

An Introduction & Methodology



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 conflict and repression or in a period following it. Despite this, the discourse on transitional justice in the Arab world has been slow to take hold and governments have been hesitant, have lacked the proper capacity, or have been 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). 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 even today, TJP addresses a scenario in which the need for and failure to provide transitional justice policies have been compounded by subsequent periods of conflict and repression, complicating the situation and making this conversation more pressing than ever. TJP will, through its research and analytical work, explore the different mechanisms of transitional justice: trials, truth-seeking measures, reparations, memorialization, education efforts, and security sector reform. TJP will continue to launch subprojects that delve deeper into these mechanisms, as well as research reports and analytical commentaries on the themes brought to light by said subprojects.

METHODOLOGY

While benefiting greatly from existing transitional justice literature, TJP recognizes that transitional justice policies in the Arab world, in both 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 and conflict, TJP is centered on the belief that the time to discuss, consider, and conceive of transitional justice can occur even during ongoing repression and conflict, as the case of Egypt demonstrates.

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

COURT CASE SPOTLIGHT

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 societies emerging from conflict and repression 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, TJP will assess the capacity of the Egyptian judiciary as a whole in order to determine whether the judiciary is equipped to dole out transitional justice—effectively, the question of whether it has the capacity and the willingness to investigate, prosecute, and review abuses, and, if not, whether there is regional or international willingness to investigate, prosecute, and review abuses in non-domestic forums.

The Court Case Spotlight, a subproject within TJP, 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 mostly 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 during or emerging from 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 beginning from that date until the present day. Rather than explore an exhaustive list of cases, the Court Case Spotlight is an ongoing and constantly updated subproject that evaluates a representative sample of cases—the analyses of which are integral to an assessment of the judiciary's capacity for transitional justice. The project's case selection process ensures that diverse perpetrators, victims, time periods, subject matters, and contexts are represented.

Additionally, and upon consultations with local observers of the Egyptian judiciary, practitioners, and members of civil society, the cases highlighted within the Court Case Spotlight are categorized using one or more of the following tags. 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 and 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 Egyptian 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 2014 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 constitution issued 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 Egyptian state's tendency to instead resort to informal reconciliation sessions rather than formal judicial processes 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 highlight.

In preparation for the launch of this subproject, the TJP team has conducted an extensive literature review on transitional justice and the Egyptian judiciary and continues to engage in daily Arabic and English-language 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.

FACT-FINDING FACT SHEETS


During or subsequent to periods of conflict and repression, truth seeking—which involves establishing the truth and constructing a narrative around the period of conflict and repression—is one of the key building blocks upon which most transitional justice policies are built. Through this established narrative, victims and marginalized persons are provided with a space to share their telling of events, to receive affirmation of their experiences, and to heal by reclaiming their voices after suffering severe rights violations. Through the investigative and fact-finding process, information that may otherwise have been unknown comes to light, steps are taken toward identifying violations and assigning blame for such, and recommendations are made. Further, societal divisions that would otherwise fester because of a lack of transparency or a failure to recognize the reality of the past are curbed.

In Egypt, the most common form of truth-seeking measure since January 25, 2011, has been the fact-finding committee. Fact-finding committees are nonjudicial bodies equipped with a specific mandate (temporal and/or thematic) to gather evidence, investigate claims, interview key persons, issue reports, and set forth non-binding recommendations. In Egypt, fact-finding committees can be established by the government's executive or legislative branches, the National Human Rights Council (NCHR, the country's national human rights institution), and civil society organizations; most commonly, they have been created by the executive branch and the NCHR.

Fact-Finding Fact Sheets, a TJP subproject, provides a comprehensive, in-depth assessment of the truth-seeking initiatives established in Egypt since January 25, 2011, to the present day, and is intended as a tool to assess the country's commitment to truth seeking. These fact sheets delve deep into the mechanics, findings, and approach of every fact-finding committee created by the executive branch of government or the NCHR since January 25, 2011.

For every fact-finding committee, the subproject identifies (1) when the committee was established, (2) who established it, (3) what its mandate was, (4) who its members were, (5) what its outcomes were, and (6) a brief analysis on its contribution to the truth-seeking and transitional justice process in Egypt. In the brief analysis, each Fact-Finding Fact Sheet addresses the following factors: (a) the strength of the committee's fact-finding methodology, (b) the neutrality, tone, or bias of the fact-finding committee's report, (c) the conclusiveness of the committee's findings and its ability to contribute to determining the truth, (d) the strength of the committee's recommendations, and (e) how the committee's findings compare to public opinion, reports in the media, and reports by nongovernmental organizations on the same subject.

Ultimately, and by presenting a comprehensive assessment of the truth-seeking measures created by Egyptian authorities since January 25, 2011, the Fact-Finding Fact Sheets subproject answers the question of whether the Egyptian state is able to establish the truth and, by extension, whether and to what realistic degree it can play a role in any successful truth seeking and transitional justice policy.

In preparation for the launch of this subproject, the TJP team has conducted an extensive literature review on truth seeking, transitional justice, and Egyptian fact-finding initiatives, and continues to engage in daily Arabic and English-language media monitoring. 

APPENDIX

What is Transitional Justice?

During 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.” 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 during and after a period of 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/hybrid tribunals), truth-seeking measures, reparation programs, memorialization projects, and security sector reform.

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