

The Position of Guarantees of Non-repetition within Transitional Justice

Abstract

Within transitional justice (TJ), guarantees of non-repetition (GNRs) refer to measures aiming to prevent the recurrence of mass human rights violations. They form one of the four pillars of TJ (next to justice, truth and reparation). In contrast with the other three pillars, GNRs are concerned primarily with the future and present a function that may be fulfilled by an open-ended variety of measures. Thus, GNRs aim to fulfil the preventive function of TJ. However, although non-repetition is understood as one of the core objectives of TJ, GNRs remain underexplored and there is much ambiguity surrounding the topic. This thesis thus aims to contribute to the conceptualization of GNRs within TJ.

To this end, this thesis explores the origins and normative foundations of GNRs as a State obligation arising from mass and systematic human rights violations. This analysis starts with a review of GNRs within the law of state responsibility, followed by an exploration of the concept's development in international human rights law and TJ. Since GNRs can be conceived either as a part of reparations or as a separate pillar of TJ, this section also explores the foundations for both of these understandings. Subsequently, this thesis turns to the question of how States can fulfil the obligation to provide GNRs. It describes how the content of GNRs was initially formed in Latin American political transitions. Whereas these first experiences with TJ focused primarily on the legislative and institutional changes, this limited scope turned out to be insufficient to ensure non-repetition. Most of the failures have been attributed to the deficit in addressing the key causes of a conflict, which are often related to broader social and economic structural problems. Thus, this thesis further explains the need to expand the scope of possible measures to cover socio-economic dimensions of a conflict. To provide an example of how such a comprehensive approach may work in practice, the thesis provides a brief study of the Colombian experience.

Key words:

Transitional justice, guarantees of non-repetition, Colombia