



TRANSITIONAL JUSTICE PROJECT

AN INTRODUCTION AND METHODOLOGY



TRANSITIONAL JUSTICE PROJECT - THE TAHRIR INSTITUTE FOR MIDDLE EAST POLICY

THE TAHRIR INSTITUTE FOR MIDDLE EAST POLICY

The Tahrir Institute for Middle East Policy (TIMEP), a nonpartisan and nonprofit organization, is dedicated to understanding and supporting Middle Eastern countries undergoing democratic transitions and committed to informing international policymakers and the public of developments in these countries.

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TIMEP's Transitional Justice Project enables a much needed dialogue on the definition and role of transitional justice in the Arab world, the way that transitional justice policies may manifest themselves, the current and previously attempted mechanisms of transitional justice in the region, and the willingness of the society, state, and international community to see such policies through to fruition.

THE TRANSITIONAL JUSTICE PROJECT

In the wake of the Tunisian Revolution and the subsequent and ongoing events in Arab countries, citizens of many of these countries find themselves in the midst of or in a period following conflict and repression. Despite this, the discourse around transitional justice in the Arab world has been slow to take hold and governments have been hesitant, incapable, or unwilling to implement transitional justice measures, effectively depriving their populations of the very forms of justice that are necessary to bring society out of conflict and repression.

Herein comes the Transitional Justice Project (TJP), a project of the Tahrir Institute for Middle East Policy (TIMEP), founded by Non-Resident Fellow Mai El-Sadany with the support of the TIMEP staff. The project enables a much-needed dialogue on the definition and role of transitional justice in the countries of the Arab world, the potential shapes that such transitional justice policies may take, the mechanisms of transitional justice that have already been attempted in the region, and the capacity and willingness of the society, state, and international community to see transitional justice policies through to their fruition.

Beginning with the case study of Egypt, a country that has undergone multiple, distinct periods of conflict and repression and remains within such a period, TJP addresses a scenario in which the need for and failure to provide transitional justice policies has been compounded by subsequent periods of conflict and repression, complicating the situation and making this conversation more pressing than ever.

Echoing the various mechanisms of transitional justice, TJP will launch in four distinct phases: (1) Trials; (2) Truth Commissions and Fact-Finding Committees; (3) Reparations, Memorialization, and Education Efforts; and (4) Security Sector Reform.

METHODOLOGY

While benefiting greatly from existing transitional justice literature, TJP recognizes that transitional justice policies in the Arab world, both in their definitions and their forms, are likely to take a trajectory distinct from their predecessors in Latin America, Eastern Europe, and Africa. Every context is unique and thus requires a distinct set of mechanisms to address existing needs.

Additionally, TJP recognizes the complexities and interconnected nature of state institutions and government personnel within Arab countries, and asks questions about institutions and policies that do not necessarily fall under the strict academic definition of transitional justice. Further, while most traditional transitional justice literature conceives of a context in which transitional justice is thought of as a remedy for the period after repression or conflict, TJP furthers the belief that the time to discuss, consider, and conceive of transitional justice can occur even during ongoing repression, as the case of Egypt demonstrates.

Ultimately, the purpose of any transitional justice policy in any Arab country is to achieve justice in the midst of and subsequent to periods of conflict and repression. The purpose of TJP is to begin this distinct, fluid, and experimental process in the immediate time and via academic, analytical, and policy-based discussions.

TRIALS

During or subsequent to periods of conflict and repression, individuals often look to the judiciary (whether domestic or international) to bring justice to victims of rights abuses, to curb impunity among actors, and to set precedent in order to ensure that such violations do not occur again. Despite this, judicial systems in such societies may often be in need of reform and actors may not have the political will to prosecute crimes in the first place.

In light of this dichotomy, the “Trials” phase of TJP assesses the capacity of the Egyptian judiciary as a whole in order to determine whether the domestic judiciary is equipped to investigate, prosecute, and review abuses, and, if not, whether there is regional or international willingness to investigate, prosecute, and review abuses.

The “Trials” phase of TJP will consist of (1) background reports, (2) analytical pieces, and (3) a featured sub-project entitled “Court Case Spotlight.”

COURT CASE SPOTLIGHT

The Court Case Spotlight provides a snapshot of the Egyptian judiciary as a whole in order to shed light on possible trends within the domestic judiciary. The project begins to answer the question of whether the Egyptian judiciary is able to deliver justice, and by extension, whether and to what realistic degree it can play a role in any successful transitional justice policy.

While traditional transitional justice definitions look to the prosecution of rights abuses committed by state actors, the Court Case Spotlight instead assesses the capacity of the judiciary holistically. A comprehensive assessment of the judiciary is necessary to properly determine the political will, capacity, and capability of the judiciary to address the needs of a society enduring conflict and repression.

Because January 25, 2011, is a natural marker ending a prolonged period of repression perpetrated by the government of former President Hosni Mubarak, the Court Case Spotlight assesses cases brought to the Egyptian judiciary from that date until the present day. Rather than providing an exhaustive list of cases, the Court Case Spotlight is an ongoing and constantly updated sub-project that highlights a selection of cases in order to evaluate a representative sample of cases integral to an assessment of capacity for transitional justice. The project’s case selection process ensures that diverse perpetrators, victims, time periods, subject matters, and contexts are represented.

The cases highlighted within the Court Case Spotlight are tagged using one or more of the following tags, based on consultations with local observers of the Egyptian judiciary and members of civil society. The tags are not meant to be comprehensive, but to draw attention to the capacity and capability of the judiciary in a number of specific subject areas:

- (1) **Government and Security Sector Accountability:** These are cases in which government & security sector officials are on trial for crimes committed in violation of citizen rights or in violation of their official duties as enshrined by the Constitution. These cases, which involve justice for rights abuses during a period of repression, are likely the only cases which would traditionally be considered in a transitional justice paradigm.

- (2) **Implications for Rights and Freedoms:** These are cases which involve the interpretation of the rights enshrined in Egypt's new constitution, including but not limited to the freedoms of expression, assembly, and association. While not typically considered transitional justice cases, cases interpreting rights within the constitution should be tracked, especially in the wake of the ratification of a new constitution during the transitional period. The interpretation of these rights is likely to affect transitional justice and help define what constitutes a violation in the first place.
- (3) **Implications for Religious Minorities:** These are cases which try individuals for crimes implicating religious rights or for crimes committed against religious minorities targeted because of their religious identity. These cases shed light on the historical failure of the judiciary to safeguard minority rights and the state's tendency to instead resort to informal reconciliation sessions in matters involving minorities. Observers of the Egyptian judiciary suggest that the ability or inability of the judiciary to safeguard the rights of its most marginalized members is indicative of the state of the judiciary as a whole.
- (4) **Security-Related Charges and Designations:** These are cases which designate entities as terrorist or try individuals and/or entities for terrorism-related or security-based crimes. The Security-Related Charges and Designations cases shed light on the interpretation of the disproportionately high number of terrorism and national security laws passed during the transitional period. Observers of the Egyptian judiciary suggest that because government officials are increasingly relying on national security and terrorism as pretense to constrain rights and refrain from implementing transitional justice policies, this category is important to single out.

The TJP team has conducted extensive literature review on transitional justice and the Egyptian judiciary and continues to engage in daily Arabic and English media monitoring, ultimately making discretionary decisions on what cases are included in the Court Case Spotlight. In essence, cases are included to ensure that users of TJP have access to the most representative portrayal in the determination of the judiciary's political will, capacity, and capability.

For every case highlighted in the Court Case Spotlight, data will be provided on the court circuit, presiding judge, procedural history, verdict, summary of the reasoning, relevant legal anecdotes, and implications.

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DEFINITIONS

WHAT IS TRANSITIONAL JUSTICE?

In the midst of and in the aftermath of significant rights abuses, transitional justice is “not a ‘special’ kind of justice, but an approach to achieving justice in times of transition from [and during] conflict and/or state repression.”¹ Transitional justice aims to achieve accountability for victims, guarantee that violations will not occur again, solidify the rule of law, and establish popular trust in institutions.

Any successful implementation of transitional justice in the midst of and in the period subsequent to conflict and repression should be holistic. It should incorporate a number of transitional justice mechanisms that address the particular needs of the society depending on the capacity of its institutions, the extent and form of the conflict and repression that the society underwent, and the willingness of regional and international partners to provide assistance. No single transitional justice mechanism is effective on its own, as every mechanism achieves a distinct result.

Among the most common mechanisms of transitional justice are trials (whether in domestic court or international or hybrid tribunals), truth commissions, reparation programs, memorialization projects, and security sector reform.

Transitional justice emerged in the late 1980s and early 1990s as a response to the changes occurring in Latin America and Eastern Europe and as a reaction to demands that foreign leaders be held accountable for perpetrating serious human rights violations. Since then, transitional justice has been planned, attempted, and implemented to varying degrees of success around the globe.

¹ The definition of transitional justice relied on in this project was coined by the International Center for Transitional Justice.



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