



Kawakibi Democracy
Transition Center



NATIONS UNIES
DROITS DE L'HOMME
HAUT-COMMISSARIAT



Au service
des peuples
et des nations

INSTITUT
FRANÇAIS
TUNISIE



zif Center for
International
Peace Operations

Integrating Economic, Social, and Cultural Rights in Transitional Justice Processes: A Vehicle for Reform in the Middle East and North Africa?

Stefanie Kirschweg and Johannes Hamacher

Addressing legacies of the past and revealing the truth is critical for societies emerging from conflict or authoritarian rule to build a future based on peace and justice. Transitional Justice (TJ) plays an essential role in promoting accountability, in re-establishing civic trust, and in encouraging reconciliation. During the past 30 years, TJ as a domain of policy, practice, and academic study has focused predominantly on violations of political and civil human rights, whereas violations of economic, social, and cultural rights (ESCR) were considered secondary, even though all human rights and fundamental freedoms are universal, indivisible, and interrelated. In the aftermath of authoritarian rule, the calls for TJ interventions to address past abuses were unprecedented in the Middle East and North Africa (MENA). Socio-economic grievances, outrage at widespread corruption, and the quest for freedom and human dignity were main drivers of the popular upheavals throughout the region. Conventional TJ approaches are thus insufficient for responding to comprehensive justice demands in the MENA region, while a holistic approach to TJ provides better and more opportunities to address the manifold challenges ahead.

Against the backdrop of the region's heterogeneous political and social processes in the aftermath of authoritarian rule, the conference brought together a broad range of academics, representatives of state institutions, civil society organizations, politicians, and practitioners from the Arab region and beyond. The participants explored how a holistic TJ agenda can best respond to the justice demands of Arab societies. Experiences from Algeria, Colombia, Libya, Morocco, Poland, Tunisia, and other countries were presented to demonstrate that TJ processes need to be interdisciplinary in their design and cover a range of issues including the promotion of economic growth and human development, access to basic goods and services, the fight against corruption, and the recovery of stolen assets. They also need to consider the commemo-

ration of past abuses and the reform of history curricula for educational programs. Only if based on such a comprehensive approach can TJ drive social and structural change and contribute to national reconciliation.

Regional expert conference jointly organized by:

The Center for International Peace Operations (ZIF), the Office of the High Commissioner for Human Rights (OHCHR), the United Nations Development Programme (UNDP), the Tunisian Al Kawakibi Democracy Transition Center, the French Institute, the Research Institute for the Contemporary Maghreb (IRMC).

Tunis, 24 - 26 September 2014

This conference report was written in cooperation with OHCHR, UNDP, the Tunisian Al Kawakibi Democracy Transition Center, the French Institute Tunis, and the IRMC and reflects the authors' interpretation of the discussions.

The Tunisian approach to TJ – Leading by example

The Tunisian “Law on Establishing and Organizing Transitional Justice” set out a comprehensive approach to addressing past human rights abuses. It created a national Truth and Dignity Commission (TDC) tasked with establishing the truth about abuses perpetrated in Tunisia since 1 July 1955 and with addressing reparations, accountability, institutional reform, vetting, and national reconciliation. The law created Specialized Judicial Chambers with judges trained to deal with cases of serious human rights violations. The TDC is in charge of managing a Victims’ Fund for Dignity and Rehabilitation and plays a major role in setting up a reparations program for the victims. This includes individual as well as collective reparations, since the law stipulates that geographic areas have also suffered systematic and intentional economic marginalization.

In 2004, the UN Secretary-General defined transitional justice as “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.” One of the main challenges is to design a timely justice agenda in situations of political, economic, and social transformation; one that entails a sensibly sequenced mix of instruments, responding to the needs of the victims and the society at large – a delicate process that is challenged by a fragile political context, a distressed economy, systematic human rights violations and mass violence, limited resources, and a weak, oftentimes devastated institutional landscape.

Shaping the nexus between TJ and development

In the past, TJ and development had little conceptual interaction. The dynamics between the two fields were long represented as a trade-off between justice and development; yet research and practice suggest synergies. Conference participants stressed that TJ can no longer afford to confine itself to the narrow objective of criminal accountability, but should broaden its scope to address patterns of inequality, structural violence, and socio-economic discrimination and marginalization that traditionally fall within the purview of the development sector. If left unaddressed, these increase the risk of a relapse into violence and conflict. Experts emphasized the necessity for a coherent policy response to the interrelated needs of transitional and developing societies with a long-term perspective if either field is to achieve its intended goals.

The following synergies between TJ and development were identified:

- Prosecuting ESCR violations, including economic crimes, can dismantle underlying structural causes of conflict, render justice and accountability more palpable, and provide deterrence;
- Individual and/or collective reparations initiatives can directly improve the quality of life for victims and communities, officially recognize victims, and strengthen civic trust in state institutions;
- Truth-seeking bodies can contribute to an understanding of the structural and institutional dimensions of mass rights violations and can establish links between human rights violations and structural inequalities;
- Vetting as part of institutional reform processes can contribute to dismantling abusive patterns of behavior in institutions that may have led to insecurity, which in turn negatively impacts development;
- Nationally owned, participatory TJ processes encourage the engagement of and consultation with all stakeholders and support the development of national capacity.

¹ The Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, U.N. Doc S/2004/616, (23 Aug. 2004), para. 8.



Defining a new social contract

Though ESCR violations are often presented as ‘less serious’ than civil and political violence, addressing all human rights violations is central to post-authoritarian state- and nation-building, since systemic corruption and human rights violations are mutually reinforcing. Uprisings across the MENA region called for a new social contract rooted in a more just distribution of power and resources. Due to a broad consensus that ESCR do form part of the TJ agenda, the conference discussions focused on how the inclusion of ESCR can be made effective. Conventionally, TJ measures address acts of civil and political violence without necessarily identifying the underlying causes of a conflict’s outbreak, such as systemic corruption, the misappropriation of public funds, and other forms of economic crimes. Participants argued that legal accountability mechanisms as well as truth-seeking bodies must consider economic crimes if TJ is to achieve its intended goals, including socio-economic justice. Otherwise, it is the symptoms rather than the causes of conflict that are addressed. To that end, all actors, including the state and the private sector, must be held accountable for their human rights violations.

TJ, the politics of historical memory, and history education

While socio-economic justice has started to figure more prominently in the discourse on a holistic TJ agenda, cultural rights have continued to play a subordinate role. However, these rights are often the most tangible for individual victims because of their impact on identity and their instrumentalization for identity politics. Taking into account cultural rights is therefore crucial for a conflict-sensitive understanding of history among society at large.

Participants argued that memorialization and education initiatives, including monuments and memorials, schools, museums, archives, and libraries, should be included in all TJ agendas. As political power shapes public perception of history, it is crucial that the design of educational

programs is inclusive and takes into account different perspectives of the legacy of the past. Not only the reform of educational curricula, but also the active memorialization and archiving of past abuses can reinforce peaceful tendencies in societies emerging from conflict. Furthermore, cross-border approaches can have a significant impact on reconciliation processes. While top-down approaches were deemed to be of critical importance for dealing with high-level abuses, bottom-up approaches were highlighted as instrumental in both formal and informal memorialization processes, popular and political designations of victimhood, and collective understandings of injustices and their reparation. However, participants also addressed the limitations of memory

TJ resumed: the case of Argentina

UN Independent Expert on Foreign Dept and Human Rights, Juan Pablo Bohoslavsky, highlights the case of Argentina, a country that resumed its TJ process after the end of its military dictatorship by arresting economic actors who collaborated with and benefited from authoritarian rule. The following processes are underway:

- Criminal cases against entrepreneurs for the disappearance of their own corporate employees;
- Civil lawsuits against banks that financed the authoritarian government;
- Administrative and judicial investigations of illegal appropriations of corporations and the role of mass media;
- Parliamentary discussion on the establishment of a National Truth Commission on economic complicity;
- Establishment of a Provincial Truth Commission on civil complicity in Rio Negro;
- A recently reformed Civil Code that established that the statute of limitations does not apply to civil actions against accomplices.

politics and noted that the legitimacy of actors who write history, access archives, and shape collective memory is often contested.

TJ, artistic expression, and cultural heritage

Different forms of artistic expression can become carriers of reconciliation and the memorialization of past abuses as well as of transition processes themselves. Key stakeholders in transition processes often perceive fundamental elements of conflict to be underrepresented in official discourses, with local communities often relying on art as a medium for dealing with the past. Forms of artistic expression include memorials and monuments (whether state-sanctioned or not), graffiti and other street art, informal and interactive theater performances, literature, poetry, photography, music, and other creative formats.

While justice for political, civil, and socio-economic rights violations lies at the very foundation of any society's immediate needs in post-conflict situations, the right to take part in and contribute to the cultural life of one's community is also crucial to TJ since there are significant discrepancies in access to forms of cultural production. Furthermore, the cultural heritage of the past is central to building identities in the present and thus to fostering reconciliation and sustainable peace. Cultural rights are linked to issues of language, education, and both individual and collective identities, and they are fundamental to establishing human dignity, the lack of which was one of the main grievances driving upheavals throughout the MENA region. Emphasizing the fact that history writing is never

apolitical, conference participants highlighted the importance of cultural heritage for ongoing debates on political transitions.

Recommendations for the design of TJ processes:

- Address all human rights violations, including ESCR;
- Build synergies between development and TJ;
- Address the socio-economic root causes of conflict;
- Investigate economic crimes and hold private sector perpetrators accountable;
- Design individual and/or collective reparations programs, funded through the recovery of frozen assets and/or through compensation provided by corporations;
- Promote state-led as well as grassroots memorialization initiatives and archiving programs to commemorate the past, give victims a voice, and foster collective memory building;
- Reform educational history curricula by including all perspectives on the past while being mindful of power dynamics;
- Actively incorporate forms of artistic expression in TJ initiatives;
- Decentralize the TJ process as much as possible by reaching out to all regions of the country.

ZIF's International Training and Dialogue Forum on Rule of Law continues its series of expert conferences on transitional justice processes in the MENA region.

