

Second and third generation human rights within transitional justice mechanisms

حقوق الجيل الثاني والثالث من حقوق الإنسان ضمن آليات العدالة الانتقالية



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Abstract:

Transitional justice, as a response to human rights violations, initially focused on first-generation human rights, civil and political rights. The right to life, human dignity, physical integrity, and others were the most violated rights under authoritarian regimes, and under the complementary approach of transitional justice between judicial and non-judicial mechanisms, as well as the complementarity and indivisibility of human rights, the possibility of extending transitional justice to the rights of the second and third generations were sought.

key words:

Transitional justice, human rights, second generation, third generation.

ملخص:

إن العدالة الانتقالية كاستجابة لانتهاكات حقوق الإنسان، كانت في بداياتها تركز على حقوق الجيل الأول لحقوق الإنسان، الحقوق المدنية والسياسية، فحق الإنسان في الحياة والكرامة الإنسانية والسلامة البدنية وغيرها، كانت أكثر الحقوق انتهاكا في ظل الأنظمة الاستبدادية، وفي ظل النهج التكاملي للعدالة الانتقالية بين آليات قضائية وغير قضائية، فضلا عن تكامل حقوق الإنسان وعدم قابليتها للتجزئة، جرى البحث عن إمكانية توسيع نطاق العدالة الانتقالية لتشمل حقوق الجيلين الثاني والثالث لحقوق الإنسان، اللذان يرتبطان بالعدالة الانتقالية خاصة في آلياتها التصالحية والتعويضية.

الكلمات المفتاحية:

العدالة الانتقالية، حقوق الإنسان، الجيل الثاني، الجيل الثالث.

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Introduction:

Transitional justice has emerged within societies, governed by systems with socialist backgrounds where there has been an apparent interest in economic and social rights at the expense of civil and political rights.

What distinguishes popular movements in Arab countries from others is that they largely contained social demands criticizing poverty and rampant corruption, as well as calls for social justice among residents. The focus of transitional justice on civil and political rights has been called into question, and a more comprehensive approach is required to cover economic and social rights, as well as the right to development and peace.

The distinctness of economic crimes and financial corruption as a source of conflict and the appearance of a violation of economic and social rights has been the subject of both accountability and non-accountability within transitional justice proceedings. As a result, the study's central problem will be: **What do the interests of transitional justice look like in the second and third generations of human rights?**

The research methodology necessitates the use of descriptive and analytical approaches according to the nature of the study. The descriptive technique was utilized to find indications of violations of the rights of the second and third generations as stipulated in international and regional human rights accords. The analytical approach was to use the idea of complementarity and indivisibility of transitional justice procedures and human rights to clarify the link between transitional justice and human rights.

The subjective motivations for this research originate from the fact that transitional justice began in totalitarian countries and coincided with democratization waves that focused on civil and political rights while disregarding accountability for other rights abuses. The purpose of the discussion was to emphasize the interconnection between human rights and transitional justice systems.

The study's objectives are to:

- Demonstrate that breaches of economic and social rights, widespread poverty, and financial corruption are important causes of popular revolutions attempting to establish a democratic transitional society where justice is accomplished in all forms.

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- In order to achieve a society where all human rights are respected, emphasize the importance of addressing all human rights without discrimination or differentiation, as well as structural discrimination.

- Demonstrate transitional justice's concern for economic and social rights, as well as the inequities that obstruct social justice, in order to create long-term peace and security.

the first Topic

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The absence of equality between States at the international level, as well as among members of society within the state, points to a link between violations of economic, social, and cultural rights and persistent domestic disputes.

Following the events in the Arab States, a growing sense of unfairness among peoples and unequal wealth distribution across all segments of society is one of the reasons of popular revolutions. Widespread financial and administrative corruption, the widening wealth gap, and government policies that fail to develop the economy and increase foreign debt support the view that the absence or failure of the state to fulfill its obligations to its citizens' economic and social rights is one of several causes of instability and a flagrant manifestation of human rights violations and social injustice.

The first requirement: Economic, social, and cultural rights violations as a source of conflict

The Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social, and Cultural Rights, the Declaration on Social Progress and Development, the Convention on the Elimination of All Forms of Discrimination Against Women, the Declaration on the Right to Development of the Child, and the International Covenant on Economic, Social, and Cultural Rights are all examples of economic, social, and cultural rights.¹

If civil and political rights are rights that any State protects in the sense that the State's negative obligation is to refrain from infringing on these rights, the rights of the second generation are rights that the State asserts and is obligated to ensure their enjoyment, enforcing a positive obligation on states.²

¹ _ طبيعة الحقوق الاقتصادية والاجتماعية والثقافية، تاريخ التصفح 2019/05/17، على الرابط التالي:

<http://hrlibrary.umn.edu/arabic/TR-OHCHR14-4.pdf>

² _ قادري عبد العزيز، حقوق الإنسان في القانون الدولي والعلاقات الدولية المحتويات والآليات، دار هومة، الطبعة السادسة، الجزائر، 2008، ص 26.

Danilo Türk, the Special Rapporteur on Economic, Social, and Cultural Rights, has developed basic guarantees that define the nature of the State's obligation with regard to those rights, emphasizing the complementarity of human rights and emphasizing the continuing obligation of the State to guarantee them regardless of their economic level, with a focus on vulnerable groups.¹

The State has three areas of obligations, according to the Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights: The failure of the state to obstruct the exercise of rights is the obligation to respect. The duty to protect necessitates that the State refrains from allowing other parties to violate fundamental rights. The need to perform requires States to take the necessary steps to ensure that these rights are fully realized, and the inability to perform any of these three tasks constitutes a violation of these rights.²

Social justice is solidified by ensuring these rights on an equitable level among members of society, as required by international human rights law principles. Inequality and class inequality are two causes and impacts of conflict. The lack of distributive justice within societies is one of the most prominent causes of political violence inside political systems, and these inequalities have historically been one of the most important reasons of revolutions. High levels of socioeconomic inequality have resulted in a significant increase in violence and instability in states.³

Corruption as a violation of economic and social rights was one of the main causes of mass demonstrations and the fall of regimes across the Middle East and North Africa in 2011.⁴

After the young Bouazizi burned himself on fire, the Tunisian Revolution and its aftermath began. "Freedom... social justice", was one of the most important slogans of the Egyptian Revolution, which began on January 25.

¹ طبيعة الحقوق الاقتصادية والاجتماعية والثقافية، المرجع السابق، ص9
² مبادئ ماستريخت التوجيهية المتعلقة بانتهاكات الحقوق الاقتصادية والاجتماعية والثقافية، اعتمدت من قبل مجموعة خبراء في القانون الدولي في ورشة عمل حول مضمون الحقوق الاقتصادية والاجتماعية والثقافية والمقصود بانتهاكها والمسؤولية عن ذلك وسبل الانتصاف، عقدت في (ماستريخت، هولندا) خلال الفترة من 22 إلى 26 كانون الثاني/يناير 1997، مكتبة حقوق الإنسان، جامعة منيسوتا، تاريخ التصفح 2019/05/17، على الرابط التالي:

<http://hrlibrary.umn.edu/arabic/MaastrichtguidelinesAR.html>

³ كمال بمقدار و ليلي حسيني، إشكالية العدالة الانتقالية وأثرها على بناء العدالة الاجتماعية في إفريقيا، مجلة الميزان، العدد الأول، مخبر الجرائم العابرة للحدود بالمركز الجامعي احمد صالح النعمانية، 2016/12/01، ص54-68

⁴ James Cohen, Studies on Transitional Justice in Context: Addressing Corruption Through Justice-Sensitive Security Sector Reform, Studies on Transitional Justice in Context, ictj, december 2017, P1, viewed on 11/06/2019, on https://www.ictj.org/sites/default/files/ICTJ_Cohen_Corruption_2017.pdf

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The case of Cambodia demonstrates that its economic policies resulted in poverty and famine, confirming a possible connection between economic policies and transitional justice. Rigid state planning and communist practices, such as those used in Cambodia had severe consequences, resulting in one of the worst famines in recent history, and poverty has been transformed into a problem linked to transitional justice processes as a form of structural violence.¹

Even in the most extreme cases, social justice is a state commitment to reducing social inequality. Its accomplishment enables countries to survive even the worst disasters. During a conflict or a democratic transition, any delay in responding to human rights violations compromises the enjoyment of human rights while not affecting economic and social rights.

The Arab revolutions' success in overthrowing dictatorial regimes should be viewed as a genuine opportunity for economic prosperity. Without political and security stability, political transformation is insufficient. Despite the adoption of various transitional justice processes, countries such as Yemen, Egypt, and Tunisia have seen human rights violations, mostly due to political and security instability, as well as the inadequacy of the inherited economic structure.

According to research, violent conflicts are the result of systematic discrimination in access to basic needs and rights such as education, health care, and restrictions on freedom of expression or religion, and that meeting these needs and rights will help prevent conflict and thus reduce the terrible human cost of war. Conflicts cost the world's governments \$14.3 trillion in 2016, accounting for 12.6 percent of global GDP and hence the global gross domestic product.² Half of the world's poor live in fragile and conflict-affected countries, and 20 million refugees have abandoned their homes as a result of violence, according to data.³

Systematic corruption in public institutions can encourage patterns of human rights violations by establishing an environment that "allows or even ignites such violations," according to the relationship between corruption as the most serious

¹ _Lisa Hecht and Sabine Michalowski. The Economic and Social Dimensions of Transitional Justice. (2012) , pp2-5, viewed on 14/06/2019,

at <https://www1.essex.ac.uk/tjn/documents/TheeconomicandsocialdimensionsofTJ.pdf>

² Amanda Cahill-Ripley, Economic and social rights must be addressed to stop violent conflict and sustain peace ,viewed on 18/05/2019, at

<https://theconversation.com/economic-and-social-rights-must-be-addressed-to-stop-violent-conflict-and-sustain-peace-97031>

³ _الصراع والهشاشة، ما نعرفه، موقع البنك الدولي، تاريخ الصفح 2019/05/19، على الرابط التالي:
<http://ida.albankaldawli.org/theme/conflict-and-fragility>

manifestation of crime and its connection to human rights.¹Corruption is no longer understood as a unilateral and opportunistic act, but as a profound social activity, a social expression of power that allows certain persons to control and suppress others economically².

"When apartheid was at the height of its repressive behavior, it was also at the height of corruption," according to South African experience in correlating human rights violations and corruption. In this regard, the traditional concept of transitional justice has been criticized for failing to treat economic crimes as gross human rights violations, despite the fact that they should be treated as such because the resulting structural violence is more serious than the direct consequences of violence and because it is the source of violent conflicts. The problem here, and the reason for transitional justice mechanisms focusing on violations of civil and political rights, is that they are the source of violent conflicts.³

Many argue that transitional justice has historically failed to recognize the importance of structural violence, inequality, and economic redistribution in conflicts, thus creating a distorted narrative that reflects the separation of conflict from economic issues.⁴

There's also the argument that these aren't rights at all. The traditional idea of transitional justice has emphasized grave abuses of civil and political rights as the sole rights that can be brought to the attention of the courts. As a result, if economic

¹Isabel Robinson, Truth Commissions and Anti-Corruption: Towards a Complementary Framework?, International Journal of Transitional Justice, Volume 9, Issue 1, March 2015, P3, <https://doi.org/10.1093/ijtj/iju022>

²KoraAndrieu,Dealing With a "New" Grievance: Should Anticorruption Be Part of the Transitional Justice Agenda?, Journal of Human Rights, Volume 11, - Issue 4, 2012 , p538. <https://doi.org/10.1080/14754835.2012.702471>

³روين كارانزا، النهب والألم: هل يجب أن تتطرق العدالة الانتقالية الى الفساد والجرائم الاقتصادية، المجلة الدولية للعدالة الانتقالية، المجلد رقم 02، ص 2- 3 ، تاريخ التصفح 2019/06/07، على موقع المركز الدولي للعدالة الانتقالية، على الرابط التالي

<https://www.ictj.org/sites/default/files/Carranza-Plunder%20and%20Pain%20Corruption-2008-AR.pdf>

³ Carmen Márque

⁴ René Urueña and MaríaAngélica Prada-Urbe, Transitional Justice and Economic Policy, Annual Review of Law and Social Science, Vol. 14:397-410 (Volume publication date October 2018), First published as a Review in Advance on July 13, 2018, p3 <https://doi.org/10.1146/annurev-lawsocsci-101317-031259>

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and social rights aren't viewed as justiciable, they can't be included in this classic transitional justice approach.¹

The common understanding of justice assumes that civil and political rights are freedoms that can be violated, whereas economic, social, and cultural rights are entitlements that are dependent on available resources and provided by States over time, and subject to political priorities, assuming that economic and social protection, as well as cultural rights, are by definition costly, in contrast to the realization of other human rights. Freedoms. As a result, economic, social, and cultural rights are frequently misunderstood as rights that impose legally binding obligations on States, leading to judicial resistance to their use and consideration of transitional justice mechanisms.²

In post-conflict societies, ensuring adequate protection of fundamental rights in transitional situations is critical to restoring trust in state institutions. Without losing sight of any right, judicial and non-judicial procedures attempt to ensure that they are protected, strengthened, and executed, led by international standards in this regard. As rights of the second and third generations, civil and political rights complement economic, social, and cultural rights, as well as rights to peace and development.

The second requirement: Aspects of the concern for economic and social rights in transitional justice

Ending the war would redirect public funds away from military spending and toward education and health care, improving social indicators. In 2016, warfare in the Middle East directly impacted 87 million people in Iraq, Libya, Syria, and Yemen, according to World Bank estimates. In this context, she stated that if those nations' democratic transitions had been successful in 2015, average per capita GDP growth would have reached 7.8% in five years.³

Transitional justice is needed to correct previous social and economic mistakes: sustaining long-term peace and stability in post-war communities necessitates addressing the root causes of violence, which in most developing nations

¹ Cahill-Ripley, Amanda. "Foregrounding Socioeconomic Rights in Transitional Justice: Realising Justice for Violations of Economic and Social Rights." *Netherlands Quarterly of Human Rights* 32, no. 2 June 2014: p 188.

doi:10.1177/016934411403200205

² Louise Arbour, *Economic And Social Justice For Societies In Transition*, International Law And Politics, Vol 40/1, 2007, Viewed On 27/06/2019, At

<http://nyujilp.org/wp-content/uploads/2013/02/40.1-Arbour.pdf>

³ _ بالأرقام: تكلفة الحرب والسلام في الشرق الأوسط، موقع البنك الدولي، تاريخ الصفح 2019/05/19، على الرابط التالي:

<http://www.albankaldawli.org/ar/news/feature/2016/02/03/by-the-numbers-the-cost-of-war-and-peace-in-mena>

include poverty, inequality, and land redistribution. They cannot truly offer guarantees of non-repetition if they do not address historical social and economic inequities, so this may have an impact on violations of economic and social rights resulting from structural violence and structural injustice that predate or may have helped to incite the conflict.¹

By highlighting the relationship between democracy, which includes participatory governance and true enjoyment of fundamental freedoms, and economic prosperity, it is beneficial to conceive democracy not just as "political democracy" but also as "economic democracy."²

In the transitional justice phase, criminal justice responses to financial corruption enable the recovery of looted funds for post-conflict reconstruction, compensation payments, a new system, and development initiatives. Furthermore, cutting off the financial resources of human rights violators could be a step toward limiting their ability to continue to operate with impunity.³

Despite being influenced by human rights, transitional justice was liberal in nature, focusing on abuses of civil and political rights while ignoring economic rights, and embracing the assumption that political and economic liberalization created long-term peace. As a result, liberal peace building efforts focused on establishing the rule of law, electoral democracy, and neoliberal economic reforms. With the emergence of transitional justice in the late twentieth century, following the shifts from authoritarian to democratic regimes in Eastern Europe and South America, and with the perception that such transformations were relatively short-term, subsequent democracies had to address economic change.⁴

Compensation, particularly material compensation, is crucial as a transitional justice method for rehabilitating the material status of those who have lost their means of earning revenue. "Includes aspects of distributive justice aimed at addressing socio-economic inequalities, and property restitution and rehabilitation programs can improve the physical and psychological health and well-being of

¹Cahill-Ripley, op.cit, p191

²Ali Rıza Sandalcılar, Democracy And Growth: Evidence From Transition Economies ,American International Journal Of Contemporary Research Vol. 3 No. 1; January 2013, P64

³Lisa Hecht and Sabine Michalowski.Op.cit,p3

⁴Waldorf, Lars. "Anticipating the Past: Transitional Justice and Socio-Economic Wrongs." Social & Legal Studies 21, no. 2 ,June 2012, p3
doi:10.1177/0964663911435827.

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victims to the extent that they can re-engage in economic activity and reintegrate into society," according to some analyses.¹

"The International Criminal Tribunals have investigated and judged cases of violations of economic, social, and cultural rights, noting that the International Criminal Tribunal for the Former Yugoslavia has recognized that widespread destruction of homes and property may constitute a crime against humanity, which is intended to be such criterion," according to the Office of the High Commissioner for Human Rights' analytical study on human rights and transitional justice.²

Truth commissions are also addressing less severe and more serious economic and social injustices. The South African Truth and Reconciliation Commission has confirmed that the investigation of the origins of forced poverty and other types of deprivation falls within its jurisdiction. Through hearings, reports, and recommendations, truth commissions have addressed the economic and structural foundations of gross human rights violations, and the East Timor Commission for Reception, Truth, and Reconciliation has connected the two following hearings on famine and forced displacement, deprivation of other rights, such as freedom of movement, under the name of the "right to food" of the people.³

In actuality, courts or truth commissions may not be able to investigate and provide remedies for all violations of social, economic, and cultural rights, making this effort to resolve past social and economic injustices in transitional justice challenging.⁴

In order to address violations of social and economic rights, transitional justice in its current form must be re-imagined, bringing economic justice along with legal, psychological, and political justice in an effort to transform institutions and relationships, as it has been called for. It's a "transformative justice paradigm of transitional justice," according to Wendy Lambourne, in which transformative justice seeks to restructure pre-conflict structures in more inclusive and just ways, with less inequality.⁵

Economic crimes can also be held accountable through transitional justice processes, such as the steps outlined in the United Nations Convention Against Corruption, which has been recognized. "Asset recovery" is a fundamental principle,

¹Transitional Justice & Peacebuilding Processes, peacebuildinginitiative, viewed on 19/05/2019, at <http://www.peacebuildinginitiative.org/indexf0e6.html?pageId=1883>

²Cahill-Ripley, Amanda, op.cit, p197

³Waldorf, Lars. Op.cit, p5-6

⁴René Urueña and María Angélica Prada-Urbe, op.cit, p6

⁵Waldorf, Lars. Op.cit, p9-10

and some national legislation in countries like the United States of America prohibits the provision of haven to corrupt officials and their illegally obtained assets, as well as the World Bank and the United Nations Office on Drugs and Crime's stolen asset recovery initiatives, even if recovery is unrelated to finding accountability for human rights violations.¹

On the basis of complementarity and indivisibility of human rights, we support the statement in favor of accountability for abuses of economic and social rights. Given the limited temporal scope of transitional justice mechanisms, particularly truth and reconciliation commissions, and the demands of economic crime and financial corruption to investigate them, investigate the perpetrators and their complex and confidential methods of practice, and the possibility of extending them to other States, civil and political rights are the most prominent and widespread violations.

We believe that judicial mechanisms are the best tool for dealing with economic crimes, and that truth commissions should be used to investigate the causes and motives of violations. We also believe that the relationship between truth and reconciliation commissions and anti-corruption bodies should be defined at the national level. Human rights should be viewed holistically rather than in a hierarchical, step-by-step manner.

To summarize, the economic and social dimensions of transitional justice remain a new area of research, but understanding their causes is critical to addressing these issues in justice processes in order to achieve a more holistic approach to transition. Furthermore, claiming that criminal prosecution can be effective in dealing with both economic crimes and serious human rights violations may be based on a misunderstanding of what is required to successfully prosecute two very different types of crimes.

The current Algerian experience with prosecuting senior officials of former President AbdelazizBouteflika's regime as well as businessmen will help to determine the limits, possibilities, and expected outcomes of accountability for financial corruption and economic crime under Algerian law, as well as their effectiveness in promoting democratic transition and the rule of law. As part of the transition, the demands of justice necessitate legal and institutional steps to ensure that similar violations do not repeat themselves in the future.

thesecond Topic

Third-generation rights' impact on restorative justice measures

¹ _روبن كارانزا، المرجع السابق، ص9

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The right to development is a collection of principles based on which a human being can, to the best of his or her ability, get his or her needs in order to maintain his or her dignity and to open and thrive his or her individuality. As a result, the most effective development plan is one that satisfies the human person's basic needs, which are referred to as human rights. The right to development is inalienable, and it must be realized via the enjoyment and realization of all human rights and fundamental freedoms.¹

The majority of today's armed conflicts occur in underdeveloped nations, and humanitarian disasters, as well as the widespread human rights violations that frequently accompany them, have a long-term and detrimental influence on development.²

The first requirementThe right to development's relevance to transitional justice

The rule of law, access to justice, violence reduction, and corruption reduction are all included in the Sustainable Development Goals. While the Sustainable Development Aims do not address human rights violations or transitional justice, they do give a framework for the goals that they share.³

Development and security concerns come before the desire for reconciliation, accountability, and other facets of transitional justice, according to research in nations recovering from mass violence. Economic stability and development are critical to the achievement of transitional justice and rising democracies. As a result, social and economic rights, as well as development, are critical concerns in discussions of the economic and social dimensions of transitional justice, where they are intrinsically tied, especially if development is understood to include not only economic development but also human development, which aims to improve human living conditions and opportunities for a decent life.⁴

While the developmental roots of conflict, including serious and widespread forms of economic violence, and the "developmental deficit" that conflict leaves in its wake - poverty, inequality, weak institutions, and destroyed infrastructure - can directly undermine transitional justice efforts, reference to the developmental roots of

¹ _ علي بقشيش، مشكلة الفساد والتنمية- الآثار والتداعيات-، مجلة آفاق علمية، المركز الجامعي لمتنراست، المجلد 11، العدد 03، 2019، ص61

² _ Pablo de Greiff and Roger Duthie, Articulating the Links Between Transitional Justice and Development: Justice and Social Integration, Research Brief, Research Unit, ICTJ, July 2009, p3, p19

³ Rougerduthie, The Importance of Transitional Justice to Sustainable Development, viewed on 04/07/2019, at <https://www.kpsrl.org/blog/the-importance-of-transitional-justice-to-sustainable-development>

⁴ Lisa Hecht and Sabine Michalowski. Op.cit, pp4-6

conflict, including serious and widespread forms of economic violence, can enrich transitional justice frameworks.¹

At the national level, development can be viewed as a means of bolstering the rule of law and democracy by providing the necessary financial resources to assist in the establishment of accountable democratic institutions as a result of transitional justice processes, thereby contributing to an environment conducive to economic progress. When it comes to the relationship between transitional justice and development, the question of whether transitional justice procedures are adequately equipped to deal with such situations arises. Is it, in other words, unproductive to expand its notion, and is it impossible to obtain a consensus within the country to begin the transition process? To put it another way, can transitional justice goals be met by disregarding or postponing development decisions to a later date, so that transitional justice goes beyond concern for corrective justice to include distributive justice and aspires to achieve it?²

The United Nations promotes the integration of human rights in this context. It has adopted "integrated" strategies that consider peace, justice, development, and security, trying to remove the difficult dilemmas that face transitional justice approaches, such as truth versus justice, peace versus justice, and replacing the approach of transitional justice versus development with complementary transitional justice and development outcomes.³

In terms of the relationship between transitional justice and development, justice attempts may be influenced by development. Poorer states have a harder time affording justice than wealthy states, and weaker states with weaker institutions have a harder time enforcing justice measures than stronger states. The negative repercussions of the conflict typically compound these barriers to justice.⁴

Many areas intersecting with transitional justice, such as access to justice and security sector reform, where policymakers and practitioners have realized that development gains do not last without peace, have ignited a focus on issues such as

¹Lawther Cheryl , Moffett, Luke ; Jacobs, Dov, op.cit, p169,Roger Duthie, Toward a Development-sensitive Approach to Transitional Justice, International Journal of Transitional Justice, Volume 2, Issue 3, December 2008, P 292, <https://doi.org/10.1093/ijtj/ijn029>

²Lisa Hecht and Sabine Michalowski. Op.cit,p7

³Waldorf, Lars. Op.cit, p4

⁴Roger Duthie, Toward a Development-sensitive Approach to Transitional Justice, International Journal of Transitional Justice, Volume 2, Issue 3, December 2008, 296-297

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inequality, exclusion, and violent conflict as causes and consequences of bad development.¹

As a result, transitional justice has an indirect impact on development, according to Jean-Alexandre, who believes that it can have a positive impact on development on two levels: by directly influencing measures such as individual and collective reparations, property restitution, rehabilitation and reintegration of victims and offenders, reducing marginalization, exclusion, and vulnerability, recognizing and empowering victims and offenders as citizens, and by assisting in the creation of contiguous zones.²

In this context, empirical research on public perceptions in post-conflict nations has demonstrated that development and security take precedence over reconciliation, retribution, and other parts of transitional justice.³

In terms of the connection between prosecution and development, accountability and investigation for property crimes and financial corruption can serve as a deterrent and so contribute to transparency, which can help to advance development. The developmental impact of transitional prosecution will be improved if investigations and prosecutions focus primarily on "economic crimes," including those who aid in their commission by providing supporting mechanisms that make organized crime economically feasible.⁴

More resources and capacity to invest in justice activities may be available as a result of development. With a large number of transitional societies facing enormous development challenges and a large number of developing countries facing a "significant deficit of justice" with regard to gross human rights violations, a country's level of development does not predict or determine its pursuit of transitional justice, but it can be a precondition and a constraint on justice.⁵

The link between development and the rule of law has also become more apparent in post-conflict contexts, where hostilities have destroyed State organizations' institutional capability and respect for the rule of law. In this context,

¹Cheryl Lawther, Moffett, Luke ; Jacobs, Dov. Research Handbook on Transitional Justice. Edward Elgar Publishing, 2017, P165

²Roger Duthie ,op.cit, pp 298

³ Cheryl Lawther And Luke Moffett, Jacobs, Dov,op.cit, , p 16

⁴تعزيز الحقيقة والعدالة والجبر وضمانات عدم التكرار، الدورة الثامنة و الستون، البند 69 (ب) من جدول الأعمال المؤقت، تعزيز حقوق الإنسان وحمايتها: مسائل حقوق الإنسان، بما في ذلك النهج البديلة لتحسين التمتع الفعلي بحقوق الإنسان والحريات الأساسية، رمز الوثيقة A/68/345، بتاريخ 23 سبتمبر 2013، ص 20

⁵Pablo de Greiff and Roger Duthie,op.cit,pp21-29

transitional justice is a process of rebuilding the population's trust in the state in general and in particular in the institutions of justice, and mistrust among the general population is a source of negative development impact.¹

Because truth commissions have the authority to investigate and examine abuses of economic and social rights, they can assist in economic reintegration through their recommendations. The Guatemalan Commission confirmed that state policy has resulted in indigenous peoples being abused and marginalized. The Moroccan Truth and Reconciliation Commission has concentrated on purposely denying infrastructure and other forms of funding to areas where illegal detention centers operate.²

Truth commissions reveal relevant facts on kinds of crime, particularly those with a direct developmental dimension, when investigating gross abuses of human rights. As a result, truth commissions might recommend the relocation of employees and the restructuring of institutions that may be development roadblocks, as well as the economic reintegration of people and geographical areas that have been particularly marginalized and victimized.³

Transitional justice has evolved over time, shifting from responsibility for war crimes, crimes against humanity, and other grave human rights violations to a focus on the reform of institutions responsible for the rule of law. The second step is to consider how transitional justice may be expanded to incorporate issues of social justice.⁴

It is simpler to see how atrocities and their unresolved consequences have a detrimental impact on development when the definition of development is enlarged beyond economic progress. The avalanche of norms that characterize environments where serious human rights crimes occur can leave vulnerable civil societies with low levels of political engagement, stalling debates about social needs and potential solutions.⁵

While some argue that incorporating the right to development into transitional justice mechanisms will reduce the capacity of transitional justice mechanisms to

¹Helena Sancho,Using Transitional Justice To Promote Development,Development Trends,Sida, April 2014,P4

²تعزير الحقيقة والعدالة والجبر وضمانات عدم التكرار، الدورة الثامنة و الستون، المرجع السابق، ص20-21

³Pablo de Greiff and Roger Duthie.,op.cit,p36

⁴ Rama Mani, Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development, International Journal of Transitional Justice, Volume 2, Issue 3, December 2008, P 264, <https://doi.org/10.1093/ijtj/ijn030>

⁵Pablo de Greiff,Articulating the Links Between Transitional Justice and Development: Justice and Social Integration,Research Brief,Research Unit,ICTJ,July 2009,p3

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pursue justice for gross human rights violations, others argue that including issues like widespread corruption in transitional justice will distract the public from mass atrocities or reinforce the notion that some crimes deserve a strong societal response simply because they affect all citizens, where murder and torture are concerned.¹

The economic impact of transitional justice initiatives is likely to be either insignificant or difficult to detect and assess. Transition trials are unlikely to have a significant impact on growth or distribution, for example.²

The Declaration on the Right to Development emphasized that eliminating massive and flagrant violations of human rights would help to create conditions conducive to the development of a large portion of humanity, while also highlighting the significance of international peace and security in realizing the right to development.³

Transitional justice, according to Pablo Dougrave, was functionally designed to address issues in the area of corrective justice, whereas development could lead to the "distributive" aspect of justice, so the two areas were complementary, and correcting past violations eventually led to improved living conditions.⁴

As a result, if transitional justice measures are successful in fulfilling their goals, they will create an atmosphere favorable to human development, which will be linked with the Declaration on the Right to Development's article III . In countries that have undergone conflicts and uprisings, development programs can help to restore stability and security, which is strengthened by peace.

The second requirement: Transitional justice and the right to peace

The ideals of the United Nations Charter have given rise to collective rights, sometimes known as people's rights. The right to peace, for example, is one among them. The Preamble to the United Nations Charter reads that "the peoples of the globe have formed themselves and agreed to achieve tolerance, to live in peace and good neighborliness, and to preserve international peace and security."

It is no exaggeration to say that this Charter and the subsequent International Bill of Human Rights were a reaction to the international institutions' failure to protect human rights and maintain international peace and security during the two World Wars, as evidenced by gross violations of human rights. This evolution in

¹Roger Duthie ,op.cit, p 307

²Pablo de Greiff and Roger Duthie, op.cit,p39

³إعلان الحق في التنمية، انظر موقع الأمم المتحدة، تاريخ التصفح 2019/07/03 على الرابط التالي:
<https://www.un.org/ar/events/righttodevelopment/declaration.sht>

⁴Pablo de Greiff and Roger Duthie.,op.cit,p63

international human rights law accurately reflects a qualitative shift and a breakthrough in the protection of fundamental rights in order to break with a terrible and painful past.

Although there were many references to peace in the preamble to the Universal Declaration of Human Rights and the International Covenants, the expert, William Shabazz, had pointed out that the value of the right to peace was not well developed in human rights instruments, despite the fact that the preamble to the Universal Declaration of Human Rights was based on four freedoms to which he referred. The right of peoples to peace is represented by "Franklin D. Roosevelt," which is freedom of belief, freedom of expression, freedom from fear.¹

Peace is a necessity for the development and protection of the human rights of all people, according to the General Assembly's resolution 60/163. The United Nations Charter, on the other hand, incorporates the promotion of human rights and fundamental freedoms as a tool for peace in its charter. The International Covenant on Civil and Political Rights' preamble argues that the recognition of human dignity and equal and inalienable rights is the foundation of world freedom, justice, and peace, reaffirming human rights as a cornerstone for peace.²

Ms. Fatemata-Binta, Chairperson of the Committee on the Elimination of Racial Discrimination, stated that, based on the Committee's experience, a message could be sent that peace is necessary for the enjoyment of rights and that, in the absence of peace, victims should be able to claim it as a right alongside other human rights.³

This right is defined as a universal individual and collective right, the primary responsibility of which rests with States, individually and collectively, or as members of multilateral organizations, in accordance with the legal obligation to refrain from using or threatening to use force in international relations and to settle disputes through peaceful means in accordance with the principles of the United Nations Charter. Human rights implementation leads to peace, whereas peace is a cornerstone of human rights implementation.⁴

¹تقرير المفوضية السامية بشأن حصيلة حلقة عمل الخبراء المتعلقة بحق الشعوب في السلم، مجلس حقوق الإنسان، الدورة الرابعة عشرة، رمز الوثيقة A/HRC/14/38 بتاريخ 2010/03/17، ص15
²تقرير المفوضية السامية بشأن حصيلة حلقة عمل الخبراء المتعلقة بحق الشعوب في السلم، المرجع السابق، ص6

³المرجع نفسه، ص16

⁴Kjell-Åke Nordquist, The Crossroads of Human Rights and Peace-Building – an ongoing debate, Research Program on Human Rights and Peace-Building, Stockholm School of Theology Sweden, Research Paper Series No. 2, 2008, p3

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While both peace building and transitional justice are broad concepts aimed at achieving a common goal of long-term peace, transitional justice is a subset of the Peace building Initiative that provides a process for establishing truth and reconciliation, compensating victims, and holding perpetrators accountable. Transitional justice and peace building are intrinsically tied in different ways. This can be seen in the use of litigation laws as a tool for institutional reform, ensuring that previous offenders are prohibited from having public office for at least a period of time.¹

Because it deals with a unique situation, transitional justice focuses on how to treat societies transitioning from armed conflict to peace. Transitional justice must be understood within the circumstances of democratic transitions on a conceptual level, but it has increasingly become a tool for promoting peace in post-conflict societies. At the same time, justice and accountability are becoming more widely recognized as essential components of peace building.²

Transitional justice also faces challenges in fragile societies where justice is exchanged for peace, particularly in countries where people guilty for grave human rights atrocities continue to wield power, posing a threat to the entire transitional process. Criminal prosecutions can sometimes have the opposite effect, fueling conflict.

Transitional justice debates and measures are frequently influenced by discussions beginning during peace processes, but peace processes rarely provide mechanisms to deal with the past as part of a coherent plan for an integrated vision of accountability, the rule of law, or reconciliation. When transitional justice institutions emerge from the peace process, they are often fragmented as a result of practical issues that occur during the negotiations.³

Although the "international standards" governing transitional justice do not allow for amnesty for serious international crimes, they do call for "a combination of the normative commitment to accountability, the maintenance of the ceasefire, and the strengthening of constitutional frameworks at the heart of the Peace Agreement,"

¹Gerhard Thallinger. The UN Peacebuilding Commission and Transitional Justice. German Law Journal.;8(7), 2007,p 696

²Pablo de Greiff and Roger Duthie.,op.cit,p81

³Astrid JamarAnd Christine Bell, Transitional Justice And Peace Negotiations With A Gender Lens, UN Women. New York,2018,p1

which can be achieved through quasi-judicial mechanisms that provide models of accountability in the absence of criminal prosecutions.¹

The ultimate purpose of transitional justice, as a future-oriented response to the past, is to establish the circumstances for a permanent peace. In this way, transitional justice is a critical component of peace building. Finally, transitional justice aims to promote human rights, which can only be realized via peace, which is a precondition for the advancement and protection of all human rights. Any internal problems or disputes must be settled peacefully. Peace is defined as a dynamic and beneficial process based on participation, not just the absence of conflicts. Because wars are born in the minds of human people, the Declaration on the Right to Peace highlighted that the bastions of peace must also be constructed in the minds of human beings.²

Within the United Nations system, peacebuilding refers to efforts to assist countries and regions in transitioning from war to peace, reducing the risk of a country relapsing into conflict by strengthening national conflict management capacities, and laying the foundations for peace and long-term development. Peacebuilding begins with the end of an armed conflict, and includes efforts to preserve what has been achieved in order to end the conflict on the one hand, as well as the establishment of a new phase that will ensure the viability of these outcomes.³

Peace-building is the transformation of conflict, the reform of individual relationships, and the construction of infrastructure that assists conflicting parties in crossing the conflict into positive peace, with the goal of eliminating all causes of conflict, whether material or moral, and replacing them with mechanisms that allow the parties to deal with their past in a peaceful manner. Peace Building is a program that employs negotiation and mediation to resolve conflicts, as well as to create legal and human rights institutions and attain justice, in order to address the roots of conflict and past grievances and promote long-term justice and stability.⁴

¹ Cori Wielenga, Peacebuilding And Transitional Justice, Peacebuilding Blog, Viewed On 13/07/2019, At <https://www.Accord.Org.Za/Blog/Peacebuilding-And-Transitional-Justice/>
<https://www.accord.org.za/blog/peacebuilding-and-transitional-justice/>

² إعلان بشأن الحق في السلام، اتخذته الجمعية العامة للأمم المتحدة بتاريخ 19 ديسمبر 2018، رمز الوثيقة A/RES/71/189 بتاريخ 2017/02/02، ص 3-5 تاريخ التصفح 2019/07/15، على الرابط التالي: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opensslpdf.pdf?reldoc=y&docid=589c722>

³ وسيلة قانوني، توسيع مفهوم السلم والأمن الدوليين في القانون الدولي، مجلة العلوم الاجتماعية، العدد 21، ديسمبر، 2015، ص 74

⁴ مهدي سعداوي و بلخيري فاروق، دور التنمية في بناء السلام داخل مجتمعات ما بعد النزاع، مجلة الحقوق والعلوم السياسية، جامعة عباس لغرور، خنشلة، العدد 10، جوان 2018، ص 196، وسيلة قانوني، المرجع السابق، ص 74.

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Maintaining "negative peace" (the absence of physical violence) and developing "positive peace" (the existence of social justice) are both necessary for long-term peace, as is minimizing, if not eliminating, conflict's core causes. This implies that peace building and transitional justice include social, economic, and political justice, as well as legal justice, which combats impunity and establishes structures to ensure continued respect for human rights and the rule of law, where ending armed conflict and introducing mechanisms to reduce future threats of violence is a fundamental foundation for peace building and human security.¹

Peace thus necessitates a new relationship between rulers and citizens, which may aid in the legitimacy and foundation of the State through transitional justice, with its values of accountability, justice, amnesty, forgiveness, tolerance, and reconciliation, bringing psychological peace and reassurance to victims if criminals are held accountable and punished, as well as reconciliation among society members.

Each culture will have its own perspective in the context of transitional justice. Those who feel that the only way to create peace is to prosecute, hold accountable, and punish the most senior perpetrators. Those who believe that peace, security, and stability may be achieved through reconciliation and amnesty laws. Peace is a goal of transitional justice and a matter of consensus among all persons, governments, and the international community, given these two viewpoints and the clear attitude of international law toward amnesty legislation.²

Conclusion :

Human rights' universality, interconnection, interdependence, and indivisibility have been reflected in order to make it the duty of States to promote and protect them, regardless of their political, economic, or cultural systems, and to ensure that they are enjoyed in their entirety, without exclusion. As a result, transitional justice should not be limited to the first generation of human rights, but should also look into other rights violations and their ties to conflicts, as well as address underlying imbalances, such as financial corruption and social segregation, which are the root causes of conflict. In order to assure support for victim compensation and development efforts, the latter may use the financial proceeds of corruption to avoid accountability and retrieve stolen assets to some extent.

¹Wendy Lambourne, Transitional Justice and Peacebuilding after Mass Violence, International Journal of Transitional Justice, Volume 3, Issue 1, March 2009, p 34, <https://doi.org/10.1093/ijtj/ijn037>

²For more information, Giovanni Cellamare and Ivan Ingravallo, Peace Maintenance in Africa, Springer International Publishing, 2018, p135.

As a result, there should be no turning a blind eye to distributive justice at this time, especially given that the majority of popular demands have advocated for freedom and social justice, despite the differences between the most effective mechanisms for accountability for financial corruption and economic crimes, between those who favor transitional justice and its mechanisms having jurisdiction over it, and those who believe that courts should have jurisdiction over the rights of displaced persons. Any transitional community ripped apart by conflict, poverty, and hunger must prioritize peace and long-term development.

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