



What is transitional justice?

Transitional justice is a way to address past human rights violations so that nations and their people can move forward towards sustainable peace and reconciliation. It refers to four specific areas of judicial and non-judicial activities that are often used when countries move from autocratic rule to democracy or from armed conflict to peace:

- 1) **truth-seeking**
- 2) **prosecutions**
- 3) **reparations to victims**
- 4) **institutional reform**

Countries in transition often face a legacy of large-scale human rights abuses that cannot be fully addressed by existing judicial and non-judicial structures. In such situations, instead of forgetting the past, many countries have used transitional justice mechanisms to seek the truth, pursue accountability, provide reparations to victims, serve justice, and take steps towards national reconciliation.

Truth-seeking: Truth commissions are officially sanctioned, temporary, non-judicial bodies created to establish the truth about large-scale violations, including the responsibility of individuals and institutions and the root causes of the violations. They help to assist in understanding, acknowledging, and addressing the suffering of victims; pave the way for prosecutions; and support the processes of reconciliation. Truth commissions have been established in more than 30 countries, including East Timor, Liberia, Morocco, Peru, Sierra Leone and South Africa. Commissions of inquiry are similar to truth commissions but have a narrower mandate, usually limited to a specific incident, time period or category of violations. They are focused on establishing the responsibility of individuals, rather than the broader causes of a conflict; and have a shorter life-span.

Prosecutions: Domestic courts have primary responsibility for carrying out trials for genocide, crimes against humanity, war crimes and other serious violations of human rights. International or “hybrid” courts (using national and international judges) should only be considered if domestic courts are unable or unwilling to conduct effective investigations or prosecutions. The International Criminal Court was established in The Hague (Netherlands) in 1998 to try persons for genocide, war crimes and crimes against humanity committed after July 2002. International or hybrid courts have also been established for Bosnia

and Herzegovina, Cambodia, East Timor, Kosovo, Sierra Leone, Rwanda and the former Yugoslavia. Perpetrators of serious crimes under international law should not benefit from amnesties and other clemency measures, even when they are part of a peace agreement.

Reparations to victims: In addition to the need for investigations and prosecutions, victims of human rights violations have a right under international law to remedies and reparations. Reparations do not have to be exclusively monetary, or even material; they can be symbolic acts such as apologies and recognition of the plights of victims through construction of memorials and other symbolic acts. State verification of the facts and recognition of the truth are also important reparation measures. The *UN Basic Principles and Guidelines on the Right to Remedy and Reparation* identify and provide guidance on different forms of reparations. The high number of victims in many post-conflict societies makes it necessary to consider collective reparations for the hardest hit communities or constituencies. Comprehensive and integrated reparations programmes should therefore comprise both collective and individual measures, as well as both material and symbolic reparations.

Institutional Reform: Institutional reform refers to the transformation of public institutions that contributed to conflict or supported an authoritarian regime. The institutional reform process should transform such institutions into efficient and fair institutions that respect human rights, maintain peace, and preserve the rule of law.

Institutional reform measures may include:

- the creation of oversight, complaint and disciplinary procedures;
- reform or establishment of new legal frameworks;
- the development or revision of ethical guidelines and codes of conduct;
- the provision of adequate salaries, equipment and infrastructure;
- reform of an institution by screening and removing personnel who are unsuitable for public employment from, for example, the security forces, the police or the judiciary, a process known as vetting.

Key principles to guide the establishment and functioning of transitional justice mechanisms:

- Decisions on how to deal with past human rights violations should be based on extensive consultations with broad sectors of society, including victim groups.
- Political commitment and institutional engagement by all parties to the conflict is a pre-condition for the successful use of transitional justice mechanisms.
- The selection and design of transitional justice mechanisms should respond to the particular country context - there is no “model” transitional justice strategy.
- A mix of transitional justice mechanisms should be considered, making full use of the close links between them.

- Local communities, human rights groups and other civil society organizations should actively participate in the design and implementation of transitional justice processes so that they can develop a sense of ownership in them.
- Transitional justice mechanisms must be allowed to operate completely independent of government and political parties.

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