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**POLICY BRIEF ONE
PARTICIPATION AND TRANSITIONAL JUSTICE**



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“Justice is like beauty, it is in the eye of the beholder”. – President Owsegun Obasanjo.¹

Executive summary

Transitional justice is an umbrella term for a set of judicial and non-judicial measures aimed at redressing histories of oppression and human rights abuses in societies and communities. It is a worldwide tool of justice with multiple mechanisms that can be tailored to the historical, political, socioeconomic and cultural contexts to which it is applied. No one template exists. While there are multiple approaches to transitional justice, experiences from around the world indicate that the most effective are in places where a strong civil society plays an active role in the preparation, implementation and follow-up phases of transitional justice efforts.

The Arab region, both prior to and after the onset of Arab uprisings, has witnessed considerable human rights violations and histories of authoritarianism, oppression and armed conflict. This makes transitional justice vital to a sound evolution towards democratic rule and the maintenance of social cohesion. This policy brief discusses the central role of civic engagement and civil society in forging transitional justice mechanisms. Using international case studies, it outlines the general instruments of transitional justice and describes the role that civil society has played in this process. Case studies of different transitional justice programmes in Arab countries are provided, highlighting the different approaches adopted. The brief concludes with a list of recommendations for policymakers and civil society bodies alike, which underscore the necessity of active civil society participation in successful transitional justice processes.

WHY TRANSITIONAL JUSTICE IN THE ARAB WORLD?

Transitional justice is a global instrument meant to achieve justice for victims of mass human rights violations in contexts of political transition,² whether that transition is from an autocratic regime to democratic rule, civil war to peace, or occupation to independence. For the past two years, the Arab region has been in the throes of such transitions, as popular uprisings resulted in the overthrow of leaders in some countries and internal conflict in others. Most of these countries were characterized by an approach that pitted citizens against their states and resulted in gross violations of human rights.

Victims in countries undergoing political transitions often face a multitude of challenges, including the politicization of their suffering, or the prioritization of socioeconomic and political issues at their expense. However, to achieve national reconciliation and social justice,³ states should address crimes against humanity irrespective of the perpetrators. They should also engage with systemic violations of the social, economic and cultural rights of citizens. Examples of such violations include the destruction and/or appropriation of property and land, forced displacement, starvation, market-price manipulation, damage to infrastructure, and monopolization of health and education systems. In such contexts, transitional justice becomes a binding system through which the political and civil rights of victims are accounted for, and where the social, economic and cultural needs of affected societies are addressed.⁴

Transitional justice aims to achieve its goals with a myriad of tools. These include:⁵ (a) achieving accountability through the prosecutions of perpetrators; (b) revealing the truths behind victims' suffering through truth commissions; (c) designing reparation programmes, both material and symbolic, in an attempt to compensate for victims' suffering; (d) institutional reforms and awareness-raising, to avoid future violations.

However, as experience has shown, no one template for transitional justice exists. In fact, ample evidence from various contexts suggests that attempts at one-size-fits-all transitional justice procedures are flawed. Rather, the mechanisms

implemented should be context-specific and modified to meet the needs of the society in question, taking into account best practice from successful transitional justice processes around the world.⁶ This is of particular relevance to the Arab region, where recent political transitions have taken different routes in different countries.

One of the most important elements of successful transitional justice has shown to be the concerted engagement of civil society activists and local communities in the process.

CIVIL SOCIETY AS A KEY TO SUCCESS: HIGHLIGHTS FROM INTERNATIONAL CASES

Civil society is an essential player in transitional justice processes, especially in developing countries and those emerging from conflict, where weak institutional capacity, a lack of strong governance and a shortage of resources hinder the transition.⁷ Civil society plays an important role in pressuring transitional and post-conflict governments into adopting transitional justice mechanisms and implementing them. Civil society's participation is integral to three different stages of the transitional justice process: (1) planning and design; (2) implementation; (3) follow-up and revisions to transitional justice mechanisms.⁸

The role that civil society actors have played and the positive impact they can have on ensuring the effective implementation of transitional justice mechanisms remains under-researched. However, a close examination of transitional justice processes from around the world indicates the large extent to which the participation of civil society organizations and activists can enhance the effectiveness of such processes.

- South Africa's Truth and Reconciliation Commission (TRC) was established in 1995 following the abolition of apartheid.⁹ Close collaboration between the South African Government and civil society was initiated by the Government. Civil society played a pioneering role in drafting the law that established the Commission, which was mandated to investigate the human rights violations committed under apartheid; prepare a comprehensive

reparation and rehabilitation programme; and review perpetrator testimonies and amnesty applications. Civil society also played a role in the selection of commissioners and for the design of compensation and reparation measures. Most importantly, South African civil society independently tailored symbolic and collective reparations that went beyond measures implemented by the Government. These included memorials, exhumations and monument-building, among other initiatives that aimed to achieve reconciliation and promote collective healing.¹⁰

- Another prominent international example of civil society participation in transitional justice comes from Guatemala, where the Assembly of Civil Society argued for the creation of a truth commission as part of the United Nations-brokered deal between the Government and rebel fighters, following three decades of conflict. Civil society played a pioneering role in calling for the truth behind atrocities, which eventually led to the creation of the Historical Clarification Commission that investigated and documented human rights violations, and proposed recommendations to ensure justice for the victims.¹¹ Additionally, an independent civil society initiative, the Alliance Against Impunity, worked to guarantee an amnesty-free National Reconciliation Law, especially for mass human rights violations such as genocide.¹² Together, the Alliance and the Law succeeded in protecting the rights of victims in the transitional justice process, instilling a sense of accountability for crimes and atrocities committed, and safeguarding society from a culture of impunity that could have further victimized Guatemala's people.
- In Argentina, where a general amnesty law for all perpetrators of human rights abuses during the ruthless military rule of the Juntas was granted in 1982, civil society organizations played an instrumental role in truth-seeking and memorialization initiatives. For example, despite the amnesty granted to perpetrators, *Madres de*

la Plaza de Mayo and the Center for Legal and Social Studies (CELS) were central in developing and implementing truth trials and a truth commission (CONADEP – *Comisión Nacional sobre la Desaparición de Personas*) that sought to uncover human rights abuses. Also under pressure from civil society, amnesty laws were revoked in 2003 and criminal trials were launched against perpetrators of state violence. HIJOS (*Hijos por la Identidad y la Justicia contra el Olvido y el Silencio*, founded in 1995) is another initiative, led by the children of disappeared persons. Over the past two decades, they have organized marches and protests demanding the truth about the disappeared and ensuring that they are not forgotten. These civil society initiatives have succeeded in keeping the debate and discussion of atrocities and crimes against humanity alive in Argentina.¹³

- Finally, the European experience with transitions is telling of the role that civil society plays in achieving transitional justice. One such example is the advancement of transitional justice mechanisms in the countries of the former Yugoslavia. The Coalition for RECOM (Regional Commission for establishing the facts about war crimes and other gross violations of human rights committed on the territory of the Former Yugoslavia in the period 1991-2001), a civil society network of non-governmental organizations, associations and individuals, has been promoting the creation of this regional truth and reconciliation commission. This initiative stems directly from civil society and combines the efforts of networks across multiple countries.¹⁴ The establishment of such a truth commission would be beneficial for transitional justice in the Balkans beyond the existing prosecutions, which are governed by the International Criminal Tribunal for the Former Yugoslavia.

In sum, civil society plays different roles in transitional justice, including but not limited to:¹⁵ (a) data collection and the dissemination of information such as victim testimonies, truth

commission findings and reports; (b) ensuring media coverage of the justice processes; (c) collaboration, facilitation, and provision of advisory services to governments in transition; (d) tailoring reparation programmes to facilitate community healing, especially symbolic reparations; (e) advocating for perpetrators of human rights abuses to be held accountable and working against impunity; (f) ensuring that the voices of the victims and their families continue to be heard; (g) following-up on the transitional process to ensure that it is being conducted fairly, transparently and comprehensively.

TRANSITIONAL JUSTICE IN SELECTED ARAB COUNTRIES

Transitional justice mechanisms are not new to the Arab region, where Lebanon, Iraq and Morocco established various kinds of transitional justice programmes prior to the eruption of the Arab uprisings. More recently, and in the aftermath of the popular movements, Governments and civil society organizations are seeking to establish transitional justice mechanisms in several other countries.¹⁶ Programmes in Arab countries include:

- *Lebanon*

Lebanon is one of the few examples where transitional justice efforts have been carried out mainly by civil society organizations, with latent support from international organizations. These initiatives are meant to address crimes committed during 15 years of civil war (1975-1990), as well as more recent political assassinations. In 1991, at the end of the civil war, a blanket amnesty was granted by the Lebanese parliament to the perpetrators of all crimes committed during the preceding 15 years of conflict. In reaction, a number of civil society initiatives have been established. The Wadad Halwani initiative and Act for the Disappeared both seek the truth about the 17,000 forced disappearances which took place during the war; UMAM Documentation and Research seeks to document the history of the war years, including disappearances; and Memory for the Future focuses on memorials for war victims. Collectively, these initiatives have succeeded in keeping the discussion on the disappeared in the public arena. Recently, they successfully pressured the Lebanese Government to establish a

commission to look into the disappearances, alongside Syrian government authorities. However, many obstacles remain, including the general amnesty law; apparent government apathy towards the establishment of transitional justice mechanisms to address human rights violations during the war period (particularly since several of those involved occupy key political positions in the country); and recurrent conflicts, both internal and external, including the Israeli war on Lebanon in July 2006.

Another government-led initiative is a reparation programme, established through the Central Fund for the Displaced, to compensate victims of forced displacements during the war years. However, considerable loopholes in the programme and its overt politicization have undermined its effectiveness,¹⁷ resulting in the failure to appropriately address the more than 75,000 cases of internal displacement in Lebanon. More recently, a hybrid tribunal, the Special Tribunal for Lebanon (STL), was created to investigate the assassination of former Prime Minister Rafik Hariri in 2005. While hybrid tribunals are considered a key instrument of international justice,¹⁸ intended to ensure that there is no impunity for political assassinations, STL has been a polarizing rather than a unifying instrument within Lebanese society.

- *Iraq*

Although civil society participated early on in transitional justice efforts by cataloguing the human rights violations that were perpetrated under the Saddam Hussein regime, subsequent justice mechanisms were centralized and achieved little in terms of national reconciliation. Most efforts towards transitional justice in Iraq have focused on the accountability of former power brokers, officials and Baathists, with a full-fledged de-Baathification process ongoing since 2003. The process culminated in the creation of an Accountability and Justice Law in 2008 that governs the vetting of public employees and aims to remove Baathists in a state-controlled manner, quite similar to the de-Nazification programme in post-World War II Germany. De-Baathification sought to purge Baath party adherents and supporters from political life, an outdated, exclusionary and futile mechanism which failed to build on successful vetting experiences from

post-transition countries such as Bosnia and Herzegovina.¹⁹ In that country, armed security forces were targeted first, followed by the judiciary, thus reforming the systems most deeply involved in corruption and abuses of power.²⁰ Another good example of a partially successful vetting programme comes from El Salvador, where an Ad Hoc Commission was created to vet armed forces and senior commanding officers only. Criticism of the Salvadorian approach to vetting has focused on its restriction to punitive action against perpetrators.²¹

Another highly valued aspect of transitional justice, namely reconciliation, has been marginally attempted by the Iraqi Government through the creation of a Ministry of Reconciliation. However, the reconciliation process in Iraq did not attempt to bridge the gap between different communal groups nor create a sense of social cohesion. Rather, it focused primarily on settling disputes among a minority of elites competing over religious sites.²² The lack of a clear participatory approach to transitional justice in Iraq has contributed to the low rate of success.

- *Morocco*

One of the most successful transitional justice mechanisms to date in the Arab region is Morocco's Equity and Reconciliation Commission (ERC), a truth commission established by King Mohammed VI in 2004 to investigate gross human rights violations during the 'Years of Lead', which stretched from 1961 until the late 1980s under the rule of King Hassan II.²³ This massive truth commission specifically investigated forced disappearances, arbitrary detention, torture and killings by the security forces. The Commission also established an individual and collective reparation programme, addressing material and symbolic reparations for the victims, their families, and the community as a whole. The process sought to reinstall dignity and trust in a society that had long been haunted by fear and abuse.

ERC had a highly participatory dimension, despite the fact that it was created by the King. Civil society actors not only pushed for transitional justice and the creation of the Commission; they also participated in formulating its mandate and

tailoring its mechanisms. Representatives of civil society, human rights groups in particular, were members of the Commission and were active throughout its proceedings. They were also closely involved in tailoring and implementing reparation programmes, both individual and collective, which culminated in the distribution of 85 million United States dollars to approximately 16,000 victims and their families. Civil society activists and organizations also played an important role in designing and implementing symbolic reparations, such as memorials and funerals, and facilitating a sense of collective reconciliation within Moroccan society.²⁴

- *Bahrain*

In the aftermath of popular unrest in Bahrain in February and March 2011, King Hamad bin Isa al-Khalifa established the Bahrain Independent Commission of Inquiry (BICI) to look into 35 deaths and hundreds of injuries that had taken place. BICI work was centralized, as the King appointed the commissioners, chaired by Cherif Bassiouni, a renowned and highly credible international war crimes expert. Following the publication of the BICI 500-page report, the King ordered state agencies to implement its 26 recommendations. The involvement of civil society in the process was minimal, and the time dedicated to the Commission's work was insufficient for the in-depth examination of human rights violations that was required. Of the 26 recommendations, only three have been implemented to date.²⁵ Concurrently, ongoing protests have led to further human rights violations, undermining the role of independent civil society organizations and their capacity to promote social cohesion. Therefore, although Bahrain used an important tool of transitional justice, the mechanism did not initiate a transitional justice process. It remains uncertain whether civil society will pick up efforts where the Government has left off.

- *Syrian Arab Republic*

Although transitional justice mechanisms are rarely formulated before the end of a conflict or an effective transition, plans for the establishment of transitional justice instruments in a post-conflict Syrian Arab Republic were initiated in 2012.²⁶ Such initiatives are the product of joint

work between international institutions, transitional justice experts, Syrian opposition members and Syrian civil society and human rights groups.

Transitional justice preparations have included a series of workshops held in the Hague in April 2012, and a conference in Istanbul in January 2013. Both involved not only civil society organizations, experts and human rights groups, but also victims of the conflict in the Syrian Arab Republic and their families. The mechanisms suggested in preparation for a post-conflict Syrian Arab Republic include prosecutions, truth-seeking and reconciliation commissions, and victim reparations.²⁷ However, these fragile initiatives are confronted by multiple obstacles: the lack of transition; continued violence; the exclusion of a major part of Syrian society; the uncertainty of future prospects in the country; and the involvement of opposition groups, mainly the Free Syrian Army, which could politicize efforts for transitional justice.

CONCLUDING REMARKS AND KEY ISSUES

Transitional justice mechanisms in the Arab region are as diverse as the countries they were initiated in. Arab uprisings have propelled work on transitional justice efforts in several countries.²⁸ In Egypt, for example, the ousted president, Hosni Mubarak, and his closest associates are being prosecuted through local courts. However, the court proceedings have come under criticism for being controlled by the military, also closely linked to the Mubarak regime. Prosecution efforts in Libya were implemented through warrants issued by the International Criminal Court (ICC) against Muammar Gaddafi, prior to his death, and Saif al-Islam Gaddafi. However, the latter is currently being prosecuted through local courts, as Libya does not wish to hand him to ICC. Of the countries where sitting presidents were ousted, Tunisia initiated the most comprehensive transitional justice programme. It included the prosecution of former President Zine El Abidine Ben Ali, his family and associates, the establishment of a truth commission and reparation programme, and the creation of a Transitional Justice Academy.

The need to implement transitional justice mechanisms is acknowledged by many countries affected by the uprisings. However, most transitions in the region are neither certain nor complete, and the ultimate goal of reconciliation could be marred by hasty, state-monopolized and non-participatory approaches to transitional justice, such as rushed domestic trials.

A common thread that runs through international and regional experiences is the importance of involving civil society in transitional justice efforts. Initiatives stemming from within society have contributed to their success in diverse contexts. Examples such as South Africa and Morocco highlight the vital role of participation in transitional justice, where civil society can help achieve what Governments alone cannot.

In Arab countries, key challenges include tight governmental control and structural weakness that impair many civil society bodies. These factors further undermine their ability to participate fully in ensuring an effective transitional justice process. In countries where civil society is strong and active, state-sponsored amnesia stymies the transitional justice efforts of civil society.

What follows are some recommendations intended for governments, policymakers and civil society groups for the successful implementation of transitional justice in the region.

THE WAY FORWARD

To initiate an effective and participatory approach to transitional justice, Governments and civil society organizations can undertake a number of measures.

- Governments and policymakers can:
 - Create an enabling context for the application of transitional justice. Therefore, they should:
 - Develop the needed institutions and governmental bodies to handle the transitional justice process;
 - Empower these governmental bodies.

- Develop clear participatory transitional justice policies through a close working relationship with civil society, affected communities and victim groups. This includes:
 - Involving victim groups and civil society organizations in the planning phases of the transitional justice process;
 - Tailoring policies in ways that involve collaboration between the Government, civil society, victims and communities in the implementation of transitional justice mechanisms.
- Adopt a victim-centred approach* to participatory transitional justice policies.
- Recognize that civil society is an ally and a driving force towards achieving transitional justice. Through concerted efforts, including national dialogue and discussions, Governments can work with civil society organizations to build public-civic consensus around key issues.
- Remove media restrictions through a reform of censorship laws. This gives civil society groups greater access to media tools in order to advance and promote transitional justice procedures through media platforms.
- Seek advisory services from civil society groups, both local and international, during the planning and implementation phases of the transitional justice process and ensure their involvement.

→ Civil society groups can:

- Play an effective role in advocacy and civic education campaigns to inform both policymakers and the public about the importance of transitional justice processes and institutional reform.
- Build a normative knowledge base on transitional justice. In order to do so, they can:
 - Engage professionals from the human rights, law and social sciences domains;
 - Participate in training workshops and knowledge-based conferences, and seek expert consultations on transitional justice issues;
 - Engage in rigorous research, both qualitative and empirical, to investigate the various roles played by civil society and its effects on the successful achievement of transitional justice.
- Actively research and document past human rights abuses, an activity that strengthens transitional justice work and feeds into the work of truth commissions and trials.
- Act as a caring space for victims, ensuring no revictimization. This could be achieved through lobbying for a victim-centred approach, providing rehabilitation and psychosocial services for victims, and creating a supportive environment.
- Monitor the implementation of transitional justice procedures and the non-recurrence of violence. Local groups can work in conjunction with international monitoring bodies such as Human Rights Watch and Amnesty International, making use of their expertise and designing training programmes based on their substantial knowledge.

* A victim-centred approach to transitional justice is one that focuses solely on delivering justice for the victims of violations, as opposed to being focused on what to do with the perpetrators (perpetrator-centred approach), no matter what transitional justice mechanism is utilized. Even accountability measures should be targeted towards ensuring non-recurrence of abuse rather than merely punishment and/or exclusion of perpetrators.

- Organize international outreach and recruit donors and the support of international human rights and justice organizations (such as the International Center for Transitional Justice), and global civil society. This builds an international support base and coalitions that can exchange experiences with local grassroots transitional justice initiatives (as in former Yugoslavia). It can further help to provide sufficient funding for the implementation of comprehensive reparation programmes.
- Develop homegrown, traditionally-sourced rituals for transitional justice that can complement official and quasi-official bodies and respond to the customs and values of victims (such as in South Africa and Morocco).

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