



# AFRICA CENTER FOR STRATEGIC STUDIES

## Conclusions from the “Strengthening Rule of Law to Mitigate Harm: Security and Justice Provision After Conflict and Transition” Roundtable

*As summarized by the rapporteurs based on discussions with the subject matter experts*

**Banjul, The Gambia**

*August 22-24, 2023*

*Rapporteurs: Mr. Sait Matty Jaw, BG (Professor) Dan Kuwali, Ms. Caroline Cosby, Dr. Catherine Lena Kelly*

### **Overview**

The Africa Center for Strategic Studies convened a subject matter experts roundtable to enhance peer learning and experience sharing on the state of the art on security and justice coordination in post-conflict and transitional settings. Defense sector officials specialized in national security strategy and military justice, civilian justice sector officials, and members of civil society focused on people-centered justice and security provision, gathered to discuss strategic coordination of security and justice reform and the potential of these processes to build citizens’ trust in state security and justice institutions. Convening this range of experts from different countries offered an opportunity for them to leverage their national, local, and sectoral experiences on these issues – as well as their insights into how to enhance the African Union Security Sector Reform (SSR) Policy Framework and the Transitional Justice (TJ) Policy. They discussed the latest approaches to providing transparent, legitimate, and accountable security and justice services to citizens after conflict or transition. Experts from Central African Republic, Democratic Republic of Congo, The Gambia, Liberia, Malawi, Sierra Leone, South Africa, and South Sudan explored the strategic logic and the operational art of strengthening the rule of law to provide human security after conflict or transition.

The objectives of the roundtable were to enhance peer learning on how African states’ strategic decisions about the sequencing, methodology, and coordination of security and justice service provision can affect the outcomes of TJ and SSR; and to analyze the ways that military and civilian security and justice actors can work together to account for the harms of the past, while also fostering reforms that ensure a more prosperous and equitable future. Both kinds of strategic thinking are important for addressing harms of the past and preventing the recurrence of violence; both are also key for ensuring sustainable peace and security in countries that are stabilizing after conflict or transition. Security and justice reforms are frequently strategized, planned, and implemented in silo. Yet, some of the continent’s prime security challenges depend upon strategic coordination between the security and justice sectors. This includes formal and informal institutions, as well as the military and civilian components of security and justice systems.

This document shares the experts' principal recommendations and synthesizes the experts' perspectives on four aspects of the "co-production" of security and justice that were discussed in depth at the roundtable. The list of recommendations, destined for domestic leaders of TJ and SSR in diverse contexts, focuses on concrete measures that could be amplified to ensure that TJ and SSR synergistically address the root causes of past harms and abuses and jointly create the long-term conditions for a more prosperous, just, and secure society in line with the African Union Agenda 2063.

### *Key Recommendations to Domestic Leaders of TJ and SSR Processes*

- 1. Take a truly integrated, "sector-wide" approach to achieving the goals of TJ and SSR.** This requires implicating security sector officials in transitional justice and justice sector reform conversations, and implicating justice sector officials in security sector reform conversations. Additionally, this calls for including other key stakeholders like bar associations, community-based paralegals, legislators, civil society organizations, community leaders (women, youth, traditional, religious), and the media. It is important that all stakeholders are included under conditions that not only give them a seat at the table, but also facilitate their substantive contributions.
- 2. Develop a clear and comprehensive strategic, policy, and legal framework that links TJ, SSR, and justice sector reforms.** Some countries have separate strategies for each of these processes, while others have national security advisors or other offices that develop overarching strategy to address these elements. In both cases, taking a "human security" approach to developing strategy, policy, and legal frameworks can help to address the core factors (like socio-economic challenges, impunity, perceptions of injustice in the ways that the state works) that will prevent the recurrence of violence and to create a just and secure society. Although any framework will require national-level coordination to implement effectively, it is most likely to succeed if it has components that are deconcentrated or decentralized, and interactively engages state and societal stakeholders.
- 3. Within the realm of the possible, shape the environment to facilitate the success of an integrated approach.** Ideally, countries will be working with a comprehensive peace agreement or transition framework, and will have established clear implementation plans, and milestones for TJ and SSR. Where possible, taking advantage of political opportunities to ensure that those in charge of implementing TJ and SSR are not also leaders suspected of perpetrating past violence is ideal. When it is not possible, the champions of TJ and SSR may need to focus on incrementally advocating to modify and adapt the strategy, policy, and legal frameworks guiding the approach.
- 4. Identify and empower a coordinating body (with lead and supporting institutions for various lines of effort) and coordination mechanisms is key.** Design and implementation of an integrated, "sector-wide" strategy to prevent recurrence is most likely to work well will if each sector of government involved develops an action plan, as well as a communications plan to explain the TJ and SSR activities they are responsible for implementing and on what timelines. Leaders of the coordinating body may also wish to facilitate regular check-ins to monitor progress on the achievement of

milestones and facilitate contingency planning and adaptation. While there may be one institution designated to coordinate implementation, there should also be another that is designated to monitor and evaluate implementation progress (Human Rights Commission, Anti-Corruption Commission, or otherwise).

5. **To improve public understanding and trust in the integrated process, explicitly link strategy implementation to specific programs and projects, and communicate realistic milestones and measures of success.** In an integrated strategic approach to TJ and SSR, leaders will think about the “big picture” while simultaneously identifying a series of concrete, multi-sectoral activities that are needed to jump-start the implementation phase. A mix of quick impact and longer-term projects are often appropriate. Linking a series of specific, locally tailored projects with measurable milestones to the strategy framework can help governments establish realistic timelines for delivering results and help citizens understand what substantive results are realistic to expect.
6. **Take steps to ensure national and local ownership of integrated TJ and SSR processes, and related projects to facilitate access to security and justice services.** Ownership of a vision and agenda will guide engagement and financing by international partners. Government should be driving ownership, assessing whether potential partners are following guiding principles from the Paris Declaration (ownership, alignment, harmonization management for results, mutual accountability) and the Accra Agenda for Action (ownership, inclusive partnerships, delivering results). Communities and civil society should play a role in defining where and how the government is using its own resources and those of donors to implement various elements of its integrated, “sector-wide” approach. Diaspora communities should also be included in defining the national vision for the future and the design of its implementation.
7. **Leverage the wealth of African practitioners and academics who possess extensive real-world and data-driven insight about the expectations and needs of the communities that are involved in TJ and SSR.** These individuals and their organizations can be useful sources of information for the leaders seeking to achieve the goals of TJ and SSR in ways that remain cognizant of the perceptions, perspectives, and needs of many stakeholder groups. They are often quite dedicated to including the voices of the survivors of violence in their research and programming, have built trust in communities whose security and justice needs and perceptions of TJ and SSR need to be understood. Because of this, they can also help to provide suggestions for mainstreaming gender into TJ and SSR. These individuals and their organizations also often have specialized training in social science, law, public policy, project management, and qualitative and quantitative methods of data analysis that could be extremely useful to governments.
8. **Connect with local security and justice experts to design contextually appropriate, cost-effective security and justice provision mechanisms.** Many African societies have features of the security and justice systems that can be sources of cost-effective innovation. Given this, punitive and restorative justice approaches can be treated as complementary tools for building the rule of law and laying the groundwork for development and security. Similarly, treating state and non-state mechanisms for dispute resolution as complementary can relieve burdens on state institutions with limited resources.

Leveraging this legal hybridity effectively has the potential to reduce case backlogs in state courts, reduce administrative pressure on prisons, increase citizens' autonomy in navigating everyday security and justice challenges, and help people make informed bids for services as the state seeks to build a social contract with citizens. Several countries have also expanded access to justice by investing in locally designed models of legal empowerment (training community members to provide information about the range of dispute resolution options that citizens have, what their strengths and weaknesses are, and how to use them). Leveraging technology in the pursuit of cost-effective solutions, where applicable, is also key.

9. **Invest ample time and resources into building the trust of citizens in security and justice institutions.** This takes time, demands iterative and adaptive engagement, and requires leaders to work in an embedded fashion at the community level. There are a variety of initiatives that may be needed to foster public trust in the state. Some that are especially critical include:
  - Community level education that enhances citizens' access to information about their options for solving their security and justice problems, and that help them navigate state and non-state institutions to get the services that they seek;
  - Enhancing civil affairs programming and public affairs engagements of the security sector;
  - Improving citizens' understanding of the military branch of the justice system along with the civilian branch of the justice system, to convey that the rule of law applies to all;
  - Building or strengthening victim and witness protection systems;
  - Working with Bar Associations and civil society to come up with pro-bono legal aid, public defender, or community-based paralegal programs to enhance the timely delivery of justice.
  
10. To strategize and implement an integrated approach to TJ and SSR, **consider building the joint capacity of all stakeholders together, so that they understand each other's basis of knowledge, everyday experiences, and practical concerns, as well as their roles and responsibilities.** Various branches of the security services and of the justice sector are important to connect, and both types of service providers benefit from thinking and training alongside the leaders of independent oversight institutions, parliamentarians, and civil society broadly defined.

### *Summary of Lessons Learned*

#### Session 1: Addressing the Past: Integrating Transitional Justice into Security Sector Reform

*While transitional justice (TJ) is a critical tool for preventing recurrence of violence, it is not always effectively integrated into the SSR processes shaping long term security, often to the detriment of recovery. This session sought to examine the extent to which TJ, SSR, and justice sector reform have been integrated in different African contexts, and how such integration shapes prevention of the recurrence of violence.*

- The leaders of a country's security and justice institutions shape the effectiveness of those institutions. Different peace agreements and disarmament, demobilization, and reintegration (DDR) processes have resulted in leaders with differing links to past conflict

or violence coming to power. Building the political legitimacy of TJ and SSR is especially difficult when people who are directly implicated in the abuses of the past become the leaders who are responsible for TJ, SSR, and justice sector reform in the present.

- Fortunately, TJ is defined quite expansively by the African Union in its Transitional Justice Policy as “the various (formal and traditional or non-formal) policy measures and institutional mechanisms that societies, through an inclusive consultative process, adopt in order to overcome past violations, divisions and inequalities and to create conditions for both security and democratic and socio-economic transformation.”
  - The four pillars of TJ - prosecutions, reparations, truth seeking processes, and institutional reform processes (including SSR) are best approached as complementary tools for creating a context in which human security is attainable and violence is unlikely to recur.
  - Addressing the socio-economic rights and needs of citizens as part of the above is a key element of ensuring stability and sustainable security.
- Designing TJ interventions that are specific to the political and cultural context of a country, and that take into account citizens’ preferences for retributive versus restorative approaches, can make or break their effectiveness.
- A frequent challenge that leaders face is ensuring that citizens understand how TJ and SSR are intended to work and know the overarching plan for their integration nationally and locally. Sensitization is beneficial for establishing a social contract between the state and citizens because it calibrates citizens’ expectations about what can be achieved through TJ and SSR, and on what timeline. Cultivating realistic expectations about both processes is key. As part of sensitization, the public may need an explanation of what the security and justice sectors are, and how they serve the people in a transitional society.

## Session 2: Looking Forward: Security Sector Reform and the Role of the Justice Sector

Transitional processes must be both retrospective and prospective. Those leading SSR must understand *from survivors what went wrong in the past to identify areas where change is needed. But developing a people-centered national security vision is also critical for integrated strategy development, implementation, and resource mobilization. Insofar as it helps states forge a new social contract with citizens, forward-looking strategy development is a useful tool for enhancing security and justice delivery and for building confidence in institutions. This session addressed how SSR can be tailored to meet citizens’ justice and rule of law needs, as well as how national security strategy processes can lay the groundwork for delivering services to citizens.*

- SSR, TJ, and other elements of justice sector reform should be strategized together, with the support of clearly defined coordination mechanisms and transparent mechanisms for monitoring, evaluation, and adaptation.
- Strategy processes for recovering from conflict and preventing recurrence must be broadly inclusive from the beginning (incorporating state institutions like the military, law enforcement, and judiciary, along with local civil society organizations, traditional and religious leaders, women and youth leaders, bar associations, paralegals, etc.). “Inclusive” means not only having a seat at the table, but also possessing the information and capacity to contribute to reform processes and advocate for the diverse needs of citizens.

- A successful transition goes beyond the reform of institutions; it also requires addressing what survivors need in order to move forward in a post-conflict society. The first step is to create and defend space for survivors' voices to be heard and heeded during reform processes. Establishing or strengthening of victim and witness protection systems and bolstering citizens' economic and social rights can also further the long-term goals of preventing recurrence and building resilience.
- Local ownership of TJ and SSR are central to strategic and operational success. Developing integrated national strategies to guide these processes can help decision makers determine whether donor resources fit their needs, and whether the timing is appropriate to take on projects that domestic or international stakeholders propose. They can also help policymakers take a more comprehensive "sector-wide approach" that includes justice alongside security when questions arise about how to structure budgetary allocations and mobilize domestic resources.
- Stakeholders doing integrated TJ and SSR work will therefore benefit from distinguishing between short term objectives for recovery and long-term priorities for creating a just, secure, and prosperous society. Decisions about when to implement certain components of a broader, integrated strategy have long-term political consequences for recovery. Strategists, practitioners, and citizens will be forced to make difficult tradeoffs as they work together towards their goals.
- Much like strategy-making, managing budgets to implement integrated strategies to deliver security and justice requires an inclusive and coordinated approach. Maximizing effectiveness also depends on no sector being exempt from auditing, monitoring, and evaluation, including the military.

### Session 3: Facilitating Access to Justice and Public Understanding of Accountability

*Undertaking reforms to mitigate harm from the past and prevent the recurrence of violence requires re-building state institutions that inspire public trust. Fostering legitimacy depends upon state officials building long-term, rights-respecting relationships with citizens. During this session, participants analyzed how the efforts of government officials (especially military and civilian justice officials and civil affairs branches of the military) and civil society (especially groups focused on community-based legal empowerment and alternative dispute resolution) can be mutually reinforcing.*

- Many African societies have advantageous features that can be leveraged to address real and perceived injustice that is at the root of conflict and violence. Among them are legal hybridity (differing bodies of law that overlap and can be used to access justice through state and non-state mechanisms) and locally designed models of legal empowerment (informing citizens about their range of dispute resolution options, their strengths and weaknesses, and how to use them).
  - Given this, punitive and restorative justice approaches can be treated as complementary tools for building the rule of law and laying the groundwork for development and security.
  - Similarly, treating state and non-state mechanisms for dispute resolution as complementary can relieve burdens on state institutions with limited resources.
  - Leveraging hybridity effectively has the potential to reduce case backlogs in state courts, reduce administrative pressure on prisons, increase citizens' autonomy in

navigating everyday security and justice challenges, and help people make informed bids for services as the state seeks to build a social contract with citizens.

- Avoiding the recurrence of violence or conflict requires building the trust of citizens in security and justice institutions. This takes time, demands iterative and adaptive engagement, and requires leaders to work in an embedded fashion at the community level. Especially critical are community level education initiatives that enhance citizens' access to information about their options for solving their problems and the bureaucratic practicalities of getting the services that they seek.
- In a transitional context, it is important that people learn how the military courts complement civilian parts of the justice system. The purpose, mission, and workings of the military courts tend not to be as well understood. However, government and civil society actors can remedy this by working together to sensitize citizens about both military and civilian aspects of the rule of law. Their expertise is also key to advancing policy discussions about the implications of different technical arrangements for the application of military and civilian jurisdictions in a specific context.
  - The prime ways to build public trust are likely to be different where the government has declared a state of emergency and mechanisms of civilian control are therefore weakened.

#### Session 4: Mitigating Harm Comprehensively: Military and Civilian Work with Oversight Institutions

*Even in places where security and justice reform have been relatively successful, the implementation of TJ and SSR agendas requires ongoing innovation and adaptation to fit contextual needs. Establishing mechanisms to monitor and evaluate the institutions leading TJ and SSR can help to bolster the legitimacy of these processes and help them remain fit for purpose. To this end, oversight institutions, including independent anti-corruption commissions and national human rights commissions that are often created during transitions, have watchdog roles to play. In this session, experts analyzed the political and economic conditions influencing the contributions of oversight institutions to TJ and SSR.*

- SSR cannot leave behind any part of the sector, including the police and the prison system. Anti-Corruption Commissions, National Human Rights Institutions, inspectorates, parliaments, and the military and civilian justice systems can assist in solidifying these reforms by ensuring that citizens have recourse to file complaints about mistreatment they experience by service branch members.
- The results that oversight institutions can achieve depend on several factors: whether there is a robust civil society to link people to institutional reporting mechanisms; the legal mandate and staffing rules affecting the reach and the political autonomy of commissions; the commissions' inclusion in the coordination of a "sector-wide approach"; and their human and financial resources.
- The leaders of oversight institutions have lonely professional experiences if they pursue an agenda for reform. They also face challenges navigating domestic politics to ensure that their institutions can function independently. Fostering networks of solidarity and learning between oversight institution leaders, as well as other champions of security sector governance, can help them weather these challenges. Deep-rooted "epistemic communities" of dedicated practitioners are needed.

- When possible, solidifying the legal mandate, political independence, and bureaucratic autonomy of anti-corruption and human rights commissions within the first six months of a transition can help to set them up for success. The more that transitional leaders spend time navigating the politics of TJ and SSR after a transition, the less they are likely to facilitate these conditions.
- In some countries, oversight is constrained by an executive branch with unchecked powers over security sector appointments and the professional advancement of the judicial corps. In some cases, inspectorates of the armed forces or of the judicial services desire more autonomy but the ministries to which they report do not grant it. In such contexts, leaders of oversight institutions and their allies must balance the need to maintain political neutrality and the need to be anticipatory (i.e., spotting and seizing opportunities to establish further checks and balances).

### *Plans for Follow Up*

The experts concluded the roundtable by meeting in country groups and discussing concrete actions they could take together upon returning home. Several groups plan to communicate recommendations from the roundtable to their governments in order to shape the environment for further integration of security and justice approaches to preventing recurrence.

Two roundtable experts will attend the African Union's ten-year review of its Security Sector Reform Policy Framework in November 2023. They will also share outputs from the Africa Center roundtable.

The Africa Center for Strategic Studies will hold a virtual reunion in April 2024 to support the subject matter experts in the follow up measures that they choose to pursue.