



# Transitional Justice and Prevention

**SUMMARY FINDINGS FROM  
FIVE COUNTRY CASE STUDIES**

June  
2021

## Cover Images

From left: Relatives and friends hold balloons during the funeral of three-year-old Kateleen Myca Ulpina on July 9, 2019, in Rodriguez, Rizal province, Philippines. Ulpina was shot dead by police officers conducting a drug raid targeting her father. (Ezra Acayan/Getty Images). A young participant in a peace and theater workshop in San Vicente del Caguán, Caquetá, Colombia, wears a T-shirt that reads “Colombia in peace.” (Maria Margarita Rivera/ICTJ). A man calls the residents of Karina, a village in the Biriwa Limba Chiefdom in Sierra Leone’s Northern province, to attend an outreach meeting of the Special Court for Sierra Leone on behalf of the paramount chief. (Special Court for Sierra Leone). An Andean woman marches in a protest in Lima, Peru, against a mining project in the Andean region of Cajamarca on July 25, 2012. (Enrique Castro-Mendivil/Reuters). Moroccans take part in an annual human rights march organized by the Moroccan Forum for Truth and Justice and the other members of the follow-up committee for the implementation of the recommendations of the country’s Equity and Reconciliation Commission. (Moroccan Forum for Truth and Justice)

# Transitional Justice and Prevention

## **SUMMARY FINDINGS FROM FIVE COUNTRY CASE STUDIES**

*Roger Duthie*

JUNE 2021

## About the Research Project

This publication is part of an ICTJ comparative research project examining the contributions of transitional justice to prevention. The project includes country case studies on Colombia, Morocco, Peru, the Philippines, and Sierra Leone, as well as a summary report. All six publications are available on ICTJ's website.

## About the Author

**Roger Duthie** is a senior research expert at the International Center for Transitional Justice (ICTJ), where he works on research and policy initiatives. At ICTJ, he has managed projects addressing the relationship of transitional justice to prevention, sustainable development, education, and forced displacement. His publications include numerous research reports, edited volumes, and journal articles.

## Acknowledgments

This report presents summary findings from five country case studies. It is therefore a result of the work of the authors of those studies, María Cielo Linares, Mustapha Hadji, Julie Guillerot, Robert Francis Garcia, and Ibrahim Bangura, to whom the author is extremely grateful for their collaboration and valuable contributions to the project. Special thanks also to colleagues at ICTJ who in so many ways helped to complete and improve the final products.

ICTJ is grateful to the Directorate for Development Cooperation and Humanitarian Affairs of the Ministry of Foreign and European Affairs of Luxembourg for support that made this research possible.

## About ICTJ

The International Center for Transitional Justice works across society and borders to challenge the causes and address the consequences of massive human rights violations. We affirm victims' dignity, fight impunity, and promote responsive institutions in societies emerging from repressive rule or armed conflict as well as in established democracies where historical injustices or systemic abuse remain unresolved. ICTJ envisions a world where societies break the cycle of massive human rights violations and lay the foundations for peace, justice, and inclusion. For more information, visit

**[www.ictj.org](http://www.ictj.org)**

# Contents

<b>Introduction .....</b>	<b>1</b>
<b>Prioritizing Prevention in the Global Policy Agenda .....</b>	<b>5</b>
<b>Preventing the Recurrence of Human Rights Violations .....</b>	<b>7</b>
<b>Preventing Violence, Crime, and Violent Conflict.....</b>	<b>9</b>
<b>Contributions to Prevention: Evidence from the Case Studies.....</b>	<b>13</b>
Individual-Level Inclusion .....	13
Collective-Level Inclusion .....	16
Inclusive Rule of Law .....	17
Inclusive Institutions .....	19
<b>Challenges to the Preventive Function of Transitional Justice.....</b>	<b>23</b>
Tensions Between Justice and Stability .....	23
Design and Process.....	24
Implementation.....	25
Political and Security Contexts .....	27
Structural Problems .....	28
<b>Conclusion .....</b>	<b>31</b>



# Introduction

In recent years, the notion of prevention has been prioritized within the global policy agenda, including by actors such as the United Nations (UN) and within frameworks such as the Sustainable Development Goals. This policy discourse acknowledges the value of addressing the legacies of massive and serious human rights violations in prevention efforts. Transitional justice discourse has long included prevention among its primary goals, perhaps exhibited most famously in the title of the 1984 report of the Argentine National Commission on the Disappeared, *Nunca Mas (Never Again)*.<sup>1</sup> While the concept of “guarantees of nonrecurrence” is the only element of the UN Principles to Combat Impunity to be articulated explicitly in terms of preventing the recurrence of gross human rights violations, the other principles of justice, truth, and reparation are also seen to potentially contribute to this goal.<sup>2</sup>

The notion of prevention that is foregrounded in international policy forums is broader than the version that is emphasized in the transitional justice discourse, as it is primarily about violence, crime, and violent conflict and not only human rights violations. Nevertheless, there are good reasons to think that transitional justice efforts can contribute to prevention in this more expansive sense as well. Serious human rights violations, for example, often occur during or in connection with other forms of violence and conflict, and they often result from common drivers or root causes, which suggests that addressing the causes and consequences of human rights violations may also contribute to preventing the recurrence or persistence of violence and violent conflict. Statistical evidence shows that transitional justice is in fact correlated not only with fewer human rights violations but also with less recurrence of armed conflict and criminal violence, depending on the nature of the justice processes and important contextual factors.

This report synthesizes the findings of an International Center for Transitional Justice (ICTJ) research project exploring the contributions of transitional justice to prevention in the narrow and broad senses of the term. That is, it examines the prevention of violations of human rights—civil and political as well as economic, social, and cultural—and also different forms of violence, systemic crime, violent conflict, and authoritarianism. The project included case studies of five countries, Colombia, Morocco, Peru, the Philippines, and Sierra Leone, representing a range of different and complex contexts that include violent conflicts, authoritarian regimes, and mixes of the two. With this limited number of cases, it is necessary to be cautious about the certainty of the findings, and with a topic as expansive as prevention, it is wise to be modest about assigning responsibility for outcomes and in general to avoid attributing them to any single process or cause. Nevertheless, the case studies allow certain conclusions to be drawn about specific ways in which

---

1 Argentine National Commission on the Disappeared, *Nunca Mas: The Report of the Argentine National Commission on the Disappeared* (New York: Farrar Straus & Giroux, 1986).

2 UN Economic and Social Council, *Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity* (E/CN.4/2005/102/Add.1, Feb. 8, 2005), Principles 35–38, pp. 17–19.

transitional justice processes contribute to prevention, building on the correlations and insights that have been identified by previous quantitative and qualitative work.

There are many different channels through which an intervention can make a contribution to prevention. Risk factors for the onset of atrocities, for example, include a variety of political, economic, and social conditions and events. One common driver and consequence of abuses, violence, and conflict, which this research project suggests is particularly useful for considering the value of transitional justice, is the notion of exclusion and the grievances that are frequently associated with it. Violence and abuse can create feelings of exclusion because of the harms people suffer and the neglect of their suffering. Violence and abuse can also reinforce exclusion at the collective level due to structural marginalization and social injustice. Further, if grievances associated with exclusion are neglected, they can lead to further violence and abuse. To the extent that transitional justice can address such grievances and foster reform that promotes inclusion, then, it is argued here that it can help to establish and sustain more peaceful societies.

The findings of this research project are grouped into four main categories of potential contributions to prevention. First, transitional justice can address the exclusion and related grievances that victims feel due to the harms they suffered as a result of experiencing human rights violations. In every case study, transitional justice to a certain extent facilitated inclusion by providing support through reparations and restitution programs, but also by providing recognition, supporting participation, and increasing people's awareness of their rights through various justice processes, all things that can change people's perceptions and the way they engage with society.

Second, transitional justice can address the exclusion and related grievances that communities and social groups experience as a result of targeted violations and structural marginalization. In Peru, the Philippines, and Sierra Leone, for example, truth commissions have examined issues such as inequality and marginalization; in Colombia, Morocco, and Peru, collective reparations programs have responded to communities and regions that were intentionally targeted or excluded.

Third, addressing human rights violations and corruption and acknowledging the complicity of criminal support networks can help to strengthen the rule of law and make it more inclusive. There is some evidence that deterrence can play a role in this regard, but at a broader level, a system that is based on the sovereignty and equality of law—a system that makes people feel they are protected by the law—is more likely to prevent recurrence in multiple ways.

Fourth, transitional justice can include or catalyze the reform of institutions and laws that used violence and discrimination to maintain exclusion within society. Institutional, constitutional, and legal reforms, which are often recommended by truth-telling processes, generally target the institutions that perpetrated, facilitated, or failed to prevent past injustices. The creation of new institutions or the reform of existing ones can also promote participation and therefore inclusion. Although reforms of this kind usually begin at the national level, in Sierra Leone the reform process included the decentralization of justice, security, and other governance structures, creating local-level institutions that play an active role in reducing violence and promoting inclusion and social cohesion.

The research findings also identify a number of challenges that transitional justice faces in fulfilling its preventive potential. To start, while the overly dichotomous “peace versus justice” framing of the issue is not the most helpful approach, it is important not to overlook the real tensions that can exist between justice and prevention. There is no evidence that justice processes inherently or generally undermine peace, and there is increased consensus that the two can be mutually reinforcing. When tensions do exist, they are more likely to result from specific contextual factors and characteristics of certain justice processes. Criminal accountability, institutional reforms such as vetting processes, and land restitution programs, for example, may be seen to be divisive or provoke instability or insecurity. However, the case studies suggest that these types of tensions are usually most prominent in the short term, and concern about them should be balanced with the increased long-term risk of the persistence or recurrence of exclusion and violence.

From the perspective of long-term reform and inclusion, more prominent challenges include issues of process and implementation. The research suggests that when a process itself is seen to be exclusionary, its contribution to prevention may be limited or undermined. Making sure that certain victims, regions, or social groups do not feel left out by encouraging consultation, meaningful participation, and gender and ethnic approaches is therefore critical. Furthermore, arguably the main obstacle to the preventive function of transitional justice lies in the failure to enforce new laws and to implement measures and reforms that are designed or recommended. *The steps to preventing recurrence, in other words, are often identified but not taken.* Whether a failure to implement such initiatives is due to limited resources, capacity, or political will or to overly ambitious and complex plans, it can reinforce existing grievances and undermine confidence in institutions.

The fact that tensions may be reduced, process can be shaped, and implementation can be supported and advocated means that there are opportunities to promote the contribution of transitional justice to prevention. At the same time, contextual factors affect this relationship as well. For example, in Colombia and the Philippines, armed conflicts were ongoing when the transitional justice processes in question were underway. In Morocco, transitional justice was undertaken in the absence of regime change and at a time when the government was engaged in abuses in the name of its counterterrorism agenda. These case studies raise questions about what justice processes in such situations are meant to prevent and the extent to which the parties to the conflict are committed to preventing it.

Another crucial aspect of the context encompasses the structural element of the root causes of abuse, violence, and conflict. In order to truly prevent the recurrence of the types of injustices that transitional justice processes address, as well as the violent conflicts and authoritarianism within which those injustices are commonly perpetrated, structural problems such as inequality, racism, power imbalances, and marginalization have to be confronted. The more structural the exclusion that is driving outcomes such as atrocities, corruption, deprivation, and discrimination, the more prevention will depend on a combination of peace-building, development, and governance processes. This research suggests that transitional justice needs to make more of a contribution to these processes than it usually does, but nevertheless, it is only one necessary intervention among many.

The countries that were studied in this project have made varying but often significant improvements in a number of indicators since their transitional justice processes began, including levels of human rights violations, the existence or intensity of armed conflict, and perceptions of corruption. In every country,

structural problems, societal divisions, and the use of violence in response to social conflict persist. Yet the existence of these challenges does not make violent conflict or wide-scale abuses inevitable. It is important to acknowledge both the progress societies have made and the distance they still have to travel toward sustainable peace.

Sierra Leone has conducted multiple fair elections since its civil war ended and has become one of the more peaceful countries in the region; ethnic divisions and youth violence persist, but a return to mass political violence seems unlikely. Peru emerged from both authoritarianism and violent conflict, restoring the rule of law and democracy, and though it may not have succeeded in creating a pluralist society and still faces social conflicts, these have not risen to the levels of violence of the recent past. The Philippines transitioned to a democracy in the 1980s, although violations, corruption, and insurgencies have continued, and a turn toward authoritarianism and state violence in recent years echoes that of the Marcos period. Colombia ended the longest of its armed conflicts in 2016, but, despite having initiated, before and after the peace agreement, a range of justice and other processes meant to address the structural causes of the conflict and its consequences, it has since seen the persistence of violence, again, if not at the levels seen in the past. Morocco enacted transitional justice in the aftermath of its “Years of Lead,” and although the government may not wish to return to the gross violations of that period, the state continues to wield repression against dissidence and social unrest.

Examining transitional justice through a wide prevention lens does not change the fundamental understanding of the concept, but it does place an emphasis on a number of considerations that have strong policy implications. First, fostering inclusion in societies and institutions that have experienced widespread human rights violations should be a primary objective of both the outcomes and the design and process of transitional justice measures. Second, assessing the preventive function of transitional justice requires a long-term perspective on inclusion and reform because it involves changes to social relationships, institutions, and structures that happen incrementally over time. Third, long-term prevention requires that the consequences and both the immediate and the root causes of injustice be addressed—which transitional justice can do. Still, it cannot fully mitigate the consequences, nor can it resolve the causes on its own, and therefore it should be viewed in the larger context of how a society responds to its past and seeks a peaceful future.

# Prioritizing Prevention in the Global Policy Agenda

The notion of prevention has in recent years been a major priority in the global policy agenda. In 2015, the Sustainable Development Goals (SDGs) included the target of reducing all forms of violence and related death rates in Goal 16, on peaceful, just, and inclusive societies.<sup>3</sup> In 2016, the UN General Assembly and the Security Council issued twin resolutions on sustaining peace, emphasizing the need to prevent conflict rather than react to it.<sup>4</sup> The UN Secretary-General has since issued progress reports on the implementation of these resolutions, including the review of the UN peacebuilding architecture and the prevention agenda. A recent report reiterated the need to put prevention “at the heart of the work of the United Nations in order to address the root causes of vulnerability and provide pathways to sustainable development and peace.”<sup>5</sup> The UN has always held prevention to be part of its mission, as articulated in its founding charter, and has long undertaken broad initiatives in its direction; however, the recent emphasis has significantly shaped the global agenda.<sup>6</sup>

A number of the texts that have helped to set this agenda point to the relevance of transitional justice to prevention. The 2019 Task Force on Justice report, *Justice for All*, concludes that it has “helped cement peace in societies where conflicts have simmered or broken out for decades.”<sup>7</sup> The 2018 UN–World Bank study *Pathways for Peace* contends that because “rebuilding trust and cohesion” is a “critical element in preventing further cycles of violence,” “most countries have found it necessary to take some measures toward reckoning with the events of the past to build the trust to move forward.”<sup>8</sup> The 2016 UN twin resolutions themselves identify transitional justice as “critical to consolidation of peace and stability...and preventing

3 The text of SDG 16 is available on the SDG website: [www.un.org/sustainabledevelopment/peace-justice/](http://www.un.org/sustainabledevelopment/peace-justice/).

4 UN General Assembly, Resolution 70/262 (A/RES/70/262, May 12, 2016); UN Security Council, Resolution 2282 (2016) (S/RES/2282 [2016], April 27, 2016).

5 UN General Assembly, Security Council, *Peacebuilding and Sustaining Peace: Report of the Secretary-General (A/74/976-S/2020/773)*, 2. For analysis of the report, see Paige Arthur, Celine Monnier, and Leah Zamore, NYU Center on International Cooperation, “The New Secretary-General’s Report on Peacebuilding and Sustaining Peace: Prevention Back on the Agenda” (Sept. 2020).

6 For a brief review of the UN’s interest in prevention, see UN General Assembly, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence (A/72/523, Oct. 12, 2017)*, 3–7.

7 Task Force on Justice, *Justice for All—Final Report* (New York: Center on International Cooperation, 2019), 90.

8 World Bank and UN, *Pathways for Peace: Inclusive Approaches for Preventing Violent Conflict* (Washington, DC: World Bank, 2018).

countries from lapsing or relapsing into conflict.”<sup>9</sup> And the 2011 *World Development Report* describes it as potentially “crucial for sustained violence prevention.”<sup>10</sup>

Even before the current prioritization of prevention, the UN understood transitional justice to have a preventive capacity. The Secretary-General’s 2010 Guidance Note on the institution’s approach to transitional justice, for example, argued that by addressing the full spectrum of human rights violations, the field can “contribute to achieving the broader objectives of prevention of further conflict, peacebuilding and reconciliation.”<sup>11</sup> In 2004, the Secretary-General’s report on transitional justice and the rule of law stated emphatically that in regard to peace and stability, “prevention is the first imperative of justice,” and that justice constitutes “an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs.”<sup>12</sup>

---

9 UN General Assembly, Resolution 70/262, 5; UN Security Council, Resolution 2282, 5.

10 World Bank, *World Development Report 2011: Conflict, Security, and Development* (Washington, DC: World Bank, 2011), 18.

11 United Nations, *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice* (March 2010), 3.

12 UN Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General* (S/2004/616\*, Aug. 23, 2004), 4.

# Preventing the Recurrence of Human Rights Violations

While the discourse on transitional justice and prevention has been quite general in terms of actual contributions to peace, there has been more clarity about at least some of the specific ways in which the field can help to prevent the recurrence of serious and massive human rights violations. One of the four UN principles to combat impunity, articulated first in 1996 and updated in 2005, for example, is the notion of “guarantees of nonrecurrence,” which explicitly declares that “states shall ensure that victims do not again have to endure violations of their rights.” Guarantees of nonrecurrence originally focused on the reform of state institutions, such as by removing public officials and employees who were responsible for gross violations of human rights, particularly in the military, security, police, intelligence, and judicial sectors; ensuring the independence, impartiality, and effectiveness of the judiciary; promoting civilian oversight and control of military and security forces; strengthening civil complaint procedures; and providing training in human rights and humanitarian law. These efforts also included the reform of laws, including the repeal or abolishment of legislation and courts that contributed to rights violations, and the enactment of legislation to protect human rights and safeguard democratic institutions.<sup>13</sup>

The articulation of guarantees of nonrecurrence in the impunity principles has since been criticized as too narrow to respond to the nature of violence and conflict today. Alexander Mayer-Rieckh, for example, has argued that the principle should be expanded beyond a list of concrete measures to include “an open-ended number of corrective and distributive measures” that would work to address the immediate and root causes of human rights violations.<sup>14</sup> Pablo de Greiff, the former special rapporteur on the promotion of truth, justice, reparation and guarantees of nonrecurrence, has similarly described guarantees of nonrecurrence as “a function that can be satisfied by a broad variety of measures.”<sup>15</sup>

The former special rapporteur has more recently proposed the development of a “framework approach” to the prevention of human rights violations that includes state interventions such as the ratification and in-

---

13 UN Economic and Social Council, *Updated Set of Principles*, Principles 35–38, pp. 17–19.

14 Alexander Mayer-Rieckh, “Guarantees of Non-Recurrence: An Approximation,” *Human Rights Quarterly* 32, no. 2 (2017): 44. See also Naomi Roht-Arriaza, “Measures of Non-Repetition in Transitional Justice: The Missing Link?,” in *From Transitional to Transformative Justice*, eds. Paul Gready and Simon Robins (Cambridge: Cambridge University Press, 2019), 105–130.

15 UN General Assembly, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence* (A/HRC/30/42, Sept. 7, 2015), 7.

corporation of international treaties, review of emergency and anti-terrorism laws, and judicial and constitutional reforms; support for civil society's role in aggregating and magnifying voices; and cultural and individual interventions in education, the arts, archives and documentation, and religion.<sup>16</sup> This type of approach overlaps with but is more far-reaching than both guarantees of nonrecurrence and transitional justice.

In addition to guarantees of nonrecurrence, other transitional justice processes are understood to contribute to preventing recurrence. According to the UN's 2014 *Framework of Analysis for Atrocity Crimes: A Tool for Prevention*, for example, a country's record of serious violations of international human rights and humanitarian law, including violations that have "not been prevented, punished or adequately addressed," is a risk factor for further atrocity crimes.<sup>17</sup> Along these lines, in 2018, the UN Independent International Fact-Finding Mission on Myanmar concluded that "impunity for gross human rights violations [had] significantly and demonstrably contributed to the validation of deeply oppressive and discriminatory conduct, enabled recurrence of human rights violations and atrocity crimes, emboldened perpetrators and silenced victims."<sup>18</sup> And in 2021, the UN High Commissioner for Human Rights argued that in Sri Lanka, "the failure to advance accountability and reconciliation undermines the prospects for sustainable peace and development in line with the 2030 Agenda, and carries the seeds of repeated patterns of human rights violations and potential conflict in the future."<sup>19</sup>

The former special rapporteur on transitional justice and former special advisor on genocide prevention have pointed to specific ways in which this contribution to prevention can be made. Criminal justice can assist through its deterrent effect, strengthening of the rule of law, and confrontation of the violent manifestations of discrimination, marginalization, and inequality. Truth-telling contributes by revealing the magnitude of atrocities and the motives, means, and structures leading to them, and it also offers recommendations for transforming these structures. Finally, reparations provide recognition of the rights of victims.<sup>20</sup>

Quantitative studies also identify correlations between transitional justice and human rights violations. One study, for example, shows that trials and amnesties together are associated with lower levels of violations, and although truth commissions on their own are associated with higher levels of violations, when they are combined with trials and amnesties, they are not.<sup>21</sup> Another study suggests that both truth commissions and human rights prosecutions have a positive impact on reducing repression.<sup>22</sup> In addition, a recent report demonstrated that in countries that had experienced atrocities, those that implemented a truth commission had a "46.1% greater reduction in overall risk, on average over time, compared with those cases that did not," the effect being particularly strong when the commission's mandate was complete and a final report was made public.<sup>23</sup>

---

16 UN General Assembly, *Report of the Special Rapporteur (A/72/523, Oct. 12, 2017)*.

17 United Nations, "Framework of Analysis for Atrocity Crimes: A Tool for Prevention" (2014), 11.

18 UN Human Rights Council, *Report of the Independent International Fact-Finding Mission on Myanmar (A/HRC/39/64, Sept. 12, 2018)*, paras. 95–99; UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar (A/HRC/39/CRP.2, Sept. 17, 2018)*, para. 1565.

19 UN Human Rights Council, *Promotion Reconciliation, Accountability and Human Rights in Sri Lanka: Report of the Office of the High Commissioner for Human Rights (A/HRC/46/20, Jan. 27, 2021)*, para. 57.

20 UN Human Rights Council, *Joint Study of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence and the Special Advisor to the Secretary-General on the Prevention of Genocide (A/HRC/37/65, March 2018)*, 4–5.

21 Tricia D. Olsen, Leigh A. Payne, and Andrew G. Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (Washington, DC: United States Institute of Peace Press, 2010).

22 Hunjoon Kim and Kathryn Sikkink, "Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries," *International Studies Quarterly* 54, 4 (2010): 939–963.

23 Auschwitz Institute for the Prevention of Genocide and Mass Atrocities, "Truth Commissions and Their Contributions to Atrocity Prevention" (2020), 12.

# Preventing Violence, Crime, and Violent Conflict

The prioritization of prevention in the global policy agenda is mostly not about human rights violations or atrocities specifically but rather about violence and violent conflict more generally. Nevertheless, the frequency with which violence and corruption persist after peace agreements and regime changes and the prevalence of the recurrence of armed conflicts suggest that it would be valuable to know whether and how transitional justice can have an impact in the broader sense.<sup>24</sup> As the former special rapporteur on transitional justice and former special advisor on the prevention of genocide argue, “While transitional justice should not be conceived primarily as a ‘peace-making’ instrument, numerous indicators demonstrate that it can contribute to sustainable peace and security.”<sup>25</sup>

The connections between different forms of violence and injustice make it reasonable to think that transitional justice and prevention are also linked in this broad sense. During periods of violent conflict and authoritarian repression, for example, human rights abuses, criminal violence, violent extremism, and gender-based violence are often “interlinked and reinforce each other.”<sup>26</sup> Indeed, according to various studies, two-thirds of mass atrocities occur during violent conflicts. Further, violations of economic and social rights and physical integrity rights increase the risk of violent conflict, and high levels of gender inequality and gender-based violence are associated with increased vulnerability to violent conflict and more severe forms of violence during conflict.<sup>27</sup>

Furthermore, injustice frequently persists after peace agreements, as “the end of wars very rarely, if ever, marks a definitive break with past patterns of violence.”<sup>28</sup> This happens for a number of reasons, including

24 In the post–World War II era, 135 countries experienced a recurrence of conflict, with 60 percent of all conflict recurring. Since the mid-1990s, most conflicts have been recurrences. Scott Gates, Havard Mokleiv Nygård, and Esther Trappeniers, Peace Research Institute Oslo, “Conflict Recurrence,” *Conflict Trends* 02/2016.

25 UN Human Rights Council, *Joint Study*, 7, 11, 4.

26 Sarah Cliffe and David Steven, NYU Center on International Cooperation, “An Integrated Approach to Prevention: The Links Between Prevention, the 2030 Agenda, and Sustaining Peace” (Dec. 2017), 4.

27 Flavia Carbonari, Alys Willman, Federico Manolio, Sofia Reinach, and David Marques, Forum Brasileiro de Segurança Pública and Pathfinders for Peaceful, Just and Inclusive Societies, “A Review of the Evidence and a Global Strategy for Violence Prevention” (March 2020); Kjersti Skarstad and Håvard Strand, “Do Human Rights Violations Increase the Risk of Civil War?” *International Area Studies Review* 19, no. 2 (2016): 107–130; World Bank and UN, *Pathways for Peace*, xxiii.

28 Mats Berdal, “Reflections on Post-War Violence and Peacebuilding,” in *The Peace In Between: Post-War Violence and Peacebuilding*, eds. Astri Surhke and Mats Berdal (London: Routledge, 2012), 309.

the fact that institutional alliances between organized crime and armed groups that form during conflict tend to be difficult to break.<sup>29</sup> In Guatemala and El Salvador, for example, post-conflict reforms did not effectively dismantle the structures in security institutions that had allowed abuses to occur during the conflicts. Consequently, many of the people who were responsible for human rights violations were left in positions of influence in institutions that continued to employ the same practices going forward, such as the “extermination of gang members just as rebels had been dealt with in the past”; they also facilitated criminal violence by defecting to organized crime or protecting criminals from within the state, turning the “political impunity” of specialists in violence into “criminal immunity.”<sup>30</sup> Moreover, a lack of institutional reform or other forms of accountability can reinforce a culture of violence, as “a climate is created where individuals are led to believe that they can ‘get away’ with violence.”<sup>31</sup>

Different forms of violence and injustice can have “common drivers,” including state fragility, exclusion, gender inequality, and low community cohesion and resilience, which suggests that addressing such drivers “can be expected to generate gains in reducing various forms of violence simultaneously.”<sup>32</sup> The notion of exclusion and the grievances associated with exclusion, in particular, are regularly cited in the policy discourse on prevention. Feelings of exclusion can result from discrimination, corruption, insecurity, and lack of access to “power, opportunity, and services,” creating grievances that can be mobilized for violence.<sup>33</sup>

This dynamic can be reinforced by human rights violations. “Exclusion that is reinforced by state repression poses a grave risk of violent conflict,” explains the *Pathways for Peace* study. “Countries where governments violate human rights...are at a higher risk for violent conflict. In these contexts, repression creates incentives for violence by reinforcing the perception that there is no viable alternative for expressing grievances and frustration.”<sup>34</sup> The same dynamic can apply in contexts of violent extremism as well, with extremist groups able “to tap into the sense of injustice and exclusion people feel.”<sup>35</sup> Indeed, one reason that good governance correlates with a lower risk of renewed violence of any kind is that “governments beholden to a formal constitution, that follow the rule of law and that do not torture and repress their citizens may create fewer grievances.”<sup>36</sup>

Human rights violations, then, can create feelings of exclusion because of the harm victims suffer and the neglect of their suffering. Human rights violations can also result from and reinforce feelings of exclusion at the collective level as a result of targeted violations and structural marginalization. The grievances as-

---

29 Mats Berdal, “The ‘New Wars’ Thesis Revisited,” in *The Changing Character of War*, ed. Hew Strachan (Oxford: Oxford University Press, 2011), 126.

30 Jose Miguel Cruz, Rafael Fernandez de Castro, and Gema Santamaria Balmaceda, “Political Transition, Social Violence, and Gangs: Cases in Central America and Mexico,” in *In the Wake of War: Democratization and Internal Conflict in Latin America*, ed. Cynthia J. Arnson (Washington, DC: Woodrow Wilson Center Press, 2012), 340; Guillermo Trejo, Juan Albarracin, and Lucia Tiscornia, “Breaking State Impunity in Post-Authoritarian Regimes: Why Transitional Justice Processes Deter Criminal Violence in New Democracies,” *Journal of Peace Research* 55, no. 6 (2018): 787–809.

31 Chrissie Steenkamp, “The Legacy of War: Conceptualizing a ‘Culture of Violence’ to Explain Violence After Peace Accords,” *The Round Table* 94, no. 379 (April 2005): 259.

32 Carbonari et al., “A Review of the Evidence,” 68–70.

33 World Bank and UN, *Pathways for Peace*, 165–166, 221.

34 *Ibid.*, xxii.

35 Carbonari et al., “A Review of the Evidence,” 52. See also UN General Assembly, *Plan of Action to Prevent Violent Extremism: Report of the Secretary-General (A/70/674, Dec. 24, 2015)*, para. 3, para. 20.

36 Barbara F. Walter, “Conflict Relapse and the Sustainability of Post-Conflict Peace,” background paper for 2011 World Development Report, Washington, DC (2010), 3–4, 9–10.

sociated with exclusion and the resulting damage to the social fabric are therefore among the drivers and impacts of past violence and injustice, with unaddressed impacts themselves potentially becoming drivers of recurrence. In South Africa, for example, where the marginalization and alienation that led people to participate in “political” violence were similar to those that led people after the end of apartheid to engage in “criminal” violence, the truth commission, by drawing a clear line between political and criminal violence, may have limited its understanding of the social and economic dynamics underlying widespread and persistent violence.<sup>37</sup>

By addressing those grievances, transitional justice may help to disrupt these dynamics.<sup>38</sup> One quantitative study concluded that to the extent that “social group exclusion or inclusion drives conflict non-recurrence,” it may be the “coming together after a war to initiate a major legal process” of transitional justice that provides a mechanism of change.<sup>39</sup> Similarly, contends the UK Stabilisation Unit, national experiences with transitional justice suggest that “ideas, beliefs and notions of legitimacy can play a significant role in building inclusion within, or conversely, unsettling ruling coalitions,” and that transitional justice itself “provides a language and a narrative that can and has proven to be empowering, and a useful tool to build vertical inclusion.”<sup>40</sup> A recent report by UNDP concluded that addressing root causes of conflict, including grievances associated with exclusion, constitutes “the connecting factor between the dealing-with-the-past paradigm and the prevention paradigm and where the field of transitional justice positioned.”<sup>41</sup>

The quantitative evidence again identifies correlations between transitional justice and the persistence of violence and the recurrence of violent conflict. One study, for example, found that truth commissions are associated with lower murder rates, as are human rights trials that result in guilty verdicts when combined with truth commissions—even when socioeconomic conditions favor such violence—while amnesty laws are associated with higher homicide rates.<sup>42</sup> Another study claims that the International Commission Against Impunity in Guatemala, a hybrid model of internationalized prosecution, reduced criminal violence and murder rates, helping to prevent 18,000 murders by “dismantl[ing] the networks of corruption, criminality, and human rights violations that emerged under military rule and during the country’s civil war and survived the peace agreement.”<sup>43</sup>

One study found mixed results in relation to violent conflict recurrence: Trials for middle- and lower-level officials were associated with a decrease in recurrence and trials for high-level officials with an increase. The creation of a new constitution, but not the amendment of an existing one, was associated with a reduction in the rate of recurrence. Significantly, none of the measures were associated with an increased risk of re-

37 Graeme Simpson, “‘A Snake Gives Birth to a Snake’: Politics and Crime in the Transition to Democracy in South Africa,” in *Justice Gained? Crime and Crime Control in South Africa’s Transition*, eds. Bill Dixon and Elrena van der Spuy (Cape Town: Juta Academic, 2004), 1–28.

38 Global Alliance for Reporting Progress on Peaceful, Just and Inclusive Societies, *Enabling the Implementation of the 2030 Agenda Through SDG 16+: Anchoring Peace, Justice and Inclusion* (New York: United Nations, 2019), 41.

39 Leigh Payne, Andy Reiter, Chris Mahoney, and Laura Bernal-Bermudez, “Conflict Prevention and Guarantees of Non-Recurrence,” background paper for UN–World Bank *Pathways for Peace* study (2017), 19.

40 Christine Cheng, Jonathan Goodhand, and Patrick Meehan, Elite Bargains and Political Deals Project, United Kingdom Stabilisation Unit, “Synthesis Paper: Securing and Sustaining Elite Bargains That Reduce Violent Conflict” (2018), 75.

41 United Nations Development Programme, “From Justice for the Past to Peace and Inclusion for the Future: A Development Approach to Transitional Justice” (2020), 57.

42 Trejo, Albarracin, and Tiscornia, “Breaking State Impunity in Post-Authoritarian Regimes.”

43 Guillermo Trejo and Camilo Nieto-Matiz, “Containing Large-Scale Criminal Violence Through Internationalized Prosecution: How the CICIG Contributed to the Reduction of Guatemala’s Murder Rate” (2019), 2–3, doi:10.33774/apsa-2019-crqto.

currence.<sup>44</sup> Two other studies respectively found that transitional justice can have positive effects on peace, depending not only on the nature of the processes themselves but also on a number of contextual factors such as the degree of social diversity, the state of democracy, and the way in which a conflict ends.<sup>45</sup>

The value of case studies is that they can complement the correlations that are identified by the quantitative work with more qualitative analysis of the potential mechanisms of change. At the same time, it is important to be cautious in drawing conclusions from a small number of case studies, especially when examining complex contexts such as fragile and conflict-affected societies. The quantitative research on transitional justice, according to one study, lacks consensus on whether or not transitional justice produces benefits for society and does not lend itself to providing decisive policy descriptions.<sup>46</sup> Qualitative research, for its part, can help to identify specific ways in which transitional justice measures can further advance aims whose realization depends on a range of interventions and factors.<sup>47</sup> In complex environments, a single type of measure can *contribute* to the prevention of injustice; it cannot prevent it on its own. “Transitional justice mechanisms are only one of many processes that shape transitional societies as complex systems,” caution Paul Gready and Simon Robin. “As a result, change is likely to be non-linear and multi-causal.”<sup>48</sup>

---

44 Payne, Reiter, Mahoney, and Bernal-Bermudez, “Conflict Prevention and Guarantees of Non-Recurrence.”

45 Mariam Salehi and Timothy Williams, “Beyond Peace vs. Justice: Assessing Transitional Justice’s Impact on Enduring Peace Using Qualitative Comparative Analysis,” *Transitional Justice Review* 1, no. 4 (2016): 96–123; Tove Grete Lie, Helga Malmin Binningsbo, and Scott Gates, “Post-Conflict Justice and Sustainable Peace,” World Bank Policy Research Working Paper 4191 (2007), 17–18.

46 Brandon Stewart and Eric Wiebelhaus-Brahm, “The Quantitative Turn in Transitional Justice Research: What Have We Learned About Impact?” *Transitional Justice Review* 1, no. 5 (2017).

47 Pablo de Greiff, “Theorizing Transitional Justice,” in *Transitional Justice*, NOMOS LI, ed. Melissa S. Williams, Rosemary Nagy, and Jon Elster (New York and London: New York University Press, 2012), 41.

48 Paul Gready and Simon Robin, “Transitional Justice and Theories of Change: Towards Evaluation as Understanding,” *International Journal of Transitional Justice* 14 (2020): 280–299.

# Contributions to Prevention: Evidence from the Case Studies

This research project included case studies on Colombia, Morocco, Peru, the Philippines, and Sierra Leone. Using the notions of inclusion and reform as a lens, the research results point to four main ways in which transitional justice can contribute to prevention:

- addressing exclusion and related grievances at the level of individual victims;
- addressing exclusion and related grievances at the collective or group level;
- facilitating a more inclusive rule of law; and
- making institutions more inclusive and less abusive.

These categories draw from the discussion above. They represent an attempt to extract relevant insights about transitional justice's role in preventing human rights abuses and to explore their application in a potentially more expansive role in preventing violent conflict, crime, and violence.

## Individual-Level Inclusion

Transitional justice can address the exclusion and related grievances that victims feel due to the harms they suffer as a result of experiencing human rights violations and the ensuing neglect they may otherwise perceive. In every case study, transitional justice to a certain extent facilitated inclusion, for example, by providing material support through reparations or restitution programs, but also by supporting participation and recognition and by increasing people's awareness of their rights through a range of justice processes.

In Sierra Leone, the Truth and Reconciliation Commission (TRC), which operated from 2002 to 2004, promoted inclusion to the extent that it was participatory and accessible. Both the commission and the Special Court for Sierra Leone helped to increase people's awareness of their rights through their outreach and public education activities. In addition, the institutions that were subsequently established on the recom-

mentation of the truth commission, such as the Human Rights Commission and the Legal Aid Board, have continued to increase such awareness in the longer term. As one Sierra Leonean explained:

The first time I heard the word “human rights” was during a TRC meeting in Bo. I was confused and was asking those around me to explain to me what the man was trying to say. Then I later came to know that people such as Hinga Norman were to be tried because of human rights violations, then I started asking more questions to know what human rights is about. Now we have the Legal Aid where we go all the time to ask for help and guidance when our rights are abused. There is a lot we know now that we did not know before 2002.<sup>49</sup>

Indeed, the Legal Aid Board has reported increased demand for justice-related services across the country.<sup>50</sup> In the Bangsamoro region of the Philippines, the Transitional Justice and Reconciliation Commission (TJRC), studying the regional armed conflict, conducted an “elaborate consultation process” that included community-based “listening sessions” in more than 200 communities.<sup>51</sup>

In Morocco, the Equity and Reconciliation Commission (IER), in operation from 2004 to 2006, took a relatively expansive approach to the provision of individual reparations, with benefits that included employment, health care, and psychological counseling, “all of which can help to reduce grievances and foster inclusion in society.”<sup>52</sup> In the Philippines, a 2011 law created the Human Rights Victims Claims Board and the Human Rights Violations Victims Memorial Commission, which were mandated with the documentation, reparation, and recognition of victims of martial law. One observer described the law as “a commitment by the state that these violations should never be repeated.”<sup>53</sup> In Peru, the reparations program included economic, health, housing, and education benefits as well as the restitution of rights, understood by the truth commission (Comisión de la Verdad y Reconciliación, or CVR) as an effort to restore victims’ dignity and status as full citizens.<sup>54</sup>

In Colombia, the 2011 Victims Law provided land restitution and health care, education, and housing measures focused on “correcting the situation of vulnerability and social exclusion,” the restitution process in particular helping to “equalize real power between the dispossessed and those who occupy their property.”<sup>55</sup> The development of the law involved forums in which victims could express their needs, and the law itself created mechanisms of direct participation.<sup>56</sup> In addition, the National Commission of Repara-

49 Ibrahim Bangura, International Center for Transitional Justice, “Leaving Behind the Worst of the Past: Transitional Justice and Prevention in Sierra Leone” (2021), 33.

50 Ibid.

51 Transitional Justice and Reconciliation Commission, “Report of the Transitional Justice and Reconciliation Commission” (2016), 20, cited in Robert Francis García, International Center for Transitional Justice, “Disrupting Cycles of Unrest and Atrocity: Transitional Justice and Prevention in The Philippines” (2021), 39.

52 Mustapha Hadji, International Center for Transitional Justice, “Moving from Mirage to Reality: Transitional Justice and Prevention in Morocco” (2021), 3.

53 Byron D. Bocar, “The Right to Reparation and the Philippine Experience,” presentation at the Transitional Justice Pilot Training for the CHR, Quezon City, August 15–16, 2019, cited in García, “Disrupting Cycles of Unrest and Atrocity,” 45.

54 Julie Guillerot, International Center for Transitional Justice, “Alive in the Demand for Change: Transitional Justice and Prevention in Peru” (2021), 22–27.

55 María Cielo Linares, International Center for Transitional Justice, “Setting an Agenda for Sustainable Peace: Transitional Justice and Prevention in Colombia” (2021), 44, 38.

56 Ibid., 37.

tion and Reconciliation, part of the 2005 Justice and Peace Law, “helped to reactivate local leadership and to create small and grassroots listening spaces where victims started to feel less alone.”<sup>57</sup>

Cultural interventions, such as efforts to preserve the memory of an exclusionary and abusive past, can be important to long-term prevention through their educational function.<sup>58</sup> Such interventions can include both state and nonstate initiatives. In Colombia, the National Center of Historical Memory increased social awareness of the armed conflict and helped to create a culture of respect for human rights through more than 110 reports, as well as podcasts, national and regional exhibitions, discussions, and other events.<sup>59</sup> In Morocco, even before the IER was established, former political prisoners published best-selling memoirs that raised awareness about enforced disappearances and other human rights violations, giving “a human face to victims and shed[ding] light on parts of the country’s history that were unknown to many.”<sup>60</sup> Victims’ and human rights organizations have also pushed for memorialization projects such as turning former illegal detention centers into museums or sociocultural centers meant to preserve the memory of victims and benefit local populations that suffered from state repression.<sup>61</sup>

In the Philippines, the Human Rights Violations Victims Memorial Commission runs education programs and plans to build a martial law museum, having collected memorabilia, including photographs, from compensation claimants. Other martial law memorials in the country exhibit documentation of torture and prison conditions as well as biographies and photographs of victims.<sup>62</sup> In Mindanao, a local civil society group runs an effort called the Reflection Sessions on Martial Law in Mindanao, which explicitly draws connections between the human rights violations that were committed in the past under Marcos’s martial law and those that are currently being committed under President Rodrigo Duterte’s “war on drugs.” One of the sessions is entitled “Conversation on a Culture of Life and Dignity.”<sup>63</sup>

As victims and others participate in or otherwise engage with the institutions, processes, and interventions that address the legacies of the past, they may come to feel more included in society in different ways. Taking part in consultations can make people feel listened to, and attending truth commission meetings can expand people’s awareness of their rights and how to demand justice in the future. Receiving assistance and recognition in the form of money, employment, housing, health and psychological care, or education can empower people to actively engage in society as full citizens. Exposure to memoirs, museums, and memorial initiatives can remind people about the risks of exclusion and the humanity of victims. All of these experiences can help to minimize the exclusion that made people vulnerable to abuse and society vulnerable to violence.

---

57 Ibid., 30.

58 Hadji, “Moving from Mirage to Reality,” 38.

59 Linares, “Setting an Agenda for Sustainable Peace,” 34.

60 Hadji, “Moving from Mirage to Reality,” 39.

61 Ibid.

62 Garcia, “Disrupting Cycles of Unrest and Atrocity,” 24.

63 Ibid., 43.

## Collective-Level Inclusion

Transitional justice can also address the exclusion and related grievances that communities and social groups experience as a result of targeted rights violations and broader, more structural marginalization, and again the ensuing neglect they may otherwise perceive. In Sierra Leone and the Philippines, for example, truth commissions examined issues such as inequality, poverty, racism, gender discrimination, and economic and social violations; in Colombia and Morocco, collective reparations programs have supported communities and regions that were intentionally targeted or marginalized, or at least brought attention to the issues of marginalization and exclusion; and in Peru, transitional justice addressed such issues through its truth commission, collective reparations, and institutional reform in the education system. Where justice processes fall short in terms of contending with the more structural elements of injustice, they may nevertheless succeed in shaping the future public agenda in this direction in ways that can be mutually reinforcing with the increased individual awareness that was highlighted in the previous section.

In Peru, the CVR revealed socioeconomic, rural–urban, and ethnocultural divides behind the violence that was committed during the armed conflict. It identified a direct relationship between poverty and social exclusion and the likelihood of being a victim, and also found that the regions that were hit the hardest by violence were the poorest in the country’s interior. The victim profile that it created was a “picture of the socially and economically excluded.”<sup>64</sup> The CVR’s mandate was nevertheless focused on violations of civil and political rights, which partly explains why the broader transitional justice process may have played a role in catalyzing human rights organizations but “failed to connect with economic, social, and cultural rights or socio-environmental and indigenous organizations.” Protests and social conflicts in Peru in the years since have revolved around basic economic, social, and cultural rights.<sup>65</sup>

In the Philippines, the Bangsamoro TJRC highlighted the social and historical elements of the region’s injustice and conflict. It concluded: “The Bangsamoro narrative of historical injustice is based on an experience of grievances that extends over generations, particularly with respect to land dispossession and its adverse effects upon their welfare as a community as well as their experience of widespread and serious human rights violations.” This narrative, the commission argued, was rooted in the “historical injustice” or “wrongdoings” that were “committed or sanctioned by governments (Spanish, American, and Japanese colonial governments and the Philippine Government) that hurt or harmed people, affected relationships repeatedly over time and were not (properly) addressed.”<sup>66</sup> The commission viewed the grievances of the people of Bangsamoro as the result of violence, impunity, and neglect, “interlocking phenomena” rooted in the “imposition of a monolithic Filipino identity and Philippine State by force on multiple ethnic groups.”<sup>67</sup> At the national level, though, transitional justice efforts “did not address fundamental and structural problems of the country, such as social inequality...the root of the social volcano that continues to smolder up to this day.”<sup>68</sup>

---

64 Guillerot, “Alive in the Demand for Change,” 12.

65 Ibid., 39, 37-43.

66 Transitional Justice and Reconciliation Commission, “Report of the Transitional Justice and Reconciliation Commission” (2016), XIV, 27, cited in Garcia, “Disrupting Cycles of Unrest and Atrocity,” 39.

67 Ibid., XVII.

68 Garcia, “Disrupting Cycles of Unrest and Atrocity,” 63.

In Morocco, the IER did not directly address economic, social, or cultural rights violations, despite the connections between such violations, social unrest, and repression. It did, however, identify regions of the country that had suffered the most from economic exclusion and recommend collective reparations that were meant “to promote equal opportunities and a gradual process of positive discrimination in favor of the regions and communities concerned.”<sup>69</sup> The IER also managed the gender dimension of exclusion in multiple ways. It determined compensation in part according to women’s vulnerability to harm as a result of their loss of income and opportunity. It also allocated compensation between female and male claimants of deceased victims without regard for Shari’a-based inheritance laws. And, it recommended the establishment of a national mechanism “to ensure the protection and the promotion of women’s rights, an effort to dismantle the discriminatory attitudes and practices that deprive women of their basic rights and put them at a disadvantage in society.”<sup>70</sup>

In Colombia, the transitional justice processes that were initiated before the 2016 peace agreement have had limited success in contending with economic, social, and cultural rights violations and the structural social problems underlying violent dynamics, especially with regard to inequity and discrimination, thereby “leaving the door open for future violence.”<sup>71</sup> The 2018 model of the collective reparations program, for example, does not include contextual analysis and requires proof of collective damage for reconstruction and infrastructure. Land restitution, despite not fully engaging with the structural causes of dispossession, nevertheless has significant potential impact on inequity because its rulings include orders regarding issue such as water and housing. Moreover, these processes crucially underscored the need for addressing the plunder of land and collective reparations to the public agenda for the first time.<sup>72</sup>

By acknowledging the collective nature of massive human rights violations, transitional justice processes can examine and put on the public agenda the common drivers of abuse, violence, and conflict, including structural and root causes such as racism, discrimination, marginalization, and inequality, as well as the economic and social dimensions of injustice. Truth-telling initiatives, to the extent that they have sweeping mandates, are a standard mechanism for addressing this type of exclusion, and the individual and collective reparations programs that they often recommend can represent concrete steps to foster collective inclusion if they adopt a gender approach or target historically marginalized communities or regions. Tackling common drivers by these different approaches may be one of the most powerful ways in which transitional justice can promote substantial prevention through inclusion.

## Inclusive Rule of Law

Accountability and redress for human rights violations and the systemic or grand corruption and other economic crimes that are frequently connected to violations can help to strengthen and make the rule of law as an institution more inclusive. At a broad level, the importance of transitional justice to strengthening the

---

69 Hadji, “Moving from Mirage to Reality,” 33.

70 Ibid.

71 Linares, “Setting an Agenda for Sustainable Peace,” 4.

72 Ibid., 39-40.

rule of law rests on both the sovereignty of law and the equal application and protection of law.<sup>73</sup> As such, the application of the notion of guarantees of nonrecurrence has been criticized for failing to “get at the ties between rights violation and their partners, backers or successors in the economic and political elite and organized crime.”<sup>74</sup>

In Morocco, the absence of any individual accountability—an absence that human rights and victims’ organizations viewed as further entrenching a culture of impunity—has undermined the government’s credibility in committing to ending abuses through reform and other measures. Even at the truth commission, for example, victims had to sign a declaration before participating in public hearings that they would not name public officials who were responsible for their suffering.<sup>75</sup>

In Sierra Leone, in contrast, there has been at least some individual accountability. In asking the UN to set up an international tribunal after the war, then-president Ahmad Tejan Kabbah referred to the need for “a strong court in order to bring and maintain peace and security in Sierra Leone.”<sup>76</sup> One political opposition leader, referring to the impact of the Special Court for Sierra Leone, later argued that “no matter the anger and frustrations of political elites in Sierra Leone, they will never resort to outright violence because they will constantly be reminded of what happened to those who took up arms and hurt innocent civilians.”<sup>77</sup> Indeed, TV and radio programs in the country now refer to the Special Court during elections to impress on politicians the need to prevent political and ethno-regional tensions and violence. While this suggests the specific role of deterrence, the full impact of accountability appears to go beyond that to affect how people understand the sovereignty and equality of law more generally. “I always thought that those who killed my wife and my children were above the law,” reported one victim. “I wanted to see the leaders of the RUF [Revolutionary United Front] and the AFRC [Armed Forces Revolutionary Council] arrested and jailed but was not confident knowing the history of our country and the way powerful people escape justice. The day Charles Taylor was arrested and brought to Sierra Leone was my happiest day. That was the day all my anger and pain disappeared.”<sup>78</sup>

A more inclusive rule of law also encompasses accountability for economic crimes such as corruption, which can be a factor in the onset of violent conflict and usually forms an integral part of authoritarian repression. As Sierra Leone’s truth commission concluded, “Endemic corruption was a central factor that produced the dire conditions that made civil war inevitable. Sierra Leone remains in the grip of pervasive corruption, which, if not arrested, will sap the country of its life force and lay the grounds for further conflict.”<sup>79</sup> Sierra Leone subsequently established an Anti-Corruption Commission, which gives citizens the opportunity to report acts of corruption and has the power to prosecute its own cases.<sup>80</sup>

---

73 UN General Assembly, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence* (A/67/368, Sept. 13, 2012); UN Security Council, *The Rule of Law and Transitional Justice* (S/2004/616\*, Aug. 23, 2004), para. 6.

74 Roht-Arriaza, “Measures of Non-Repetition in Transitional Justice.”

75 Hadji, “Moving from Mirage to Reality,” 26.

76 UN Security Council, Annex to the Letter dated August 9, 2000, from the Permanent Representative of Sierra Leone to the United Nations addressed to the President of the Security Council (S/2000/786, August 10, 2000), cited in Bangura, “Leaving Behind the Worst of the Past,” 14.

77 Bangura, “Leaving Behind the Worst of the Past,” 30-31.

78 *Ibid.*, 33.

79 Sierra Leone Truth and Reconciliation Commission, *Witness to Truth*, Vol. 2, Ch. 3, 159, cited in Bangura, “Leaving Behind the Worst of the Past,” 12.

80 Bangura, “Leaving Behind the Worst of the Past,” 14.

In Colombia, the 2005 Justice and Peace process involved the investigation of international crimes, war crimes, and crimes against humanity committed during the conflict, resulting in 66 rulings (by end of 2020), the condemnation of more than 700 individuals, and the accreditation of more than 75,000 victims. It also included the investigation of macro-criminality patterns, highlighting the complicity of economic and political support networks—involving security actors, politicians, and third-party financiers—that helped to facilitate the human rights violations that were committed by paramilitary groups. The process had limited impact in dismantling the networks, but it did change the discourse in the country about the nature of responsibility, constituting a “substantial step forward as far as recognizing victims of the conflict and building a culture of respect for human rights.”<sup>81</sup> In addition, but to a lesser extent, the ensuing Victims Law’s land restitution program has helped to determine criminal responsibility for dispossession by identifying and forwarding information about those responsible to the ordinary criminal jurisdiction.<sup>82</sup>

In the Philippines, the little criminal accountability that was achieved for violations that were committed during martial law under Marcos may help to explain the persistence of human rights violations since the transition. Furthermore, corruption was “at the heart of the culture of impunity. It is a facet of that culture of impunity. That culture had to do not just with the ease with which people could murder other people, it had to do with the ease with which people, notably public officials, could steal.”<sup>83</sup> The Presidential Commission on Good Government was therefore created in 1986 to help recover Marcos’s ill-gotten wealth, investigate corruption, and institutionalize measures to prevent a reoccurrence. Its mandate included the “adoption of safeguards to ensure that the corrupt practices shall not be repeated in any manner under the new government, and the institution of adequate measures to prevent the occurrence of corruption.”<sup>84</sup>

By holding individuals, actors, networks, and institutions accountable for serious crimes, transitional justice processes can not only strengthen the rule of law but also, perhaps equally as important, make it more inclusive and responsive. Victims who talk about leaders no longer appearing to be above the law speak to this effect, while actors in societies where little or no accountability was sought point to the entrenchment of a culture of impunity. Where accountability includes the systemic corruption and economic networks that facilitate abuses and violent conflict, its effect on inclusion and contribution to long-term peace may be even stronger.

## Inclusive Institutions

Transitional justice can implement or catalyze the reform of institutions that are exclusionary in themselves and that use violence and discrimination to maintain systems of exclusion within society. Institutional, constitutional, and legal reforms, often recommended by truth-telling processes, can target the institutions at the national and local levels that perpetrated, facilitated, or failed to prevent past injustices. The institutions to be reformed can range from the security and justice institutions that are usually most directly responsible for perpetrating violent crimes to the social, economic, and cultural institutions that are integral to or complicit in

81 Linares, “Setting an Agenda for Sustainable Peace,” 16.

82 Ibid., 39-41.

83 Conrado de Quiros, “Still, Getting Back,” *Philippine Daily Inquirer*, September 25, 2013, cited in Garcia, “Disrupting Cycles of Unrest and Atrocity,” 51.

84 “PCGG at 30: Recovering Integrity: A Milestone Report” (PCGG, 2016), 8, cited in Garcia, “Disrupting Cycles of Unrest and Atrocity,” 20.

a wider spectrum of injustices such as discrimination and marginalization. Creating or reforming institutions that promote participation and inclusion are important steps in addressing such structural problems.

In Sierra Leone, the TRC's proposals focused on "creating systems and conditions that were essential for preventing a relapse into violence."<sup>85</sup> At the broadest level, the commission called for a new constitution through a consultative and participatory process in order to "provide a historic bridge between the divided and violent past and a future based on peace, unity, social justice and economic development."<sup>86</sup> It then recommended the establishment of myriad institutions for the protection and promotion of human rights, reform of the security and justice sectors, cultivation of good governance, advancement of youth participation and representation in governance, and transparency of government systems and structures. The creation and decentralization of security and justice-related structures in particular have been essential for preventing or minimizing potential violence at the regional, district, and chiefdom levels. According to one observer, the establishment of structures like the local police partnership boards and provincial, district, and chiefdom security committees represents "one of the most formidable approaches to the prevention of violence in local communities in Sierra Leone."<sup>87</sup> Structures such as these address land and community disputes that the truth commission identified as factors behind the violence that was committed during the war, serving as "an outlet that is vital to reducing tension and violence at the lower levels."<sup>88</sup> The TRC also recommended political decentralization in response to grievances related to exclusion resulting from a centralized, gerontocratic, and elite-based approach to governance that had contributed to the war.<sup>89</sup> Decentralization was meant to "open up the political space and improve inclusiveness, as a way to address one of the root causes for conflict," according to the World Bank.<sup>90</sup>

In Peru, the CVR recommended institutional reforms designed to improve access to justice, guarantee respect for human rights in the operations of the police and defense institutions, and promote social inclusion in the education system. Reform of the justice system since has included strengthening the independence and impartiality of the judicial system and incorporating into the criminal code violations in international treaties such as forced disappearance, torture, and genocide. Reform of the security sector has involved changes to military and police education and curriculum, the subordination of the military and police to the ministries of defense and the interior, the limitation of the scope and concept of national defense, the incorporation of civilians into defense-sector policies, the separation of national defense and internal order and citizen security, and the legal establishment of nonmilitarization of the national police. But, this progress is undermined by norms that regulate states of exception and grant the armed forces the power to intervene in any type of situation with a high degree of impunity.<sup>91</sup>

In Morocco, the IER recommended a number of institutional and legal reforms in the judiciary and the security sector focused on preventing the recurrence of human rights violations. The judiciary in particular

---

85 Bangura, "Leaving Behind the Worst of the Past," 13.

86 Sierra Leone Truth and Reconciliation Commission, *Witness to Truth*, Vol. 2, Ch. 3, 139, cited in Bangura, "Leaving Behind the Worst of the Past," 24.

87 Bangura, "Leaving Behind the Worst of the Past," 39.

88 *Ibid.*, 40.

89 *Ibid.*, 41.

90 World Bank, "Project Appraisal Document to the Government of Sierra Leone on a Proposed Grant on Institutional Reform and Capacity Building Project" (2004), 1, cited in Bangura, "Leaving Behind the Worst of the Past," 41.

91 Guillerot, "Alive in the Demand for Change," 30-32, 39.

had facilitated violations in the past through its disregard for due process, unfair trials, and lack of independence, while the security sector had been responsible for extrajudicial killings and arbitrary arrests. The IER's recommendations for reforming the justice system included modernizing the courts and ensuring the independence of the judiciary.<sup>92</sup> In 2011, the government responded to protestors' demands by turning to the IER's recommendations, with the king calling for strengthening the rule of law and the human rights system "through the constitutionalisation of the judicious recommendations of the Equity and Reconciliation Commission, as well as Morocco's international commitments in the matter."<sup>93</sup> One observer described the IER recommendations as "the backbone of the 2011 constitution."<sup>94</sup>

The 2011 Moroccan constitution then established human rights protection, a clearer separation of powers, a stronger legislature, the primacy of international law, and greater judicial independence.<sup>95</sup> Reforms to the police include a 2014 code of conduct that prohibits torture, enforced disappearance, and arbitrary detention. Security sector reforms overall, however, have mostly focused on effectiveness and efficiency rather than integrity and legitimacy, and the security service's role in fighting terrorism and responding to social unrest makes more meaningful reform unlikely. According to one observer, "Moroccan citizens see the security services as tools of oppression rather than a public service whose *raison d'être* is to ensure their protection."<sup>96</sup>

In Colombia, the creation of Victim Participation Tables at the municipal, departmental, and national levels was meant to give victims political influence, in part through their representation in the Transitional Justice Committees, which serve as a forum for establishing policies related to victims. The committees are designed to "to guarantee victims' active and empowering participation in political debates and to promote their reintegration in public life," although in practice their ability to shape the political agenda remains limited.<sup>97</sup> In addition, the Unified Victims' Registry has registered more than 9.1 million victims, creating "a public, official account of victims that acknowledges their rights and should be used as input for other public policies."<sup>98</sup>

In the Philippines, the 1987 constitution returned the country to the constitutional system that had existed before martial law, limiting the presidential term, creating checks and balances on presidential power through the congress and the judiciary, and providing for judicial reform to increase integrity and independence. In addition, it sought to "ensure that an abdication of duty such as that exercised by the Supreme Court under Marcos would not happen again."<sup>99</sup> It also led to the creation of the Commission on Human Rights and established civilian oversight of the military, which had been the "primary implementation apparatus for martial law," although checks on military excess remained "highly politicized and vulnerable to rent-seeking practices."<sup>100</sup>

92 Hadji, "Moving from Mirage to Reality," 53.

93 Cited in *Ibid.*, 2.

94 *Ibid.*, 44.

95 *Ibid.*, 44-46.

96 *Ibid.*, 49.

97 Linares, "Setting and Agenda for Peace," 37.

98 *Ibid.*, 5, 37.

99 Garcia, "Disrupting Cycles of Unrest and Atrocity," 12.

100 *Ibid.*, 14, 16.

While the security sector subsequently enacted human rights–related laws, including against torture and enforced disappearance, the 2003 defense reform program focused on operational capacity and efficiency, and the defense establishment overall maintains a focus on counterinsurgency. Under current president Duterte, the national police force has served as the main instrument of violence in the campaign against drugs. Furthermore, the 2007 Human Security Act was recently replaced by an Anti-Terrorism Law that presents threats to civil liberties.<sup>101</sup>

Reform of social institutions such as the education system can also be an important step in the long-term, multigenerational prevention of recurrence. In Sierra Leone, where the truth commission concluded that illiteracy had been a contributing factor to the conflict, “as uneducated youth served as a ready-in-waiting army for recruitment into armed groups,” the ensuing education reform sought to improve access and affordability. The 2004 Education Act, for example, reformed the structure of the system, required certain minimum levels of schooling, and abolished fees for primary-level education. Financial and human resource constraints, however, have limited such reform, and schools and universities still do not adequately teach about the war and its causes.<sup>102</sup>

In Peru, the CVR recommended reform of the education system to ensure quality education and promote democratic values, respect for human rights, and social inclusion. Educational policy now includes attention to bilingual education, teacher training, the allocation of additional resources to rural schools, the expansion of initial education coverage, and the inclusion of contents of the CVR report in primary and secondary school textbooks. Nevertheless, inequalities in educational quality, access, coverage, and infrastructure remain significant.<sup>103</sup> In the Philippines, the Bangsamoro truth commission highlighted the role of education in a strategic and sustainable approach to preventing recurrence, calling for the promotion of “intercultural exchange and cultural diversity integration” and the incorporation of regional and indigenous people’s history, art, literature, and language into the curriculum. In the country more broadly, though, the failure until recently to include the lessons of martial law in the formal curriculum has contributed to efforts to rehabilitate the Marcoses’ image.<sup>104</sup>

Institutional reform is a fundamental element of the notion of guarantees of nonrecurrence because it helps to dismantle the institutional structures that allowed abuses to occur and at the same time helps to establish institutional structures at the national and local levels that can help to protect human rights going forward. Reform of the security and justice institutions that perpetrated, facilitated, or failed to prevent abuses is crucial in this regard. However, reducing the risk of the recurrence of abuses and of conflict more generally depends on transforming a wide range of institutions, from constitutional systems to education systems, which in turn can contribute to changing values and ideologies. While institutions can play a direct role in preventing violations and violence, governments that refrain from committing such violations may also be less likely to engage in violent conflict.

---

101 Ibid., 26.

102 Bangura, “Leaving Behind the Worst of the Past,” 45.

103 Guillerot, “Alive in the Demand for Change,” 30-31.

104 Garcia, “Disrupting Cycles of Unrest and Atrocity,” 53.

# Challenges to the Preventive Function of Transitional Justice

The case studies suggest that transitional justice can contribute positively to prevention in a broad sense, primarily by facilitating inclusion and reforming institutions. They also indicate that the dynamic can be a challenging one. In practice, justice processes can have a complicated and potentially fraught relationship to peace and stability, and the design of those processes, the extent of their implementation, and a number of contextual factors can shape the precise nature of this relationship.

## Tensions Between Justice and Stability

Although the “peace versus justice” debate may have falsely and unhelpfully depicted peace and justice as being inherently in opposition to each other, it is certainly true that the two objectives can be in tension, especially in the short term. Transitional justice processes may, for example, contribute to instability if they provoke the resistance of spoilers, exacerbate grievances to the extent that their processes are seen to be discriminatory or inaccessible, or undermine the capacity of security institutions. The extent of this precariousness or division will depend on political dynamics and the distribution of power, which change over time, and on the perceived legitimacy and fairness of the processes; regardless, the potential for instability should not be ignored. Transitional justice is always a political process, and so contention should be expected.<sup>105</sup>

In Sierra Leone, the TRC chose not to recommend the vetting of public institutions for human rights abuses because “it was concerned that in the context of a fragile transition it could be divisive and abused for political ends.”<sup>106</sup> In addition, some Sierra Leoneans worried that the establishment of the Special Court might reopen “old wounds and lead to a relapse into violence,” especially since the court was to be based in Sierra Leone.<sup>107</sup> Ex-combatants in particular feared that personal information they provided to the disarmament, demobilization, and reintegration program or the truth commission might then be used to prosecute them,

105 See Jack Snyder and Leslie Vinjamuri, “Trials and Errors: Principle and Pragmatism in Strategies of International Justice,” *International Security* 28, no. 3 (2003/2004): 5–44; Cheng, Goodhand, and Meehan, “Synthesis Paper”; World Bank and UN, *Pathways for Peace*; Mayer-Rieckh, “Guarantees of Non-Recurrence.”

106 Alexander Mayer-Rieckh and Howard Varney, Geneva Centre for Security Sector Governance, “Recommending Change: Truth Commission Recommendations on Institutional Reform” (2019), 30, cited in Bangura, “Leaving Behind the Worst of the Past,” 13.

107 Bangura, “Leaving Behind the Worst of the Past,” 32.

leading some to refuse to participate in either process. “Out of fear, some of our colleagues ran to Liberia and they fought alongside the forces of Charles Taylor and they also fought in Côte d’Ivoire,” reported a former RUF commander. “We were all very much afraid that we would be arrested, tried, and jailed.”<sup>108</sup>

In the Philippines, although the first administration after the Marcos era created oversight mechanisms for the armed forces as a part of an effort to assert civilian control over the military, the military remained a powerful actor, attempting seven coups during the administration’s term. The efforts at reform and justice during this period must be seen against this backdrop.<sup>109</sup> In Colombia, people making claims for land restitution face acts of violence and constant threats to their safety. From 2011 to March 2015, 49 homicides were committed and 367 threats were made against land claimants, their families, accompanying human rights defenders, and public officials. By June 2016, there had been at least 700 reports of threats made against claimants. “Whoever claims land carves his own grave,” said one Urabá leader.<sup>110</sup>

## Design and Process

If transitional justice can contribute to prevention, the nature and extent of that contribution are likely to be shaped by the design and process of the measures themselves. The minimization of grievances, for example, depends on how inclusive the transitional justice is perceived to be by victims and the public. If a justice measure is viewed as exclusionary, discriminatory, or inaccessible, it may aggravate or create grievances at the individual or collective levels.

In Sierra Leone, the reach of both the truth commission and the reparations program was limited by resources and infrastructure, meaning that rural populations, particularly in remote and isolated communities, and displaced populations were often unable to participate or benefit. Many victims as a result were ultimately neglected or received minimal support. As one victim in the north of the country explained:

I never heard of the TRC, and the other amputees that I know also did not hear of it. We were in Mato, which is in Sierra Leone, but no one reached us. They knew we were there but maybe our stories and need for justice was not important to them. We are hopeless and destroyed but no one cares. The TRC should have reached us and hear the little we had to say and help us heal. I still hurt every day and my scars are a constant reminder of what happens to innocent people when the state does not care.<sup>111</sup>

Even those who received interim reparations may have felt that their needs and grievances were not fully addressed. “I felt more pain on the day that I was provided the Le 300,000 than all the pain that I felt during the war,” said one victim. “It was a big let-down, a big disappointment. It was clear that the government was not interested in helping to transform the lives of the victims of the war.”<sup>112</sup>

---

108 Ibid.

109 Garcia, “Disrupting Cycles of Unrest and Atrocity,” 15.

110 Linares, “Setting an Agenda for Sustainable Peace,” 41.

111 Bangura, “Leaving Behind the Worst of the Past,” 34.

112 Ibid., 35.

In the Philippines, only a small proportion of those who applied for reparations benefits received them because of “problems of inclusion and awareness” as well as legal and technical obstacles such as the need to provide proof of identity. Furthermore, the reparations legislation covers only victims of martial law and state authorities, “excluding victims of atrocities that were committed before and after the Marcos period and victims of nonstate armed groups.”<sup>113</sup> In Morocco, access to reparations was limited by administrative and practical barriers, a lack of access to information, confusion about the application period, and distrust of state institutions, all of which left many victims feeling “unjustly excluded.” Those who were not members of a political party or a victims’ group often did not know about the opportunity to apply.<sup>114</sup> In Colombia, participation processes in the Justice and Peace process at first were so problematic as to be revictimizing at times, undermining confidence in the state. And even though the quality of participation improved as a result of a 2012 legal amendment, victims’ negative perceptions persisted, demonstrating the importance of design in the initial stages of a program.<sup>115</sup>

Transitional justice processes can be exclusive at the collective level as well. In Colombia, the Peace and Justice process may have reinforced structures of ethnic discrimination by not allowing collective subjects to be considered victims. A later requirement that an ethnic approach be applied was “not enough for these communities to feel included,” and they continue to resist participation. The few Justice and Peace rulings treating ethnic discrimination as a structural factor of violence addressed discrimination against only indigenous and not Afro-descendent communities.<sup>116</sup> In addition, discussion of the Victims Law did not include ethnic participation, and though the decrees were intended to create a special approach for ethnic communities, by 2019 only a small fraction of victims who received two or more reparation measures were Afro descendants or indigenous.<sup>117</sup>

## Implementation

Transitional justice and follow-up measures that are proposed or designed but not or only minimally implemented will do little to facilitate inclusion and reform and therefore sustainable peace and stability. Moreover, the expectations that can be created when ambitious programs are promised may foster new or reinforce long-standing grievances associated with exclusion and violence when those programs go undelivered. This holds true for measures such as reparations, institutional reform, and the comprehensive recommendations of truth commissions.

In Morocco, the slow implementation of individual reparations has limited access among victims or claimants who live in poverty and with chronic illnesses to the financial compensation and health insurance that could cover medical expenses and debt.<sup>118</sup> Furthermore, implementation of the socioeconomic and cultural programs that were expected to be established through collective reparations has been minimal and largely paid for by donors, with little effect on regional inequality. This has reinforced grievances and perceptions

113 Garcia, “Disrupting Cycles of Unrest and Atrocity,” 47.

114 Hadji, “Moving from Mirage to Reality,” 32.

115 Linares, “Setting an Agenda for Sustainable Peace,” 31.

116 Ibid., 29.

117 Ibid., 48.

118 Hadji, “Moving from Mirage to Reality,” 29.

of exclusion. “There will be change when the state behaves differently than the way it did in the past,” said a local nongovernmental organization representative, “to give us our share of development or at least to follow through with what it promised us, and to stop considering us as second-class Moroccans.” The abundance of natural resources alongside these regions’ lack of schools and infrastructure contributes further to these feelings of exclusion.<sup>119</sup> In Colombia, the minimal implementation of reparations created by the Victims Law, in part due to the program’s complexity and insufficient attention being given to “what was effectively achievable with a long-term and progressive vision,” has undermined victims’ and public confidence in the process and limited its contribution to transformation and prevention.<sup>120</sup>

In Sierra Leone, many of the TRC’s recommendations remain unimplemented, without the political will, financial commitments, and victim involvement that are necessary to fully integrate them into reconstruction and peacebuilding efforts. As a police officer observed, “Sierra Leone as a country needs serious fixing, and we know what the problems are. The problems are not very different from those that existed before and during the war. What we need to do is to comprehensively and systematically implement the [TRC] recommendations.”<sup>121</sup> According to a former commission staff member: “If we decide to pick it up and ensure that the recommendations are fully addressed, we could be in a good position to avoid future conflicts. However, the implementation has been ad-hoc, ill-coordinated and not treated seriously by governments.”<sup>122</sup>

In Peru, the implementation of the CVR’s recommendations “remains unfinished, characterized by progress, setbacks, and even internal contradictions.” Many in civil society believe that “nothing has been done, because any progress is dispersed and diluted, the fruit of its own struggles but not of genuine political will, at the mercy of changes in funding priorities and political directions and not visible in the public agenda as a comprehensive process.” Moreover, the advances that have been made in implementing the recommendations are not necessarily seen to be part of a post-CVR agenda; “the Final Report is not a formal reference point.”<sup>123</sup> Part of the explanation for the limited implementation is that the CVR’s findings and recommendations fundamentally call into question the political, institutional, economic, and social systems that are beneficial to much of society. In other words, the CVR “revealed the existence of ghosts that society as a whole did not want to confront.”<sup>124</sup>

In Sierra Leone, due to limited financial and human resource capacity as well as political will, many laws and policies that would have preventive functions also go unenforced by the state. A series of laws protecting and promoting women’s rights and welfare that have been passed since the end of the war are a good example. “Sierra Leone has not succeeded in enforcing laws that should protect and provide women with justice,” said one observer. “Something as meaningful as justice for women, which has very minimal costs, should be in the national budget and fully funded by the government and not a donor.” Women and girls therefore continue to be vulnerable and disadvantaged by family and community members.<sup>125</sup> In Morocco,

---

119 Ibid., 36.

120 Linares, “Setting an Agenda for Sustainable Peace,” 50.

121 Bangura, “Leaving Behind the Worst of the Past,” 43.

122 Ibid.

123 Guillerot, “Alive in the Demand for Change,” 22.

124 Ibid, 31.

125 Bangura, “Leaving Behind the Worst of the Past,” 45.

constitutional provisions establishing the primacy of international law and the protection of human rights have limited impact because the legislation that is necessary for their application and compliance with ratified international human rights instruments still does not exist.<sup>126</sup>

## Political and Security Contexts

Context is important to transitional justice because the institutional, political, socioeconomic, and cultural dynamics of certain places and times shape the policies and interventions that governments and other actors enact in addressing the past. The issue of political and security context is especially salient in this regard, because transitional periods in which regimes change or violent conflict ends create both opportunities to respond to past injustice and constraints on taking such actions.<sup>127</sup> In relation to the preventive function of transitional justice, the nature of the context is relevant because it affects what a society is trying to prevent and the extent of its commitment to doing so.

In Morocco, a defining feature of the context in which transitional justice was undertaken has been the absence of regime change. Morocco was in neither a political transition from an authoritarian regime to a democratic one nor a transition from war to peace. It has undergone a degree of political liberalization, but the monarchy's retention of control over the transitional justice process explains in part the lack of implementation and the narrow and limited nature of the IER's mandate and the ensuing reforms and laws. The fact was that "the regime that had committed the violations of the past remained in charge of the efforts meant to address their legacies, which, at a fundamental level, calls into question the state's commitment to actually prevent future such violations."<sup>128</sup>

This lack of commitment was demonstrated by the Moroccan government's counterterrorism agenda, within which the security apparatus arrested and sentenced thousands of Islamists and their sympathizers without due process and reportedly engaged in torture, "raising questions about the state's credibility in ending impunity and its seriousness in putting an end to torture, disappearance, and arbitrary detention."<sup>129</sup> The enactment of the 2003 anti-terrorism law was interpreted by human rights organizations as "another indication that the state was not ready to let go of its repressive approaches in dealing with those it perceived as a threat."<sup>130</sup> On top of these counterterrorism efforts, the security sector's role in putting down instances of social unrest in Morocco in recent years has further undermined the government's commitment to change.<sup>131</sup>

In Colombia, numerous transitional justice measures were implemented in the decade before the 2016 peace agreement, when violent conflict and human rights violations were ongoing. Colombia's experience in this regard suggests that while "it is possible to initiate transitional justice processes in contexts of ongo-

126 Hadji, "Moving from Mirage to Reality," 47-48.

127 Roger Duthie, International Center for Transitional Justice, "Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies" (2017).

128 Hadji, "Moving from Mirage to Reality," 3.

129 *Ibid.*, 24-25.

130 *Ibid.*, 25.

131 *Ibid.*, 24-26.

ing high levels of violence, doing so requires a special kind of coordination between justice and security policies.”<sup>132</sup> In regions of Colombia experiencing high levels of human rights violations and serious security risks, progress in transitional justice was more limited.<sup>133</sup> In the Philippines, numerous internal armed conflicts that began during the Marcos period have persisted to this day. “A primary factor for the ongoing human rights violations in the Philippines,” these conflicts create “conditions that are favorable to excessive acts and abuse of power, such as torture, use of human shields, enforced disappearances, and extrajudicial killings.”<sup>134</sup>

## Structural Problems

The long-term prevention of human rights violations and different forms of violence, as well as the violent conflicts and authoritarianism within which those injustices are frequently perpetrated, requires that structural problems such as inequality, racism, discrimination, and marginalization be addressed. Moreover, these structural problems are themselves injustices whose prevention should be sought in peaceful and inclusive societies. The case studies suggest that transitional justice can do more to directly manage structural exclusion, whether by confronting economic and social rights violations more squarely or by drawing clearer connections between violations and the contextual conditions that facilitate them.

Fostering structural change, however, is not an objective that transitional justice can attain alone. It requires a combination of peacebuilding, development, governance, and other interventions—to which transitional justice can make an important contribution. Countries that attempt to confront their pasts often make significant progress in reducing human rights violations, the intensity of violent conflict or the likelihood of its recurrence, and authoritarian repression. In most, if not all, of those countries, though, structural problems and societal divisions endure for decades. While this does not make recurrence inevitable, it does highlight the ongoing risk and the comprehensive societal effort that is needed to sustain peace.

Sierra Leone has conducted multiple fair elections since the war, “made substantial socioeconomic progress, improved its democratization and governance, and become one of the most peaceful countries in Africa.”<sup>135</sup> Yet many of the factors that led to the war persist, including poverty, mass unemployment, corruption, unequal access to resources, and the marginalization of young people and women. The marginalization of young people, in particular, which had facilitated their recruitment into armed groups, has recently led to increasing youth violence and gang activity. Additionally, the practice of ethno-regional-based politics deepens societal divisions and escalates the risk of instability. Nevertheless, a return to the mass political violence of the past seems unlikely.<sup>136</sup>

---

132 Linares, “Setting an Agenda for Sustainable Peace,” 4.

133 Ibid., 54-64.

134 Garcia, “Disrupting Cycles of Unrest and Atrocity,” 59.

135 Bangura, “Leaving Behind the Worst of the Past,” 1.

136 Ibid.

In Peru, the transition out of authoritarianism and violent conflict brought the restoration of the rule of law and formal democracy in terms of the electoral process and the independence and oversight of state powers, but it did not succeed in creating a pluralist society that includes “all Peruvians in the benefits and obligations of citizenship.”<sup>137</sup> While the 20 years of political violence emerged from “almost two centuries of domination, marginalization, and oppression” of the Andean and native populations,<sup>138</sup> the 20 years since the transition began have been marked by the tension between guaranteeing inclusive social programs and pushing economic growth and the resulting social conflicts about access to basic rights related to resources, the environment, and labor. Nevertheless, there is a “before and after” the CVR: Social conflict has not risen to the levels of violence in the recent past; certain public policies exist in part due to the commission’s call to bridge social divides; and the CVR’s message and narrative have contributed to the Constitutional Court’s and the public’s position against amnesty laws and the legacy of former president Fujimori.<sup>139</sup>

The Philippines transitioned to democracy after martial law, but violations, corruption, and insurgencies have continued, with recent authoritarianism and state violence echoing that of the Marcos period. Human rights violations have been pervasive, with torture practiced in secret detention facilities and in response to insurgencies. With limited reforms and organizational change, the country faces structural problems such as inequality, corruption, and deep social divisions, contributing to high levels of discontent. In recent years, the Duterte administration has waged and encouraged a “war on drugs” involving thousands of extrajudicial killings, with most victims among the poorest members of society. It has undermined democratic institutions, targeted critics and opponents, taken control of the judiciary and legislature, and employed violence against civilians via security institutions like the police in a resurrection of “the specter of Marcos.”<sup>140</sup>

In Colombia, the 2016 peace agreement, building on the transitional justice processes that came before it, initiated a range of legal, social, political, and economic processes designed to end the armed conflict and “to mitigate the structural causes of the conflict and its consequences.”<sup>141</sup> Despite the importance of the agreement, however, the years since its signing have seen the continuation of numerous internal armed conflicts and, in 2019, higher levels of violence. The systems of inequality and discrimination that fueled the conflict remain almost intact, 15 years after its first transitional justice processes began. Nevertheless, some progress has been made in addressing participation as a structural problem, while public discussion of human rights violations has begun to include economic, social, and cultural rights. The challenges to be faced in Colombia in addressing the legacies of the conflict highlight the need to link justice policies to broader sustainable development agendas.<sup>142</sup>

Morocco enacted transitional justice in the aftermath of its Years of Lead; the government may not wish to return to the gross violations of that period, but the state continues to wield repression against dissidence and social unrest. Progress in development is undermined by corruption and inequality, with a need for

137 Guillerot, “Alive in the Demand for Change,” 2.

138 Ibid., 14.

139 Ibid., 45-48.

140 Garcia, “Disrupting Cycles of Unrest and Atrocity,” 62.

141 Linares, “Setting an Agenda for Sustainable Peace,” 6.

142 Ibid., 69.

“inclusive development strategies to ensure that all regions of the country receive their share of socioeconomic development.”<sup>143</sup> These problems foster the illegal migration of young people and social unrest in marginalized regions, “the same ones that were excluded from development during the Years of Lead.” The persistence of human rights violations in part results from the lack of implementation of the IER’s recommendations, particularly those addressing structural drivers.<sup>144</sup>

---

<sup>143</sup> Hadji, “Moving from Mirage to Reality,” 56.

<sup>144</sup> Ibid.

# Conclusion

Transitional justice encompasses some of the ways in which a society responds to its past. But it has always been understood to be about the future as well. Addressing the legacies of past human rights violations is in part meant to help to prevent those violations from happening again, captured in the notions of “never again” and “nonrecurrence.” Human rights violations do not happen in a vacuum, but are instead related in different ways to the various forms of violence, crime, violent conflict, authoritarianism, and structural inequalities that precede, parallel, and outlast them. This report has drawn on examples from case studies on Colombia, Morocco, Peru, the Philippines, and Sierra Leone to examine the nature of the contribution that transitional justice can make to prevention in the more expansive sense of the term—that is, its role in helping to prevent not only massive human rights violations but violence, violent conflict, and authoritarianism.

Looking beyond these individual case studies, it is reasonable to suggest that, to a significant extent, the violence and conflict that today recur and persist in different parts of the world are connected to the injustices of the past and the failure to contend with the legacies of those injustices. Violence in countries such as the United States and Kenya in 2020, for example, is related to both the absence of police reform specifically and the broader failure to address more historical injustices such as slavery and colonization. The long-term persistence of violent conflict in Afghanistan is undoubtedly an extension of multiple decisions at the national and international levels to avoid dealing with decades of war crimes. The recent decline of democratic institutions in countries such as Poland and Hungary likely stems in part from an incomplete reckoning with their authoritarian pasts. And in Syria, if at the current war’s end the regime chooses not to engage with the crimes of the past decade and beyond, as is likely, it should not be surprising that stability in the region proves elusive.

Examining transitional justice through a wide prevention lens does not necessarily require a rethinking of the fundamental understanding of how transitional justice works, but it does shift the focus to emphasize certain aspects of transitional justice in ways that have policy implications and to attend more to using broad objectives to design better institutions and measures. Promoting inclusion in societies and institutions that have experienced massive and serious human rights violations, for example, should be a primary objective of both the outcomes and the design and process of transitional justice measures. In addition, assessing the preventive function of transitional justice requires a long-term perspective on inclusion and reform because it involves changes to social relationships, institutions, and structures that play out incrementally over time. Finally, long-term prevention requires that the consequences and causes of injustice be addressed. Transitional justice can contribute to this accounting, rather than bringing it about on its own, and therefore should be viewed in the larger context of how a society responds to its past and seeks a peaceful future.

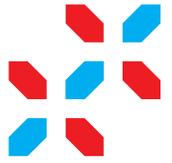




# ICTJ

Justice  
Truth  
Dignity

**LUXEMBOURG**  
**AID & DEVELOPMENT**



ICTJ New York  
50 Broadway, 23rd Floor  
New York, NY 10004  
Tel +1 917 637 3800  
Fax +1 917 637 3900  
[www.ictj.org](http://www.ictj.org)