

A New Frame? Transforming Policing through Guarantees of Non-Repetition

Brianne McGonigle Leyh

Abstract Using qualitative legal scholarship, combined with literature analysis from post-conflict peacebuilding and police studies, this article provides a normative and theoretical lens through which police and other actors can view and carry out reform efforts. It explores whether and how the concept of guarantees of non-repetition could contribute to or reframe discussions in order to prevent future violence and facilitate lasting institutional changes. The article examines the development of a broader approach to security sector reform and explores guarantees of non-repetition and the conceptual confusion it has encountered. It teases out the main aspects of guarantees of non-repetition, including its human rights elements, such as due diligence obligations. Finally, it addresses how guarantees of non-repetition provide a normative institutional policy framework that offers the possibility to shift the rhetoric to focus on State obligations that are context-driven. As a result, guarantees of non-repetition could prove useful when addressing police reform.

Introduction

Countries around the world grapple with excessive police violence that violates human rights (Rushin, 2016; Pion-Berlin and Carreras, 2017; Gingerich and Oliveros, 2018, p. 78). All too frequently, the police, as one of the first lines of security at the local level, have become a source of insecurity. They are often directly involved with physical violations of personal integrity, including killings, torture, rapes, disappearances, or arbitrary arrests, or are involved with violations of socio-economic harms such as corruption. In other cases, even when not directly participating in the

violations, they project an inability or unwillingness to stop it.

For decades, scholars and practitioners have stressed the importance of establishing better relationships between police and the communities they serve and have adopted a myriad of ways to bring about real police reform that fosters relationships of trust. Community policing, democratic policing, and problem-oriented policing are some of the ways in which police and communities have sought to make this change (Ellison, 2006, pp. 12–16; Lewis, 2011, p. 104). And while there is some progress made by these initiatives, the recurrence of excessive police violence around the globe

*International and European Law Department, Utrecht University, 3584 BH Utrecht, The Netherlands. E-mail: b.n.mcgonigle@uu.nl

Advance Access publication: 8 July 2020
Policing, Volume 15, Number 1, pp. 362–372
doi:10.1093/police/paaa035

© The Author(s) 2020. Published by Oxford University Press.

This is an Open Access article distributed under the terms of the Creative Commons Attribution Non-commercial License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits noncommercial re-use, distribution, and reproduction in any medium, provided the original work is properly cited. For commercial re-use, please contact journals.permissions@oup.com

can be disheartening. The struggle to reform police actions and behaviour are particularly acute in countries emerging out of conflict, where often the entire society is looking to rebuild and reform. Given the enormous amount of attention (both politically and financially) that many of these situations receive, perhaps, there is something to gain by looking at the field of post-conflict peacebuilding when it comes to police reform.

Countries emerging from a post-conflict situation often turn to democratic governance, rule of law, development, and transitional justice measures not only to address past violations and re-establish trust between citizens and the state but also to create secure environments that are conducive to economic growth, poverty reduction, and democracy (OECD/DAC, 2005, p. 16; Mobekk, 2006; MacColman, 2016, p. 73). Each of these fields or domains is distinct in their methods and objectives, but there is a great deal of overlap. Democratic governance is defined, at least in part, by transparency, participation, effectiveness, and the importance of enhancing the links between government and society (Picard and Mogale, 2015, p. 3). Development is seen as work that has the aim of improving the standard of living for all people (De Greiff and Duthie, 2009, p. 18).¹ The rule of law is ‘a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards’ (United Nations, 2004, p. 4). Transitional justice is largely seen as ‘the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve

reconciliation’ (United Nations, 2004, p. 4). The UN, regional organizations, and domestic states pump hundreds of millions of Euros into programming that falls within these domains to support efforts to establish positive peace (UNDP, 2008, p. 4; Arthur, 2018, pp. 209–241).

Much of the programming envisions permanent structural reforms, which serve a future-oriented agenda, while transitional justice processes are generally more temporary and backward looking, and include measures such as criminal trials, truth commissions, and reparation processes (United Nations, 2004, p. 4; McGonigle Leyh, 2017, p. 84). The overlap between these conceptual frameworks is great as they all largely share similar aims (Lambourne, 2009, p. 34; McAuliffe, 2010, p. 131; Andersen, 2015, p. 317; Sriram, 2017, p. 66),² and there is one set of measures, in particular, that has been (under)-conceptualized under all fields. These measures concern actions taken to prevent the recurrence of violence, often referred to as guarantees of non-repetition. In this sense, guarantees of non-repetition lie at the nexus of these wide-reaching frameworks which link ‘various aspects of human and state security, democratic governance and development’ as well as human rights and rule of law (de Greiff, 2015, p. 7; MacColman, 2016, p. 72; Mayer-Rieckh, 2017, p. 434).

Guarantees of non-repetition are basically intended to prevent states from backsliding into violent, repressive, or authoritarian situations. Within the peacebuilding field, scholarship recognizes guarantees of non-repetition as some of the most understudied post-conflict measures, although they offer the highest potential for impact on successful transitions to rule-of-law-based societies (Roht-Arriaza, 2016, p. 31; Mayer-Rieckh, 2017, p. 448–8). If adopted, then they have the

¹ ‘Human development’, which is closely related to Amartya Sen’s capabilities approach, includes but is not limited to economic development and focused on agency, choice, and opportunity; see Sen (1999).

² These scholars have highlighted the need for conceptual clarity between actions falling under the rhetoric of rule-of-law programming and transitional justice programming and have called for more research on the interface between the fields and how they can complement and strengthen one another.

possibility to bring about real institutional and cultural changes in a society. They aim to address and prevent serious violations of human rights, and they inherently trigger discussions about structural causes of violence requiring broad institutional and legal reform (HRC 2010, para 62). Accordingly, measures falling within the category of guarantees of non-repetition include state-sponsored actions such as legislative, educational, justice, and security reforms (UN General Assembly, 2005, article 23). Legislative reforms may entail amending laws to reflect international human rights norms on, for instance, the rights of victims of crime, educational reforms may include the use of new textbooks in schools that better reflect a culturally diverse and valued society, justice reforms could take the shape of new codes of conduct for the judiciary, and security reforms often include human rights and professionalization trainings for police. On their own, these measures may not bring about the change needed to guarantee the non-recurrence of violence, but a combination of these actions grounded in human rights and state responsibility offers opportunities for real transformation. Of these various measures, security sector reform (SSR) is often the most prioritized as it aims to improve safety through more effective and accountable security institutions controlled by civilians' and ensuring accordance with human rights and the rule of law principles (UN General Assembly, 2012).

Using qualitative legal scholarship, combined with a literature analysis from post-conflict peacebuilding and police studies, this article aims to contribute to discussions around police reform by exploring whether and how the concept of guarantees of non-repetition could contribute to or reframe discussions in order to prevent future violence and facilitate lasting institutional changes. Not focusing on a specific empirical case study, it provides a normative and theoretical lens through which police and other actors can view and carry out reform efforts.

The article begins by examining the development of a broader approach to SSR. Next, it explores guarantees of non-repetition and the conceptual confusion it has encountered. It teases out the main aspects of guarantees of non-repetition, including its human rights elements and more transformative elements, which align well with the broader SSR approach. A crucial human rights element includes the duty of due diligence. When states have duties of due diligence, they have obligations of conduct requiring them to address specific risk factors associated with violence. Finally, it addresses how guarantees of non-repetition provide normative institutional policy frameworks, which are built around human rights standards and transformative theories, and that offer the possibility to shift the rhetoric to focus on state obligations that are context-driven. As a result, the language of and programming falling under guarantees of non-repetition could prove useful when addressing police reform in post-conflict societies as well as societies grappling with police reforms more generally. Nevertheless, as all case studies have shown, the success of any reform policy is directly proportional to the state and communities' enthusiasm for and commitment to it (Bayley, 2001).

Security sector reform: transformative policing

When addressing policing at the international level, SSR is the umbrella term used to describe reform programmes adopted in states where the security sector, namely the military, police, gendarmes, and militias, has played a significant role in the violence or conflict experienced by the local populations. Much of the literature on SSR comes out of case studies focusing on post-conflict situations, but, importantly, the underlying principles underpinning modern SSH resonate with police reform practices in countries not identified as

unstable or 'fragile' states (Lewis, 2011, p. 103; MacColman, 2016).

Traditionally, security sector assistance focused on technical advising and knowledge transfer in order to support state stability (Ball, 2010; MacColman, 2016, p. 74). In other words, national security took centre stage. It was only in the late 1990s after the release of the Boutros Boutros-Ghali Agenda for Peace report and the Human Development Report (UN Secretary General, 1992, para 21), and in the mid-2000s after communities of scholarship and practice worked together to help produce policy guidelines and a handbook on SSR (OECD/DAC, 2001, 2005, 2007), when the broader, more holistic SSR came about. Soon the concept of broader SSR became endorsed by the UN, and in particular the peacebuilding and development fields (OECD/DAC, 2007; UN Secretary General, 2008; USAID, 2009). In fact, as noted by Sharp (2015, p. 169), 'all major players in the SSR landscape essentially agree, as a matter of principle at least, on a comparatively holistic approach to SSR' (Ball, 2010).

The current holistic view of SSR is that it must be a *transformative* process built upon human security and democratic governance. Human security demands that the interests of the individual, rather than the state, should dictate security policy (Ball, 2010). Democratic governance requires respect for human rights, rule of law, and adherence to principles such as inclusiveness, transparency, and accountability (OECD/DAC, 2005). Today, the security sector is generally understood to include traditional security actors including the military and the police, but also comprising oversight mechanisms such as state institutions, correctional services, and civil society. The transformation of the security system requires all of these actors to work together in a multi-tiered dialogue (MacColman, 2016, pp. 78–79) to understand their roles and responsibilities and to hold one another to account.

These normative SSR developments also paralleled police reform movements taking place

domestically in countries not necessarily undergoing a transition from serious conflict to peace where calls for a more people-centred approach arose (Ellison, 2006, pp. 12–16). Yet, whether in communities in Detroit or Freetown, the gaps between the idealistic rhetoric and harsh realities of practice have been significant. According to Ball and Hendrickson (2005), much of the work concerning police reform is 'misleadingly optimistic'. The consensus among scholars and practitioners is that the broader approach to SSR, and police reform more generally, has been difficult to implement (MacColman, 2016, pp. 77, 81). This reluctance to fully implement a broader approach to SSR comes down to many factors. Husain notes, in the context of Brazil, a number of impediments to adopting more holistic processes. These include, but are not limited to, continued mistrust of police, politicians, and judicial actors, low salaries among police personnel which make them susceptible to corruption, adherence to a militarized mind set, and conflict with other reform programmes (Husain, 2007, pp. 267–8).

The fact is, many states and communities prefer the faster and easier 'train and equip' paradigm than a more complex and costly holistic approach (Sharp, 2015, pp. 166, 180). The easier approach allows politicians grappling with legacies of human rights violations to, on the one hand, claim they are addressing the security situation with action-oriented programmes, and on the other hand, ignore, to a large extent, entrenched cultures of impunity. But this fast result approach, which states view as action-oriented, but lacking in real transformation, is not working. As a result, in many countries, police reforms adopt the normative policies and rhetoric but do not take actions to change the prevailing police culture. Is there a different way to approach or reframe police reforms that builds upon the normative ideals of SSR to help bring about meaningful institutional cultural change that results in less police violence?

A new frame? Guarantees of non-repetition

Guarantees of non-repetition (or non-recurrence as it is also referred to) were first referred to in a 1993 study on restitution, compensation, and rehabilitation for victims of gross violations of human rights and were thus conceptualized under reparations (UN Commission on Human Rights, 1993). Under the right to a remedy, states have obligations to provide adequate, effective, and prompt reparation to victims for serious violations of human rights (UN General Assembly, 2005, para 15). This early document stated that measures aimed at preventing the recurrence of violations should include the following: (1) ensuring effective civilian control of military and security forces; (2) restricting the jurisdiction of military tribunals; (3) strengthening the independence of the judiciary; (4) protecting the legal profession and human rights workers; and (5) providing human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials (UN Commission on Human Rights, 1993, p. 58). There was, from the beginning, a strong emphasis on linking guarantees of non-repetition and SSR, particularly in the form of strengthening institutions of accountability and focusing on trainings.

The 1993 study laid the early foundations for the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN General Assembly, 2005, hereinafter 2005 Basic Principles). This document similarly focuses on SSR but also takes on a broader focus by noting the need to promote human rights standards not only in law enforcement and security sectors but also in the media, industry, and psychological and social services. Moreover, in addition to the provision of trainings and human rights education, the 2005 Basic Principles stress the promotion and

observance of codes of conduct and ethical norms for law enforcement and other sectors, as well as the promotion of mechanisms for preventing and monitoring social conflicts and their resolutions (UN General Assembly, 2005, article 23). Guarantees of non-repetition are therefore broader than SSR alone. Measures aimed at guarantees of non-repetition link together multiple areas of reform, including their social elements, in order to redress and prevent structural forms of violence.

The conceptualization of guarantees of non-repetition as a measure of reparations made sense to a certain extent because, in theory, it would allow a victim bringing a claim for a remedy to seek specific court-ordered actions aimed at preventing future violations. However, guarantees of non-repetition do not easily fit solely within a reparation framework because they are not specifically focused on restoring a victim back to the position they were in prior to the violation taking place (a basic principle of reparation) or about individual remedy. Rather, they are about state responsibility for acknowledging past wrongs and ensuring they are not repeated on society as a whole.

Therefore, the concept of guarantees of non-repetition was also taken up within documents addressing state responsibility and state measures to combat impunity (UN Commission on Human Rights, 1996; International Law Commission, 2001, article 30; UN Commission on Human Rights, 2005, principle 1). By 2005, guarantees of non-repetition were also seen as their own separate pillar within transitional justice equal to truth, justice, and reparations (UN Commission on Human Rights, 2005, principle 1; UN General Assembly, 2012; Roht-Arriaza, 2016). Indeed, Mayer-Rieckh (2017) contends that guarantees of non-repetition 'are more accurately understood as a distinct obligation rather than a subset of reparations' due in large part to their more forward-looking position that addresses society as a whole rather than just victims.

Whether as a sub-measure of reparations or a stand-alone obligation, guarantees of

non-repetition serve a specific function within rule of law and transitional justice programming. They are concerned about addressing past wrongs as well as about preventing future violations (Tams, 2009, p. 443). In this sense, when a state begins to take responsibility for past failings, measures that are categorized as guarantees of non-repetition serve a preventive function and as a means to reinforce 'confidence in a continuing relationship' between the state and those falling within its jurisdiction (International Law Commission, 2001, p. 219).

From the international documents, a number of things stand out concerning guarantees of non-repetition and SSR. First, there is an emphasis on the need to reform security structures to ensure that they are run by civilians. Secondly, there is an emphasis on trainings related to human rights in particular. Thirdly, there is an emphasis on establishing and enforcing a code of conduct and ethical behaviour. Finally, there is an emphasis on the need to monitor social conflicts and their resolutions. And, although these international legal norms do not go into any detail about precise ways in which states can specifically reform their security and police services, since specific strategies should be context specific, they do establish a useful, preliminary normative framework to inform SSR reforms.

Value of guarantees of non-repetition frame to approach police reform

Since the normative foundations behind SSR, including for example human rights, rule of law, and transformation, align nicely with the normative foundations behind guarantees of non-repetition, it will be relatively less difficult to adopt programming that more explicitly reflects measures falling under guarantees of non-repetition. Moreover, the implications for stable states adopting a guarantee of non-repetition frame are likely synonymous with states transitioning out of serious conflict, namely greater oversight and accountability over state processes, greater

engagement between the state and communities, and slowly building greater trust between society and the state. The below section goes into greater detail about the value of a guarantees of non-repetition frame to approach police reform focusing on its human rights and state obligation foundations. This linkage with past human rights violations and broader state obligations and actions can bring about more context-tailored strategies that address underlying causes of violence.

Already in 2015, Sharp noted that the development of norms concerning guarantees of non-repetition suggests that SSR must become more rights-based and justice-sensitive (p. 185). Guarantees of non-repetition frame become useful for SSR because it is based on international human rights standards and set up to promote and protect human rights. Boiled down to its most basic tenant, international human rights law ensures individuals have rights and states have duties or obligations. These require states to respect, protect, and fulfil human rights obligations. 'The obligation to respect requires states to refrain from interfering with or curtailing the enjoyment of human rights'. The obligation to protect means that states must protect individuals and groups against human rights abuses by third parties. The obligation to fulfil entails states taking positive action to facilitate the enjoyment of basic human rights. The obligation to prevent future violations of human rights, including police-perpetrated or police-supported violence, is not only reinforced by the duty to respect, protect, and fulfil human rights, but also the specific duty to make reparation for the violations that occurred previously (here, the two conceptualizations of guarantees of non-repetition reinforce one another) (Mayer-Rieckh, 2017, p. 423).

Adopting guarantees of non-repetition that are underpinned with a human rights-based approach to police reform would require states to view themselves as the principal duty bearer of SSR reform obligations. This obliges the state to shift its

thinking from a ‘state-capacity paradigm’ to a ‘state-obligation paradigm’ (Galletti and Wodzicki, 2010, p. 286; Sharp, 2015, p. 172). Sharp argues that this could help to reframe programming priorities (2015, p. 172). A rights-based approach means that any initiatives or programmes adopted by the state will go towards realizing the norms and standards espoused in human rights instruments. This new frame would also require the state to link SSR reforms with broader institutions and processes beyond security alone.

A rights-based approach considers the full range of human rights, including civil and political as well as economic, social, and cultural so that individual rights can be enjoyed by all. Such an approach requires states, when adopting police reform policies, to have an understanding about which groups in society may face discrimination or be in vulnerable situations and how they can better respond to their needs. It means that police, community leaders, politicians, and others need to better grasp intersectional identities and relationships, which better reflect the different layers of discrimination affecting individuals and communities. As observed by Lamb in the context of Northern Ireland, often notions of human rights are not understood correctly (2008, p. 390). Rather than being viewed as set of values and rights for all individuals, they are used by police to justify violent measures against bad perpetrators seen as violating their own human rights or those of ‘innocent’ victims. It therefore becomes imperative that human rights advocate the police, and communities agree on how human rights should be viewed and continuously reinforce this approach.

Human rights also require states to take positive steps to protect, respect, and fulfil their obligations. These steps include a duty of due diligence. In the context of police reform, when states have duties of due diligence it places on them obligations of conduct requiring them to address specific risk factors associated with police violence and victimization. The main elements of a due diligence

framework within human rights law include the 5 Ps: Prevent, Protect, Prosecute, Punish, and Provision of Redress (Abdul Aziz and Moussa, 2014). This framework reflects and reinforces the preventive and reparative aspects of guarantees of non-repetition as well as the human rights obligations to protect, investigate, prosecute, and hold accountable those who violate human rights. In this way, due diligence ‘is a critical tool in the formulation of accountability’ (Koskeniemi, 2017, pp. 60–61).

Due diligence conduct that is linked with guarantees of non-repetition in the context of police reform may include, for example, collecting, analysing, and understanding patterns of abuses that either occurred in the past or are ongoing (Sharp, 2015, p. 177). Linking the reforms to the specific acts of violence that took place (or that are ongoing) is important in order to take measures to ensure their prevention. General reforms that are not tailored to prevent the specific acts of violence will likely have little impact and are certainly not guarantees of non-repetition. Moreover, requiring that authorities analyse and understand the patterns of violence, including the root causes, could also help address more structural factors contributing to harm. It will also provide further opportunities for interacting with civil society actors that want to collect and share information on communities and the concerns they face.

Another example of conduct may include the adoption of a lustration or vetting process. Vetting or lustration laws allow a state to stipulate particular conditions for holding certain positions and can dismiss abusive individuals who do not meet the conditions stipulated (Choi and David, 2012, p. 1175; Mayer-Rieckh, 2017, p. 424). It is often seen as a form of administrative justice (Teitel, 2000, p. 171) that can help re-establish trust by dismissing those individuals who do not conform to the new standards. A rights-based approach, which includes due diligence obligations, may mean a greater focus on engaging with local actors, collecting and analysing data, vetting, human

rights training, gender, and anti-corruption work. Arguably, these actions would further the goals of trust-building and reconciliation between the security forces and the communities they serve.

Moreover, since guarantees of non-repetition for SSR are seen in the light of a state's human rights obligations to ensure the right to life or the right to be free from torture, for example, the state's conduct would fall under the monitoring role of international treaty bodies such as the Human Rights Committee or be brought to the attention of Special Rapporteurs (Télez Chávez, 2015). This additional layer of state accountability for its actions or lack of action concerning police reform may be valuable in exerting needed pressure on politicians. It could also empower victims and victim communities to demand their rights through legal and policy channels.

Because guarantees of non-repetition are based on international human rights standards and designed, operationally, to promote and protect human rights, it provides the useful frame of duty bearer to ensure that the state takes action to ensure respect, protection, and fulfilment of rights. So long as states exercise their due diligence to understand the situation, they may decide on the specific action to take so long as it goes towards guaranteeing non-repetition. While there are no one-size-fits-all solutions, giving states a great deal of leeway in deciding on what action to take in a particular context, this framework does provide for clear actions that a state should take (the 5 Ps), which it must then report upon and justify at the international level.

Changing culture

All of these efforts, to reframe and reconstitute reform efforts, may help. Equally, however, they may not. In addition to the reframing suggested above, it is crucial to adopt and promote a culturally sensitive approach to guarantees of non-repetition for SSR aimed at policing. The cultural

element of police reforms has in many ways been taken for granted, and more research in this area is needed. Yet, one thing seems clear: having reforms designed and implemented that have a clear understanding and appreciation for both police culture as well as the multiplicity of cultures in the communities in which they operate will be a key factor for success.

Cultural anthropologist, Clifford Geertz, defined culture 'a system of inherited conceptions expressed in symbolic forms by means of which men communicate, perpetuate, and develop their knowledge about and attitudes towards life' (1973, p. 89). Similarly, United Nations Educational, Scientific and Cultural Organization (UNESCO) adopts a view of culture as encompassing the complex features that characterize a social group, including ways of life, value systems, traditions, and beliefs.³ A culturally sensitive approach will likely require authorities to engage with those non-state actors that contribute to plural security provision, referring 'to situations in which an array of actors, regardless of their relationship to the state, claim the prerogative to coercive force' (Belhadj *et al.*, 2015; Price and Warren, 2017, p. 2). Likewise, the state will also need to engage other non-state actors that are embedded in the local cultures, including religious groups or other prominent social actors and institutions. Importantly, cultures are not static (Merry, 2003, p. 67). Rather, they can and are contested, challenged, and influenced by, for instance, knowledge transfers and experiences that underpin the values shared by SSR and guarantees of non-repetition, including most prominently human rights.

An analysis of the specific context (what types of violations took place in the past and how those violations affected the community), roles, relationships, and responsibilities will enable policy makers to identify clearer steps that can be taken. Mayer-Rieckh provides some excellent examples of technical measures of guarantees of non-

³ UNESCO Universal Declaration of Cultural Diversity (2001, preamble) and the UNESCO Mexico City Declaration on Cultural Policies (1982).

repetition which have been adopted to address context-specific needs: tearing down walls in police stations to reduce ill-treatment in Georgia or establishing ethnic balance rather than ethnic representation in the security sector in Burundi (2017, p. 445). In Northern Ireland, the police reform challenges often seemed insurmountable. Yet, because authorities adopted a broad human rights approach, where human rights were mainstreamed throughout, progress in terms of changing the culture has been made. A mainstreaming approach means that human rights, including principles such as non-discrimination and equality, were at the core of all reforms rather than confined to separate policies and procedures (Lamb, 2008, p. 387). It requires authorities to promote a culture of respect so that human rights values can align with operational exigencies and included everything from changing emblems on uniforms to new methods of trainings and greater engagement with non-state actors (Lamb, 2008, p. 388).

Conclusions

This article sought to contribute to the debate around police reform by examining whether and how the concept of guarantees of non-repetition, from the post-conflict peacebuilding field, could contribute to or reframe discussions in order to prevent future violence. It showed how a holistic framework of SSR and guarantees of non-repetition share a number of common normative objectives, including the prevention of police violence, the transformation of conduct, the establishment of trust between society and the police, and importantly, the upholding of human rights. It then explored how guarantees of non-repetition, which are built around human rights standards, offer the possibility to shift the rhetoric to focus on state obligations to victims and society more broadly that are context-specific and context-driven. Because guarantees of non-repetition are based on international human rights standards

and designed, operationally, to promote and protect human rights, states are seen as duty bearers obliged to ensure that individuals' rights are respected and remedied if there is a violation. Under this framework, states must exercise their due diligence to respect, protect, and fulfil human rights. The due diligence obligations require states to take actions to address specific risk factors associated with police violence and victimization through actions addressing the 5 Ps: Prevent, Protect, Prosecute, Punish, and Provision of Redress. While there are no one-size-fits-all solutions, and each context is specific, this approach provides for clear framework that a state would need to respond. It also brings in a layer of monitoring from the international treaty body level, where the state would need to report on and justify steps taken to show that they are meeting their due diligence obligations. These added benefits of adopting guarantees of non-repetition frame could prove useful when addressing police reform in post-conflict societies as well as societies grappling with police reforms more generally. Nevertheless, all steps taken must respond to and be receptive of local cultures and dynamics; otherwise, the ability to change or transform will be limited.

References

- Abdul Aziz, A. and Moussa, J. (2014). Due Diligence Framework: State Accountability Framework for Eliminating Violence against Women. Due Diligence Project. <http://www.duediligenceproject.org/ewExternalFiles/Due%20Diligence%20Framework%20Report%20Z.pdf> (accessed 15 January 2019).
- Andersen, E. (2015). 'Transitional Justice and the Rule of Law: Lessons from the Field.' *Case Western Reserve Journal of International Law* 47(1): 305–318.
- Arthur, P. (2018). 'Why Do Donors Choose to Fund Transitional Justice?' In Arthur, P. and Yakinthou, C. (eds), *Transitional Justice, International Assistance, and Civil Society: Missed Connections*. Cambridge: Cambridge University Press, pp. 209–241.
- Arthur, P. and Yakinthou, C. (2018). 'Changing Contexts of International Assistance to Transitional Justice.' In Arthur, P. and Yakinthou, C. (eds), *Transitional Justice, International Assistance, and Civil Society: Missed*

- Connections*. Cambridge: Cambridge University Press, pp. 1–24.
- Ball, N. (2010). 'The Evolution of the Security Sector Reform Agenda.' In Sedra, M. (ed), *The Future of Security Sector Reform. Ontario, Canada: The Center for International Governance Innovation*, pp. 29–44.
- Ball, N. and Hendrickson, D. (2005). 'Trends in Security Sector Reform (SSR): Policy practice and research'. Paper given at Workshop on 'New Directions in Security Sector Reform.' Ottawa: International Development Research.
- Bayley, D. H. (2001). *Democratizing the Police Abroad: What to Do and How to Do It*. US Department of Justice, National Justice Institute, Washington, DC.
- Belhadj, S., van der Borgh, C., Jaffe, R. et al. (2015). *Plural Security Provision in Beirut*. The Hague: The Knowledge Platform Security & Rule of Law.
- Choi, S. Y. P., and David, R. (2012). 'Lustration Systems and Trust: Evidence from Survey Experiments in the Czech Republic, Hungary, and Poland'. *American Journal of Sociology* 117(4): 1172–1201.
- de Greiff, P and Duthie, R. (eds) (2009). *Transitional Justice and Development: Making Connections*. New York: Social Science Research Council.
- Ellison, J. (2006). 'Community Policing: Implementation Issues'. *FBI Law Enforcement Bulletin* 75(4):12–16.
- Galletti, N. and Wodzicki, M. (2010). 'Securing Human Rights: Shifting the Security Sector Reform Paradigm'. In Sedra, M. (ed), *The Future of Security Sector Reform*. Ontario: Centre for International Governance Innovation, pp. 281–300.
- Geertz, C. (1973). *The Interpretation of Culture*. New York: Basic Books Publishers.
- Gingerich, D. W. and Oliveros, V. (2018). 'Police Violence and the Underreporting of Crime'. *Economics & Politics* 30(1):78–105.
- de Greiff, P. (2015). *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*. UN Doc A/HRC/30/42.
- Human Rights Council. (2010). Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo. *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural, including the Right to Development*, A/HRC/14/22.
- Husain, S. (2007). *In War Those Who Die Are Not Innocent: Human Rights Implementation, Policing, and Public Security Reform in Rio de Janeiro, Brazil*. Amsterdam: Rozenberg Publishers.
- International Law Commission. (2001). *Draft Articles on Responsibility of States for Internationally Wrongful Acts*. In Report of the International Law Commission on the Work of Its Fifty-third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc A/56/10.
- Koskenniemi, M. (2017). *Sources of International Law*. New York: Routledge.
- Lamb, M. (2008). 'A Culture of Human Rights: Transforming Policing in Northern Ireland'. *Policing* 2(3): 386–393.
- Lambourne, W. (2009). 'Transitional Justice and Peace-building after Mass Violence'. *International Journal of Transitional Justice* 3(1):28–48.
- Lewis, D. (2011). 'Security Sector Reform in Authoritarian Regimes: The OSCE Experience of Police Assistance Programming in Central Asia'. *Security and Human Rights* 22(2):103–118.
- MacColman, L. (2016). 'Security Sector Reform in Theory and Practice: Persistent Challenges and Linkages to Conflict Transformation'. *International Journal of Conflict Engagement and Resolution* 4(1):72–89.
- Mayer-Rieckh, A. (2017). 'Guarantees of Non-Recurrence: An Approximation'. *Human Rights Quarterly* 39(2): 416–448.
- McAuliffe, P. (2010). 'Transitional Justice and the Rule of Law: The Perfect Couple or Awkward Bedfellows?' *Hague Journal on the Rule of Law* 2(2):127–154.
- McGonigle Leyh, B. (2017). 'The Socialization of Transitional Justice: Expanding Justice Theories within the Field'. *Human Rights and International Legal Discourse* 11(1):83–95.
- Merry, S. E. (2003). 'Human Rights Law and the Demonization of Culture (and Anthropology along the Way)'. *Political and Legal Anthropology Review* 26(1): 55–76.
- Mobekk, E. (2006). 'Transitional Justice and Security Sector Reform: Enabling Sustainable Peace.' Geneva Centre for the Democratic Control of Armed Forces, Occasional Paper No 13.
- OECD/DAC. (2001). *Helping Prevent Violent Conflict*. Paris: OECD.
- . (2005). *Security System Reform and Governance*. Paris: OECD.
- . (2007). *Handbook on Security System Reform: Supporting Security and Justice*. Paris: OECD.
- OHCHR. (2006). *Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation*. Geneva: Office of the United Nations High Commissioner for Human Rights.
- Picard, L. A., and Mogale, T. (2015). *The Limits of Democratic Governance in South Africa*. Boulder, CO: Lynne Rienner Publishers.
- Pion-Berlin, D. and Carreras, M. (2017). 'Armed Forces, Police and Crime-Fighting in Latin America'. *Journal of Politics in Latin America* 9(3):3–26.
- Price, M., and Warren, M. (2017). 'Reimagining SSR in Contexts of Security Pluralism'. *Stability: International Journal of Security & Development* 6(1):8–13.

- Roht-Arriaza, N. (2016) 'Measures of Non-Repetition in Transitional Justice: The Missing Link?' In Gready, P. and Robins, S. (eds), *From Transitional to Transformative Justice*. Cambridge: Cambridge University Press.
- Rushin, S. (2016). 'Using Data to Reduce Police Violence'. *Boston College Law Review* 57(1):117–166.
- Sen, A. (1999). *Development as Freedom*. New York: Alfred Knopf.
- Sharp, D. (2015). 'Security Sector Reform for Human Security: The Role of International Law and Transitional Justice in Shaping More Effective Policy and Practice.' In Saul, M., and Sweeney, J. A. (eds), *International Law and Post-Conflict Reconstruction Policy*. New York: Routledge, pp. 198–217.
- Sriram, C. L. (2017). 'Beyond Transitional Justice: Peace, Governance, and Rule of Law.' *International Studies Review* 19(1):53–69.
- Tams, C. J. (2009). 'Recognizing Guarantees and Assurances of Non-Repetition: *La Grand* and the Law of State Responsibility'. *Yale Journal of International Law* 27(2): 441–444.
- Teitel, R. G. (2000). *Transitional Justice*. Oxford: Oxford University Press.
- Téllez Chávez, L. (2015). Addressing Police Brutality through the United Nations Human Rights System: the Jurisprudence of the Human Rights Committee. https://www.academia.edu/19059886/Addressing_Police_Brutality_through_the_United_Nations_Human_Rights_System_The_Jurisprudence_of_the_Human_Rights_Committee (accessed 15 January 2019).
- UNDP. (2008). 'Strengthening the Rule of Law in Conflict and Post-Conflict Situations, A Global UNDP Programme for Justice and Security, 2008-2011'. UNDP. https://www.un.org/ruleoflaw/files/rol_final_apr09.pdf (accessed 15 January 2019).
- UNESCO. (1982). Mexico City Declaration on *Cultural Policies*. World Conference on Cultural Policies. Mexico City. CLT/MD/1.
- UNESCO. (2001). Universal Declaration on *Cultural Diversity*, 31 C/Resolutions +CORR.
- United Nations. (2004). *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*. UN Doc S/2004/616.
- . (2010). 'Guidance Note of the Secretary-General on the United Nations Approach to Transitional Justice'. https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf (accessed 15 January 2019).
- UN Committee on the Elimination of Discrimination against Women. (2017). *General Recommendation 35 on Gender-based Violence Against Women, Updating General Recommendation No. 19*. UN Doc CEDAW/C/GC/35.
- UN Commission on Human Rights. (1993). *Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms*. Sub-Commission on the Promotion and Protection of Human Rights. Final report submitted by van Boven, T. Special Rapporteur. UN Doc E/CN.4/Sub.2/1993/8.
- . (1996). *The Administration of Justice and the Human Rights of Detainees. Question of the Impunity of Perpetrators of Violations of Human Rights (Civil and Political)*. Sub-Commission on Prevention of Discrimination and Protection of Minorities. Final Report Prepared by Joinet, L. UN Doc E/CN.4/Sub.2/1996/18.
- . (2005). *Report of the Independent Expert to Update the Set of Principles to Combat Impunity, Diane Orentlicher, Addendum: Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*. UN Doc E/CN.4/2005/102/Add.1.
- UN General Assembly. (2005). *Basic Principles and Guidelines on the Right to a Remedy and Reparation for the Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. UN Doc A/RES/60/147.
- . (2012). *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels*. UN Doc A/RES/67/1.
- UN Secretary General. (1992). *Agenda for Peace, Preventative Diplomacy, Peacemaking and Peace Keeping*. UN Doc A/47/277 – S/24111.
- . (2008). *Securing Peace and Development: The Role of the United Nations in Supporting Security Sector Reform*. UN Doc A/62/659-S/2008/39.
- USAID. (2009). 'Security Sector Reform'. US Agency for International Development, US Department of Defense, and US Department of State. <https://www.state.gov/documents/organization/115810.pdf> (accessed 15 January 2019).