

What is Transitional Justice?

Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition for the victims and to promote possibilities for peace, reconciliation and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly; in others, they may take place over many decades.

This approach emerged in the late 1980s and early 1990s, mainly in response to political changes in Latin America and Eastern Europe—and to demands in these regions for justice. At the time, human rights activists and others wanted to address the systematic abuses by former regimes but without endangering the political transformations that were underway. Since these changes were popularly called “transitions to democracy,” people began calling this new multidisciplinary field “transitional justice.”

Governments there adopted many of what became the basic approaches to transitional justice. They include the following initiatives:

- **Criminal prosecutions.** They are judicial investigations of those responsible for human rights violations. Prosecutors frequently emphasize investigations of the “big fish”: suspects considered most responsible for massive or systematic crimes.
- **Truth commissions.** These commissions of inquiry have the primary purposes of investigating and reporting on key periods of recent past abuse. They are often official state bodies that make recommendations to remedy such abuse and to prevent its recurrence.
- **Reparations programs.** They are state-sponsored initiatives that help repair the material and moral damages of past abuse. They typically distribute a mix of material and symbolic benefits to victims, benefits which may include financial compensation and official apologies.
- **Security system reform.** These efforts seek to transform the military, police, judiciary and related state institutions from instruments of repression and corruption into instruments of public service and integrity.
- **Memorialization efforts.** They include museums and memorials that preserve public memory of the victims and raise moral consciousness about past abuse, in order to build a bulwark against its recurrence.

While these initiatives are widely understood to form a basis for transitional justice efforts, they do not represent an exclusive list. Many societies have developed other, creative approaches to past abuse—one reason why the field has gained both strength and diversity over the years.

A HOLISTIC APPROACH

Dealing with widespread human rights violations raises large practical difficulties. A country’s political balance may be delicate, and a government may be unwilling to pursue wide-ranging initiatives—or it may be unable to do so without putting its own stability at risk.

The many problems that flow from past abuses are often too complex to be solved by any one action. Judicial measures, including trials, are unlikely to suffice: If there are thousands or hundreds of thousands of victims and perpetrators, how can they all be dealt with fairly through the courts—especially in cases where those courts are weak and corrupt? Even if courts were adequate to the task of prosecuting everyone who might deserve it, in order to reconstruct a damaged social fabric, other initiatives would be required.

After two decades of practice, experience suggests that to be effective transitional justice should include several measures that complement one another. For no single measure is as effective on its own as when combined with the others.

Without any truth-telling or reparation efforts, for example, punishing a small number of perpetrators can be viewed as a form of political revenge. Truth-telling, in isolation from efforts to punish abusers and to make institutional reforms, can be viewed as nothing more than words. Reparations that are not linked to prosecutions or truth-telling may be perceived as “blood money”—an attempt to buy the silence or acquiescence of victims. Similarly, reforming institutions without any attempt to satisfy victims’ legitimate expectations of justice, truth and reparation, is not only ineffective from the standpoint of accountability, but unlikely to succeed in its own terms.

Just as important, transitional justice should be designed to strengthen democracy and peace—the key goals for societies picking up the pieces after periods of mass abuse. These goals are more likely to be reached with active consultation of, and participation by, victims groups and the public. A society’s choices are more likely to be effective if they also are based on a serious examination of other societies’ experiences as they emerged from a period of abuse. This reduces the likelihood of repeating avoidable errors, which transitional societies can rarely afford to make.

Finally, a holistic approach implies taking into account the full range of factors that may have contributed to abuse. Sensitivity to gender issues in personal, family and social relationships should be a central element of all transitional justice measures, and will help in developing an understanding of the distinct injuries suffered by women.

TRANSITIONAL JUSTICE IN INTERNATIONAL LAW

As the field has expanded and diversified, it has gained an important foundation in international law. Part of the legal basis for transitional justice is the 1988 decision of the Inter-American Court of Human Rights in the case of *Velásquez Rodríguez v. Honduras*, in which the Inter-American Court found that all states have four fundamental obligations in the area of human rights. These are:

- To take reasonable steps to prevent human rights violations;
- To conduct a serious investigation of violations when they occur;
- To impose suitable sanctions on those responsible for the violations; and
- To ensure reparation for the victims of the violations.

Those principles have been explicitly affirmed by later decisions by the court and endorsed in decisions by the European Court of Human Rights and by UN treaty body decisions such as the Human Rights Committee. The 1998 creation of the International Criminal Court was also significant, as the Court’s statute enshrines state obligations of vital importance to the fight against impunity and respect for victims’ rights.

LOOKING AHEAD

New practical challenges have forced the field to innovate, as settings have shifted from Argentina and Chile, where authoritarianism ended, to include societies such as Bosnia and Herzegovina, Liberia and the Democratic Republic of the Congo, where the key issue is shoring up peace. Ethnic cleansing and displacement, the reintegration of ex-combatants, reconciliation among communities and the role of justice in peacebuilding have become important new issues.

Transitional justice practitioners have also engaged with local, or “traditional,” justice measures. In some countries, such as Sierra Leone and Uganda, communities may wish to use traditional rituals to foster reconciliation of warring parties or reintegrate ex-combatants. In such cases, the role of transitional justice is to ensure that a holistic approach is taken—one that may include the ritual but does not exclude the possibility of using other transitional justice measures.

Ultimately, there is no single formula for dealing with a past marked by large-scale human rights abuse. All transitional justice approaches are based on a fundamental belief in universal human rights. But in the end, each society should—indeed must—choose its own path.