



This policy paper series was developed to reflect U.S. policy understanding of a range of transitional justice (TJ) mechanisms related to peace-building, accountability, human rights, and reconciliation in post-conflict and post-authoritarian transitions. They were created by the State Department's Office of Global Criminal Justice, Bureau of Democracy, Human Rights, and Labor, Bureau of International Narcotics and Law Enforcement Affairs, Bureau of Conflict and Stabilization Operations, and USAID's Center for Excellence on Democracy, Human Rights and Governance.

WHAT IS TRANSITIONAL JUSTICE?

Transitional Justice (TJ) refers to a range of measures—judicial and non-judicial, formal and informal, retributive and restorative—employed by countries transitioning out of armed conflict or repressive regimes to redress legacies of atrocities and to promote long-term, sustainable peace. It is not a distinct or ‘soft’ form of justice, but rather a set of approaches to achieving justice, broadly understood, in order to address legitimate grievances while also strengthening security, development, reconciliation, and good governance. Effectively addressing past atrocities through these approaches is an important tool in preventing the recurrence of atrocities, a goal that is a core national security interest and a core moral responsibility of the United States.

There may be questions about the applicability of the concept of “transition” to all relevant scenarios; consequently the issues noted above may also be discussed using the term “dealing with the past” or “the promotion of truth, justice, reparation, and guarantees of non-recurrence.”

THE IMPORTANCE OF TRANSITIONAL JUSTICE

If applied in a manner consistent with the “Guiding Principles” below, TJ measures have the potential to mitigate the risk of further violence, promote civilian security, strengthen the rule of law, rebuild social cohesion, encourage respect for human rights, address the needs of victims, facilitate development, and restore trust in formerly abusive institutions.

COMMON TRANSITIONAL JUSTICE MEASURES



Criminal prosecutions. The investigation and prosecution of crimes—including genocide, crimes against humanity, war crimes, and other crimes related to human rights violations and abuses—are important components of TJ. Such prosecutions can take place in domestic courts, international courts, or in hybrid or mixed courts that involve a combination of international and domestic actors and laws.



Truth commissions. A specialized type of commission of inquiry, these commissions have the primary purpose of investigating and reporting on periods of abuse. They are non-judicial independent institutions that are often, but not always, government-sponsored. Their mandates may vary, but truth commissions are generally created to examine the root causes and patterns of violence, create a historical record of periods where abuses and violations took place, provide a venue for victims to share their experiences, and make recommendations to remedy abuses and violations and prevent their recurrence.



Institutional reforms. These efforts aim to transform public institutions—including but not limited to security and justice sectors—from instruments of repression and corruption into institutions dedicated to public service and marked by transparency and integrity. Reforms may take the form of vetting and lustration, structural reform, civilian oversight, transformed constitutions or legal frameworks, or education and training. They may also include new educational curricula, or social welfare initiatives that provide services to all in need.



Reparation programs. These initiatives are focused on repairing and restoring victims by redressing the material and moral damages of past abuse and taking steps to prevent future harm. Reparation may include a mix of material and symbolic benefits to individuals and groups of victims, including compensation, restitution, rehabilitation, official apologies, and guarantees of non-repetition.



Missing person commissions. These non-judicial commissions focus specifically on identifying those who remain missing and work to clarify what happened to them.



Memorialization efforts. These may include the establishment of museums, memorials, and days of remembrance or commemoration to preserve public memory of victims, raise awareness of past abuses, and help prevent recurrence.



Documentation. Documentation efforts involve collecting information about violations and abuses as well as those who may have been affected by or implicated in them. Such initiatives can help establish a better understanding of events, and provide a foundation of credible information for other TJ measures.



Other measures. Many societies have developed other creative TJ approaches to dealing with legacies of abuse and atrocities. As a result, the field has gained diversity over the years.

GUIDING PRINCIPLES

- **Comprehensive.** TJ measures are most effective when they complement each other as part of a comprehensive TJ strategy that addresses truth, criminal justice, reparation, *and* guarantees of non-recurrence. While each context must be approached with an understanding of what is both practical and feasible, implementing a singular TJ mechanism on its own cannot achieve the range of important TJ objectives. It is essential to consider local priorities, constraints, and capacities to determine how best to sequence and link TJ measures.
- **Transparent, independent, and impartial.** For TJ measures to achieve their objectives, they must be embraced as legitimate by victims and members of society as a whole. Trust in public institutions is often low in societies dealing with legacies of abuse. TJ processes should be designed and implemented to demonstrate they will be free from political manipulation and improper external influences, treat all participants and parties fairly, and be open to public scrutiny. Without these structural safeguards, it is unlikely that the public will trust these institutions, their processes, or their findings. This may lead to a failure to restore confidence in the government, hurt chances for reconciliation, and result in renewed conflict.
- **Consultative and participatory.** Consultation with a broad array of stakeholders is critically important in the design and implementation of a TJ process. Stakeholders might include those from majority and minority groups; diaspora representatives; those in and out of power; members of local government and community structures; and members of traditionally underrepresented groups such as women, youth, ethnic and religious minorities, victims, and groups vulnerable to reprisal attacks. Consultations with meaningful public participation and broad outreach reveal the needs of communities and develop local ownership of TJ processes.
- **Gender integrated.** Gender considerations should be integrated throughout all TJ initiatives. Ensuring gender justice means not only challenging impunity for sexual and gender-based violence but also ensuring women's equal access to redress for human rights violations and abuses and involvement in post-conflict reform.
- **Context-specific.** TJ measures and strategies should fit the cultural, judicial, legal, and economic context. They should also be shaped in a manner that responds to the nature and scope of the abuse, and the needs and priorities of the victims.
- **Engaged with civil society engaged.** Civil society groups are often essential partners in supporting justice and accountability, educating the population on issues related to TJ, linking victims with information and resources, supporting new government policies and practices respecting human rights, providing training and capacity building for reform processes, and monitoring progress to inform the media and other actors of any backsliding. Where governments remain reluctant to engage in TJ, civil society organizations can move the process forward by reminding governments of their relevant commitments, as well as facilitating unofficial truth seeking initiatives like citizens' commissions, art exhibits or other artistic expressions about histories of abuse, or initiatives that work with communities to promote traditional reconciliation processes.
- **Doing no harm.** A secure environment is critical for TJ processes to take place. Though full security may necessitate long-term institutional reform, it is important to consider safety for victims, witnesses, advocates, investigators, prosecutors, judges, commissioners, and TJ staff. It is important to recognize when participants' safety cannot be ensured, and to be transparent about this so that those engaging with the process do so with clear knowledge of the risks.
- **Managing expectations through outreach.** TJ mechanisms provide a range of tools to help address important needs in transitional societies. However, TJ is not a panacea for all of a society's needs. It is important to manage expectations about what these mechanisms can and should be expected to achieve and how they will operate. This will help the TJ program have the greatest possible impact.





RELEVANCE TO U.S. NATIONAL SECURITY AND FOREIGN POLICY

Presidential Study Directive-10 states that, “[p]reventing mass atrocities is a core national security interest and a core moral responsibility of the United States of America,” and calls for a comprehensive policy framework to prevent mass atrocities that would include building the capacity to not only prevent but also respond to mass atrocities, including genocide.

The 2015 National Security Strategy notes that “[w]e will work with the international community to prevent and call to account those responsible for the worst human rights abuses.”

The State Department’s 2015 strategic Quadrennial Diplomacy and Development Review goals include “preventing and mitigating conflict and violent extremism” and “promoting resilient, open, democratic societies.”

TJ, when deployed in a contextually-appropriate way and in consultation with local stakeholders, can be an effective tool to address these various goals by redressing legitimate grievances in practical and constructive ways: preventing the recurrence of conflict and abuse, promoting the rule of law, civilian security, and access to justice, enhancing trust in state institutions, safeguarding human rights and the inclusion of marginalized and vulnerable groups, and ensuring an accountable security sector.

HOW THE U.S. GOVERNMENT ENGAGES ON TRANSITIONAL JUSTICE

Foreign assistance. The U.S. government provides financial support directly to various TJ mechanisms and programs that support transitional justice initiatives through awareness raising and capacity building. This includes funding for civil society organizations to conduct activities to hold their governments accountable for abuses.

Technical advice. Various agencies and departments within the U.S. government provide technical support and advice to foreign governments, inter-governmental organizations, and civil society organizations on a variety of transitional processes and mechanisms.

Promotion. The U.S. government—through diplomacy, public statements, laws, resolutions, and other actions—promotes transitional justice as a way to help countries redress histories of abuse and pave the way for a more peaceful and just future. This may be done bilaterally or in coordination with international partners, the U.N., or other multilateral organizations.