



Transitional Justice and Social Cohesion (re)Construction in African Countries during the COVID-19 Pandemic

Analytical report, Webinar, 18 June 2020



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Contents

1. Introduction	5
2. The multifaceted impacts of the COVID-19 pandemic on transitional justice and social cohesion (re)construction processes in Africa	7
Suspension and slowing down of transitional justice and social cohesion (re)construction processes	7
A new threat for the most vulnerable populations	9
Economic recovery vs. reparations: What to prioritize?	10
3. How to keep transitional justice and social cohesion (re)construction processes at the top of the sociopolitical agenda of African countries in the context of COVID-19 or similar emergencies	12
Possible scenarios	12
Programmatic recommendations	13
Annex	16
Programme	16
About International IDEA	17

1. Introduction

As the COVID-19 crisis worsens, its impact on the democratic development of African countries is becoming a key issue and a priority. Much attention has been paid to the question of the pandemic's consequences for electoral processes, constitutionalism and the rule of law. With very few exceptions, its impact on transitional justice and social cohesion (re)construction processes in the countries of Africa has received relatively less attention. Indeed, in all the fragile countries emerging from conflicts, armed violence or authoritarian regimes in Africa, the ongoing pandemic is not only a public health emergency but also a human rights and justice crisis. The situation, sometimes aggravated by the fact that it is happening at a moment when other political interventions (such as constitutional revision, electoral management or the implementation of peace agreements) are taking place, has shed light on underlying social, political and economic problems deeply rooted in historical inequality, exclusion, human rights violations and injustice. Therefore, the problem—for citizens, leaders and partners—is to determine how to keep justice and reconciliation at the top of the democratic development agenda in these extraordinarily complex contexts. Against this backdrop, the International Institute for Democracy and Electoral Assistance (International IDEA) organized, in partnership with the Department of Political Affairs of the African Union Commission and the Truth, Reconciliation and Reparations Commission of Republic of The Gambia (TRRC), an experience-sharing webinar called 'Transitional Justice and Social Cohesion (re)Construction in African Countries during the COVID-19 Pandemic'.

The issues of transitional justice and social cohesion (re)construction in Africa are high on the agenda of both International IDEA and the Department of Political Affairs of the African Union Commission. Indeed, both organizations are committed to ensuring that respect for human rights and justice for victims of mass atrocities and violence are attained in democracy-building across Africa. For democratic institutions and processes to have integrity and respond to the interests of all citizens in Africa, they must include all groups in society—particularly the most vulnerable. This is in line with Aspiration 3 of the African Union Agenda 2063, which envisions '*an Africa of good governance, democracy, respect for human rights, justice and the rule of law*'¹. This is also in line with United Nations Sustainable Development Goal 16, which calls for promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels.

This analytical report is not a verbatim transcript of the webinar; instead, it provides a general summary of the contributions of the panellists and participants. While not necessarily expressing the views of the three organizing partners (International IDEA, the African Union Commission and the TRRC), it covers the main thematic aspects discussed, the key lessons

learned, experiences shared and the recommendations made. These inputs—based on a retrospective and forward-looking practical analysis—were aimed at inspiring decision-makers, shaping the discourse and influencing the course of action and intervention of experts, academics, researchers, media and citizens on the subject. More specifically, the discussion considered not only the challenges in terms of the sociopolitical dynamics induced by the COVID-19 crisis as well as its impact on transitional justice and social cohesion (re)construction in African countries but also the opportunities that the pandemic provides in terms of democratic development. All the presentations and the discussions held during the webinar may be found in a recording of the webinar accessible at <https://business.facebook.com/Int.IDEA.AwA/> (in French and English). The webinar programme is attached as an annex to this report. The discussions that took place during the webinar concerned the following questions: How is the COVID-19 pandemic affecting the ongoing transitional justice and social cohesion (re)construction processes? What can be done to keep transitional justice and social cohesion (re)construction processes at the top of the sociopolitical agenda of African countries in the context of COVID-19 or similar emergencies? What are the potential scenarios that could emerge?

Endnotes

1. African Union Agenda 2063, Aspiration 3, <https://au.int/en/agenda2063/aspirations>.

2. The multifaceted impacts of the COVID-19 pandemic on transitional justice and social cohesion (re)construction processes in Africa

To contain the spread of the COVID-19 pandemic, all African countries have adopted restrictive regulations and measures that have included declarations of a state of emergency, curfews, the closure of virtually all institutions and the obligation to work from home, partial or total city lockdowns, social distancing, the shutting down of vast sectors of the economy, restricted movement of all public transportation, restrictions on social and public gatherings (including places of worship) and the deployment of security forces, including the police and the military. While every state on the continent has implemented such regulations and measures, they have had a more negative impact on those countries currently implementing transitional justice and social cohesion (re)construction processes. In these countries, past or ongoing repression and conflicts have weakened government institutions and led to serious economic fragility in societies grappling with the legacy of mass atrocities. The negative impacts of these measures will be discussed in detail below.

Suspension and slowing down of transitional justice and social cohesion (re)construction processes

The first set of immediate visible effects of emergency regulations and measures adopted by African governments to stop the spread of the COVID-19 pandemic were the suspension and slowing down of transitional justice and social cohesion (re)construction processes, which have had both practical and psychosocial impacts on victims of past gross human rights abuses, conflicts and violence.

In some countries, plans to engage in a transitional justice process have been delayed. In others, where implementation is ongoing, truth and reparations commissions have temporarily suspended most of their activities, including ongoing public hearings, investigations and outreach activities, as well as victim support and reparations programmes. Overnight, victims who have been awaiting justice for a long time and who had begun to receive interim reparations (such as livelihood support, medical and educational assistance, and employment opportunities) found themselves on their own and isolated. For example, women who were victims of gender-based violence and people living with certain disabilities (such as people living with HIV/AIDS) are two groups that have been particularly hard hit;

the difficulties they have encountered because of the ongoing emergency measures (such as social distancing, regular handwashing, bans on movement in and between cities) have exacerbated their situation.

To mitigate these effects, several commissions have been working on plans for extended awareness-raising campaigns through television and radio broadcasts and social media. They have also set up hotlines that are available to anyone who cannot travel but who wishes to report certain problems. While these are positive steps given the situation, they are not a real substitute for physical outreach, especially considering that many of the most vulnerable victims may not have access to information about hotlines or may not be able to afford to make a phone call. Moreover, some victims may not feel comfortable making reports while living in close proximity with other family members where privacy is not an option. This situation has, in turn, generated debates and questions among victims about the legitimacy and effectiveness of transitional justice, particularly in contexts where truth and reparation commissions had to work very hard to garner widespread public interest.

More specifically in the case of The Gambia, the suspension of the transitional justice process will have legal implications. Because of the delays due to the COVID-19 pandemic, it will be difficult for the TRRC to officially complete its work by the end of its two-year mandate in October 2020. The commission now faces a dilemma: it must either request an extension of its mandate or finish on time at the expense of the quality of its work and drafting of the final report of its activities.

After nearly 12 weeks of observing lockdown measures, the TRRC resumed its work with public hearings on 8 June 2020. The commission has put in place safety measures, and all staff members have been instructed to adhere as much as possible to the required social-distancing rules to ensure everyone's safety. But the government still has not resolved the legal dilemma, and the continuation of measures aimed at preventing the spread of COVID-19 will likely negatively affect the TRRC's plans and the inclusivity of its work, even though the commission has not yet considered the issue of an extension of its mandate. The TRRC is taking all reasonable steps to achieve its thematic workplan for public hearings in accordance with the agreed timeline, and to discharge its other responsibilities under its mandate at the same time.

The effects of the COVID-19 pandemic on social cohesion (re)construction are similar. The emergency regulations and measures that the governments implementing such processes have adopted have exposed and deepened many of the existing inequalities and social fractures in these countries. The most vulnerable (the poor, refugees, internally displaced persons, victims of violence or terrorism, children, asylum seekers, migrants, people with disabilities, etc.) are more fragile and are at greater risk of suffering both economic and health-related hardships. The groups that were most marginalized prior to the outbreak of violence and conflicts are now disproportionately affected. The political dialogue between governments and the opposition, which is a key component of social cohesion (re)construction processes, has generally stopped due to the poor capacities of the former to face the cascading effects of the crisis and the lack of trust between government and opposition. This distrust can be seen in the lack of voter registration in countries with upcoming elections and in the violent protests in other countries calling for the dismissal of recently elected bodies. The security forces deployed in response to these protests sometimes use excessive violence to enforce emergency regulations and measures. This fuels fears of political instrumentalization and of a return to autocracy. Worryingly, as attention is diverted to the health crisis, there has been, in some cases, an increase in terrorist attacks and conflict, especially in border areas, where drug trafficking and other illegal economies are controlled by armed groups.

The situation is worsened by the impact of the COVID-19 pandemic on the bodies responsible for social cohesion (re)construction in these countries. In Togo, for example, the

Office of the High Commissioner for Reconciliation and National Unity Building (HCRRUN), whose aim is to accelerate the national reconciliation process, has a mandate based on three pillars—community reparations, institutional reforms and the fight against impunity.

Togo has to provide reparations to 30,000 individual victims and 40 communities; some 9,000 victims and two communities have already received reparations. There were expectations that reparations would be provided to over 10,000 more victims by the end of May or early June 2020. However, the HCRRUN had to wind down all of its activities due to the COVID-19 pandemic. After not operating at all for two months, the HCRRUN resumed its activities but decreased the number of people a day to receive compensation. Instead of 100 victims compensated every day before the pandemic, only 10 to 15 people per day may now receive compensation. With regard to institutional reforms, the National Assembly, Togo's Parliament, has passed constitutional amendments that have to be explained to the population. However, it is not possible to organize mass gatherings due to the emergency regulations and measures that Togo adopted to stop the spread of the virus. Concerning the fight against impunity—the third pillar in Togo's national reconciliation effort—a major international conference was due to take place later this year, but this has also been postponed until 2021 for now.

A new threat for the most vulnerable populations

The COVID-19 pandemic has led to a new threat for the most vulnerable populations. In countries undergoing transitional justice or social cohesion (re)construction processes, those who were most impacted by conflict-related violence and repression are now at risk of being severely affected by the impact of the novel Coronavirus. Many of these states are already among the world's poorest and most fragile, and the same pre-existing inequalities and vulnerabilities that had initially exposed victims to human rights violations are likely to recur in more serious forms. With the pandemic, vulnerable populations are experiencing the brunt of myriad forms of harm: additional difficulties accessing medical facilities, exacerbation of food insecurity, the inability to perform precarious everyday jobs, limited access to humanitarian relief, increases in gender-based violence, delays in reparations and access to justice, etc. These harms are affecting a huge segment of the population, which could lead to renewed frustrations and engagement in violent movements as well as extremism, which could, in turn, result in more human rights violations and even more victims. That is why there is a serious risk of revictimization among the most vulnerable populations as a result of the implementation and vigorous enforcement of emergency regulations and measures adopted to tackle the COVID-19 pandemic.

The novel Coronavirus has also led to the emergence of new categories of victims of human rights violations in countries undergoing transitional justice or social cohesion (re)construction processes: those who were spared from past human rights violations but who are now, due to the implementation of emergency regulations and measures, deprived of access to basic public services, water, healthcare and food; victims of gender-based violence and brutality by security forces; those who see even the slightest criticism levelled against government responses treated as an act of treason and who are themselves susceptible to arbitrary prosecutions; the unemployed and precarious workers in the informal economy without any medical insurance and for whom COVID-19 is not considered as an occupational disease, thus meaning they are not entitled to free medical coverage and care; and people living in conflict areas who are now threatened by the COVID-19 pandemic. Paradoxically, transitional justice and social cohesion (re)construction processes, which are

supposed to deal with the past, must now face the future. This is a situation that the existing transitional justice and social cohesion (re)construction frameworks had never considered. As a result, they are ill-equipped to provide a comprehensive response.

Finally, in some of the African countries implementing transitional justice and social cohesion (re)construction processes, there have been instances where governments have tried to exercise their power to enforce amnesties, pardons and exemptions from criminal liability for perpetrators in an effort to mitigate the risk of the spread of COVID-19. Such interventions jeopardize justice processes and the reconstruction of social cohesion in these fragile environments insofar as they tend to minimize the harm suffered by the victims, create new frustrations and open the way to impunity. That is why the African Union's Transitional Justice Policy states that blanket or unconditional amnesties should not apply to the most serious crimes. However, since the policy does not provide any further guidance or explanation, it implies that such crimes can be subject to conditional amnesty. The policy does not state what kind of conditional amnesty might be appropriate for such crimes, nor does it set out what circumstances might justify amnesty for less serious crimes. Therefore, the risk of instrumentalization of amnesties during the pandemic remains high.

Economic recovery vs. reparations: What to prioritize?

The COVID-19 pandemic and the emergency measures adopted to stop it have hit the already-fragile economies of countries implementing transitional justice processes and rebuilding social cohesion particularly hard. Faced with this situation, the governments of these countries—none of which had the opportunity or resources to set up a safety net for their most vulnerable citizens—were forced to prioritize their spending. One of the budget items generally questioned has been reparations for victims of mass human rights violations or violence and conflict. Some may suggest that such a situation should not happen, since reparations are supposed to be provided during the truth-telling process; therefore, the funds allocated for reparations were already earmarked before the pandemic began. Nonetheless, this situation has arisen.

Being cognizant of the fact that addressing socio-economic grievances is also key to preventing the recurrence of human rights violations, further radicalization and violent extremism, the governments of these countries have adopted various responses. Some of them, including Togo, have preserved their reparations budget. Others, such as The Gambia, have created welfare funds under their victim support funds, with the support of the United Nations Transitional Justice Human Rights Project, in order to continue to cover financial and material reparations, including interim reparations. A third category of countries are exploring possibilities to prioritize non-financial reparations such as restitution of access and/or title to properties taken or lost, the rebuilding of property destroyed by violence and the provision of jobs; rehabilitation, i.e. the provision of basic services, including victim-specific support such as medical and psychosocial services, as well as services dedicated to women and children; collective reparations, which may include the restitution of communal lands; rebuilding health, education, security, judicial and other public service infrastructure as well as the livelihood systems of affected communities, with due regard to the interests of children and young people and moral reparations, i.e. non-material reparations including disclosure of facts about the perpetrators and circumstances of a victim's maltreatment or death, public acknowledgement and an apology, the identification and exhumation of remains, and the provision of support for burial ceremonies and memorialization. In all cases, with the severe impact of the COVID-19 pandemic on the economies of the countries in question, the

operationalization of these options remains a serious challenge, and there is a need for strong political will and transformative leadership to implement them.

3. How to keep transitional justice and social cohesion (re)construction processes at the top of the sociopolitical agenda of African countries in the context of COVID-19 or similar emergencies

Based on the forecasts of the African Union Centres for Disease Control and Prevention, it may be assumed that the COVID-19 crisis will last as long in Africa as it does in the rest of the world, and it is important to anticipate the potential risks of a deterioration of respect for human rights and justice in African countries due to the continuation of the pandemic. Therefore, the countries implementing transitional justice or social cohesion (re)construction processes should reflect on how to maintain justice and human rights at the top of their democratic development agenda in this context of structural uncertainty.

Possible scenarios

Three possible scenarios are available to governments:

1. Governments may adopt the unfortunate ‘business as usual’ scenario, which would consist in not making any changes in the way they operate transitional justice and social cohesion (re)construction processes. This approach is about trying to cope with the pandemic and to get back to the conditions that existed before the outbreak of COVID-19 as soon as possible. In this scenario, budgets have already been allocated. Therefore, once societies start functioning slowly again following the lifting of lockdown measures, both transitional justice and social cohesion (re)construction processes will continue as planned.
2. Governments may consider the adaptive scenario, which takes the crisis into account and draws on lessons learned. In this scenario, there is a shifting and reprioritizing of resources. Therefore, the funds allocated to transitional justice may be limited or even reduced, since no significant budget could be provided for any activity outside the new priorities, such as health.

3. A transformative scenario may be preferred, wherein socio-economic transformation and sustainable peace are equally important components of transitional justice and social cohesion (re)construction processes. This preferable scenario consists in a redistributive approach to these two processes that sheds light on the root causes of gross human rights violations and many conflicts in Africa, and serves as guidance for economic and institutional reforms aimed at making societies more inclusive and equitable.

In view of the above, there is a clear requirement to work collectively to frame a new social contract that will prioritize human rights and reparations for victims. Indeed, the pandemic has shed light on the structural and/or systemic gaps and shortcomings of several African countries. This has been the case particularly in those countries recovering from authoritarian experiences or affected by political violence and conflicts.

Programmatic recommendations

Faced with these challenges, International IDEA and its partners—led by the Department of Political Affairs of the African Union Commission, the International Centre for Transitional Justice (ICTJ), the Centre for the Study of Violence and Reconciliation (CSVR), and others—are suggesting the following programmatic recommendations:

1. *The COVID-19 crisis should not be an excuse to abandon transitional justice and social cohesion (re)construction programmes in Africa.*

- All the governments currently implementing such programmes are strongly advised to continue their activities. Transitional justice processes and social cohesion (re)construction are crucial elements that will help them achieve sustainable peace, justice, reconciliation and healing in this very specific context of the pandemic and in accordance with Article 4(o) of the Constitutive Act of the African Union, which calls for peaceful resolution of conflicts, respect for the sanctity of human life and the condemnation and rejection of impunity.
- The urgency for reparations is greater during the COVID-19 pandemic because victims who are already vulnerable are at greater risk due to the restrictions in place; therefore, it is important to provide interim reparations for the most needy victims. Also, due to governments' competing interests during the pandemic, it is important to maintain an emphasis on honouring the right to reparations, which can be done in various forms, including symbolic and collective measures. In the case of The Gambia, it is also important to consider an extended mandate and a follow-up mechanism to ensure that the reparations mandate is fully implemented.

2. *There is a need to contribute collectively to determine how to advance transitional justice and social cohesion (re)construction processes.*

- This means that decision-makers, experts, academics, researchers, media and members of civil society are most welcome to share their thoughts and reflections on how to best support such processes at the national level. In addition, the countries that have had a successful experience in this field should share their experience and knowledge with the countries that are about to take their first steps.

- It is commonly accepted that resources are going to be scarce in the near future; therefore, there is a need to make sure that they are adequately used and that transitional justice processes find their place in the national debate.

3. *It is necessary to find innovative alternatives to pursue transitional justice and social cohesion (re)construction processes.*

- On the practical level, transitional justice and national reconciliation institutions may reduce the number of victims they listen to every day; they could hold community meetings in small gathering spaces where all the World Health Organization's social-distancing guidelines are strictly adhered to. However, the basic principles of transitional justice and social cohesion (re)construction should be abided by, which means that, to include all victims, the mandates of the bodies in charge of these processes may have to be extended. Also, it should be taken into account that the payment of reparations is a long-term process; therefore, designing a payment schedule and actually paying out reparations is time-consuming.
- Among the major resources that tend to be overlooked are the inputs and contributions of civil society—they often prove to be very innovative and manage to get the government's attention, which results in the rapid payment of reparations.
- The institutions responsible for transitional justice and social cohesion (re)construction should develop strategic partnerships with key stakeholders at the community, local, national and international levels that can help them achieve their objectives in the difficult context of the pandemic.
- Institutions responsible for transitional justice and social cohesion (re)construction may make good use of this time off to reflect on their internal structures and their objectives—including how to go about achieving them as efficiently as possible.
- In addition, there is a need to use this time when operations are reduced to carry out data analysis and write reports. We know that truth commissions' legacy and credibility ultimately depend on their final report. This document is critical in terms of vindicating the right to truth and guiding or influencing further transitional and transformative processes. Therefore, the findings outlined in final reports must be well substantiated and should support the vision to promote change.

4. *There is a need to adopt a transformative approach to development.*

- A transformative approach to development consists in focusing not only on the past (mistakes and lessons learned) but also on the present and on building structural changes for the future. Institutions responsible for transitional justice and social cohesion (re)construction have a critical role to play in this process. They are responsible for advising governments, developing contingency plans and informing governments about the plight of the most vulnerable populations. These institutions can lobby and influence the framing, design and implementation of public policies to address the root causes of human rights violations and violence, and they can ensure that policies respond to the specific needs of the most vulnerable people. The mandates of institutions responsible for transitional justice and social cohesion (re)construction may also be reviewed to adapt them to the new reality.

5. The African Union's Transitional Justice Policy (AUTJP) must be updated to include contingency plans for its implementation during the COVID-19 pandemic or similar emergencies.

- This gap could be addressed in the road map for implementation of the AUTJP.

6. There is a need to monitor and report on the additional risk of human rights violations and conflicts caused by the COVID-19 crisis and its aftermath.

- The major impacts of the crisis on the issues of human rights violations and conflicts should be thoroughly assessed to develop practical responses in an effort to avoid social unrest.

7. The collection of data is crucial to successful transitional justice policies.

- Sound data management and the proper handling of expectations are necessary. Overall, communication is needed both between institutions and governments and between the former and victims and the public at large. Victims should not feel abandoned; there needs to be efficient communication to confirm that there are delays in transitional justice processes, while also making it clear that activities are slowly resuming.

Annex

Webinar on Transitional Justice and Social Cohesion (re)Construction in African Countries during the COVID-19 Pandemic. 18 June 2020, 14:00–16:00 Stockholm/Paris Time

Programme

14:00–14:05 **Welcoming remarks**

- **Prof. Adebayo Olukoshi**, Regional Director for Africa and West Asia, International IDEA

14:05–14:10 **Introductory remarks**

- **H. E. Amb. Minata Cessouma Samate**, Commissioner for Political Affairs, African Union Commission

14:10–15:00 **Presentations by panellists**

- **H. E. Hon. Adelaide Sosseh**, Deputy Chairperson of the TRRC of The Gambia, ‘Impact of the COVID-19 Pandemic on Transitional Justice Processes: The Case of The Gambia’
- **Ms Claudine Y. L. Kpondzo Ahiany**, Rapporteur of the High Commission for Reconciliation and National Unity Building of Togo, ‘Effects of the COVID-19 Pandemic on National Reconciliation Processes: The Case of Togo’
- **Ms Annah Moyo**, Advocacy Programme Manager, CSV, ‘Impact of the COVID-19 Pandemic on the Most Vulnerable People’
- **Ms Ismene Zafiris**, Senior Technical Advisor, American Bar Association, ‘Impact of the COVID-19 Pandemic on Reparations Regulations – Including Interim Reparations: Challenges and Opportunities’

- **Dr Anna Myriam Roccatello**, Deputy Executive Director and Director of Programmes, ICTJ, ‘Best Practices in the Functioning and Operations of Transitional Justice and National Reconciliation Bodies during the COVID-19 Pandemic or Similar Emergencies’
- **H. E. Mr Johnny de Lange**, former Deputy Minister of Justice, South Africa, ‘Dynamics of State—Citizen Relations on Transitional Justice and Social Cohesion (re)Construction Processes during the COVID-19 Pandemic or Similar Emergencies’

15:00–15:15 **Questions for panellists**

15:15–15:45 **Responses from panellists**

15:45–16:00 **Conclusion and closing of the webinar**

About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with the mission to advance democracy worldwide, as a universal human aspiration and enabler of sustainable development. We do this by supporting the building, strengthening and safeguarding of democratic political institutions and processes at all levels. Our vision is a world in which democratic processes, actors and institutions are inclusive and accountable and deliver sustainable development to all.

What do we do?

In our work we focus on three main impact areas: electoral processes; constitution-building processes; and political participation and representation. The themes of gender and inclusion, conflict sensitivity and sustainable development are mainstreamed across all our areas of work.

International IDEA provides analyses of global and regional democratic trends; produces comparative knowledge on democratic practices; offers technical assistance and capacity-building on reform to actors engaged in democratic processes; and convenes dialogue on issues relevant to the public debate on democracy and democracy building.

Where do we work?

Our headquarters are located in Stockholm, and we have regional and country offices in Africa, Asia and the Pacific, Europe, and Latin America and the Caribbean. International IDEA is a Permanent Observer to the United Nations and is accredited to European Union institutions.

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Indeed, in all the fragile countries emerging from conflicts, armed violence or authoritarian regimes in Africa, the ongoing pandemic is not only a public health emergency but also a human rights and justice crisis. The situation, sometimes aggravated by the fact that it is happening at a moment when other political interventions (such as constitutional revision, electoral management or the implementation of peace agreements) are taking place, has shed light on underlying social, political and economic problems deeply rooted in historical inequality, exclusion, human rights violations and injustice. Therefore, the problem—for citizens, leaders and partners—is to determine how to keep justice and reconciliation at the top of the democratic development agenda in these extraordinarily complex contexts.

Against this backdrop, International IDEA organized, in partnership with the Department of Political Affairs of the African Union Commission and the Truth, Reconciliation and Reparations Commission of Republic of The Gambia (TRRC), an experience-sharing webinar called 'Transitional Justice and Social Cohesion (re)Construction in African Countries during the COVID-19 Pandemic'.



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