



Cairo Regional Center for Training on Conflict Resolution and Peacekeeping in Africa
مركز القاهرة الاقليمي للتدريب على تسوية المنازعات وحفظ السلام في افريقيا



Criminal Justice and Accountability in Arab Transition Processes

Johannes Hamacher and Stefanie Kirschweg

The revolutionary movements across the Middle East and North Africa (MENA) emerged from widespread socio-political discontent and economic grievances exacerbated by the global financial crisis. The Arab Spring and the ongoing transition processes underline the assumption that addressing past legacies is essential to building a future based on peace and justice. The prolonged tensions in the region are evidence of people's demand for justice as a basis for social reconciliation. Conventional transitional justice initiatives, including prosecutions, truth seeking processes, lustration and vetting mechanisms, as well as institutional reform efforts, traditionally focus on civil and political rights violations. Distributive justice issues as well as economic and social rights, however, have largely been the concern of the development sector. While there is an increasing recognition that corruption and human rights violations are mutually reinforcing forms of abuse, post-conflict justice initiatives have historically marginalized socio-economic issues thus far. Nevertheless, transitional justice processes that also address corruption are gaining importance across the MENA region. In the context of Arab transition processes, addressing widespread human rights violations committed by deposed regimes is as urgent as redressing economic crimes.

In a series of conferences on the relationship between the rule of law and post-conflict justice in the MENA region, this second conference provided another opportunity to identify and analyze linkages between principles of Islamic and transitional justice with a special focus on economic crimes. Conference participants reflected on reform processes, current challenges, and prospects for the future. Acknowledging the unique context of every transition, the conference addressed transitional justice in post-authoritarian settings with a focus on Egypt, Libya, and Tunisia, bringing together diplomats, scholars, independent experts, politicians, jurists, and field

practitioners, including representatives from the United Nations and other international organizations.

Expert conference jointly organized by:

The Center for International Peace Operations (ZIF), the Cairo Regional Center for Training on Conflict Resolution and Peacekeeping in Africa (CCCPA), and the Criminal Law and Judicial Advisory Service (CLJAS) of the United Nations Department of Peacekeeping Operations (UN DPKO).

Cairo, 25 – 27 September 2012

This conference report was written in cooperation with CLJAS/OROLSI/UN DPKO and reflects the authors' interpretation of the discussions and not necessarily the views of all other participants or partner organizations.

1. Keynote Speech

In his keynote speech, Dr. Ahmed Kamal Abu El Magd, former Egyptian Minister of Information, discussed processes and mechanisms for addressing legacies of past injustices committed during the Arab Spring, calling for increased tolerance and dialogue in the face of mounting challenges in the aftermath of widespread socio-political upheaval in Egypt and other Arab countries. Reflecting on the origins of unrest within Egypt itself, Abu El Magd noted that the Kefaya movement,¹ for instance, emerged and began campaigning long before 2011, but that the regime remained oblivious to increasing grievances and dissenting voices from across Egypt's political spectrum. The regime's continued ignorance of and disinterest in grievances within society proved to be a source of frustration, allowing for a growing protest movement, which ultimately led to the Egyptian Revolution of 25 January 2011. The transitional period following the revolution, while opening the political arena to reforms with heightened expectations at the social, political, and economic levels, also entailed myriad challenges. The difficulties of far-reaching systemic reforms became evident with the Egyptian elections, which were held without constitutional legitimacy, leading to considerable confusion concerning the limits and responsibilities of the elected offices. Abu El Magd warned that, in the absence of genuine efforts to deal with the severity of the economic situation, the revolution could be perceived as having failed. Therefore, three steps were essential to navigate the transitional period safely. First, planning was crucial for determining the intended targets of potential reforms. Second, setting priorities was vital to deal with the most pressing issues in a timely fashion. Third, considering the consequences of the reform process was essential to ascertain how certain results could be attained and to entertain a sense of a better future. Acknowledging that Egypt was headed down a very difficult path, Abu El Magd emphasized that in order to create sustainable systems of governance, a clearly

delineated, methodological, respectful, and honest dialogue between incumbent and oppositional political parties as well as civil society was imperative.

After the keynote speech, conference participants discussed the relationship between Islamic law and post-conflict justice mechanisms with a focus on democratic transition processes in Egypt, Libya, and Tunisia.

2. Criminal Justice and Reform of the Justice System

Human Rights Violations and the Criminal Justice System

Despite differences in the types and impact of crimes in Egypt, Libya, and Tunisia, participants highlighted human rights violations as a prevalent issue in these countries and noted that even following the respective revolutions, abuses remained a widespread phenomenon. While the notion of justice is not limited to its criminal dimension, it is the criminal justice system that provides the main legal avenue to ensure accountability for past crimes, to protect human rights, and to prevent future abuses. Both before and during the Arab Spring, criminal justice systems across the MENA region often failed to redress severe abuses, thereby perpetuating an impunity gap. Reasons for the malfunctioning of the systems were manifold. Operationally, the police in Egypt, Libya, and Tunisia, which constituted an integral element of the regimes' authority, widely lost legitimacy after the downfall of the respective regimes, leading to deficient agencies, notably in the collection of evidence. Serious abuses such as torture were often not criminalized due to the lack of specific legislation and non-compliance with international law. Administratively, criminal investigative authorities such as fact-finding commissions were not well equipped to investigate crimes. Politically, the necessary will of the new elite to tackle these issues has been insufficient.

¹ *Egyptian Movement for Change, a grassroots coalition of political groups founded in 2004.*



Reform of the Justice System

Given the challenges arising from deficiencies in the justice systems in Egypt, Libya, and Tunisia, participants believed that a fundamental legislative and institutional reform process is necessary to reestablish the rule of law and ultimately to meet the demands of civil society for accountability and legitimacy. A critical condition for successful reform processes is the reestablishment of public trust in judicial institutions. Transitional justice agendas across the region exhibit multifaceted needs, such as measures of assistance to victims, including compensation, effective criminal investigation, and accountability for rights offenders. Temporary transitional commissions need to cooperate with ordinary justice institutions; military justice and special courts jeopardize due process, and the legal framework, including its constitutional basis, needs review. In order to address these manifold exigencies, recognizing the judiciary as an institution in need of reform and independence is of utmost importance. Addressing these challenges is a long-term process, supported by the international community. The judicial reform program in Tunisia, for instance, is conducted in close cooperation with the European Union, while the United Nations supports justice reform efforts in Libya.

3. Islamic Law and Transitional Justice

The transition processes in Egypt, Libya, and Tunisia suggest the need for continued discussion about the relationship between Islamic law and post-conflict justice. Participants illustrated how Islamic legal and moral principles are compatible with key objectives of transitional justice such as accountability, truth, reparation, and reconciliation. Correspondingly, the concept of the rule of law, including its guiding principle of justice, is deeply rooted in Islamic law. References to Islamic law serve as a common denominator in countries with a Muslim majority. In order to promote their wider acceptance, transitional justice initiatives should incorporate and reflect the different Islamic legal traditions. However, a purely Islamic legal approach to addressing past injustices bears

the risk of excluding non-Muslim minorities from the process. Transitional justice initiatives in Arab countries should incorporate both Islamic legal thinking as well as norms and standards established through the development of international justice mechanisms.

4. Justice and Accountability for Economic Crimes and Corruption

Socio-economic grievances were among the main factors fueling protests across the MENA region in 2011. Exposing and prosecuting economic crimes and corruption in transitional societies is thus not only essential to ensuring social justice and achieving sustainable institutional reforms, but also to restoring public trust in state institutions and the private sector alike. Addressing these issues in the context of transitional environments in Egypt, Libya, and Tunisia, however, poses a number of technical, procedural, and programmatic challenges. These include, but are not limited to defining what constitutes corruption and how rigorously economic crimes should be prosecuted, addressing a wide range of different demands such as holding offenders accountable, confiscating proceeds of crime, compensating victims, and preventing future transgressions.

Approaches to combating and preventing corruption are manifold, with varying degrees of effectiveness. Producing better outcomes in the fight against economic crimes and corruption in Arab transition processes requires comprehensive approaches that do not merely address one aspect of the problem, such as asset recovery, but rather the whole spectrum of implications, covered by the United Nations Convention against Corruption (UNCAC). Petty corruption across all levels of the public sector, for example, were often tackled to demonstrate state resolve, while corruption at the political level and among economic elites was largely left untouched. Furthermore, oversight was required at all levels of the public sector, from budget controls in ministries to efficiency assessments of relevant institutional bodies. Not only should proceeds of crime be confiscated and offenses criminalized, but reforming and controlling administrative mechanisms that may

be conducive to corruption and preventing the misappropriation of resources in the future is vital for achieving economic justice. Increased efforts are required to build capacities at the national level with the support of and in cooperation with the international community.

The numerous challenges to developing appropriate mechanisms to promote criminal justice and combat impunity for economic crimes and human rights abuses in Arab transition processes were exacerbated by conditions that threaten to undermine existing efforts to collect evidence and prosecute serious crimes. Ad hoc mechanisms such as fact-finding committees, for instance, often encountered significant obstacles to their work in transitional contexts. While instability and insecurity often limited access to certain areas, the scope of such committees' authority was often contested. Furthermore, their findings were often off the record and their recommendations were seldom put into practice in Egypt, Libya, and Tunisia, thereby undermining their credibility. The lack of a national legal framework for fact-finding committees and other temporary instruments is one aspect of the transitional justice dilemma. Transitional justice initiatives aim at redressing the legacies of abuses committed under an old regime "in order to secure accountability, serve justice and achieve reconciliation."² The set of measures implemented to this end, however, often lack legitimacy and effectiveness either due to their ad hoc nature or due to their connection with the very individuals and institutions whose offenses they are intended to uncover, prosecute, and prevent. In confronting such challenges, political will is crucial in establishing and pursuing the transitional justice agenda.

While the need to redress economic crimes and corruption at the institutional state level poses a major challenge in transitional societies, transgressions often go beyond the public sector. Participants thus suggested that truth-finding mechanisms should be employed to uncover the economic interests behind crimes, focusing not only on the state, but also on private corporations,

which often benefit from the criminal violations of incumbents. Penalizing corporate complicity not only in economic crimes, but also in cases of human rights abuses must be part of a comprehensive approach to transitional justice. In this respect, the private sector should be held accountable both in terms of asset recovery and of reparations. Compelling corporate actors to contribute to reparations programs to the extent that their responsibility for abuses can be established could help states burdened with recovery address significant impunity gaps.

5. Working Group Discussions on Egypt, Libya, and Tunisia

In working group sessions, conference participants discussed transition processes in Egypt, Libya, and Tunisia.

Decades of autocratic rule characterized by systematic human rights violations, including homicide, torture, rape, enforced disappearances, and arbitrary detentions, are a common denominator of the three countries that were the focus of the conference. In addition to major civil and political rights violations, widespread economic crimes, especially corruption, continue to be a source of social discontent and economic instability. Socially, corruption has led to the loss of legitimacy, confidence, and popular trust in state institutions. Economically, corruption has reduced investment and hindered growth, resulting in increasing rates of unemployment and poverty. A comprehensive strategy incorporating international standards of integrity, transparency, and accountability is crucial when implementing policies and programs to combat and prevent corruption. Sufficient institutional resources are as indispensable as the inclusion of civil society and effective mechanisms to monitor the implementation of a sustainable transitional justice strategy that addresses human rights violations and economic crimes alike.

Among others, conference participants identified the following substantial challenges to domestic justice systems in Egypt, Libya, and Tunisia:

² UN Doc S/2004/616; 23 August 2004.





Participants of the conference on “Criminal Justice and Accountability in Arab Transition Processes,” Cairo, 25–27 September 2012

- *Lack of adequate legal frameworks for addressing major human rights violations and economic crimes;*
- *Insufficient institutional resources;*
- *Insufficiently trained judicial personnel;*
- *Lack of specific legislation criminalizing corruption in accordance with UNCAC;*
- *Inefficient reporting mechanisms hindering effective coordination and cooperation among different national authorities and other stakeholders.*

Libya faces additional challenges in its efforts to reestablish and reform state structures as tribal clans coexist with state institutions in some parts of the country and often fulfill similar functions through a parallel system of accountability mechanisms and alternative dispute settlements. Consultation and coordination among traditional and formal justice systems is needed in order to deal effectively with a justice vacuum.

Conference participants agreed that, despite many common points between Egypt, Libya, and Tunisia with regard to rights abuses, the respective reform programs should be designed according to each country’s particular context. The importance of developing a holistic, nationally owned transitional justice strategy with distinct short, medium, and long-term objectives was highlighted.

Some key recommendations included:

- *Establishing independent fact-finding committees and implementing their recommendations;*
- *Capacity-building for national stakeholders with a focus on facilitating training programs for judicial personnel;*
- *Creating links to specialists, e. g., the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence;*
- *Adopting specific laws on transitional justice, including victim compensation mechanisms;*
- *Aligning national laws with international treaties;*
- *Providing technical support, e. g. for election processes;*
- *Implementing institutional reform programs, including educational reform;*
- *Enabling asset recovery procedures based on bilateral agreements and/or applicable modalities of international cooperation in combatting crime;*
- *Mainstreaming gender issues, including increasing female participation in decision-making processes and national reconciliation initiatives.*

As reconciliation within society is one of the key objectives of transitional justice, Islamic legal and moral principles are invaluable to the success of Arab transition processes. It was strongly emphasized that principles of Islamic law that have impacted Arab legal systems are compatible with the provisions of international law and that principles of justice and the rule of law are deeply engrained in Islamic legal thinking. Accordingly, reliance on Islamic law for designing justice and accountability strategies is invaluable for strengthening support and legitimacy from within Muslim-majority societies and fostering local ownership.

All working groups acknowledged Tunisia's pioneer role in the revolutionary movements across the MENA region as well as the country's achievements along the transitional justice path. It was commonly agreed that each country's transition context was unique, rendering comparison among countries in transition and the identification of a regional role model difficult. Nevertheless, lessons from other countries' experiences with transitional justice should be learned and best practices taken into consideration. Additionally, regional consultations among national stakeholders on transitional justice initiatives should be encouraged in order to facilitate the exchange of experiences.

6. Conclusion and Future Prospects

There was recognition among participants that widespread human rights violations and systematic economic crimes and abuses of power over decades of rule required rigorous and consistent investigation and prosecution. Redressing these

crimes was essential not only in order to enable social reconciliation, but also to address extensive impunity gaps and to promote the rule of law. While addressing the legacy of the past is indispensable to uncovering the truth and establishing accountability, it is equally important to establish a future vision through an intensified dialogue that incorporates civil society. Future steps should thus be decided upon in an inclusive and comprehensive manner considering that the participation and consultation of civil society is crucial to successful transition processes. Furthermore, strengthening women's rights and ensuring their equal participation and representation in judicial and non-judicial forums is yet another condition for effective and sustainable reform processes.

While legislative and institutional reforms are among the main concerns in transitional processes, they are insufficient for the reconciliation of fragmented societies. Addressing calls for basic socio-economic rights is imperative and necessitates a holistic approach, making use of a wide range of transitional justice mechanisms.

Participants agreed to consider the content of the discussions in future decision-making processes and highlighted three points in particular – the compatibility of Islamic law and international norms, the importance of public participation in transition processes, and the respect for human dignity, the lack of which triggered the revolutionary movements across the region.

The ZIF Rule of Law Training Program plans to continue its series of expert conferences on post-conflict justice processes in the MENA region in 2014.



ZIF Rule of Law Training Program | AT A GLANCE

→ What is our aim?

The program organizes training courses and expert workshops aimed at enhancing the capacity of judicial affairs officers (JAOs) in United Nations peacekeeping operations. The role of JAOs is crucial as they assist post-conflict societies in re-building and strengthening their judicial and legal systems. The training program is coordinated by the Center for International Peace Operations (ZIF) in Berlin and the Criminal Law and Judicial Advisory Service (CLJAS) of the United Nations Department of Peacekeeping Operations (UN DPKO). It is the first comprehensive training program specifically designed for United Nations personnel working in the justice sector. The German Federal Foreign Office has been funding the training program since October 2009.

→ What is the context?

As the United Nations Secretary-General stated in his 2004 report on the rule of law and transitional justice in conflict and post-conflict societies, strengthening the rule of law is a key element of post-conflict peacebuilding. There are currently sixteen United Nations peace operations with over 200 judicial affairs officers mandated to assist national stakeholders in re-establishing and/or strengthening their local legal and judicial systems. In order to implement mission mandates, DPKO judicial affairs officers must demonstrate highly specialized technical knowledge and excellent diplomatic skills to be able to work in challenging contexts and promote international norms and standards effectively and sustainably.

→ What do we do?

ZIF and DPKO jointly organize two six-day rule of law training courses per year in the proximity of existing peacekeeping operations. The courses are based on a comprehensive instructor's manual, which was developed by DPKO with the support of the Government of Canada. Expert workshops on rule of law issues of relevance to post-conflict societies bring together training facilities, trainers and rule of law experts and provide opportunities to exchange best practices and build synergies between various international rule of law assistance efforts.

→ What is our contribution to rule of law promotion?

In addition to strengthening the professional competencies of United Nations judicial affairs officers, the program helps to foster the analytical and operational capacities of the training facilities in developing countries, where the courses and workshops are held. Lawyers and other relevant professionals from developing and post-conflict countries participate in the training courses as possible future providers of international rule of law assistance. With practice-oriented expert workshops and analysis products, the program also contributes to the conceptual development and a more sustainable implementation of international rule of law assistance.

Project Manager: Britta Madsen

Project Officer: Stefanie Kirschweg

ZIF

The Center for International Peace Operations (ZIF) was founded in 2002 by the German government and parliament to strengthen civilian capacities for international peace operations. Its core mandate is to recruit and train civilian personnel and to prepare analysis and concepts for peacekeeping and peacebuilding. ZIF works closely together with the Federal Foreign Office and is responsible in particular for German civilian personnel deployed to UN, EU, and OSCE operations. The center's integrated approach, bringing together training, human resources, and analysis under one roof, has gained worldwide recognition as an example to follow. Through joint projects with international partners, ZIF works to expand civilian capacities for peacekeeping and advance the theory and practice of peace operations.

Center for International Peace Operations (ZIF)
Ludwigkirchplatz 3-4 | 10719 Berlin | Germany
www.zif-berlin.org

CCCPA

The Cairo Regional Center for Training on Conflict Resolution and Peacekeeping in Africa (CCCPA) was established in 1994 to promote peace and stability in Africa. It was originally part of the Institute for Diplomatic Studies, but is now an independent institution affiliated with the Egyptian Ministry of Foreign Affairs. The Center aims to support peacekeeping operations on the African continent through a capacity-building approach, providing training for all those involved in peacekeeping, peacebuilding, and conflict resolution. Its primary focus is on building African capacities so that peacekeepers from Africa may assume a more active role in dealing with crises and conflicts on the continent.

Cairo Regional Center for Training on Conflict Resolution and Peacekeeping in Africa (CCCPA)
1 Omar Makram Street | Tahrir Square | Cairo | Egypt
www.cairopeacekeeping.org

CLJAS

The Criminal Law and Judicial Advisory Service (CLJAS) was established at United Nations Headquarters in 2003 to support the implementation of rule of law, justice, and corrections mandates of United Nations peace operations managed by the Department of Peacekeeping Operations (DPKO). In 2007 CLJAS became part of DPKO's Office of Rule of Law and Security Institutions (OROLSI). The Service is structured into a Justice Team, a Corrections Team, and a Policy Cell, which coordinate and oversee efforts by United Nations field missions to strengthen justice and corrections institutions.

Criminal Law and Judicial Advisory Service (CLJAS)
Office of Rule of Law and Security Institutions (OROLSI)
Department of Peacekeeping Operations (DPKO)
United Nations | 1 United Nations Plaza, DC1
New York | NY 10017 | USA
www.un.org/en/peacekeeping/issues/ruleoflaw/