

ADVANCING TRANSITIONAL JUSTICE IN CONFLICT-AFFECTED CONTEXTS:

A Case Study for Libya





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INTRODUCTION

PURPOSE OF THIS GUIDE

Transitional justice is a fragile, slow, and often non-linear process that requires patience and the foresight for long-term planning. Often the work is multigenerational, and there are many setbacks along the way. But the most successful transitional justice endeavors are those that gain the trust, goodwill, and engagement of as much of society as possible.

The degree to which civil society groups can influence transitional justice processes depends not only on the strength of individual and collective civil society efforts but also on the state's receptivity to non-state participation. This varies both across cases and over time. However, at every stage of a transitional justice process, civil society plays a vital role in supporting a society to deal with its past and rebuild trust in its future.

This guide is designed to help Libyan civil society and its allies think through what steps can be taken to support and prepare society before transitional justice mechanisms are established. It covers documentation of atrocities, awareness-raising and victim engagement efforts, recovery of stolen assets, institutional and judicial reform, and reporting on transitional justice developments. It is also relevant for other complex transitions, where societies have not yet implemented transitional justice processes.

Participating civil society organizations (CSOs) need not be limited to human rights organizations, but may include humanitarian aid organizations, victims' and survivors' associations, development non-governmental organizations (NGOs), lawyers, academics, mental health and medical associations, religious organizations, activists, artists, media actors, and peacebuilding groups.

WHAT IS TRANSITIONAL JUSTICE?

Transitional justice (alternatively referred to as 'dealing with the past') is a collection of approaches by states and societies for confronting systematic and large-scale human rights violations and violations of international humanitarian law. It aims to address legacies of violence left by conflict and authoritarian regimes. Transitional justice is based on four core rights, which have been embedded in international legal frameworks.

DEFINITION OF TRANSITIONAL JUSTICE

Transitional justice aims to address systematic or massive violations of human rights by pursuing justice for victims and promoting trust, reconciliation, and rule of law. By uncovering and acknowledging the root cause of violations, transitional justice contributes to preventing renewed violence and rebuilding the legitimacy of government institutions.

They are:

1. **The right to truth.** The questions of *why* certain events were allowed to happen can be as important as explaining *what* happened. The right to truth has been exercised through approaches such as truth or fact-finding commissions, panels of inquiry, recovery of missing and disappeared persons, oral history and memorialization work, the release of government archives, and artistic and public platforms to give voice to suppressed or ignored narratives.
2. **The right to justice.** This is understood as guaranteeing equal access to justice, and usually focuses on establishing individual criminal accountability for those most responsible for past human rights violations and crimes.
3. **The right to reparation.** Reparations programs seek to address the harms caused to victims and survivors. They can be designed in many ways, and may include (a combination of) restitution; financial compensation; social services such as healthcare, psychosocial care, or education; and symbolic measures such as formal apologies or public commemorations.
4. **The guarantee of non-recurrence.** Related to the principle of repair is the commitment by the state to rebuild public trust in it. Part of this rests in the reform of public institutions that perpetrated abuse to ensure rule of law and human rights. It can also include vetting of officials who were involved in human rights abuses. Where there has been an internal armed conflict, the disarmament, demobilization, and reintegration of armed actors is often also a component of institutional reform.

WHY FOCUS ON TRANSITIONAL JUSTICE?

Victims of human rights violations are likely to seek truth and justice as soon as possible, and transitional justice processes may also help promote the rule of law. If done thoughtfully and inclusively, transitional justice can help societies confront and slowly overcome legacies of conflict and rebuild trust.

However, without real peace, a relatively safe security environment and strengthened government institutions — particularly the police and the judiciary — implementing transitional justice processes may appear overwhelmingly hard. The fracture of political parties, competing priorities of international allies, marginalized victims, divided or scattered civil society, and limited economic resources all provide perceived blocks for progress.

But these challenges do not mean nothing can be done in the absence of peace. On the contrary, there are important steps CSOs can take during ongoing conflict. These steps include: mobilizing victims and survivors; documenting and reporting on human rights violations; safeguarding documentation information for eventually passing to fact-finding or judicial bodies; building the capacity of civil society and potential domestic stakeholders, especially in transitional justice methods and gender- and justice-sensitive approaches; mentoring victim and survivor groups; and building international and local networks to galvanize their support when needed.

NO ONE-SIZE-FITS-ALL FORMULA

It is important to note that these core rights are expressed differently across contexts. They organize around what is needed within their society — there is no fixed formula.

Civil society initiatives have included: reaching out to citizens across the country through town hall meetings, conferences, radio programs, and workshops to share information about transitional justice processes and seek their input; establishing dialogue with relevant government officials and policy makers; mobilizing victims and survivors to advocate for transitional justice policy changes, and organize petitions and peaceful demonstrations; lobbying the United Nations, the African Union and other international stakeholders including donors; collecting information and issuing reports; monitoring transitional justice mechanisms and issuing recommendations; providing health and education services to victims, and initiating human rights related litigation in domestic and international courts.

THE ROLE OF CIVIL SOCIETY IN TRANSITIONAL JUSTICE PROCESSES

While some initiatives will only be possible after a conflict ends, others can begin earlier. But at every stage of the transitional justice process, civil society involvement is crucial. Often, CSOs play key roles mobilizing public opinion, informing the public and victims/survivors on the transitional justice or post-conflict process, developing or enhancing mandates and operational structures, and making sure that mechanisms have credibility and legitimacy in the eyes of the public and international society. This can be done by disseminating information, encouraging open and representative discussion, linking stakeholders to specific processes, enhancing legislation, functioning as a watchdog, and defining and assisting the overall transitional justice process.

In addition, CSOs can play a key role managing expectations of transitional justice processes; reminding all stakeholders, about the time and dedication transitional justice requires, and about the bumps there will be along the way. Voicing this reminder periodically will be valuable.

LIBYA AND TRANSITIONAL JUSTICE

THE TRANSITIONAL JUSTICE LAW: WHAT IT COVERS

Libya explored prosecutions, amnesties, and lustration before passing the Transitional Justice Law 29 (2013) to guide state-led transitional justice efforts. Although the law remains unimplemented, its purpose is to “address severe and systematic violations of the basic rights and liberties to which the Libyans were subjected by state affiliated apparatus under the former regime.” The law’s objectives are summarized here:

- » Investigate, document, and preserve information about severe and systematic human rights violations in order to understand their scope and causes;
- » Pursue accountability for human rights violations committed by the state, including individuals and institutions operating under the state;
- » Provide reparations to victims for human rights violations, both financial and symbolic;
- » Reform state institutions and repeal unjust laws; and
- » Encourage community reconciliation.

To achieve these aims, the law sets out several focus areas, including criminal accountability, truth-seeking, reconciliation, reparations, and displaced persons.

The law has a number of features that may be of interest to CSOs including victims’ groups.

EXAMPLE OF EFFECTIVE CSO LITIGATION EFFORT

The Bosnia-Herzegovina (BiH) chapter of the international CSO, TRIAL (Track Impunity Always), fills a key gap in litigation support for victims and their families, as well as functioning as a pressure point bringing international attention to inadequacies in the BiH justice system. A significant part of its work focuses on training associations that work with victims to leverage the international mechanisms (like the European Court of Human Rights and the UN Human Rights Commission) to defend the rights of victims in BiH.

It has helped survivors of wartime rape in Bosnia to successfully claim reparations from the soldiers who committed the crimes. In a landmark 2016 ruling, the BiH War Crimes Court ordered the perpetrators to pay reparations to two victims. In an environment that has not prioritized victims’ rights, the decision resulting from TRIAL’s persistence has opened the way for further prosecutions.

SPOTLIGHT ON THE FACT-FINDING COMMISSION

The transitional justice law provides for the establishment of a fact-finding commission to:

- » Understand and portray the severe and systematic human rights violations and determine who was involved;
- » Collect, document, and publish the views of victims and survivors;
- » Understand the conditions of both internally and externally displaced persons, and suggest measures so they can return, enjoy the same rights as other Libyans, and to prevent discrimination against them;
- » Examine the issue of missing persons and detainees, and issue decisions necessary to ensure a dignified life for their families;
- » Cooperate with CSOs working in parallel with the justice and reconciliation law; and
- » Issue binding reparation decisions.

SPOTLIGHT ON REPARATIONS PROVISIONS IN THE LAW

The law establishes the right of anyone “subjected to severe and systematic human rights violations [to] obtain adequate reparation from the state.” Forms of reparation include:

- » financial compensation;
- » commemoration; and
- » treatment, rehabilitation and provision of psychosocial and medical services.

Decisions regarding reparations will be made by a committee drawn from the commission’s board, and the General National Congress (GNC) will establish a victims’ compensation fund.

SPOTLIGHT ON THE LAW’S WEAKNESSES

There are several weaknesses and unclear aspects to the law. First, the applicable timeframe is unclear, covering events “[...] that took place as of 1 September 1969 until the end of the transitional period when parliamentary elections will be held based on the permanent Constitution.” This is problematic, as there is no operational constitution yet, and post-constitution elections have not been held.

Second, the law does not clearly state that the transitional justice mechanisms are to address post-February 2011 gross human rights violations, and it appears that the 2012 amnesty law remains in place for violations surrounding the 17 February Revolution.ⁱ It is also unclear whether the severe and systematic violations described by the law include rape, arbitrary detention or imprisonment, enforced disappearances, discrimination or persecution, and/or forcible transfer, all of which are alleged to have been committed by organized forces in post-1969 Libya. It also does not mention crimes related to internal armed conflicts.ⁱⁱ All of this suggests that a significant number of grave human rights violations will not be addressed by the fact-finding commission. While CSOs will be able to make submissions to the commission, it appears that unrepresented individuals may not — this is problematic especially because it risks closing individuals out of the process.

CRIMINAL JUSTICE AND AMNESTY

Slobodan Milosevic and Charles Taylor, long time fugitives from international tribunals that had issued warrants for their arrests, were eventually arrested and transferred to the tribunals once the political circumstances in their home countries changed. Prosecutions of individuals, who once believed they were protected by amnesty laws are taking place, or have taken place, in Brazil, Chile, Guatemala, Argentina, and El Salvador, among others. Victim and other civil society groups have often played a critical role in petitioning courts to overturn amnesties, especially as political conditions change with time.

HOW CAN CSOs CONTRIBUTE TO A BETTER TRANSITIONAL JUSTICE LAW?

While what civil society can achieve will very much depend on factors outside its control, it is worth bearing in mind that until the law is operational, it is open to further amendment. It is particularly important that the law's mandate be clarified before adoption; particularly related to how it applies after the revolution, and the relationship between fact-finding commission and other government authorities. Consensus among authorities for the law's implementation, once it is passed, will also be important.

Once the fact-finding commission is functional, civil society groups may wish to consult with those members of the commission responsible for setting up a compensation plan. They may also wish to focus on:

- » Lobbying to improve commissioner selection processes and mandate;
- » Convening national actors to discuss international best practices for transitional justice;
- » Educating the public, political actors, and media on the law and what it means for them;
- » Facilitating connections between international experts and commission staff for training on best practice and foreseeable challenges;
- » Providing or facilitating counseling services to prepare victims for transitional justice proceedings;
- » Developing processes to monitor transitional justice mechanisms, and establishing patterns of collaboration with them and between the mechanisms and stakeholder groups like victims and survivors.



PRACTICAL STEPS:

- Manage expectations clearly and carefully. This applies no matter what steps you are taking — over-stating what is possible risks damaging morale of stakeholders and public trust in the process. It also prevents clear-minded planning and sequencing.
- Galvanize support early and map the actor landscape. Identify potential allies in state agencies and actors, international civil society, survivor associations, and international actors.
- Think about sequencing and resources. What is possible now? What is necessary before other approaches can begin?
- Sensitize the media, particularly to the motivations and methods of transitional justice, and on the importance of responsible reporting.

LEARNING FROM: COLOMBIA

In 2003 the Colombian government proposed a transitional justice bill entitled Draft Law 85. There was very little public debate while the law was being drafted, but it was immediately condemned after it was made public by human rights groups for promoting impunity and neglecting victims' rights. The criticism forced the government to move the debate to Congress, where hearings were held over the course of almost two years to discuss the law. Although these resulted in major changes to the law, many still considered the mechanisms unsatisfactory. Activists and human rights organizations filed an appeal against the law with Colombia's Constitutional Court. In 2006, the Court struck down some of its provisions and reinterpreted others so as to strengthen victims' rights to truth, justice, and reparation. This resulted in further processes and legislation strengthening victims' rights. These developments took place while the conflict was ongoing.



DOCUMENTING HUMAN RIGHTS VIOLATIONS

HOW CAN DOCUMENTATION CONTRIBUTE TO TRANSITIONAL JUSTICE?

Good documentation underpins a society's success in dealing with the past and creating trust in the state. It can begin before a conflict ends, and is the backbone of many other aspects of transitional justice.

A stable post-conflict society is built on knowing what happened during the conflict, why, how, and by whom. Documentation plays a crucial role in clarifying these questions, and is one of the key contributions to transitional justice processes that CSOs can begin while conflict is ongoing. In addition, documentation can help integrate victims and survivors into the state-building process, allowing them to reclaim their stories and helping ensure they are not marginalized during any subsequent transitional justice process. In the long term, documentation will contribute to the creation of multi-perspective narratives of what happened during the conflict. It is the most critical element making sure that memories of what happened, and why, are protected for future generations — particularly if societies are unable to talk about what happened in the years directly after a conflict or regime ends.

When the Kenyan authorities failed to establish criminal justice processes to address the violence following the 2007 elections, civil society groups transmitted information about the human rights violations committed during that period to the International Criminal Court.

WHEN TO START

It is important to begin the information collection and documentation process as soon as possible. As time passes, victims' memories of key details of events will fade, and witnesses will be more difficult to find — this is especially true of older violations. In addition, when possible, the early collection and sharing of information about human rights violations may help to focus attention on those individuals or units and curb more violence. It may also encourage more victims to come forward, share their stories, and begin building trust in a transitional justice process.

WHAT CAN CIVIL SOCIETY DO?

Normally police or other state authorities investigate acts of violence. During conflict, however, such institutions are either not functioning or unwilling to collect this information. This is where civil society can play an important role, by collecting, preserving, and mapping this information and keeping it safe. Such work has been used in the past to draw attention to human rights issues, as well as in criminal proceedings, truth commissions, vetting processes, and memorialization projects.

WHERE TO SHARE DOCUMENTATION

For a number of reasons, but especially for victim and witness safety, it is important to protect data from theft, degradation, and loss in ongoing conflicts, as well as to share only with trusted organizations whose safety protocols are clear and in line with security and confidentiality best practices.

Information about grave human rights violations amounting to crimes against humanity in Libya since 15 February 2011 can be transmitted to the Prosecutor of the International Criminal Court. Information about those and other human rights violations and economic crimes can be collected and given to:

- » Libya's fact finding commission once it is established;
- » Vetting commissions that may be established; and/or
- » Domestic prosecutors when you think it is safe to do so.

In addition, when it is safe, there are many truth-telling initiatives that CSOs can lead, particularly with artists, musicians, and activists, to encourage more public engagement and discussion.



PRACTICAL STEPS

1. Start early and coordinate with other documentation efforts. Collaborate to the extent possible so as not to duplicate focuses and communicate regularly. This will help build a more coherent and comprehensive picture over time, and help strengthen your own networks.
2. Not all documentation collected will meet a court's standards for evidence. But documentation that falls short of this can still be used for other important transitional justice work, especially reparations, truth commissions, institutional reform, and memory work.

Syria Justice and Accountability Centre (SJAC) can provide training and guidance on documentation best practices and security. To learn more about their work contact them here: www.syriaaccountability.org

SHARING INFORMATION WITH THE INTERNATIONAL CRIMINAL COURT:

If you have information on alleged crimes, communications and claims can be submitted to the Office of the Prosecutor:

Mail:

Information and Evidence Unit,
Office of the Prosecutor,
Post Office Box 19519, 2500 CM
The Hague, The Netherlands

Email:

otp.informationdesk@icc-cpi.int

Fax: +31 70 515 8555

More information can be found here:

<https://www.icc-cpi.int/get-involved/Pages/ngos.aspx>

Before sending this information, first reach out to the relevant unit via an encrypted route, to agree on a secure method of communication and transmission.

KEY PRINCIPLES AND METHODOLOGY

Careful planning and a clear methodology is critical in the effective, safe, and credible collection of information. An information collection plan will ensure that important information is not missed or overlooked, although the plan should be flexible enough to adapt as more information is gathered. The information collection plan may include an overview of the information required or available, from whom this information will be collected, how it will be collected; who will collect it, and when it will be collected.

When organizing and assessing information, there are five key documentation principles:

1. **Define your scope.** A narrow mandate can be an advantage. Defining the types of violations you are categorizing early will help maintain your focus. With the breadth of crimes over the course of a conflict, attempting to document too much will negatively affect the quality of your work.
2. **Document sources carefully.** Record the time and place information was obtained, from whom, the receiver, and notes on origin and reliability. Also assign a unique number to identify each piece of documentation.
3. **Be impartial and comprehensive.** Once you have defined your scope, be aware of documenting across gender, age, and tribal/religious affiliation.
4. **Establish guidelines** to store information, including on databases, backups, encryption, and levels of security. This is to preserve confidentiality and security of sources and to protect the data itself.
5. **Get the right training, so you can assess the reliability and validity of data collected.** This is especially important in polarized contexts as well as for building corroborating evidence.
6. **Conduct continuous information review.** This ensures any gaps in information are identified and remedied.

SOURCES OF INFORMATION

1. **Interviews** – this can be with victims, survivors, or witnesses. These are often the most valuable information available to an investigation. Remember to ask for and include corroborating physical information provided by interviewees, including medical records, official documents, and videos.
2. **Official documents** – including autopsy reports, court records, military personnel records, official press statements, and public speeches. Original documents should not be collected but rather copied or photographed and stored with a detailed information report.
3. **Reports from UN mechanisms and other groups** – international and local civil society groups providing services such as medical care and education have established contacts with communities and their leaders and often have valuable information. International organizations and civil society groups write detailed reports and interview victims and witnesses.

ENHANCING THE VALUE OF VIDEO DOCUMENTATION

Witness has produced short films on videos as evidence. This includes basic practices, legal principles, and how to film and ethically share eyewitness videos.

You can see it here:

<https://vae.witness.org/video-as-evidence-field-guide/>

DIGITAL DATA FOR HUMAN RIGHTS

In 2016, a group of tech and human rights groups came together to make better resources for digital documentation. They also produced a guide called “Navigating digital data for human rights research.”

You can see it here:

<https://www.theengineroom.org/wp-content/uploads/2016/09/datnav.pdf>

4. **Satellite imagery** – a comparative analysis of “before” and “after” images can provide information on the extent of damage, and presence of the perpetrators and types of vehicles in the area, monitor armed group movements, and identify sites of potential mass graves. However, this data requires partnership with or in-house expertise in satellite image analysis, and because of its nature requires diligent cross-corroboration. Be aware that data coming from newer technologies like satellite imagery and social media also lead to higher data storage and security costs and a significant data management burden.
5. **Social media, real-time data, and photos/videos** – this data provides an additional source of data to traditional methods of documentation. It can help in collecting courtroom evidence, verifying atrocities, and providing important corroborating evidence on aspects like time and location of violations. While documentation has been facilitated by technology like mobile phones, collection of this data also requires careful cross-corroboration and verification, and learning more about these tools is valuable.

Victims and survivors may be unwilling to come forward, especially if they do not feel safe. It is therefore important that in addition to the key documentation principles above, the following ethical principles inform the methods of work:

1. **Do no harm.** Interviews must be voluntary, and conditions as safe as possible. All data must be protected with a thorough data management plan.
2. **Confidentiality.** Exercise good judgment, caution, and sensitivity in all interactions, information storage, and reports. Gain informed consent. Carelessness can put lives at risk.
3. **Seek balance.** Collect information from all sides of the conflict, and be aware of gender, age, religious/tribal affiliation, geographic diversity, urban versus rural divides in gathering all data.
4. **When interviewing, exercise good judgment.** Be professional and polite, objective, and clear. Be aware that victims can be re-traumatized when discussing the past, so be sensitive, listen actively, be willing to stop, and be empathetic.
5. **Avoid conflicts of interest.** Maintain professional boundaries and do not create unrealistic expectations among victims and witnesses. Offering financial compensation to interviewees beyond reimbursement may undermine the credibility of interviewee.
6. **Accuracy.** Be aware of how to ask clarifying questions that elicit specific and detailed answers while being sensitive to how witnesses tell their stories.
7. **Suppressed narratives.** Pay particular attention to narratives that may be more difficult to share or collect, such as sexual and gender-based violations (SGBV), and human rights violations that occurred long ago. In particular, SGBV is an important lens to integrate into your work.

GENDERED APPROACH TO DOCUMENTATION

Conflict affects women and men differently, and often hides violations committed against sexual minorities. All types of violations need gender sensitivity and awareness, especially because victims and survivors often fear coming forward to report gender-based crimes. But without knowledge of these violations, the crimes and gendered experiences of the conflict will remain silenced, narratives lopsided, and remedies unavailable.

- In addition, the following factors should be foregrounded:
- When collecting data, understand how gender is embedded in the society's structures and institutions, as well as its symbolic meanings;
- Include gender as part of your analysis at every stage. Ask how it affects:
 - » the circumstances and nature of the violation
 - » the cause and consequences of the violation
 - » accessibility to care and the nature of care available
- Implement extra confidentiality protocols for sensitive violations; and
- Where possible, connect survivors to medical, psychosocial and economic support.

USEFUL RESOURCES

PROTOCOLS

International Protocol on the Documentation and Investigation of Sexual Violence in Conflict. Access it here:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319054/PSVI_protocol_web.pdf

DOCUMENTATION GUIDES

Syria Justice and Accountability Centre has a series of guides and memos on different aspects of documentation. Access them here: <https://syriaaccountability.org/documentation-practices/>

Amnesty International and the International Center for Human Rights and Democratic Development have three guides on investigating and documenting sexual and gender-based violence in conflict (not available online).

- *A Methodology for Gender-Sensitive Research*, 1999
- *Documenting Human Rights Violations by State Agents, Sexual Violence*, 1999
- *Documenting Women's Rights Violations by Non-State Actors: Activist Strategies from Muslim Communities*, 2006

DIGITAL DATA

DatNav: A Guide to Navigating and Integrating Digital Data in Human Rights Research. Access it here:
<https://www.theengineeroom.org/datnav-digital-data-in-human-rights-research/>

WITNESS has a range of clips on documenting using video/camera/phones, video production, advocacy, teaching in the classroom, archiving, and protecting privacy. Access it here: <https://witness.org/resources/>

New Tactics in Human Rights has a guide on using video for documentation and evidence. Access it here:
<https://www.newtactics.org/conversation/using-video-documentation-and-evidence>



ASSET RECOVERY AS A WAY OF FUNDING TRANSITIONAL JUSTICE PROGRAMS

ECONOMIC CRIMES

The Gadhafi regime was notorious for economic corruption. It has been estimated that Gadhafi allegedly held between USD 33 to USD 160 billion in financial institutions across the globe, most of which is believed to be proceeds of corruption. Consequently, the UN Security Council “supported the efforts of the Libyan authorities to recover funds misappropriated under the Gadhafi regime and, in this regard, *encourages* the Libyan authorities and Member States that have frozen assets . . . to consult with each other regarding claims of misappropriated funds and related issues of ownership.”ⁱⁱⁱ

Economic crimes like the theft of public assets, corruption, and laundering of money stolen from the public are usually a hallmark of authoritarian regimes. They both undermine trust in the state’s institutions and deprive citizens of functioning public services by siphoning funds away from hospitals, roads, electricity, and education.

Article 2 of Libya’s transitional justice law establishes the “confiscation or damage of funds” as a serious violation for investigation by the fact-finding commission and domestic law enforcement. While integration of economic crimes into transitional justice frameworks is a relatively new phenomenon, truth commissions established in Kenya and Chad have sought to address them, and Tunisia’s legal transitional justice framework includes provision for the pursuit of economic crimes. Civil society can raise public and international awareness of the need for asset recovery, conduct research into the extent and details of the thefts, and advocate on society’s behalf for returning funds.

HOW CAN ASSET RECOVERY CONTRIBUTE TO TRANSITIONAL JUSTICE?

Transitional justice processes frequently struggle with limited or insufficient funding, particularly when it comes to funding reparations and memorialization. Using recovered assets therefore serves two purposes. First money stolen *from* the public, goes back to directly serve those harmed by the conflict by contributing to fund transitional justice work. And second, the process of tracing, recovering, and returning stolen assets supports truth-seeking efforts to help victims and society understand crimes of the past.

UNDERFUNDED TRANSITIONAL JUSTICE PROCESSES

Truth-seeking and reparations programs are among the most neglected areas of transitional justice funding. In Sierra Leone, for example, only 4% of total spending was allocated to the truth and reconciliation commission and the reparations program together; 96% was spent on the Special Court for Sierra Leone.

Source: Paige Arthur and Christalla Yakinthou, “Funding Transitional Justice: A Guide for Supporting Civil Society Engagement,” Public Action Research, 2015, p.16.

THE PROCESS

Once the security conditions exist for the investigation of corruption and recovery of stolen assets after a change of regime, prompt action is necessary to locate and preserve relevant information. Here are the key steps to recovering stolen assets:

1. **Locate the assets.** This includes gathering intelligence to identify and verify the crime and locate the stolen assets;
2. **Freeze the assets.** Identified assets are frozen by the relevant state authority where they are held and asset ownership is verified to allow for a seizure order;
3. **Prosecution of perpetrators.** A judicial process is undertaken and a trial is held to examine the alleged crime. If found guilty, the stolen assets can be ordered confiscated;
4. **Verification of rightful owners.** The rightful owners are identified and the amount of assets to be returned is decided; and
5. **Asset repatriation.** The distribution of assets is decided and the process begins to return the stolen assets.

Libya is very much at the beginning of its asset recovery processes, as are other post-Arab Spring countries like Egypt and Tunisia. Tracing and recovering the billions in proceeds from corruption that Gadhafi allegedly hid in overseas banks has proved difficult. What comes next is the difficult task of strengthening legal frameworks, building investigative capacity, and creating political incentives for the transparent return of stolen assets.

CHALLENGES

The recovery of looted assets is often complicated by the length of time between the looting of the assets and efforts to recover them, the need to identify and trace looted assets, the sophistication of efforts to conceal ownership and the source of the assets, the need to prove that they were actually stolen, and difficulties in obtaining the cooperation of other states and foreign, and often private, financial institutions.

Persuading courts to freeze and return assets is especially tricky when they have been hidden inside complex corporate structures in jurisdictions that offer secrecy to investors, and when the looters can afford top lawyers.

WHAT CAN CIVIL SOCIETY DO?¹⁴

Because an incoming government may not have the investigative resources to pursue the legal remedies to recover stolen assets, civil society can serve several key functions in different stages of the asset recovery process.

CSOs are contributing to asset recovery in other contexts in three important ways: by raising public and international awareness, conducting research, and through advocacy. Over time, CSOs have also increasingly proposed ideas on the use of returned assets and/or assisted states in managing the distribution of returned assets.

THE ARAB FORUM ON ASSET RECOVERY

Since 2012, the Arab Forum on Asset Recovery (AFAR) has met annually to support asset recovery efforts by Arab countries in transition. The forum is an open discussion between policymakers and practitioners on the challenges and expectations related to asset recovery. The Forum has also provided training and guidance to increase the capability of law enforcement and other officials.

1. RAISING AWARENESS AND RESEARCH

The Yemeni National Authority for Recovering Stolen Assets (AWAM) emerged from the popular Youth Revolution in Yemen in 2011. It seeks to raise awareness of the importance of recovering stolen assets across society, as well as the negative effects of corruption and smuggling assets outside Yemen. AWAM uses the media to highlight the importance of recovering stolen assets, serving to both draw attention to the issue and educate the public about transparency and integrity. AWAM also holds workshops and conferences on these issues, and liaises with governmental authorities to track stolen assets. Arab Reporters for Investigative Journalism, a regional organization based in Amman, also provides training, resources, and community support, to investigative journalists working on reports about corruption and other sensitive issues.

2. RESEARCH AND LEGAL ANALYSIS

Corruption Watch, Associação Mãos Livres, and a group of Angolan anti-corruption campaigners are seeking to recover USD 700 million that they believe was looted in a scheme involving Russian oligarchs and high-ranking Angolan officials. They have initiated legal proceedings in both Angola and Switzerland. Corruption Watch and Associação Mãos Livres issued a report revealing improper payments and fraudulent transactions. They also work with local Angolan communities to collect information and provide legal assistance. Asociación Pro Derechos Humanos de España (APHDE) filed a criminal complaint in Spain alleging that members of the ruling Obiang family laundered money and transferred Equato-Guinean oil revenues into private accounts held in Spain.

3. ADVOCACY

The Tunisian Association for Financial Transparency (ATTF) is seeking to accelerate judicial and administrative efforts to recuperate assets stolen by the former Tunisian President Ben Ali and his entourage. To do this, it: i) puts pressure on governments and financial institutions to accelerate asset recovery efforts; ii) assists the Tunisian government through targeted citizen actions and by mobilizing other NGOs to support asset recovery efforts; iii) lobbies the government to strengthen anti-corruption laws and institutions; and iv) raises youth awareness about rule of law and integrity issues as well as the threat that corruption poses to Tunisia's fundamental values.

4. MANAGING THE PROCEEDS OF ASSET RECOVERY

In Nigeria, some of the assets looted by former military dictator Sani Abacha were returned to national mechanisms under the supervision of the World Bank after Abacha's death. Civil society groups lobbied both the government and the World Bank for a role in distributing the assets. As a result, the World Bank mobilized Nigerian CSOs to participate in reviewing the use of the returned funds. Civil society monitored uncovered funds and reported on misconduct in the allocation and expenditure of some of those funds. Nigerian civil society groups have also lobbied US government officials for the return of another nearly half a billion USD looted by Abacha that was frozen by the US in 2014. In Kazakhstan, the BOTA Foundation deployed USD 115 million of disputed assets to various health, education, and social welfare programs for Kazakhstani children and youth.



PRACTICAL STEPS

- Manage expectation about the length of time it takes to recover assets both within your own movement and among the wider public. Be realistic about your capacities and reach out to international experts like the World Bank and the Stolen Asset Recovery Initiative when you need additional support.
- Identify and collaborate with key partners within state institutions and actors like members of parliament, parliamentary sub-committees, policymakers, ministries of finance and transitional justice, and public prosecutors.
- Identify and build strategic partnerships with key actors in foreign jurisdictions such as ministries of finance and foreign relations, public prosecutors, the Civil Liberties Committee of the European Parliament and similar regional committees, and international actors such as the World Bank, the United Nations Office on Drugs and Crime, and the Stolen Asset Recovery Initiative.
- Reach out to and coordinate actions across CSOs in both requesting and requested countries.
- Cooperate with citizens, local communities, and the media (especially national and international investigative journalists) to trace assets, help with investigations, and advocate for the return of assets for the public benefit.
- Initiate and contribute to a national dialogue on the use of returned assets, and lobby decision-makers on potential uses.
- This is a challenging process. Plan for a long-term engagement, and develop strategies for keeping domestic and international stakeholders engaged and committed.

USEFUL RESOURCES

The Arab Forum on Asset Recovery has produced a Guide to the Role of Civil Society Organisations in Asset Recovery. Access it here: http://star.worldbank.org/star/sites/star/files/afar_guide_to_the_role_of_csos_in_asset_recovery_english.pdf

Transparency International has produced Lessons Learned in Recovering Assets from Egypt, Libya, and Tunisia. Access it here: http://www.transparency.org/whatwedo/answer/lessons_learned_in_recovering_assets_from_egypt_libya_and_tunisia

The UNODC Digest of Asset recovery cases is available here: https://www.unodc.org/documents/corruption/Publications/2015/15-05350_Ebook.pdf

The Basel Institute on Governance and the International Centre for Asset Recovery has produced a guide – Managing proceeds of Asset Recovery: The Case of Nigeria, Peru, the Philippines, and Kazakhstan, 2009. Access it here: https://www.baselgovernance.org/sites/collective.localhost/files/publications/biog_working_paper_06.pdf



CSO AWARENESS-RAISING AND ORGANIZING VICTIM AND SURVIVOR GROUPS

HOW CAN AWARENESS-RAISING CONTRIBUTE TO TRANSITIONAL JUSTICE?

Two areas in which CSOs play important roles are raising awareness within society about the opportunities, needs, and challenges of dealing with the past, and working with victim and survivors to ensure their voices are central to processes of confronting the legacy of conflict-related violence.

Victims and survivors are at the heart of all transitional justice designs — but are also the most marginalized groups within a country's transition. Sadly, it is usually far too late in a process before actors realize that there will be no stable peace if harms to victims are not adequately addressed and if victims and survivors do not feel acknowledged.

Similarly, civil society will have multiple priorities after conflict, and there will be a risk of divided, competing, or duplicated work, particularly when resources and funding is scarce. But if CSOs working in related areas like human rights and development have an early and deeper understanding of what transitional justice aims to do, it will help them frame their own work and identify complementarities. This strengthens all initiatives — particularly if you are working in a context where government is reluctant to commit to reform. It also underpins the broader goal of rebuilding a stronger, more stable society.

WHAT CAN CIVIL SOCIETY DO?

RAISING AWARENESS WITHIN THE SECTOR

It is likely that during conflict, CSOs have focused on humanitarian or human rights work. Some organizations, over time, will move into transitional justice. It is useful to help them think through the core aspects of that transition. These include:

1. **What to expect.** Many CSOs will have roots as watchdogs, advocacy organizations, or in humanitarian aid. But as a conflict ends, donors begin seeking partners in transitional justice, and some will find themselves reorienting their focus to meet the changed domestic and international landscape.

MISSING PERSONS IN LIBYA

After the revolution, the Ministry of Affairs of Martyrs and Missing Persons (MAFMM) created the Libyan Identification Center (LIC) to collect, catalogue, and manage DNA testing. Although not currently active, a successful process of identifying missing persons will require the active participation of associations of families of missing persons and other civil society actors to develop trust in the process and voluntarily participate in gathering DNA samples.

2. **How to contribute.** CSOs can sometimes be driven by the strategies of donors, rather than donors guided by the strategies of CSOs. The negative impact of this can be minimized if CSOs understand early what society needs and where they can contribute, rather than reacting to scattered donor funding calls. Such CSOs will need to consider their capacity, skill-set, and the organization's knowledge base and legacy to-date.
3. **Building domestic alliances.** Successful transitional justice needs a broad range of actor involvement, beyond the state and CSOs. Think about how to use and strengthen the networks you already have, and about building coalitions with social change agents beyond the boundaries of human rights or transitional justice. This includes with activists, artists, youth movements, journalists, allies in government and the civil service, unions, and victims and survivor groups across the country.
4. **International and regional networks.** It will be important to draw on international and regional solidarity networks, especially if CSOs face domestic threats from suspicious governments. Human rights International NGOs, religious actors, journalists, legal and human rights watchdogs, and transnational political movements will all be useful allies, and will also help keep pressure on the state to continue reform.

SENSITIZING THE BROADER PUBLIC

A public that understands the goals, hopes, and difficulties of transitional justice is more likely to become the process' support base. This early work will provide building blocks for later, when public engagement is needed. There are a number of frequently asked questions that can help focus people's interest. Encouraging discussion around them can be useful. Such questions include:

1. **What does transitional justice do?**
2. **What is it for?**
3. **How does it relate to my everyday life? (Why should I care about it?)**
4. **How is it different from development and humanitarian work?**

WHEN TO START

It pays for civil society to begin organizing *before* a transitional justice process begins. One way of doing this is by seeking best practices and learning from other contexts' successes and failures, to help think through the pitfalls and possibilities. During this early stage, CSOs should consult broadly, and pay particular attention to working with a diverse set of actors. This will make sure that transitional justice is not captured by capital-focused elites but will instead enjoy broad socio-geographic representation. This will be important — especially for legitimacy—as the process develops.

LEARNING FROM: SIERRA LEONE

In Sierra Leone, stakeholders failed to clarify for victims of human rights violations the difference between the work of the Special Court for Sierra Leone, the Truth and Reconciliation Commission (TRC), and the Disarmament, Demobilization and Reintegration (DDR) Program.

This confusion undermined the efforts of transitional justice institutions. The comparison with DDR packages given to former combatants left some victims feeling that former combatants were being visibly 'rewarded' for their crimes, while victims and survivors received little tangible reparation for their suffering. The TRC was also conflated with other peacebuilding efforts such as relief and medical agencies. This created unattainable expectations for what the TRC could do, and ultimately undermined its effectiveness.



PRACTICAL STEPS

- Work with the media to explain the different roles of humanitarian aid, development, and transitional justice. This will prevent damage to public perceptions of the goals of each, and minimize risk of confusion or alienation.
- Before transitional justice mechanisms are implemented, provide clear information about their aims, limitations, and potential. Continue this over the lifetime of the mechanism.
- Work with other CSOs, allies, and policymakers to develop a holistic transitional justice approach that includes early and sustained focus on outreach to society.
- Be pro-active: build coalitions and lobby donors based on society's needs.

WORKING WITH VICTIM AND SURVIVOR GROUPS

Despite the impact conflicts have on victims and their families, they are often marginalized during the design and implementation of transitional justice processes. Working in partnership with this marginalized group holds value not only to the victims and survivors themselves, but also to civil society and the transitional justice process more broadly.

Donors and policymakers frequently focus on prosecutorial approaches to transitional justice and on perpetrators rather than victims. This is reflected in lopsided funding and support to mechanisms like criminal justice and little attention to properly-supported reparations programs, truth-seeking initiatives, and outreach to society. Donors and other international actors rarely engage with victims and vulnerable groups, instead relying on CSOs that are usually based in capital cities and far from the needs of often rural or non-urban groups.

Benefit to victims and survivors. Victim and survivors are often deeply divided, under-supported, and marginalized. For good reason, many will not trust authorities, so their engagement with both official agencies and transitional justice processes will often need targeted facilitation. CSOs are usually trusted to provide this facilitation. They can also provide advocacy, psychosocial and medical support, capacity building, and legal representation, and act as a conduit between victims/survivors and the state, donors, policymakers, and society.

Benefit to society. CSOs often have greater access to political elites and international actors and can help ensure that victim needs are foregrounded in transitional justice processes. Other CSOs can provide advocacy until victim and survivor organizations have the capacity to advocate for themselves. They can also provide the public with a deeper understanding of the challenges, needs, and fears of victims and survivors and help them reintegrate into society.

CIVIL SOCIETY ASSISTANCE

CSOs' assistance to victims and survivors can come in many forms, including:

- Support before and after victim testimony in a truth commission;
- Advocacy and design of reparations programs; and
- Psychosocial support and legal assistance;

Services related to conduct of hearings and statement-taking (including support such as transportation and childcare, etc.)

INVOLVE VICTIMS AND SURVIVORS FROM THE OUTSET

From 2012, the Colombian peace process has incorporated the views of approximately 60 victims of FARC and the government, who were brought to Havana by victims' associations. They became consultants to the process, and had specific input into the transitional justice aspects of the peace plan. Delegates were chosen under principles of inclusion and included indigenous communities, Afro-Colombians, LGBT groups, military, police, business, and trade unions. This has not been an easy process or without tensions, but it has ensured that their primary needs and concerns have been heard and met. It has also bridged the vast gap between victims and political elites, and given victims access to networks that will help them work to keep the process on track.

PROMOTING VICTIM-FOCUSED JUSTICE

One aim of CSOs can be to build the capacity of victim and survivor groups so that they can function autonomously and engage with stakeholders directly. It is important to do this early so that victims/survivors can participate in future mechanisms.

It is sometimes the case that authorities are too quick to define categories of victims, and this can deny victimhood to many genuine victims. This affects both their ability to engage with the transitional justice mechanisms and their right to receive reparations later. Strong, early organizing from civil society, and good documentation about human rights violations can together help counter these initiatives to unreasonably limit definitions of victims.



PRACTICAL STEPS

1. Map victim and survivor networks, including across gender, geography, religious, and tribal affiliations.
2. Identify marginalized and underrepresented groups in your mapping and correlate your mapping with known crimes.
3. Consider planning national and subnational/local consultation processes to understand what victims and survivors need and where capacity building is required to amplify their voices.
4. Actively listen to what victims and survivors want.
5. Make victims/survivors genuine partners in advocacy. They are often used by groups to extract information without building genuine relationships or victim and survivor capacities.
6. If you can, get victims/survivors a seat at the decision-making table, especially in transitional justice-related negotiations and design of mechanisms.
7. Integrate victims and survivors into your own organizations.
8. Work with victims, survivors, CSOs, and international allies to ensure state adhesion to a meaningful reparations program.



REPORTING ON TRANSITIONAL JUSTICE

Transitional justice processes must be connected to, engage with, and be affirmed by the societies emerging from conflict and/or repressive rule. The media has a vital role to play in translating the often complicated language of transitional justice into something widely accessible. Furthermore, media can help contribute to addressing the legacy of human rights violations and promoting reconciliation. Done properly, good journalism can increase understanding and awareness about transitional justice processes, build public support for peace and reconciliation, give voice to the victims, and shape public attitudes.

Media helps shape public perceptions about the legitimacy of transitional justice mechanisms and monitor the implementation of transitional justice processes. The lack of sustained reporting on prosecutions against former Gadhafi officials, for example, contributed to confusions and generally passive attitudes about improving the legitimacy of the ongoing cases. The media can help explain proceedings and bring to light procedural delays, lack of legal representation, and weak physical protections for defendants. The ICC in The Hague also struggles to communicate with Libyans, leading to misunderstandings and disconnection from the community. Libyan media can help explain ongoing cases, monitor judicial standards, and facilitate public dialogue about the advantages and disadvantages of different prosecution types.

Media should not indiscriminately applaud transitional justice developments, however. Courts may not rule objectively or truth-seeking processes may focus only on specific profiles of perpetrators. Critically reporting on transitional justice efforts can help improve them. Transitional justice is often a decades-long process, and the media can help function as a watchdog for objectivity and impact.

There is a wealth of potential transitional justice stories in Libya, but reporting on them can be dangerous for journalists working in a chaotic, violent media landscape dominated by militias and impunity. Libya was ranked 154th out of 180 countries in the 2015 Reporters Without Borders Press Freedom Index. Human Rights Watch says that “armed groups target journalists to punish or censor their reporting” with little interest from those in power to stop the attackers and promote a free press.^v

WHY MEDIA AND OUTREACH MATTER

If Libyans have no idea that war crimes trials, reparations processes, and truth commissions are taking place—or could potentially take place—then their impact will inevitably be diminished.

The two examples below demonstrate how the media can have a positive impact on transitional justice and peace processes or a negative one that can potentially incite further conflict.

MEDIA INCREASING ENGAGEMENT WITH THE TRUTH AND RECONCILIATION COMMISSION (SOUTH AFRICA)

The South African Truth and Reconciliation Commission was set up to help address human rights violations committed during the Apartheid era including abductions, killings, and torture. The country's broadcast media played a vital role in bringing its work to the attention of ordinary South Africans, particularly those in rural areas who might otherwise have missed out. The Truth Commission Special Report program was compiled by a team of investigative journalists and broadcast weekly by the South African Broadcasting Corporation between 1996 and 1998. It brought the truth commission testimonies into the homes of South Africans but also included analysis and interviews on the process with victims, perpetrators, witnesses, and experts such as lawyers and truth commissioners. These audio-visual records offered South Africans a window into the conflicts of the past, helping them to engage with the commission and its aim of reconciling a divided society. All 87 episodes are still available online.

MEDIA FURTHERING POLARIZATION, TENSION, AND MISINFORMATION (PERU)

Local media coverage of the Peru Truth and Reconciliation Commission (PTRC) failed to inform the public about the human rights abuses committed by the government and rebels from 1980-2000. By focusing on issues like the commissioners' salaries and alleged embezzlement, journalists generated controversies about the tribunal's legitimacy and provided a superficial view of its work. Commissioners and politicians traded public barbs through the media, rather than discussing the serious issues raised at the hearings. The media fostered sympathy for the former president which contributed to questioning the validity of the PTRC's findings. The wider public still believes that the violence committed by the state, which claimed the lives of thousands of marginalized people, was necessary to defeat terrorism — an attitude that continues to polarize society today.

STORY IDEAS FOR REPORTING ON TRANSITIONAL JUSTICE

About transitional justice mechanisms: Explain the plans for and implementation of transitional justice mechanisms like prosecutions, truth-seeking processes, reparations, and institutional reform.

THE INTERNATIONAL CRIMINAL COURT IN LIBYA

Explain the International Criminal Court's jurisdiction as it applies to Libya. What has taken place with the cases against Saif Gadhafi and Abdullah al-Senussi? How is the ICC intended to complement rather than replace local transitional justice processes? What other prosecution options exist such as special courts, hybrid tribunals, or domestic prosecutions? What advantages and challenges are associated with each?

Explore questions central to the pursuit of justice and peace: Contribute to a dialogue about tensions within pursuing peace, healing, forgiveness, and reconciliation. Transitional justice can take many different, and sometimes seeming incompatible forms, such as prosecuting certain crimes and granting amnesty for others.

LUSTRATION, AMNESTY, OR PROSECUTION?

The Political Isolation Law (2013) was passed to prevent Gadhafi-era officials from holding public office, but critics of the law considered that some former officials supported the revolution and could be valuable for rebuilding Libya's institutions. Militias also have mixed reputations as revolutionaries, protectors, illegally holding detainees, attacking civilians, and intimidating journalists. How should former officials and/or militias be involved in Libya's new institutions while still addressing past human rights violations? Sharing the story of victims as well as individual Gadhafi-era or militia members could provide a human face to the story.

Highlight the experience of victim groups: Media can help break silence surrounding atrocities and foster empathy and understanding. In doing so, be careful not to dehumanize other groups or reinforce "us versus them" narratives.

TAWERGHA AND MISRATA

Misratans and Tawerghans are still discussing reconciliation aimed at allowing the Tawerghans to return home. Compensation for lost property and lives on both sides is a major issue that must be addressed if the process is to move forward. Interview and share the stories of victims on both sides to understand their losses and expectations for reconciliation. Gather the perspectives of from both sides about the human rights violations allegedly committed by members of their communities.

Examine necessary supporting conditions for transitional justice: Draw attention to the underlying conditions that influence the success of transitional justice. What reforms and outreach need to take place for the implementation of trusted transitional justice mechanisms?

LIBYAN JUDICIAL REFORM

A functioning, independent, and trusted Libyan judiciary is a key transitional justice process. Share the stories of Libyan judges trying to deliver justice to show the challenges associated with assassinations, intimidation, and delays. Examine other countries where judicial and security sector reform has taken place to illustrate what is possible. South Africa once had a hugely biased system based on Apartheid-era laws. Rwanda rebuilt from the ground up when most of its lawyers and judges were killed or fled.

CONCLUSION

That transitional justice is in its infancy in Libya should be no deterrent to reporting on the topic. Informing the public early on, before views become hardened and entrenched, is essential. Through good journalism, readers, listeners, and viewers can follow the transitional justice processes as they unfold and see the truth of what happened on both sides of the frontlines — illustrating the humanity of supposed enemies and laying the foundations of social healing.

Journalists shouldn't act as mediators, but in reality those living and reporting from conflict areas like Libya can play an important mediatory role through conflict sensitive journalism. This is a unique style of reporting that goes beyond the basic journalistic requirements of impartiality, balance, and accuracy to seek out new voices with important stories to tell, moving beyond the political or military leaders who usually dominate the headlines. Instead, conflict sensitive journalism is victim-centered. It looks at attempts at reconciliation and truth telling with the aim of healing rather than provoking or dividing.



PRACTICAL TIPS FOR CONFLICT-SENSITIVE REPORTING ON TRANSITIONAL JUSTICE

- Uncover the real causes of conflict, the true motives of those involved, and the consequences of their actions. Ensure that facts about human rights violations committed on both sides are reported on. Make your reporting an accurate record of what happened and why.
- Be impartial by not taking sides (particularly with members of your own community despite the pressure to do so). Be careful to not reinforce biases of “victors” or “victims.” Transitional justice risks becoming a form of victor’s justice, so journalists should monitor whether all the perpetrators of atrocities — from all sides — are being held accountable.
- Conflict sensitive journalism listens to the victims. It recognizes and records their suffering and in doing so helps with their healing. Remember to be respectful of the huge trust they’ve placed in you by sharing their stories. Don’t re-stigmatize or traumatize people who’ve already suffered enough.
- Transitional justice processes are uniquely created in each country. Each truth-seeking commission may have a different mandate, procedures, and overall intentions. Use reliable sources to help you understand legal concepts and procedures such as not identifying protected witnesses during court hearings.
- Use words and descriptions carefully. Words like martyr, genocide, or massacre have huge power but also a specific definition. Make sure you understand what they mean before using them.
- Remember that the best stories are usually those that have been previously untold. Marginalized people, whose voices are seldom heard during times of conflict, are a good source of information and inspiration.
- Do no harm. Don’t make a bad situation even worse. Conflict sensitive journalism seeks to reconcile divided societies and ensure past mistakes are clearly explained and analyzed. When media describes groups in terms of general categories like ethnicity or religion, they can reinforce group stereotypes instead of drawing upon common experiences of suffering.
- Acknowledge that uncovering the truth does not always mean that there is a single truth. Understandings of the truth are highly contested in post-conflict environments and doing justice can also mean sharing the diversity of and conflicting understandings of the truth.



INSTITUTIONAL AND JUDICIAL REFORM

WHAT IS INSTITUTIONAL REFORM?

Institutional reform is the transformation of public institutions from entities that helped perpetuate conflict or repressive rule into entities that sustain peace, protect human rights, and foster respect for the rule of law. It is important that judicial, police, and security sector reforms progress as part of a coherent and inter-linked strategy, as each reform is dependent on the other for its credibility and success. During transitions, institutional reformers generally concentrate first on transforming the security and justice sectors.

In general, reform of public institutions consists of the following:

1. **Increasing legitimacy of institutions** by creating accountability mechanisms, promoting integrity, enhancing independence, and ensuring broad representation;
2. **Creating publicly accessible and transparent oversight bodies** within state institutions, including military, security, and intelligence agencies, to ensure accountability to civilian governance;
3. **Amending or creating new legal frameworks**, including the constitution and criminal justice legislation; repealing laws that contributed to human rights violations; and promoting the ratification of international human rights treaties;
4. **Establishing vetting processes** to prevent the recruitment or continued employment of individuals associated with human rights violations and/or corruption;
5. **Providing human rights training programs** for public officials and employees, especially in the police, judiciary, and military; and
6. **Disbanding armed groups** and providing means by which ex-combatants can rejoin civil society.

LIBYA REFORM PRIORITIES

The Libyan Political Agreement (December 2015) included judicial and security reform priorities within the agreement's governing principles:

- Commitment to the integrity, impartiality, and respect of an independent judiciary.
- Military or para-military groups outside the state army and security forces are prohibited.
- Reform the security sector to improve its transparency, accountability, effectiveness, professionalism, and oversight.
- End detention and arrests outside the state's judicial authority.
- Activate transitional justice and national reconciliation mechanisms to uphold the truth and achieve accountability, reconciliation, reparation, and reform of state institution.

HOW CAN INSTITUTIONAL REFORM CONTRIBUTE TO TRANSITIONAL JUSTICE?

Reforming state institutions that were involved in, or failed to prevent, grave human rights violations is an essential element of the transitional justice processes, and underpins the principle of non-recurrence. Most importantly, this process helps rebuild society's trust in the state, underlines the idea that citizens — and especially victims — are rights-holders, and makes institutions accountable to their citizens.

FOCUS ON JUDICIAL REFORM

Judicial reform is an important component of transitional justice, especially because it helps achieve respect for human rights and due process, and repairs citizens' trust in the state's impartiality. The kinds of reforms needed and the best way to undertake reform will depend on the failures of the past system. For this reason, reforms must be undertaken *after* a documentation and analysis process, when there is a clearer picture of what reforms are needed.

It is the duty of the executive and legislative powers to ensure judicial independence, and the mechanisms to protect this will vary widely for each group.

- » **Judges** must be appointed on the basis of their integrity and qualification in law. At the same time, the law must protect them from removal on political grounds. They must receive adequate remuneration to safeguard against corruption, and adequate security to safeguard against threats of physical retribution;
- » Governments must ensure that **lawyers** are able to perform their duties without intimidation, interference or harassment, that they are able to consult with clients freely, and not subject to threats of prosecution or administrative sanctions for actions taken in accordance with their professional duties;
- » **Prosecutors** play an important role in the justice system's proper operation. Unlike judges, international law does not require their institutional independence. However, states must allow prosecutors to conduct investigations impartially and objectively. They must give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, and grave violations of human rights and other crimes recognized by international law, where authorized by law.

SPOTLIGHT ON SECURITY REFORM:

In Bangladesh, a civil society group conducted a household survey of public perceptions of security provisions in Bangladesh that revealed the public's views about formal and informal security and justice providers, including the ways in which women and men experienced security differently. On the basis of the survey, the organizations presented recommendations for reform, particularly in the justice and police sectors.

SPOTLIGHT ON PENAL REFORM AND YOUTH:

In Morocco, Lebanon, Jordan, Egypt, Yemen, and Algeria, Penal Reform International (PRI) has focused on generating dialogue and information exchange on alternatives to imprisonment. PRI in the region works on ensuring that the rights of children in conflict with the law are protected, and that the detention of children is a measure of last resort and for the shortest time possible. They work with both governments and domestic CSOs to promote international standards and guidelines related to juvenile justice, notably the UN Convention on the Rights of the Child.

WHAT CAN CIVIL SOCIETY DO DURING A CONFLICT?

Often it is difficult to begin implementing judicial reform while a conflict is ongoing. However, there are some things that civil society can do in this period. This includes:

- » **Map and build networks** with exiled members of the judiciary or the diaspora. Often many members of a country's judiciary have fled or been exiled. If there is a critical mass in a particular country, it may be possible to conduct trainings and build capacity of these actors so they are ready to return once conflict ends;
- » Consider whether it is possible to **build relationships with victim/survivor associations**. If not, prioritize this for when conditions are safer, as foregrounding their participation in judicial reform will help strengthen accountability and prevent victim marginalization after conflict;
- » **Map human rights violations by the justice sector** if possible, and formulate strategies for justice sector reform. This will help spark debate once reform becomes possible, and helps prevent loss of time;
- » **Reach out to comparative experiences**. Build networks with reformers who have undertaken this work in their own contexts so you can have an available source of support when reform is possible; and
- » **Develop a strategy** for how to bring the courts to the people. This is particularly important when the justice sector is seen as a tool of wealthy or urban elites.

WORKING ALONGSIDE GOVERNMENTS IN TRANSITION PERIODS

When a conflict ends, it is government's responsibility to begin and to steer institutional reform. As outlined above, CSOs can play an important role before reform begins and during the transition, but CSOs will need to develop strategies for working alongside (and continuing to pressure) governments to drive reform. This can be done in a number of ways, including:

- » **Raising public awareness** about the need for institutional reform and mobilizing public opinion to maintain pressure on governments to follow through;
- » **Working with newly-established vetting mechanisms** to act on documented abuses;
- » **Providing human rights training** to public institutions;
- » **Providing legal and information services** to victims; and
- » **Highlighting gender-based violations** that need to be addressed and are likely to be ignored;
- » **Continuing to report** on human rights violations and corruption within individual institutions;
- » **Monitoring and reporting** on the implementation of institutional reform programs; and
- » **Lobbying international stakeholders** to support credible and transparent reform processes and keep eyes on domestic governments.

SPOTLIGHT ON GENDER AND POLICE:

In Nepal, civil society groups accompany women wishing to file complaints to local police stations, as the police in Nepal often do not always pay attention to cases brought by women.

SPOTLIGHT ON GENDER AND LOBBYING INVESTIGATORY COMMISSIONS:

The National Commission on Violence against Women, Komnas Perempuan, in Indonesia, was established in response to demands from civil society for state accountability for the mass rapes that occurred in the country in 1998. Women's groups engaged in lengthy negotiations with the president's office on issues relating to the independence of the commission, the procedure for selecting commissioners, and the naming of this commission.



PRACTICAL STEPS

- Understand what other contexts have done and their strategies for overcoming challenges.
- Support analysis of the failures that need reforming and craft a road map towards transformation.
- Find champions at every level within the judiciary or police to build ownership of reform. If reform is internally-owned, it has a greater chance of taking root.
- Understand that you will need to convince those who benefit from corruption that they can benefit in the new order of things.
- Continue monitoring work during transition. There is a close relationship between institution-building, human rights monitoring, and justice sector capacity. Monitoring allows CSOs and other actors to feed into suggestions for institutional reform, and becomes a testing mechanism (especially for government implementation) during and after reform.

USEFUL RESOURCES

The **United States Institute of Peace** has conducted several studies about justice and security in Libya.

- *Tribe, Security, Justice, and Peace in Libya Today*, 2016. <http://www.usip.org/sites/default/files/PW118-Tribe-Security-Justice-and-Peace-in-Libya-Today.pdf>
- *Prisons and Detention in Libya*, 2016. <http://www.usip.org/publications/2016/09/02/prisons-and-detention-in-libya>
- *Policing in Libya: Form and Function of Policing Since the 2011 Revolution*, 2016. <http://www.usip.org/publications/2016/08/25/policing-libya-form-and-function-of-policing-the-2011-revolution>
- *Security and Justice in Post-Revolution Libya*, 2014. <http://www.usip.org/publications/security-and-justice-in-post-revolution-libya>

The **International Legal Assistance Consortium (ILAC)** Libya Rule of Law Assessment Report, 2013. Access it here: http://www.ilacnet.org/download/reports_documents/mission-reports_documents/Libya_Report_FULL-ENGLISH-web.pdf

UNDP *Women, Peace and Security in Libya*, 2015. Access it here: <http://www.ly.undp.org/content/dam/libya/docs/Women,%20Peace%20and%20Security%20in%20Libya-eng.pdf>



CONCLUSION

There is a growing understanding that a country's civil society plays a core role in the success of transitional justice mechanisms, as well as in its overall success. However, transitional justice is a complicated, technical, and multi-generational endeavor. The process also needs champions and support—including from domestic state actors, international organizations, states, International NGOs, and regional allies.

In the context of crushing poverty, broken institutions, destroyed infrastructure, and limited state resources, transitional justice is not always the obvious priority. But no matter what stage—during or after conflict—CSOs can lead the way for society. There are several key points to remember:

WHAT CAN BE DONE DURING CONFLICT?

While it is difficult to create institutions in the midst of conflict, important preparatory work can be done. This includes: documentation; capacity-building of allies, the media, and victims and survivors; building public awareness of transitional justice; and assisting victims and survivors to have a space at the peace negotiations.

FOCUS ON VICTIMS.

Victims and survivors are at the heart of all transitional justice goals, but they are often sidelined by processes that unintentionally marginalize them further. First, victims and survivors need to feel safe enough to come forward. Then CSOs can develop strategies to foreground their experiences and ensure their involvement in transitional justice processes.

THINK HOLISTICALLY.

Transitional justice initiatives can sometimes become lopsided, with more focus on one set of initiatives and less on others needed to truly engage society. Use documentation efforts to understand what approaches are most needed and when. Engage with decision-makers (or if you cannot reach them, international actors and donors) and develop strategies for addressing priority areas and sequencing processes over time. Priorities need to be sequenced according to domestic needs, resources, and what is feasible. Lobby for the inclusion of properly-funded outreach efforts that include *all* of society, especially marginalized and antagonistic groups.

ORGANIZE.

Be aware of what other groups are focusing on, identify gaps between you, build bridges between CSOs and sympathetic (or potentially sympathetic) decision-makers, both domestic and international. Focus on domestic, regional, and international networks and allies. This will make your own work stronger and less isolated.

BE STRATEGIC.

Even in the difficult contexts, transitional justice has a better chance of success when the state has a stake in the outcome. Deep change requires institutional absorption and political elites to at least not block reforms and initiatives. Find allies, and build their capacity. Be prepared for a long struggle.

MANAGE EXPECTATIONS.

Regardless of your stage, understand the limits of your own resources, and manage expectations of all involved, especially the public. Try to keep stakeholder focus on the goal of building a more trustful, inclusive, and just society, but prepare for the reality of a slow and challenging process.

ⁱ Amnesty International, Annual Report, Libya 2015/2016. According to the Amnesty report, in July 2012, the HOR adopted a law granting amnesty for some crimes committed since a similar law was adopted in 2012. It excluded terrorism; torture, including rape; and other serious crimes, but not forced displacement. The status of this law is unknown.

ⁱⁱ Libya ratified the Geneva Conventions of 12 August 1949 in 1956, and Additional Protocol II of the Conventions relating to the protection of victims of non-international armed conflicts in 1978. See Article 8 (c) (e) of the Rome Statute of the International Criminal Court for more detail regarding these additional international crimes.

ⁱⁱⁱ UN Security Council Resolution 2213 (2015). para. 23

^{iv} Information for these sections is taken from the Arab Forum on Asset Recovery, Guide to the Role of Civil Society Organizations in Asset Recovery, accessible at <https://star.worldbank.org/star/ArabForum/library-resources-0>

^v The following sources were consulted for the media section: Kevin Jon Heller (interview); Polina Levina Mahnad (interview); Mark Kersten (interview); Chris Stephen (interview); “Should the Media Actively Support Transitional Justice Efforts?” International Center for Transitional Justice (2014); “War on the Media: Journalists under Attack in Libya,” Human Rights Watch (2015); Howard, Ross. *Conflict Sensitive Journalism*. International Media Support (2004); “Journalists repeatedly targeted by Libyan militias,” Reporters Without Borders (2016).; Laplante, Lisa J. and Kelly Phenicie. *Mediating Post-Conflict Dialogue: The Media’s Role in Transitional Justice Processes*. 93 Marq. L. Rev.251 (2009); *The Truth Commission Special Report Series*. South Africa Broadcasting Corporation; Hodzic, Refik and David Tolbert. *Media and Transitional Justice: A dream of Symbiosis in a Troubled Relationship*. International Commission for Transitional Justice (2016).

