

# Truth, Accountability, and Asset Recovery

## How Transitional Justice Can Fight Corruption

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# “Transitional Justice and Recovery of Stolen Assets: The Absent Truth!”

**Chawki Tabib, Chairperson of INLUCC**

More than nine years have passed since the "Revolution of Freedom and Dignity" took place, although the Tunisians' assessments of their political, economic and social outcomes differed, objective data and unmistakable evidence confirm this. Freezing the assets of Ben Ali, his family and his cronies was a top priority since the first days that followed on January 14, 2011. Then the donors rushed to provide material, logistical support and expertise to dozens of judges, experts, administrators and Tunisian civil society activists in the areas of stolen assets recovery and transitional justice in general. Despite their different assessments of the transitional justice process and the outcome of the Investigation Commission on bribery and corruption' work, and the Truth and Dignity Commission's work, it is fair to acknowledge that they have not missed the goal - like some other experience - When they focused on the relationship between the tyranny and the corruption systems that was supporting the Ben Ali regime and their actions.

What are the deficiencies of the recovery of assets process in Tunisia?

## **Weak Results**

We have reliable data that the Tunisian state has recovered only 05% of what the State was supposed to recover. Assets recovered include the following:

- A yacht owned by Belhassen Trabelsi, who used it to flee on January 14, 2011 from the port of Sidi Bou Said, then left it at one of the Italian ports, and then fled to Canada. Italy returned it to Tunisia. A yacht belonging to the Qais bin Ali was confiscated in Tunisia by the Tunisian judiciary.
- A small passenger plane owned by Sakhr Al-Materi was confiscated in Tunisia, then sold to a private person. -An amount of \$ 28 million from one of the Lebanese banks was deposited in the Leila Trabelsi account - which is the largest amount - revealed by the Lebanese authorities in implementation of an international judicial cooperation and refused to return it to Tunisia without issuing final judgments against Leila Traboulsi and in the end the amount was recovered thanks to the intervention of the State of Qatar.
- An amount of 03 million and 500.000.000 euros was deposited in the account of Slim Shiboub in one of the Swiss banks. After the voluntary return of the latter and the Swiss authorities revealed his account, he acknowledged it and agreed to return it to Tunisia before starting judicial investigations on both Tunisian and Swiss sides.
- An amount of one million five hundred thousand euros was deposited also in one of the Swiss banks in the account of the Ben Ali son-in-law of Salim Zarrouk and his wife Sirine Ben Ali, as well as revealed by the Swiss authorities and the same procedures were followed in his case to recover it, as Salim Zarrouk and Sirine bin Ali were unable to leave the country and were referred to Justice.
- An amount of 270,000 euros was deposited in the Qais Bin Ali account with a Swiss bank, and a judgment was issued by the Swiss court itself regarding corruption of its source - money laundering - and the amount was returned to the Tunisian State accordingly.

The credit for recovering these cheap sums is due to chance factors and the cooperation of the Swiss state more than to the planning and good management of our state's institutions. It is important here to remember that we consider the sums referred to as low since the World Bank estimated the value of what

was stolen by Ben Ali and his cronies during the dictatorship of no less than 40 billion US dollars. Placement in relation to the outcome, given that data are not available, meaning that the “truth is absent.”

### **Messing Up**

The Tunisian State institutions that were entrusted with the task of recovering these funds committed fatal errors, which errors must be examined, and lessons be learned from them, and why these perpetrators are not held accountable, especially if their bad faith and crimes are proven. On the top of all mistakes is the lack of coordination between the various powers and actors.

In our view, the “truth” is a tool to expose the system of corruption, tyranny and oppression, and to educate the Tunisians, especially the generations that did not coexist with these black or gray eras of our history, preventing recurrence of corruption and human rights violations.

Many lessons can be learned in relation to the Tunisian experience. They are not limited to the era of Ben Ali alone, especially since the violations have been the same since more than two centuries and the system inherent in corruption is the same. Which confirms that the problem relates to a system and not to specific individuals, who were corrupt or authoritarian, which is the same system that allows corruption in public deals and assignments and revives smuggling tributary to terrorism.

It is the State within the State that prohibits the digitization of the administration and the control of the funding of parties, societies and electoral campaigns, and it is the one that prevents legislative reforms, and even if laws are issued, it prevents the issuance of operational orders to improve their implementation.

It is the State within the State that prolongs the settlement of corruption cases to not less than seven years.

The Tunisian experience achieved several successes, but it could have been much better.

# Transitional Justice and Economic Crimes: A View from South Africa

**Michael Marchant**,<sup>1</sup> *Investigation and Advocacy Researcher at Open Secrets South Africa*

## Limitations of the South African TRC

Transitional justice, as a project, is fundamentally concerned with changing the norms and behaviours of society in order to create a more just society.<sup>2</sup> This is not just regarding procedural and institutional changes, but changes in notions of trust and legitimacy that are held by the citizenry. Corruption and economic crimes are often central to the erosion of both trust and legitimacy. As a result, addressing economic crimes that have such crucial effects on those norms and levels of trust is essential. There is also particular value to be found in pursuing prosecutions and the retrieval of stolen assets. These approaches have the potential to end impunity for economic crime, and disrupt networks of criminality and corruption that span private and public sectors, often surviving transitions intact.

It is no longer a surprise to hear criticism of the South African Truth and Reconciliation Commission (TRC). The Commission operated at a challenging time, and in a context where political compromise and the need to nurture peace and reconciliation were vital. Indeed, the Commission contributed greatly to a deeper understanding of the brutality of apartheid and created an important record of the civil and political crimes committed by the regime and its forces.

Failure to prosecute those denied amnesty and reluctance to ensure reparations are paid to victims identified by the Commission have been failures of the democratic government, and not the Commission. Despite this, there was a fundamental gap in the work of the TRC. The Commission profoundly failed to turn a spotlight on to economic crimes or grand corruption, contributing not only to a gap in the Commission's findings and record, but crucially the obscurity of these issues in the democratic dialogue in South Africa.

The consequences of this failure are manifold. Perhaps most importantly, those corporations and individuals who were responsible for both aiding and abetting the crime of apartheid and for profiting from it have not faced serious investigation, prosecution or sanction in South Africa. Neither was there ever a concerted effort to recover assets lost as a result of criminality. This has encouraged a culture of impunity and allowed networks of corruption to survive and draw in new politicians and businessmen. The entrenched problem of corruption, manifesting itself now as 'state capture', is evidence of these continuities both of actors and practice. The reality is that the kind of deep state networks that define contemporary 'state capture' are emblematic of continuities between the secretive and profit-driven networks that thrived under apartheid and those of today.

Moreover, South Africa has been unable to shake the racialised view of corruption and economic crime that is supported by the perception that they are something new (i.e. a result of black rule). The current

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<sup>2</sup> Andrieu, "Dealing With a 'New' Grievance: Should Anticorruption Be Part of the Transitional Justice Agenda?."

fight against corruption in South Africa is undermined by a basic lack of appreciation of the nature of that corruption and the criminal networks that facilitate it, and that they are continuities of a profoundly corrupt system that predates democracy.<sup>3</sup>

### **Breaking from the Past, and New Opportunities**

The TRC's failures and its consequences do not have to be permanent. A transition is always and everywhere a process, often lengthy, and never limited to either one moment in time or a single response. Often, despite one path being politically impossible at one point, it is not precluded at another. It is not only in South Africa where states and civil society have grappled with economic crimes long after an actual change in regime. The establishment of a new commission to examine economic crimes under the Argentinian military junta over 30 years ago is testament to this, as is the ongoing work of civil society in Armenia to address corruption and human rights violations from its past.

In South Africa, there are two processes that are worth examining in this regard. The first is the People's Tribunal on Economic Crime, a civil society led tribunal that holds public hearings to hear evidence of economic crimes from apartheid to the present day. The tribunal makes use of public quasi-judicial hearings to gather evidence of economic crimes in South Africa and advocate for accountability. The Tribunal's panel was made up of legal minds and representatives of civil society and was chaired by former Constitutional Court justice Zac Yacoob.

The first hearings of the Tribunal took place on corruption in the arms trade in South Africa between 1977 and today. The powerful advantage of the Tribunal is its capacity to identify continuities in violations, particularly those of an economic nature that include powerful corporations. It is also, unlike a court, not limited in the kinds of evidence it can hear, allowing for both public participation and a contribution to truth telling and the creation of a public record on past and present violations.

The final findings of the panel recommended further investigation and prosecution by the state. In addition, the findings spoke directly to the continuities in economic crimes over time in South Africa, and the nature of the structures that underpin them. In these findings, the panel held that *"We would also emphasise that state capture is to some extent also a result of the corrupt activities that had gone before it. Absent the violation of United Nations sanctions, and the corrupt Arms Procurement Package, the kind of state capture described in the evidence would probably not have occurred. The examples of state capture mentioned here are the tip of the ice-berg"*.<sup>4</sup>

The second contemporary process is a Judicial Commission of Inquiry into State Capture, the 'Zondo Commission'.<sup>5</sup> The Commission was established by the former President with a mandate to gather evidence related to allegations of grand corruption, fraud and state capture in South Africa over the period of the last decade. This includes allegations of corruption related to the conduct of government departments, the former President, the Cabinet, and other officials in fraudulent tenders, corruption and other irregular and corrupt conduct.<sup>6</sup>

While the judicial Commission is not mandated to investigate and gather evidence of past economic crimes, it is important to discuss for several reasons. For one, the very need for the Commission arguably is

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<sup>3</sup> Hennie van Vuuren, *Apartheid, Guns and Money: A tale of profit* (Jacana: Cape Town, 2017).

<sup>4</sup> The findings can be accessed at the Tribunal website, URL: <https://corruptiontribunal.org.za/findings/>.

<sup>5</sup> So named because it is chaired by the Deputy Chief Justice Raymond Zondo.

<sup>6</sup> Terms of Reference of the Commission of Inquiry into State Capture, Corruption and Fraud, Government Gazette, 25 January 2018, Available: [https://sastatecapture.org.za/uploads/Terms\\_Of\\_Reference.pdf](https://sastatecapture.org.za/uploads/Terms_Of_Reference.pdf).

fundamentally linked to the failure of the TRC to consider economic crimes, and thus the latter's failure to disrupt corrupt networks. Secondly, the Commission provides an opportunity to break with the mistake of the TRC, particularly in terms of which perpetrators and actors it brings to the centre of its analysis.

The Commission is in the middle of its work and is due to deliver a final report to the President in early 2021. While the Commission does not have direct power of sanction, it makes recommendations to the President that can provide powerful impetus to further action and accountability. Further, it has extensive powers to subpoena witnesses and evidence, and can refer cases to the investigative and prosecuting authorities where appropriate while its work is ongoing. This includes referring matters to the asset recovery unit within the National Prosecuting Authority (NPA) which can apply to court to freeze assets pending civil or criminal litigation.

## **Conclusion**

South Africa is thus a powerful example of why it is essential to address economic crime and corruption in transitional justice processes. The failure of the TRC to do so undermined the pursuit of truth, justice and reparations. Yet contemporary efforts to address these issues, whether by civil society or the state, show that it is never too late to tackle these crimes and those who perpetrated them head on. It is only in doing so that networks of corruption and criminality can be disrupted, and impunity ended.

# Truth, Accountability, and Recovery of Stolen Assets

**Layla Riahi**, member of Manich Msemah and cofounder of the Tunisian Observatory of the Economy

I will be interested in the concept of "transition" that underlies transitional justice, as many of the political conceptual frameworks that Tunisia knew during the revolution in terms of "transitology."<sup>1</sup>

The study of transition began almost in the eighty years, to study the changes experienced by southern Europe and Latin America, then it became the intellectual framework in which the transformations in eastern and sub-Saharan Africa are studied and Arab countries are taught today.

The subject of this science is originally a study of the pathways of systems change and their nature. In its beginnings, it was based on the study and balance of powers and actors in change and their resources, then it soon turned to the study of the **transition to democracy** and research became mainly concerned with issues such as measuring the fragility of democratic systems resulting from framed transition paths, the ability of authoritarian systems to adapt, and measuring the stability of the election system. In the absence of real democracy, too: the political and economic mechanisms that are associated with democratic transition.

Since the beginning, the **transition to democracy** has been accompanied by another path, which is the **economic transition towards liberalization**. Whenever I know a political earthquake, financial organizations will enter the line to urge the liberalization of the economy. Given the convergence of the two tracks, the School of **Transition to Democracy** has gradually become an ideology for actors in international cooperation and an intellectual framework for structural reform policies by funders.

But the failure, which almost all experiences of **transition** at economic, social and environmental levels have exacerbated by the exacerbation of inequality, corruption and subordination, as well as at the political level with the return of dictatorial regimes, brings the science of transition back to its first square and its basic question: the **transition towards what?**

Today we see clearly in the Tunisian example that the transition to democracy, framed by different systems of elections, transitional justice, and the economic transition, has not led to any significant changes in the economic, political, or social justice situation. Rather, this path deepened inequality, corruption and a general sense of injustice, and gave rise to a loss of hope for change.

Our country, like many Arab and African countries, is ruled by a minority, which has interacted with events since colonialism and has known changes in its composition but has generally preserved its basic characteristic, which is to stay at the top of the socio-political and economic pyramid, the exploitation of proximity, power, wealth generation and accumulation.

The period of Ben Ali was characterized by the expansion of the scope of the action of this (privatization) minority, and I knew the emergence of formations of "Mafia" who live under the wing of the political authority (Trabelsi and what followed), but after Ben Ali fled, the picture turned and the political formations lived under the wing of the Mafia minority<sup>2</sup>.

This image is at the level of the system of power and the minority who benefit from the national wealth. On the other hand, at the production level, we find four societal groups: farmers, informal workers, wage earners, and owners of small and medium-sized economic initiatives. In turn, it is the groups that moved from December 17 to January 14 and expressed their will and awareness of their interest in change. "The

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<sup>1</sup> <https://www.cairn.info/revue-internationale-de-politique-comparee-2013-3-page-19.htm>

<sup>2</sup> Aziz Krichen, *L'autre chemin*, ed. script. 2019

people want to overthrow the regime", "No fear, no fear, power belongs to the people", "Degage", "work, freedom, national dignity"... Slogans raised in the 2010-2011 winter respond with a high degree of clarity to the question, "Going for what?"

Through the four categories, the will to destroy the existing system of government and get the state out of the clutches of the influential minority, restore power to the people, end the police system, and establish an economic pattern that preserves rights and sovereignty.

The world responded to the Tunisian people's call for an integrated transition system: elections, transitional justice, a transitional economy, a transitional civil society ... but the existing local political components were not able to draw or present a vision of the required transition. The transition was framed by agreements, loans, gifts, funds, and institutions, foremost of which are the International Monetary Fund, the World Bank, and various other mechanisms such as international cooperation, private diplomacy, and democracy support programs ... in a systematic and smooth manner. Something that made the question, "Move towards what?" Postponed and implicitly overridden.

### **Why am I talking about economics when our topic is transitional justice?**

Almost all political crimes committed by the various authorities in Tunisia were aimed at preserving the balance of power in favor of the influential group, in order to preserve its economic interests and develop its proceeds. The main motive is greed, and the means is power, and the primary device is the state, so that it is the state's organs, laws, procedures and even its properties are automatically prepared to benefit the people who catch it. To get out of this trap, the system must first be dismantled. If the mechanisms of corruption, tyranny, and exploitation prevail, control over them remains the primary goal for anyone looking for power.

But in reality, when trying to dismantle the system and displace the rentier mafia-controlled category in it, you realize that it has led the political transition paths (elections) and economic transition (exporting sectors). And the transitional justice system collides with these two tracks, which are based on the controlling group in the political and economic wheels in their search for security and political stability. This Conflict in tracks is the result of the concept of justice being coupled with "transition" under the theory of "Hybrid regimes". What is certain today is that a framed transition often leads to relative democracy. To cover failure, this theory considers it normal for justice to be relative, transitional, since the desired change is still far from the absence of an actual democracy. However, the concept of justice loses its effectiveness and its meaning, if not absolute and fixed.

On the other hand, justice from the perspective of international and domestic legal frameworks is one thing, and justice from the perspective of society is another. What Tunisians see as "unfair" in their country mainly relates to the economic mode and distribution of wealth, including political representation and the practice of democracy, including also the value of the individual in society in the face of manifestations such as freedom, marginalization and exploitation.

The Tunisian people have revolted mainly on the phenomenon of the minority benefiting from this mode at the expense of the public good and sovereignty, and who are responsible for its communication to this day despite its proven inefficiency. This minority is the main enemy of all the components of society seeking change, it is the rentier group and its mafia expansions, whose interests are attached to the interests of liberal external forces, and they work to protect the system of exploitation, tyranny, corruption and positioning in it.

### **Did the transitional justice arsenal help the Tunisian people get rid of the clutches of this minority?**

In fact, during this framed transition in Tunisia this category was very prosperous. How can we explain that after the success of a revolution calling for the overthrow of the regime and under an integrated framed path for the age of justice, democracy and development, a figure like Al-Baji Qaid Essebsi will come to power? Personality, from the perspective of justice that the Tunisian people demand, is supposed to be held accountable.



The flaw, according to my opinion, from what I monitored from my site, lies in dealing with things as measures that must be taken to liquidate a moral legacy according to international specifications. Whereas it is related to a failed economic model supported internationally by ideological organizations and locally from a corrupt minority, automatically generates corruption and tyranny.

Unfortunately, I believe that the concept of transitional justice has contributed deeply to two things:

1. Devoting impunity by imposing justice and thus adding blurry lines to the lines between right and wrong, public interest and private interest ...
2. Reducing the radicalization of demands, dismantling its popular support and directing prospects towards accepting half-solutions and half-positions, thus killing the desire for change.

If there is automatic impunity and there is no desire for change, can we still speak of transitional justice? And that was even on the moral and cultural level? Can we still talk about any transfer? If the system is not dismantled with the use of an absolute, stable and effective concept of justice, all efforts of the components of the political class will only focus on restoring them and re-bringing them back into a new appearance.

In the meantime, the shortest and most effective way to dismantle the system remains to scrutinize the debts and policies that were practiced during the dictatorship and the decisions taken in the name of the people against the people. Then it will become clear to all parties that have benefited from the plunder of wealth and the exploitation of influence and what they have done for that.

# What Are the Challenges for Truth Commissions and Commissions of Inquiry in Examining Corruption and Economic Crimes?

**Bai Mass Saine, Commissioner, the Gambia Commission of Inquiry to Investigate the Financial Activities of Public Bodies, Enterprises, and Offices as Regards to Dealings with Former President Yahya Jammeh and Connected Matters**

## **The Janneh Commission: Lessons Learned**

1. Recognition of the Commission itself --- credible people must be appointed to avoid controversy after the findings. Composition of the Commission must be done right from Day 1.
2. Ability of investigators to unearth evidence from willing witnesses; unwilling witnesses need to write a personal declaration in private. In Camera hearings are necessary if sensitive information will be disclosed. Matters of national security cannot be discussed in the open.
3. Findings must demonstrate that public funds were actually used wrongly --- central banks records, swift transfers, sale and purchase of landed property, etc. Sources of funds in the Jammeh Foundation for Peace account?
4. Acceptance of recommendations --- The Current President and his Cabinet have to decide; selective rejections, etc. Will certain individuals be pardoned for unknown reasons whilst others will be brought before the law?
5. Transparency of recovered funds; how much has been recovered, what are they used for? Will the funds be used for reparation or diverted to other uses?
6. Enforcement of Interim Orders freezing both moveable and immoveable assets of the former President and his close associates, including businesses that helped corruption. Powers of the Commission to make rulings derived strengthened by the Current Head of State. Only the Current President or the Supreme Court can reverse the rulings made by the Commission.
7. Territorial reach is key --- powers over local environment are given but international jurisdiction needs the political will of foreign governments
8. Mutual Legal Assistance to recover Potomac Mansion --- proof needed; amount stolen, account statements of President and his close associates, cash transactions by agents!
9. Panama Papers --- \$13M in the name of a lawyer, not in the President's name!
10. Former President claimed to be rich for life and would rule The Gambia for a billion years; naming and shaming has a political dimension that requires tact from the Commission.
11. Disclosure of assets or monies held in foreign banks very difficult to get.

12. Remuneration and reward of the Commissioners; delays and reluctance from Minister of Justice especially after submission of the Final Report.

**Rafik Grigoryan, First Deputy Minister of Justice, Armenia**

**Good morning/afternoon  
Your Excellencies,  
Distinguished guests,  
Ladies and gentlemen,**

It is an immense pleasure to be here today in this conference along with the speakers and experts from different countries and to speak on transitional justice processes in Armenia.

Before talking about current processes in our country, I would like to describe the historic path of Armenia, which led to 2018 velvet revolution.

The modern Republic of Armenia became independent in 1991 during the dissolution of the Soviet Union. Yet, during 1991 to May 2018 mass violations of human rights have periodically occurred in the Republic of Armenia, accompanied with persistent systemic and political corrupt practices. Not only, election fraud, political persecutions, murders, death of 10 people in a crackdown during protests in 2008, but also mandatory confiscation of citizen's property and other violations occurred.

This was the reason why 2018 peaceful revolution happened, since people wanted to put an end to this mass violations.

After, political changes in 2018 Armenia initiated a process of large-scale economic and legal reforms.

To address current challenges and implement transitional justice tools, last year the Government of Armenia adopted number of strategies- judicial and legal reforms strategy, anti-corruption strategy, strategy on protection of human rights, strategy for the country's penitentiary and probation domains.

These strategies enabled us to start reforming a number of areas. As a result, the **strategy of judicial and legal reforms for 2019-2023** set the following goals-conducting constitutional reforms, reforming the electoral legislation, ensuring independence and impartiality of judiciary, judicial system free from corruption and patronage, finally enforcement of transitional justice tools, which we will discuss in details.

I would like to state, that Armenian government declared the fight against corruption one of its priorities. Thus, **adoption of Anti-corruption strategy for 2019-2022**, aims to development of anti-corruption system.

This year substantial steps have been taken towards adoption of asset recovery legislation in Armenia. The law is based on the concept of unexplained wealth forfeiture and applies to assets obtained before the adoption of the law.

First, the assets of the person are evaluated against the known income of the person at the moment of their acquisition. If the acquisition of the assets does not seem to be justified by the sources of income known to competent authority and if the person does not present additional evidence to support the lawfulness of acquisition of the assets, the latter are declared as unlawfully obtained.

Since asset recovery framework is much larger in the international practice, in addition to this one piece of legislation, we are currently taking steps to include a mechanism similar to civil recovery in our new Criminal code and plan to consider adoption of extended criminal confiscation mechanisms in the future.

Turning to current reforms of judiciary, we plan to.

**-Introduce new procedures for the appointment of judges in line with international standards,**

- **Introduce grounds and procedures for disciplinary liability in line with international standards,**
- **Raise remuneration of judges and their staff.**

For insuring independence of judiciary and eliminating the crisis and high tension against Constitutional court, a referendum will be held in April 5 to vote for termination of power of judges who were linked with past violations and corruption mechanisms.

Dear Colleagues, introducing overall steps that Armenia makes towards transitional justice, now I would like to address questions related to the process of its implementation.

As I mentioned, the necessity of implementing transitional justice tools relates to mass violations of human rights periodically occurred in the Republic of Armenia during the period from September 1991 to May 201. This was underlined in a number of international reports.

The Government is persistent to enforce some tools of transitional justice, aimed at elimination of the aftermath of long-lasting distortion of the constitutional objectives of the law-enforcement and justice systems in the process of their functioning, and restoration of civil solidarity.

As a result, the strategy of judicial and legal reforms aims **to strengthen the rule of law through the application of the transitional justice instrument.**

For carrying out the above mentioned actions, in 13.12.2019 The Ministry of Justice has prepared and published a report on international experience on Fact Finding Committees and conceptual approaches on the establishment and functioning of the Fact Finding Committee in Armenia on which the public discussion was held in 26.12.2019.

Currently, a draft law on “Organization and Functioning of the Fact-Finding Committee in the Republic of Armenia” is being elaborated.

The draft law defines mandate for the Committee, which relates to collection of facts concerning the mass, periodical violations of human rights at least in the following fields:

- (a) all the electoral processes since September 1991;
- (b) political persecutions in the post-election processes since September 1991;
- (c) compulsory alienations of property for the needs of the state or the society in Armenia;
- (d) other forms of expropriations;
- (e) army officers deceased at non-combat conditions.

Other issues related to the powers of the Committee, the fact-finding procedure and final report are regulated by the draft law.

Summarizing Armenia is actively taking steps to implement transitional justice tools and mechanisms, and it would be helpful to discuss issues related to this process with such a professional team.

We are eager to discuss these issues and would be grateful to hear your suggestions for our country.

**Thank you for your attention.**

**I would like to express my gratitude to the organizers and participants.**

# **Lessons from State Capture in Kenya**

**Foundations, Features and Options for Reform**

by

**Wachira Maina**

**Constitutional Lawyer and Governance Specialist**

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1. The limits of reform approaches to 'state capture' corruption- Kenya.
2. Some framing thoughts why transitional justice is difficult in high impunity, corruption driven environments
3. Foundations of State capture: Some political economy
4. Characteristics of regimes in state capture
5. Options for reform in state capture cases.

# The limits of 'reform' as a tool against deep-seated corruption

- Kenya has tried virtually everything that one can recommend:
  - ✓ Institutional reforms: IPPG in 1998; Constitutional Reform in 2010.
  - ✓ Accountability for past crimes, corruption and human rights violations: Commissions of inquiry into past corruption; radical surgery of the judiciary; investigation into past political financing; truth commission; vetting of police; vetting of judges; international asset recovery thru Kroll Associates; internationally brokered political mediation and investigation of past political violence; a Government of National Unity.
  - ✓ Criminal indictment of Key leaders: Kenya was the first country to send a sitting president and his deputy to the ICC.
- **Still corruption rises.** It has successfully transitioned through elections in 2002; 2013 and looks set to make a 3<sup>rd</sup> transition in 2022.



# Thinking of Transitional Justice in State Capture environments

- In high impunity, corruption driven politics **a regime that prioritises justice and service delivery weakens its hold on power.**
- In order to ensure regime survival and longevity in such an environment the regime must:
  1. Tighten its hold on the key mechanisms of political power in the country, includes **giving guarantees to powerful perpetrators**
  2. Take control of the finances and reward its core financial backers as a matter of priority- **Control of sources and use of revenues**
  3. If there is still money at the end of 2) deliver services to its core electoral base.– **selectively delivered to manage discontent**
- “Accountability”, ‘moral outrage’ and ‘better knowledge/evidence of wrong-doing’ do not move unresponsive leaders or impoverished citizens in high impunity environment into action.

# Political Economy Foundations of State Capture

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How interests - financial and electoral- influence the regime characteristics and its policy stance in state capture environments.

# Basic Questions: Financiers and Voters and their Political Effect

- **Regime characteristics are shaped by two factors:** 1) Who finances the politicians and 2) who vote for them. Key Issue is, “What are the economic and social characteristics of regime supporters?”
  - Economic base of the financiers:
    - Nature of investments: Are financiers investors with expensive assets that are hard to shift to other uses, then they will for policies that protect those investments. **Tends to create a plutocracy or adaptive state capture.**
    - Source of assets: Do financiers get their money government contracts? **Tends to create ‘malignant state capture.’**
  - Social base of voters- Are the voters demographically plural or not - religiously or racially defined? Groups that talk to the like-minded tend to drift to extremities of politics.

# Some thoughts on Regime Characteristics, its Support Base and structure of capture

- Plutocracy- adaptive state capture- not incompatible with reasonably democratic politics: Money from a capitalist class (industrialists) can be used to provide services to manage rebellion but keep the plutocrats happy (USA under Roosevelt?)
- Malignant State capture is incompatible with mass politics. Why?
  - To spend money on services is bad for malignant state capture, (fewer services frees money for contractors)
  - With voters, the idea of this type of capture is to reduce the numbers you must reward)- a) create “pocket constituencies” and “booth capture” b) over-register in strongholds/under-register elsewhere; c) ensure high turnouts in core areas and repress elsewhere; d) polarize politics to eliminate moderate politics (the majority) and to concentrate the base; e) encourage party fragmentation and multiple candidates.

# The Stability of Capture

- The logic of state capture is that corrupting the system leads to power but, most important, power leads to more corruption..."Corruption empowers leaders and absolute corruption empowers them absolutely" See **The Dictator's Handbook: Why Bad Behaviour is almost Always Good Politics**
- Leaders in a state that is captured must give the small coalition that is essential to their survival- electoral managers; finance departments; the military and police- lavish opportunities for self enrichment.
- It must be known and accepted within the system that laws will be enforced partially and generally only against those who endanger the capture project.

# The threat state capture poses for Democracy -1

- Once state capture happens- especially the malignant variety, it can easily abort a democratic transition- corrupt leaders transition power to those who can protect them.
- It does so by creating **a stable, sub-optimal system-** which has a façade of democracy but not its substance.
- Incomplete transition weakens the ability of democratic institutions to undo state capture in three different ways:
  1. It destroys faith in democratic politics, even when this appears, paradoxically, to go hand in hand with growing politicization.

# The threat state capture poses for Democracy -2

- 2) 'Bogus democracy' frustrates moderate forces and drives them away from the democratic space (silent majority is real).

NB: This creates apathy at the centre and politics tends to lurch to the political extremes of both right and left.

- 3) Frustration with 'ambiguous democracy' can create reform 'fantasies' that the country can be reformed with 'a simple, brutal stroke that wins the day'.

NB: Reform fantasies generate 'simplificateurs' and 'populists' of both the left and the right- makes deep democracy impossible.

# Government form in Capture Environments

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**9 characteristics common to state capture**



# Common characteristics-1

1. **Grasp the power:** Capture and control of the presidency or military- no one must threaten the president and the 'men of power.'
2. **Control the cash:** Control of Treasury and all in-flows of revenues- natural resource revenues are crucial (foreign or domestic loans are also revenues)
3. **Maintain the form of constitutional state:** Parallel informal structures, based on the presidency must be used to subvert the constitutional state whilst maintaining their outward forms.
4. **Erode oversight:** Control of the judiciary and independent offices. If not controllable, cut back their budgets and personalised attacks on judges.

# Common characteristics-2

- 5) **Keep the police sweet:** Police are the eyes of the captured state. Keep them sweet by looking the other way as they prey on citizens.
- 6) **Show the rewards of loyalty:** Regime fixers, close business allies must visibly benefit.
- 7) **Identify a menu of visible, launchable projects:** Big projects are both good politics and good business for capture businesses.- development as spectacle.

NB: State capture depends on mega-projects and under-spending on services unless these services have 'high spend' on equipment.

# Common characteristics-3

8. **When in doubt, establish a task force or set up an independent Inquiry:** State capture elite keeps the country busy by creating uncertainty; launch frantic but controlled actions on corruption.  
  
NB: Actions must either a) multiply “veto points” at which action on corruption is thwarted or b) create semi-judicial mechanisms that can’t make binding decisions or do both a) and b).
9. **Don’t let elections surprise you:** Control the EMB or the political party, whichever is cheaper to buy and to keep bought.

# Where do we go from here?

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Options for reform and for Civil Society in cases of state capture.

# Options for reform in cases of state capture

## 1. Rupture:

- ✓ A corrupt and illegitimate regime experiences a terminal crisis that causes it to collapse suddenly and unexpectedly.
- ✓ A palace coup, a group of insiders fear imminent loss of power and understand only a more inclusive can save them.

## 2. **Corruption becomes unsustainable by terminally undermining long-term investment and growth:**

- ✓ The 'permissive ethos' up and down the system inevitably shrinks the benefits available for capture.
- ✓ Immiserate the public, radicalize politics and create room for 'clean-up' autocrats and populists of either the left or the right.
- ✓ May create a powerful anti-corruption coalition

# Options for Civil Society-1

## What realistic Options for Action?

1. Working in the spaces and opportunities available both within and outside the country.
2. In Kenya the new Constitution has created new spaces at the local level and in the judiciary.
3. Externally, the fact that we have had many ex-presidents brought to book shows that there is accountability after impunity.

# Options for Civil Society-2

Civil society and researchers should develop mechanisms, programmes and initiatives for future prosecutions:

1. Advocacy on destruction of evidence: Civil society organizations can forestall efforts to destroy evidence by trawling through official records, including audit reports, human rights investigations, and international monitoring mechanisms, preserving these for the future.
2. Own archiving of evidence: This must go hand in hand with traditional advocacy to keep the issues alive for future action.

# Options for Civil Society-3

Civil society should undertake advocacy in pursuit of foreign indictments and convictions:

1. Where domestic institutions are captured, chances of effective action are vanishingly small.
2. Changing sentiment in the west driven in part by desire to interdict funding for terrorism has led to heightened scrutiny of illicit transfers whatever their provenance.



# Current and Anticipated Challenges in Holding Perpetrators of Corruption During Dictatorship Accountable and Ending ‘State Capture’?

***Sona Ayyazyan, Executive Director, Transparency International Armenia***

After the collapse of the Soviet Union, along the years of independence Armenia gradually developed into a corrupt and consolidating autocratic regime. We had a state capture – a system whereas most of major decision making and law making was tailored to serve the private interests of a few people or groups. The state – its institutions and governance mechanisms were actually captured. This was the reality for all the fields ranging from healthcare to defence, from agriculture to politics.

Armenian government declared about fighting corruption still in 2003, joined the relevant conventions and all the relevant initiatives. Adopted/changed a number of laws, however there was no change. Most was hypocrisy, Fighters of corruption were the most corrupt ones, nobody had trust. Elections were being continuously falsified and this is when the criminal groups were extensively used. The whole nation was somehow pulled into the web of corruption, becoming a part of crime – either as part of contracts, tax evasion, bribery, embezzlement, nepotism. Speaking about CPI, 34-35-36 – stagnated systemic corruption. Government becoming more and more despotic and arrogant.

Following many years of growing disappointment and 10 years of major resistance by various social groups mostly reacting to corrupt actions of the government in 2018 we managed to throw down the regime through peaceful protests. One of the major reasons pushing people to the street was them being fed up with corrupt and arrogant governance. Hence, the fight against corruption was the major promise of its leader of revolution.

There is dismantlement of some schemes, many criminal cases opened against the former officials, a few current high-level officials are being detained. Surveys show high level of trust in reforms, changes, Country's Corruption Perception score – from 35 to 42, by more than 20 positions among about 180 countries moving from 100 to 80.

Nevertheless, Armenian revolution was named as velvet, non-violent people's revolution as well as revolution of love and solidarity. Many people who are not satisfied with the reforms think that we have had too much of velvet and love, and there is a need to move the fight to a different level.

Social surveys indicate that the Armenian people have extremely high expectations from N.Pashinyan's government, which also means that its failure to meet expectations will too be extremely disappointing. People were eager to see that the perpetrators of corruption punished, the stolen assets returned and the justice is restored.

The main challenges on the way of holding the perpetrators of corruption in our country:

1. Recognition of the problem:

- a. A large number of civil society organizations believe and demand that the process of transitional justice should have been started with a high-level official statement of the problem and particularly the state capture, which would also create a ground for transitional justice policy and prepare the society for non-standard solutions to problems. Recognition would also facilitate a common perception of the problem and similar expectations.
  - b. Though there have been many scattered speeches by the Prime Minister and other high-ranking officials and the chosen transitional justice measures – such as truth commission and civil forfeiture somehow imply, explicit and official recognition and launch never happened.
2. The pace of the process:
  - a. People anticipate quick changes. In April we are celebrating the second year of the revolution, meanwhile, we still do not have the law on Civic forfeiture and the fact-finding commission – the major instruments chosen. We still do not have in place the fully functioning preventive anticorruption body - Corruption Perception Commission and still have not adopted the law on specialized law enforcement body which have significant role in the recovery of justice. Though we appreciate the huge volume of initiatives by the Ministry of Justice, those started rather late - only last summer.
  - b. We believe that painful solutions need to be taken quickly. If they are slow there is a disappointment among the supporters of the reforms and there is time for mobilization of the opponents – and unfortunately - this is what we witness today in Armenia which contributes to growing anxiety and tension within the society.
  - c. Low pace of the reforms and actions by the government also creates legitimate concerns that there is too much time given to the perpetrators of corruption to hide or alienate their assets. People are concerned that after all these preparations the government will not be able to recover the major assets from the most corrupt ones. Freezing assets could be a solution, but we are not aware if anything like that really takes place.
3. The targeted scope of reforms:
  - a. At the moment the Armenian government still is hesitant on whether corruption shall be targeted by fact-finding commission, though the major driving force of the revolution was the anger against corrupt government.
  - b. Corruption has been the root cause for the violations of human rights that are currently put on the agenda of the fact-finding commission and it would not be satisfactory to tackle only those groups of issues – alienation of property for state needs, non-combat deaths, electoral violations and crackdown of demonstrations following falsified elections.
  - c. We have had a rich typology of corruption cases that include
    - Questionable privatization of soviet era enterprises in early 1990s and allocation of major strategic objects particularly to Russia against the debt but with very controversial processes
    - allocation of mine deposits to offshore based companies associated with local officials
    - alienation/capture of public assets – forest areas, public parks, water lands, cultural monuments by former officials

Such public interest cases contributed to the sense of injustice and social expectations and many were causes of civic protests preceding and preparing for the revolution.
  - d. Corruption has taken place through certain well-functioning schemes and it is important to expose those to enrich the understanding of the process of state capture. Schemes of abuse of power and illegal enrichment, monopolization of politics and economy, money laundering shall be revealed that may also prevent such practices in future.

- e. Another problem is to decide how much, how fresh and how thorough data you need in order to recognize or declare that there was corruption and take the next action. There is still uncertainty whether the completeness of details and depth of data acquired by the fact-finding mission might be judged against the standards of law enforcement bodies. The rules of the game shall be clarified and communicated right from the beginning, otherwise there is a risk for the process to be subject to unjustified criticism and political revenge.
- 4. Trust in the law enforcement and judiciary:
  - a. Courts – that are the final instance of judgements on criminal acts or civil forfeiture are considered as the most corrupt institution (49%), prosecutor's office is on the third place (43%) and investigative bodies are in the seventh place (35%).
  - b. Such perception is conditioned with a fact that after the revolution these institutions largely stayed the same, most of them maintained the former leadership, that merely started serving different leaders.
  - c. The trust continues to degrade also with the poor quality of work of law enforcement bodies.
  - d. Effective reforms in the judiciary and law enforcement as well as effective vetting of judges and investigators shall be in place to raise the trust. With the given level of trust any decisions and action will be questioned.
- 5. Human resources:
  - a. Armenia generally lacks qualified and professional human resources. One of the reasons is the brain drain, due to the intense emigration of professionals. Another reason is that the corrupt regime had a different agenda and no political will to fight corruption. It has developed a system which appreciated and promoted not the professionalism of judges and investigators, but their loyalty and obedience to the regime. Obviously, with a change of the course of development such qualities do not meet the needs.
  - b. As the corruption schemes are being gradually broken the public servants, being deprived of alternative sources of income, do not have much financial incentives to work well or support the reforms. There is a strong resistance of the low and especially mid-level public servants.
- 6. Transparency of processes
  - a. Transparency and accountability a crucial for restoring the trust towards the institutions and processes. This needs to totally change the modality of work of law enforcement bodies and the system of communication, which needs to be done rather fast.
  - b. At the moment we witness asset return process by some officials, which is totally non-transparent. Prime minister says that 7,200 mln dollars has been returned to the state budget, however it is not clear from whom, for what reason, how is the amount justified. Such an uncertainty creates doubts about the lawfulness of the process and is completely unsatisfactory.
- 7. Public engagement
  - a. It is important that people understand the measures taken by the government. There is a large volume of false information spread by media owned or supported by previous regime and a big challenge is to ensure proper communication of the agenda/actions of anticorruption bodies as well as transitional justice measures. fact-finding commissions or other anticorruption entities is an issue.
  - b. It is important to ensure wide engagement getting out of the capital city and reaching out to regions. People in regions are detached, which may cause informational or understanding gaps and a danger that those gaps will be filled by false information.
  - c. Important for collection of data – whistle-blowers are still afraid.



# مكافحة الفساد في تونس من الاستراتيجية الى تفعيل

الندوة الدوليّة حول "الحقيقة والمسائلة وإستعادة الأموال المنهوبة"

يومي 2 و3 مارس 2020 بنزل أفريكا، تونس

نجة باشا

مستشار مقرر عام بالهيئة الوطنية لمكافحة الفساد

نظراً لخطورة ما يطرحه الفساد من مشاكل ومخاطر على استقرار المجتمعات وأمنها،

ويَقْوُضُ مؤسسات الديمقراطية وقيم العدالة والأخلاق،  
ويعرّض التنمية المستدامة وسيادة القانون للخطر،

ويَقْوُضُ موارد الدولة، ويهدد استقرارها السياسي ويعطل التنمية المستدامة،

كان من المتأكد اتباع منهج شامل ومتعدد الجوانب لمنع الفساد ومكافحته بصورة فعالة، وبوسائل واليات متعددة منها:

- إرساء مبادئ الإدارة السليمة للشؤون والممتلكات العمومية،
- إرساء مبدأ الإنصاف والمساواة أمام القانون،
- إرساء النزاهة وتعزيزها وترسيخ ثقافة تنبذ الفساد،
- منع الفساد والقضاء عليه بمشاركة كل فرد ودعم من المجتمع المدني والمنظمات غير الحكومية والاعلام،
- إرساء هيئة أو هيئات وقائية لمكافحة الفساد طبقا لما نصت عليه المادة 6 من الاتفاقية الاممية لمكافحة الفساد والفصل 130 من الدستور التونسي الذي ينص على :

« تسهم هيئة الحوكمة الرشيدة ومكافحة الفساد في سياسات الحوكمة الرشيدة ومنع الفساد ومكافحته ومتابعة تنفيذها ونشر ثقافتها، وتعزز مبادئ الشفافية والنزاهة والمساءلة.

تتولى الهيئة رصد حالات الفساد في القطاعين العام والخاص، والتقصي فيها، والتحقق منها، وإحالتها على الجهات المعنية.

تستشار الهيئة وجوبا في مشاريع القوانين المتصلة بمجال اختصاصها.

للهيئة أن تبدي رأيها في النصوص الترتيبية العامة المتصلة بمجال اختصاصها»

# الإجراءات المتبعة لمكافحة الفساد في تونس ( الحالة الراهنة )

1 - على المستوى التشريعي

2 - على المستوى المؤسسي

3 - على المستوى العملي أو الاجرائي



## على المستوى التشريعي

- قانون يتعلق بالتبليغ عن الفساد وحماية المبلغين 7 مارس 2017
- قانون عدد 46 لسنة 2018 مؤرخ في 1 أوت 2018 يتعلق بالتصريح بالمكاسب والمصالح وبمكافحة الإثراء غير المشروع وتضارب المصالح.
- مشروع مراجعة بعض نصوص المجلة الجزائية ذات العلاقة بجرائم الفساد ( في طور الانجاز لدى وزارة العدل )

- قانون أساسي عدد 59 لسنة 2017 مؤرخ في 24 أوت 2017 يتعلق بهيئة الحوكمة الرشيدة ومكافحة الفساد.

□ يضبط مهامها وصلاحياتها وهيكلتها كهيئة دستورية مستقلة وتتمحور أساسا في :

- إرساء المبادئ العامة للحوكمة الرشيدة في القطاعين العام والخاص.
- وضع الآليات والتدابير الضامنة لاحترام وتعزيز مبادئ الشفافية
- النزاهة
- المساءلة
- سيادة القانون
- إرساء الممارسات الفعّالة لتكريسها وتعميمها.

- كما تعمل الهيئة على:

- منع الفساد ونشر ثقافة الحوكمة الرشيدة وقيمها
- نشر الوعي الاجتماعي بمخاطر الفساد وضرورة مكافحته
- تتلقى الهيئة التبليغ عن شبهات الفساد.
- تتعهد بحماية المبلغ
- تتلقى التصريح بمكاسب المعنيين بالتصريح
- تتعاون مع نظيراتها الأجنبية والمنظمات الدولية المختصة
- امكانية ابرام اتفاقيات في ميدان اختصاصها
- تتبادل الوثائق والدراسات والمعلومات في مجال الحوكمة الرشيدة ومكافحة الفساد والوقاية منه.

# على المستوى المؤسسي ( الحالة الراهنة )

- ▶ تم إحداث الهيئة الوطنية لمكافحة الفساد بمقتضى المرسوم الإطاري عدد 120 المؤرخ في 14 نوفمبر 2011
- ▶ نص المرسوم على صلاحيات الهيئة المستقلة في مجال مكافحة الفساد في القطاعين العام والخاص منها:
- ▶ اقتراح سياسات مكافحة الفساد ومتابعة تنفيذها بالاتصال بالجهات المعنية
- ▶ إصدار المبادئ التوجيهية العامة بالاتصال مع الجهات المعنية
- ▶ تلقي الشكاوي والإشعارات حول حالات الفساد والتحقيق فيها وإحالتها على الجهات المعنية بما في ذلك القضاء.

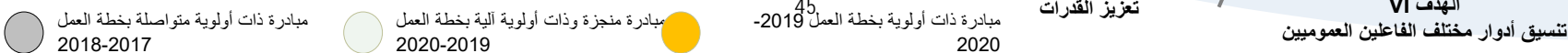
► خلق قنوات جديدة للتواصل مع المواطن وتشريكه في مسار مكافحة الفساد وذلك بـ:

- حملات تحسيسية تهدف إلى تشجيعه على التبليغ عن شبهات الفساد.
- تحليل الظواهر المساعدة على تفشي الفساد للكشف عن مكانه.

► احداث مشروع المنصة الالكترونية للشكاوى والابلاغ عن حالات الفساد "e-people" الممول من الجانب الكوري والذي حدد الأطراف المكونة للمنصة والمتمثلة في كل من الهيئة الوطنية لمكافحة الفساد ومكاتب العلاقات مع المواطن بمختلف المؤسسات الحكومية.

► المشاركة في صياغة الإستراتيجية الوطنية للحوكمة ومكافحة الفساد في إطار مقاربة تشاركية ووضع خطة عملها التنفيذية مع الاخذ بتوصيات التقرير الختامي لأعمال هيئة الحقيقة والكرامة في إطار العدالة الانتقالية.

تتضمن خطة العمل الجديد 2019-2020، 25 مبادرة : 11 مبادرة إستراتيجية جديدة و14 مبادرة إستراتيجية قديمة ذات أولوية ومتواصلة



## التحديات والمعوقات

► السعي إلى تركيز جهاز التقصي صلب الهيئة طبقا لما نص عليه المرسوم الإطاري عدد 120 المحدث لها باعتباره المحرك الأساسي لكشف مواطن الفساد وتعقب آثاره.

► توفير الموارد اللوجستية والمادية والبشرية اللازمة بما يتماشى مع المهام والصلاحيات الموكولة لها.

# على المستوى العملي (الإستراتيجية الوطنية للحوكمة ومكافحة

الفساد)

▶ لأجل تطلعات الشعب التونسي من أجل الديمقراطية والتنمية، ومن أجل أن يستمر التكيف مع بيئة سياسية ومؤسسية جديدة تمت صياغة الإستراتيجية الوطنية للحوكمة الرشيدة ومكافحة الفساد والسعي إلى تنفيذها في إطار عملية شاملة وتشاركية، ثم تقييمها بشكل منتظم وفقا للمعايير الدولية والممارسات الجيدة بغاية مكافحة الفساد على نطاق واسع.

▶ تم تحديد الرؤية وأولويات الإستراتيجية -2020



► تم اعتماد الإستراتيجية رسميا من قبل الجهات المعنية  
في سنة 2016 .

► تم الاتفاق على إحداث لجنة توجيهية تتكون من ممثلين عن  
مجلس نواب الشعب، والهيئة الوطنية لمكافحة الفساد، ورئاسة  
الحكومة والوزارات المعنية والمجتمع المدني والإعلام  
وممثلين عن القطاع الخاص بدعم من مشروع برنامج الأمم  
المتحدة الإنمائي حول "دعم نظام النزاهة الوطني".

## الخطوات المتبعة

- ▶ اختيار المقررين لتسيير أعمال اللجنة التوجيهية في اتخاذ القرارات
- ▶ مراجعة الإستراتيجية الوطنية ووضع اللمسات الأخيرة وفقا لملاحظات اللجنة التوجيهية
- ▶ وضع خطة عمل لتنفيذ الإستراتيجية كأولوية من أولوياتها
- ▶ العمل على رصد الميزانية المطلوبة لتنفيذ خطة العمل.

## الأهداف المنتظرة

- ▶ تأكيد الإرادة السياسية في إرساء مقومات الحوكمة الرشيدة ومكافحة الفساد لدعم المسار الديمقراطي وحمايته من الانحرافات.
- ▶ تفعيل مضمون الإستراتيجية على نطاق واسع مع تعديلها كلما اقتضت الضرورة بما يتوافق مع جهود الدولة في مكافحة الفساد وارساء مقومات الحوكمة الرشيدة سعيا لاسترجاع الاموال المنهوبة والمهربة الى الخارج.
- ▶ تدعيم المشاركة المجتمعية في جهود الدولة الرامية إلى إرساء مقومات الحوكمة الرشيدة ومكافحة الفساد وتطويرها.

► تدعيم آليات المساءلة والمحاسبة لفرض احترام القانون وإنفاذه وضمان المساواة بين أفراد المجتمع.

► تكريس مبادئ النزاهة والشفافية وتعزيزها لضمان حسن التصرف والتسيير في الموارد والنفقات العمومية.

► تطوير أدوات عمل الأطراف الفاعلة وتعزيز قدراتها في مجال الحوكمة الرشيدة ومكافحة الفساد.

► توضيح أدوار مختلف الأطراف العمومية الفاعلة في مجال الحوكمة الرشيدة ومكافحة الفساد وحسن الإدارة والتنسيق فيما بينها.

## المتطلبات

- ▶ التعجيل في رصد الميزانية المستوجبة لدى كل طرف متداخل لتنفيذ خطة عمل الإستراتيجية.
- ▶ ضرورة تحديد الأدوار لكل طرف متداخل في تنفيذ محتوى الإستراتيجية.
- ▶ المراجعة الدورية لخطوات الإستراتيجية المتبعة - السابقة واللاحقة - بما يتوافق والوضع الراهن لكل مرحلة.
- ▶ ضبط كل مرحلة من مراحل خطة عمل الإستراتيجية زمنيا وتقييم نتائجها.
- ▶ إرساء منظومة للمتابعة وتقييم محتوى الإستراتيجية وتنفيذ خطة عملها.

- العمل على توثيق الخطوات المتبعة ونتائج كل مرحلة ومجهود كل طرف متداخل في تنفيذ الإستراتيجية حتى يتم تحديد المسؤوليات لكل الأطراف المعنية
- السعي إلى جعل محتوى الإستراتيجية كمرجعية لفلسفة الحوكمة الرشيدة ومكافحة الفساد
- العمل على جعل الإستراتيجية التزام معنوي يلزم كافة وتلتزم به الأطراف الفاعلة.

مع الشكر على تفاعل السيدات والسادة الحضور

# How Can Transitional Justice Support Asset Recovery and the Right to Reparations?

**Commissioner Adelaide Sosseh, Deputy Chairperson and Chairperson of the Reparations Committee, the Gambia Truth, Reconciliation and Reparations Commission (TRRC)**

## Introduction

Following the defeat of the dictatorial regime of Yahya Jammeh in the December 2016 presidential elections, the Gambia embarked on a process of transition to a democratic dispensation. Central to this transition is the development of a system of transitional justice to attenuate and come to terms with and address the abuses of Jammeh's misrule.

In December 2017, the Gambia Government passed a series of laws setting up a Constitutional Review Commission (CRC), a Truth, Reconciliation and Reparations Commission (TRRC) as well as a National Human Rights Commission (NHRC). These instruments and institutions interlinked form the broader framework of the Transitional Justice Process intended to enable the country to transition from a longstanding dictatorship – during which Gambians suffered gross violations of human rights to a democratic dispensation.

A separate Commission was established in July 2018, by the President, H.E Adama Barrow, under Section (200), Sub-Section (1) of the 1997 Constitution of the Republic of The Gambia to investigate allegations of abuse of office, mis-management of public funds, and willful violations of the Constitution by former President Jammeh and financial activities of those of his family and close associates. The Commission popularly called the Janneh Commission completed its work in the latter part of 2019 and submitted its report to the government which was launched in September 2019. The government produced a White Paper, on the findings and recommendations of the Janneh Commission Report.

The TRRC has a limited time frame of two years to carry out its mandate which is to create an impartial historical record of violations and abuses of human rights committed in The Gambia from July 1994 to January 2017. Reparations is a key objective of the TRRC's mandate and the fact that the word is embedded in the title of the Act shows an acknowledgement from the onset that for victims of gross human rights violations and abuses, reparations is required as a form of recognising their pain and suffering as well as a tool for promoting reconciliation, building national unity and giving assurances of non-repetition. Under Article 20 of the TRRC Act, the Commission is required to grant reparations to victims, and it may issue regulations in furtherance of this objective.

It is envisaged that following types of reparations will be granted to individual or collective victims as material and/ or non-material (moral or symbolic) measures in the form of restitution, compensation, rehabilitation, satisfaction and/ or guarantees of non-repetition. The types of reparations granted to individual or collective victims shall be governed by the principle that reparations shall be proportional to the gravity of the violations or abuses, the type of harm suffered and designed with the intention of ensuring transformative reparations. Urgent Interim Reparations such as urgent medical care, psycho-social support and educational support, which are designed to assist victims in urgent need of assistance who have suffered harm as a result of a violation or abuse of human rights or crime within the TRRC's mandate, and are in need of urgent assistance will be granted.



## **Better Understanding of the Motivations Behind the Atrocities**

Even though the two bodies that is the TRRC and the Janneh Commission had different time frames and scope of work the TRRC was able to get important insights and learnings about the gross human rights violations that were meted out to Gambians during the 22 years of Jammeh's misrule. The learnings from the Janneh Commission show that some of the human rights violations went beyond seeking to entrench Jammeh in power but were intended to cover up economic crimes and corruption. For instance the clamp down on the media which included the passing of oppressive laws against freedom of expression, the closure of media houses as well as the arson attacks, arbitrary arrests and detentions, torture and killing of journalists were intended to deter them from investigating and publishing corruption and economic crimes.

Also the killing of innocent civilians with business interests under false accusations of engaging in activities to overthrow the government were indeed linked to economic crimes on the side of the state or their engagement in other illegal activities such as drug dealing. While these linkages are not always apparent to the general public who follow the proceedings of the TRRC they have significantly contributed to the understanding of the Commission on why these human rights violations were carried out.

## **Addressing Impunity**

Having been created in the wake of other Truth Commissions globally, the TRRC has been able to learn lessons from their successes and failures and has used these lessons to inform its work. One such lesson is that there is need to address the 'impunity gap' and that 'impunity for economic crimes reinforces impunity for human rights'. By allowing the deposed despot to retain his or her ill-gotten wealth s/he can use this wealth to avoid accountability for economic and human rights violations through use of lawyers to contest cases, witness tampering and other methods. There is evidence in The Gambia to buttress this argument as Jammeh is indeed using his ill-gotten wealth to wield influence over his party the Alliance for Patriotic Reorientation and Construction (APRC) and members of his ethnic group to remain loyal to him to the extent that they refuse to testify before the TRRC even though some of them suffered inordinately under his 22 years of misrule. Through intercepted telephone conversations between him and his party leaders it has been established that he has emboldened them to hold rallies to ask for his return and that he has been providing the funds for such activities.

While the Janneh Commission did a highly commendable job in identifying Jammeh's assets in-country and recommending that they be forfeited to the state it was less successful in getting evidence of his amassed wealth outside the country. In addition Jammeh was able to leave the country with a considerable amount of wealth. This means that he still has access to financial and material resources and is able to use this to his advantage. In trying to reduce the impunity gap the government of The Gambia has frozen his assets in the country and is in the process of liquidating them. Part of the proceeds from the sale of assets has been given to the TRRC for reparations. The sum of D50 million (the equivalent of US\$1 million) was given to the TRRC for reparations in October 2019 and a promise made to give a similar amount in 2020.

Providing this money for reparations is indeed a step in the right direction. He caused so much harm to victims and their families thus it is fair to use the money for reparations. Part of this D50 million has been used to provide urgent interim reparations to four victims who had to undergo urgent medical attention in Turkey. A unique feature of the Urgent Interim measures that have been put in place by the TRRC in collaboration with the Ministry of Health is the Medical Board. This is a body consisting of doctors from the public and private health facilities that has been set up to review cases of victims that have been suffering serious health conditions as a result of the serious bodily harm that was done to them and prescribe a course of treatment based on their assessment. While some of these cases can be treated locally a number of them require treatment abroad. Without these funds from the sales of Jammeh's assets, the TRRC would have been hard pressed to provide this important urgent interim measure. While the medical treatment is free under the framework of the Bilateral

Agreement between the Republics of Turkey and The Gambia (2014), the maintenance of the patients and their escorts in Turkey is paid for by the TRRC.

This example alone is enough to justify the retrieving of resources from the former President as the high costs of maintaining the patients in Turkey could not be maintained by the regular TRRC budget for Urgent Interim Reparations. Three of the patients who were benefitting from this treatment were victims of the April 10/11 2000 student massacre who were still suffering a lot of pain due to the bullets that remained in their bodies or due to other debilitating conditions. In addition to their health conditions these young people had their education and their dreams shattered. Another is a woman victim of the Calamar Revolution of April 2016, who was severely tortured while in detention. The former President caused so much harm to certain segments of society not only in a bid to entrench himself in power but to enrich himself and his family.

## **Development of Reparations Policy and Regulations**

Maximizing on its need to learn from other countries experiences and expertise in reparations, the TRRC has worked with partners-International IDEA (AWA IDEA) the Ministry of Justice of The Gambia, the Office of the High Commissioner for Human Rights (OHCHR), the United Nations Development Programme, the International Centre for Transitional Justice (ICTJ) and Institute for Integrated Transitions (IFIT) to develop its Reparations Policy and Regulations. Reparations are guided by the principles of fairness, objectivity, impartiality, equality, non-discrimination, gender-sensitivity; and gender-responsiveness. To ensure the application of these principles as well as the several standards and benchmarks contained in the various international instruments on reparations<sup>1</sup> the TRRC organised an Experts Meeting to learn from the comparative experiences of African countries (South Africa, Liberia, Togo Morocco) and Colombia, and various Gambian stakeholders (such as representatives of the affected communities and civil society) to contribute to the finalization of the draft TRRC reparations regulations document.

The Experts meeting was followed by a stakeholders workshop that brought together representatives of civil society organizations [CSOs] and victims' from different regions of the Gambia to dialogue with policymakers and local civil society on reparations issues including - victims registration, reparations measures that are responsive to victims' needs; implementation mechanisms that reflect victim's contextual realities in different parts of the country and the role of the victims and CSOs in the implementation of reparations. The meeting which was organized by the ICTJ in partnership with the TRRC gave victims and CSO's the opportunity to have their voices heard and views and opinions incorporated into the Draft Reparations Regulations before finalization.

## **Challenges**

Reparations under the TRRC's framework, however, apply only to victims that fall within the ambit of the TRRC's mandate which covers the acts and conduct of torture, unlawful killings, sexual and gender based violence, enforced disappearances of persons, inhumane and degrading treatment, arbitrary arrest, and detention without trial.

## **Identification of Victims**

To be eligible for reparations, victims or complainants must have testified before the Commission either publicly or privately or submitted a written statement to the TRRC's Victim Support Unit or Research and Investigations Unit either in person at the TRRC premises or during outreach missions, or via telephone or

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<sup>1</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005); African Union Policy on Transitional Justice

internet. Reparations will be paid solely to individual victims (direct and indirect victims) and collective victims who have been awarded the status of TRRC victims and included in the Commission's Victims Register. With the reluctance of many victims to come forward especially those who were subjected to Sexual Gender Based Violence (SGBV) it is feared that some of the victims may not benefit from reparations during the life span of the TRRC. Provision must be made for the laggards who did not come out for reasons best known to them and there is enough evidence from other countries to show that governments do not necessarily act on the recommendations of the Truth Commission once it ceases to exist.

### **Truth Seeking**

The truth seeking element of the TRRC is based on the willingness of victims and perpetrators to publicly tell their story to the Commission or through other existing platforms. As at the end of the 11<sup>th</sup> session on February 6, 2020, a total number of 203 witnesses testified before the Commission of whom 53 were women and 38 were perpetrators and the rest were victims. However, many victims are reluctant to tell their story either publicly or privately to the Commission. In spite of the harm that Jammeh had caused through the human rights violations and economic crimes and overt corruption, there are still many Gambians who remain loyal to Jammeh. They refuse to discredit him and see both the Janneh Commission and the TRRC as a witch hunt against him. Others see it as an attack against his ethnic group. Even though Jammeh was ousted he has been able to retain his popularity among certain members of society. Seizing his illegally amassed wealth which he used as patronage to give a better life to some people in the form of housing and other amenities is not going down well with those people who are now being evicted or who now have to pay for such amenities. The fact too that some of the persons that have been mentioned in the Janneh Commission Report and recommendations made for punitive measures to be taken against them and are still working for the government without any action being taken against them is really a failure to address impunity. There is fear that recommendations of the TRRC may face a similar fate.

### **Inadequate Resources**

Even though The Gambia Government has accepted that it has the primary responsibility of providing reparations to victims it is evident that the government cannot do it alone. The D50 million (equivalent to US\$1 million) given to the TRRC for reparations from the sale of Jammeh's assets is grossly inadequate to meet the enormous reparations bill. Even though there is a promise of an additional D50 million these monies are inadequate to give ex gratia payments for the number of reported deaths, disappearances, torture, inhuman and degrading treatment and so on not to speak of memorialization and urgent interim reparations. While this is a legal obligation on the part of the state using stolen assets from Jammeh to fund some of these reparations should be seen as supplementary funds and not the main source of funding for reparations.

The main memorialization of the TRRC - the "Portraits for Positive Change" Exhibition is a donation of an on-going collection of photographs and video testimonials developed in 2016 by British photojournalist and film-maker Jason Florio and his wife Helen Jones-Florio. The photographic exhibition provides a visual platform for exposing the truth by bringing the human face and personal testimonies of victims into the greater public arena. The photographs are on display in the main hearing hall of the TRRC but are also used for community outreach activities to create awareness of the atrocities that Jammeh committed and to promote dialogue and reconciliation and the Never Again Agenda. The second set of the portraits and testimonies have been donated to the National Council for Arts and Culture to become part of the national archive of the Museum for future generations of Gambians. A booklet of the photographs have been produced and have been distributed widely at the national and international levels. Other memorialization activities will be implemented when the funds are available but will be done in consultation of the target community.

Cognisant however that the government cannot do it alone the TRRC has engaged on several initiatives that are designed to raise additional funds for victim support and reparations. In August and September of 2019 the TRRC embarked on a successful diaspora engagement outreach mission targeting Gambians in the United

States of America (New York, Washington DC, Atlanta and Seattle) and Europe (London, Birmingham, Manchester, Sweden and Oslo). The Diaspora engagement yielded dividends as the teams were able to garner support from the Gambians in these communities particularly for the Victims Support Fund. Funds amounting to almost D1 million were raised for TRRC's Victims' Reparations Fund and contributions to this fund are on-going.

### **Inadequate Capacity for Psycho Social Support**

Another challenge is the capacity gap that exists in the provision of psycho-social support. Victims support and by extension psycho-social support are an integral part of the TRRC process. The Psycho-social team of the TRRC has been giving psycho social support to individuals, families and groups within the TRRC process leading to emotional preparation, participation and coping throughout the TRRC process. However there is little support at the community level as staff are constrained by their numbers to give effective implementation and quality delivery of support services. The public hearings of the TRRC have traumatized the nation and families and communities of perpetrators are equally traumatized as those of the victims as they listen to the testimonies of their loved ones. Confessions of heinous crimes committed in 'defense of the nation' but in reality to perpetuate the ruler in power or to carry out an economic crime have sent shock waves across the nation where the widespread belief that these crimes were carried out by non-Gambians. 'A Gambian would not kill, maim or torture another Gambian.' The dispelling of this myth has created a need for how to broaden the reach of psycho-social support to communities and the wider public. The Post Traumatic Stress Disorder training workshops carried out by Centre for the Treatment and Study of Anxiety of the University of Pennsylvania under the auspices of the UNDP Transitional Justice and Human Rights Team, the OHCHR and the UN Peace building Fund is intended to address this problem.

### **Conclusion**

As the work of the TRRC progresses it is evident that some of the gross human rights violations are inextricably linked to corruption and economic crimes. To ensure that the Never Again Agenda succeeds and that the majority of victims who suffered under Jammeh benefit from reparations there is must be a change of mindset amongst Gambians. The Community Outreach and Sensitization programmes of the TRRC are intended to bring about this broad awakening of civic consciousness. It is evident that this will not be accomplished within the limited time frame of the TRRC thus the onus is on the government to strengthen its civic education activities and Civil Society particularly the Civil Society Transitional Working Groups to maintain the momentum.

# Switzerland: How Can Transitional Justice Support Asset Recovery and the Right to Reparations?

**Niccolo Salvioni**, *Swiss lawyer and expert in international asset recovery litigation and counsel in international mutual assistance cases*<sup>1</sup>

Schukran

Dear Madam and sirs, good afternoon

Cher Mesdames et Messieurs, bon après midi

I would like to thank the moderator Ruben Carranza and all the ICTJ staff for giving me the opportunity to speak in front of this outstanding audience.

Our professional lives crossed during a case of international mutual assistance in criminal matter with Switzerland that lasted more than 20 years and became a classic, also of collaboration with transitional justice structures of the requiring State.

Already then, his human dedication to his mission was special. Our permanent curiosity and interest in the specific topic of the international justice and law maintained us in contact. Now we are again reunited in this singular occasion. I can only say: Ruben what a remarkable sensibilization work you did in all those years!

I would also thank you for the opportunity you gave to me to listen to the great legal challenges in the struggle for Rule of law and post-conflict stabilization.

I must mention that the time I had at my disposal to prepare this relation was quite short. I will try to give a brief overview on the existing Statutes and Institutions in Switzerland that can have relations with judicial assistance in criminal matters and with transitional justice. Transitional Justice meant, as institution, analogous to the formal criminal law and Courts, whose aim is, more than to punish, to reconcile the actors and victims of a post conflict State, through the elaboration of the past.

I will try to give you a broad view of the existing cooperation mechanism, in the North, in Switzerland, with foreign States authorities that permits to search for evidences, freeze, seize and forfeit money or goods or settle amicable solutions in Switzerland, against persons that committed crimes outside of Switzerland.

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<sup>1</sup> Written notes base of the short speech of about 14 minutes held at Hotel Africa, Tunis, on the 3<sup>rd</sup> of March 2020. After returning in Switzerland on the 6<sup>th</sup> of March, with the progressive rise of the Covid-19 pandemic in Northern Italy and in Southern Switzerland, my land, the world changed, completely. I will remember my short stay in Tunis, the beauty of the landscape, the scents of Musk and Sahara at the sunset in the Medina, the kindness of the people I had the pleasure to meet, like a short passage in one of the many African Continent Paradises, in a World, that, I hope, will be respectfully possible to visit again in the future.

## 1. Language of the Procedure

Switzerland has four official languages, Italian with the main financial City in Lugano, French with Geneva and German with Zurich and the Romansch language. The Swiss Statutes are therefore written in these languages, and often, for the more important Statutes, also in a non-official translation into English.

You can find all the relevant statutes on internet in the website of the Swiss Confederation.

The language is an important factor in the international mutual assistance in criminal matters with Switzerland: a request in Switzerland should be written in German, French or Italian, otherwise it is necessary to enclose a translation in one of these languages.

The translation costs and the difficulty of comprehension can be the first main obstacle to a request of assistance.

Switzerland by the EF EPI survey is ranked 19<sup>th</sup> in English knowledge, between Kenia and the Philippines. So, in any case, even if a translation of English documents into an official language is necessary, requests coming from countries where English is an official language might also somehow facilitate the procedure.

As a conclusion, if a requesting country has affinities to the Swiss official languages or with English, the procedure of assistance in criminal matters will be easier.

As every one of the 26 Swiss cantons of the Swiss confederation has his own full jurisdictional competence for civil, criminal and administrative matters, also the official language depends from the Canton. The Canton where a procedure will be finally open opened is important in order to ascertain the language of the procedure.

As we will see since 2002 the Confederation has a full working *Federal Prosecution office* that deals with specific serious crimes and has full work capacity in all official languages.

## 2. Ill-Gotten Assets

Switzerland is a very active international wealth management center. It is still ranked number one in attracting private clients.

At the end of the 2017, the Swiss banker Association mentioned that Switzerland managed assets amounting to 2'208 billion.

Only in 2010 Switzerland recovered and transferred back about 1,7 billion to post-conflict societies<sup>2</sup>. How many others are waiting to be recovered through judicial criminal proceeding with the help of Transitional justice institutions?

Not only Switzerland manages foreign wealth. Other centers are also very active in asset management. As you will hear, in the last decades, Switzerland enacted a series of new legal mechanism and appointed new bodies in order to filter, control, seize and forfeit ill-gotten assets. These mechanisms became, with the time, more and more complex and expensive to maintain. The costs determined by the overall control system of the Swiss financial system, caused a reduction of the Swiss concurrence capacity in comparison to several competitors. Those last, maybe, now are more interesting than Switzerland as place where hide looted funds.

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<sup>2</sup> See Swiss Federal Council: Message 10.039 relatif à la loi fédérale sur la restitution des valeurs patrimoniales d'origine illicite de personnes politiquement exposées (Loi sur la restitution des avoirs illicites, LRAI) du 28 avril 2010, page 3001.

The enacted Swiss filter system seems to work well. Since the first cases of restitutions in 2002, it was possible to recover several big amounts ranging from the 700 Million coming from Abacha/Nigeria to the 1.3 Million from Turkmenistan<sup>3</sup>.

As you can notice, the recovered figures reduced considerably with the time. Maybe because Switzerland lost his “appeal” as safe haven for kleptocrats.

Since the enactment of those new law provisions, probably they simply prefer avoid Switzerland, at least as a chief deposit place. That means that recovery procedures today are more complex, because it is often necessary to deal with complex multi-jurisdiction litigations, languages and costs.

Often the former, deposed politicians, without any finance problem, are assisted by series of the best Law Firms on the market. At contrary, the newly born States find themselves often in difficult economic situation, with almost empty vaults, and difficulty to find good representatives that can orient them with the different open procedures. Often the new State has to deal with “smoke screens” built through dozens of shell companies founded in in exotic places with the goal to hide the real beneficial owner of the money.

### 3. The Continuedly Changing Legal Working Frame

Transitional justice<sup>4</sup> is an always more important concept, not only internally in the legal *corpus* of the single States that sustained a deep political metamorphosis, but also internationally, in the relations between States.

Transitional justice deals not only with legal, but also with judicial, sociological, psychological, economic, political and diplomatic reorganization works of post-conflict societies. Without doubt, an extremely complex and delicate task.

Each post-conflict society should find independently, within his powers and social intellectual unicity, his way in order to establish his own rule of law, in the context of his own inherent self-determination and

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<sup>3</sup> Public known cases of recovered amounts in Switzerland:

2002 Peru / Montesinos 92 million US dollars

2003 Philippines / Marcos 684 million US dollars

2005 Nigeria / Abacha 700 million US dollars

2005 Angola I 24 million US dollars

2007 Kazakhstan I 115 million US dollars

2008 Salinas / Mexico 74 million US dollars

2012 Kazakhstan II 48 million US dollars

2012 Angola II 43 million US dollars

2014 Haiti / Duvalier 5,7 million of US dollar

2107 Tunisia 3,5 million €

2017 Abacha Nigeria 321 million under the control of the World Bank;

2020 Turkmenistan 1.3 million US dollars for a United Nation Sanitary project

see Stratégie de la Suisse concernant le blocage, la confiscation et la restitution des avoirs de potentats (« Asset Recovery »), Département fédéral des affaires étrangères DFAE, Direction du droit international public (DDIP), 2014, page 6 of 24, and other press releases of the Federal Council.

On 2016 following amounts were still **frozen** and waiting for their future:

Egypt 570 million USD in assets from.

Tunisia / 60 million CHF.

Siria / 120 million CHF connected to Syria, and Syrian companies (EU sanctions)

Libya / 90 million CHF (UN sanctions), see NO DIRTY MONEY, The Swiss Experience, in Returning Illicit Assets, by Swiss Federal department of Foreign Affairs.

<sup>4</sup> The Security council of the United Nations on August 24, 2004, in the report of the Secretary General regarding “The rule of law and transitional justice in conflict and post-conflict societies” tried to give a definition of “transitional justice”. It comprises 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.

development faculty, with the collective work of their brightest minds. Each State should decide free in the context of his sovereignty how to manage the heritage of the former State structure.

Often, courageous Judges, Public Prosecutors, State officials, Politicians and Lawyers with their integrity and example, builds the backbone of the newly born social organism that gives public trust and dignity of the State and Rule of law.

In my experience, the biggest question in Judicial assistance in Criminal matters is always if a criminal prosecution abroad will be opened, if it will continue and if it will end with a trial with conviction and forfeiture, or not.

To forecast how and when a criminal procedure in Switzerland will finish it is already a difficult task. To forecast how and when a procedure abroad will finish, for a Swiss lawyer is even more difficult, if not impossible.

This difficulty is enhanced by the general aspect that in litigations about big amounts (as principle over the 100'000.- US dollars) a case becomes, at least indirectly, also "political". When politics comes in from the door, justice steps out from the window: so, my professors told me at the Bern University: maybe a universal meta-juridical principle, South and/or North.

By evaluating the effects of "transitional justice", from a northern perspective, it is interesting to note how conflict and post-conflict societies generated enormous judicial and legal effects outside of them, also in Switzerland, during the last forty years.

After the "forerunner" Law on **International Mutual Assistance in Criminal Matters (IMAC)** entered in force in 1983, a multitude of new related Statutes where enacted.

Now the set of norms that tries to solve the different issues related with the application of IMAC, with their interactions, is vast and quite complicated.

Herewith I listed chronologically some of the most important Swiss legal mechanism related with international assistance in criminal matters:

1. 1983 Law on **International Mutual Assistance in Criminal Matters** (IMAC)<sup>5</sup>
2. 1994 **Money laundering** crime<sup>6</sup>
3. 1994 Unlawful association (**Criminal associations**) crime<sup>7</sup>
4. 1994 Forfeiture of assets of a **Criminal associations**<sup>8</sup>
5. 1995 Federal Act on **Cooperation with international courts for the Prosecution of Serious Violations of International Humanitarian Law** (former Yugoslavia and Ruanda)<sup>9</sup>
6. 1998 Enactment of the Federal Act **Anti-Money Laundering** and building of the **Money Laundering Reporting Office Switzerland (MROS)**<sup>10</sup>
7. 2000 **Corruption** and **bribery** crimes<sup>11</sup>

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<sup>5</sup> Swiss federal law on **International Mutual Assistance in Criminal Matters** (IMAC) of 20.03.1981, RS (Recueil Systématique - Systematic collection of the Swiss federal law) 351.1, in force since 01.01.1983.

<sup>6</sup> Federal Article 305bis (now) of the Swiss federal penal Code against **money laundering** of 18.03.1994, in force since 01.08.

<sup>7</sup> Federal Articles 275ter (now) of the Swiss federal penal Code against **criminal associations**, in force since 01.08.1994

<sup>8</sup> Federal Article 72 (now) of the Swiss federal penal related to **forfeiture of assets of the organized crimes** since 01.08.1994

<sup>9</sup> Of 21.12.1995 «Loi fédérale relative à la **coopération avec les tribunaux internationaux chargés de poursuivre les violations graves du droit international humanitaire**» (former Yugoslavia and Ruanda tribunals), RS 351.20, in force 22.12.1995.

<sup>10</sup> Federal Act on Combating Money Laundering and Terrorist Financing - **Anti Money Laundering Act** – AMLA – of the 12.10.1997, RS 955.0, in force since 01.04.1998.

<sup>11</sup> Federal Articles 322ter- 322octies of the Swiss federal penal Code against bribery of 01.05.2000.



8. 2002 Building of the new jurisdictional competences of the *Office of the Attorney General of Switzerland*<sup>12</sup>
9. 2003 Institution of the *corporate Criminal Liability*<sup>13</sup>
10. 2003 *Terrorism* crime<sup>14</sup>
11. 2004 The *Federal Criminal Tribunal* in Bellinzona begins his activity
12. 2004 Federal Act on *sharing of the forfeited goods*<sup>15</sup>
13. 2005 *Traffic of stolen Cultural property* crime<sup>16</sup>
14. 2009 Control of the financial market through the Swiss Financial Market Supervisory Authority **FINMA**<sup>17</sup>
15. 2007 Institution of the *Swiss federal administrative tribunal* in St. Gallen
16. 2011 New unified *Swiss federal Criminal Procedure Code*<sup>18</sup>
17. 2011 *Genocide, crimes against humanity* and *war crimes* according to the Rome Statute of the **International Criminal Court**<sup>19</sup> in den Haag and the **Geneva Convention**<sup>20</sup> and **Additional protocols** relating to the *protection of victims of international armed conflicts* crimes<sup>21</sup>
18. 2011 *Task force dealing with the past and prevention of atrocities* of the Federal Department of foreign Affairs begins his activity<sup>22</sup>.
19. 2013 Federal Act on *extrajudicial witness protection*<sup>23</sup>
20. 2016 Federal Act on **Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons (Foreign Illicit Assets Act, FIAA)**<sup>24</sup>
21. 2016 *Section on restitution of illicit Assets* of the Swiss Federal Department of Foreign Affairs begins his activity<sup>25</sup>
22. 2016 Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Act, (**FinMIA**))<sup>26</sup>

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<sup>12</sup> With main seat in Bern, and branches in Lausanne, Zurich and Lugano; Federal Act on the **new procedural competences of the Confederation in the criminal organizations and economic crimes**, of 22.12.1999, in force on 01.01.2002.

<sup>13</sup> Federal Act of 21 March 2003 (Financing of Terrorism, Federal Art. 102 of the Swiss federal penal Code regarding the **Corporate Criminal Liability** - Liability under the criminal law 12.12.2002, in force since 01.10.2003.

<sup>14</sup> Federal Act of 21 March 2003 (Financing of Terrorism), in force since 01.10.2003, with Federal Article 260quinquies of the Swiss federal penal Code **against financing of terrorism** in force since 01.10.2003.

<sup>15</sup> Federal **Act on sharing of the forfeited goods** of 19.03.2004, RS 312.04, in force from 01.08.2004.

<sup>16</sup> UNESCO Convention on the Means of Prohibiting and **Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property** 1970, and subsequent **Federal Law on the international export and transfer of cultural property** of 20.06.2003, RS 444.1, in force since 01.06.2005.

<sup>17</sup> Federal Act on the Swiss **Financial Market Supervisory Authority** (Financial Market Supervision Act, FINMASA), of 22 June 2007, in force since 01.01.2009.

Federal Act on Financial Services (Financial Services Act, FinSA) of 15 June 2018, RS 955.0, in force since

<sup>18</sup> **Swiss Criminal Procedure Code** (Criminal Procedure Code, CrimPC) of 05 October 2007, in force since the 01.01.2011.

<sup>19</sup> Of 17.07.1998, **Rome Statute of the International Criminal Court**, RS 0.312.1, in force since 01.07.2002, inserted in Art. 264 – 264a SPC in force since 01.01.2011

<sup>20</sup> Of 12.08.1949 inserted in art. 264c SPC regarding **crimes of war**, in force since 01.01.2011.

<sup>21</sup> Of 08.06.1977 inserted in Art 264d - 264h SPC relating to the **protection of victims of international armed conflicts**, in force since 01.01.2011

<sup>22</sup> Established on 2011 in the Swiss Department of foreign affairs, the “Task force pour le traitement du passé et la prevention des atrocités” reunites the know-how of the four divisions of the FDFA of International Public Law, Human safety, cooperation and International institutions in order to coordinate and manage conflict situations and mediate the after conflict and development. According to the Federal Council dealing with the past is one of the beacon themes of the Department at it permits to prevent conflicts, grant the duration of the peace process and protects civil populations (See, “Une Task force pour la prévention des atrocités”, Le Temps, Geneva, 01.07.2012.

<sup>23</sup> Loi fédérale sur la **protection extra-procédurale des témoins** (Ltém), RS 312.2, of 23.12.2011, in force since the 01.01.2013.

<sup>24</sup> Of 18.12.2015, Federal Act on the **Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons (Foreign Illicit Assets Act, FIAA)**, RS 196.1, in force since 01.07.2016.

<sup>25</sup> «Section de la restitution d’avoirs illicites».

<sup>26</sup> Federal Act on Financial **Market Infrastructures and Market Conduct in Securities and Derivatives Trading**, of 19.06.2015, in force from 01.01.2016.

Just to mention the main ones.

We can therefore note the existence of a sort of “*reflex transitional justice*”, meant as a set of complex mechanisms offered to help the conflict or post conflict societies to find a new balance with their past and build a more sustainable society and future.

It is important to note that as principle, assistance should be granted as far as possible even if the act described in the request is not an offence in Switzerland. However, in executing a request, procedural enforcement (i.e. premises searches, seizure of evidence, summons to appear with a warning of enforcement in the event of non-compliance, interviewing of witnesses, telephone tapping, and the lifting of the obligation to keep certain facts confidential) it may be ordered only if the offence described in the request also constitutes a criminal offence under Swiss law (principle of ***dual criminality***)<sup>27</sup>. So, in order to obtain measures as freezing of goods or ill-gotten assets and their subsequent forfeiture in favor of the requesting State, it is necessary that the alleged punishable act is subject to double criminality, in the requiring State and in Switzerland.

That means that with the enactment in Switzerland in the last 40 years of the listed new crimes types, the possibility to proceed with a domestic criminal procedure and then ask for assistance to Switzerland with the goal to seize and forfeit goods has been substantially extended. This relatively new possibility could be particularly interesting in connection of the crimes against Humanity since the 2011 or in case of crime of Traffic of stolen cultural identity artifacts since 2005.

#### **4. Switzerland – Assistance in Criminal Matters and Transitional Justice**

In a broad perspective, transitional justice, can be seen as a formal or unformal, hard or soft, approach by the post conflict society with regard to the people that are alleged to be accountable also for economic crimes, large scale corruption, intersecting with human rights violations.

As a formal, hard, approach, the post conflict State could reorganize his judiciary system, open a criminal procedure against the responsible granting to the accused the formal required minimum of procedural rights, and ask to the *Federal Department of Justice and Police* FDJP, Federal Office of Justice FOJ, *Mutual Assistance Unit* located in Berne, for assistance in criminal matter on the base of a bilateral or multilateral treaty (if existent) or on the base of the Swiss Federal Act on International Mutual Assistance in Criminal Matters (Mutual Assistance Act, IMAC) .

The request must be based on evidences. It is not possible to proceed with a pure fishing expedition. However, for bank enquiries, for example, if the number of the account cannot necessarily be stated in the request; depending on the gravity of the case, *circular orders*, may, however, be issued to all banks in a given area (“*bank alert*”)<sup>28</sup>. This is first and foremost a question of proportionality.

Every professional on the field of judicial assistance in criminal matters experiments, from time to time, the “sparks” of hope brought by new government representatives that are considering the possibility to open a procedure of judicial assistance in criminal matters in Switzerland against removed politicians and their associates.

The decision to proceed criminally, or not, against whom, is always a difficult one.

From my sight, in the north, we can’t do much to induce that decision.

We can only help to understand the mechanism that, in some lucky cases, can assist to obtain criminal justice and recover in Switzerland a part of looted State treasures.

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<sup>27</sup> See International Mutual Assistance in Criminal Matters, Guidelines, 9th edition 2009 (Case law as of May 2010) issued by Federal Department of Justice and Police FDJP, Federal Office of Justice FOJ, Mutual Assistance Unit, page. 26.

<sup>28</sup> See “International Mutual Assistance in Criminal Matters”, Guidelines, FDJP, 9th edition 2009, page 39 note 279.

The decision to proceed, with a criminal procedure, against one or more of the responsible, through a regular or special criminal tribunal, as said, it is a difficult one. Such a decision needs immediate action, continuity of operativity and of constant political will of the Nation, until to the end. Without that premise, no success can be reached.

One of the reasons is the difficulty, is that after a request of assistance in criminal matters or a criminal complaint is filed, nothing is predictable anymore. In order to have a conviction, you need also good evidences.

Also, after a criminal complaint, the alleged facts enter in a mechanism that can trigger a series of not forecasted auto-releasing mechanisms, governed by local criminal statutes that prescribes that the offender -or his helper- must be prosecuted **ex officio**. Those self-developing mechanism (for instance the opening of a Swiss inquiry for money laundering) could render more difficult the subsequent negotiations with the people allegedly accountable for it.

Furthermore, if sometimes the time and situation for a Criminal procedure seems to be favorable, suddenly a new unforeseen and unsurmountable obstacle can arise, blocking completely the way and rendering necessary to project a new “escape plan”, in order to limit to the losses to the minimum, or rendering necessary to wait, for better times. Those obstacles come often -but not only- a result of sudden political changes of direction of the government or by the prevailing of the resistances built the unchanged deep-State.

Other problems of continuity that can also arise during the inquiries done by the examining magistrates in international assistance cases are removal from their office, early pensioning, illness and invalidity, reduction of the allocated budget, not renewal of appointment or removal with appointment to a new more challenging activity, just to mention some of them.

The definition of “*criminal matters*” under Articles 1.1.b and 1.3. IMAC excludes the possibility of assistance to “*Commissions*”, which represents generally alternative dispute resolution methods to criminal proceedings in the strict sense.

Certain “mediation” or “Amiable settlements” procedures may, however, fall within the typical scope of criminal procedure, for instance if those are provided for in specific Procedure Codes. That is different in cases where ad hoc procedures and institutions are established and codified by supranational bodies resolutions in order to overcome crisis situations.

According to the Swiss jurisprudence and doctrine, international judicial cooperation in criminal matters can only be granted for the prosecution of criminal offences for which the judicial authorities of the requesting state are responsible<sup>29</sup>. In other words, criminal proceedings must be initiated in the requesting State<sup>30</sup>. Switzerland has, however, granted assistance for investigations conducted by administrative authorities, insofar as the activities of the administrative authorities were the preliminary stage of a procedure which then involved the criminal judicial authorities<sup>31</sup>. However, it is difficult for this example to apply to *Truth commissions* since they are not preparatory to a criminal trial but alternatives to it. The same applies to a decision of the Federal tribunal, which concerns a *parliamentary committee* of inquiry that could lead to criminal proceedings<sup>32</sup>.

In this respect, cooperation can only be envisaged if it remains in some way in the criminal justice system. As soon a procedure leaves the scope of international assistance in criminal matters, cooperation presupposes specific legislative intervention, for example in cooperation with the International Criminal Court and the International Tribunals established by UN Security Council Resolutions 827 and 955 (former Yugoslavia and Rwanda). However, there is a constitutional problem: Swiss federal Law on cooperation

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<sup>29</sup> Federal Criminal Tribunal 2010, 158 considerations 2 and references.

<sup>30</sup> Decision of the Federal Tribunal 132 II 178 consideration 2.2

<sup>31</sup> Decision of the Federal Tribunal 109 Ib 50 consideration 3

<sup>32</sup> Decision of the Federal Tribunal the 126 II 316 see also 133 IV 40.

with the International Criminal Court<sup>33</sup> is based on Art. 123 para. 1 of the Swiss Constitution regarding the criminal law. What would be the constitutional basis for this type of cooperation, given that it is not criminal? Maybe one could look at art. 54 of the Swiss Constitution regarding the competences on foreign relations, as it did with the Federal Act of 21 December 1995 on *cooperation with international courts for the Prosecution of Serious Violations of International Humanitarian Law*<sup>34</sup>.

It is also interesting to mention that Art. 316 of the *Swiss Criminal Procedure Code* provides the possibility of a *Private settlement* but limited where the proceedings related to an offence that is prosecuted only on complaint. As often serious crimes related to departing governments should be prosecuted ex officio, the private settlement disposition may not be applicable.

So, *Truth and reconciliation commissions* are not recognized as dealing *criminal matters* and therefore an international request of assistance in criminal matters from their side, will be rejected. Nevertheless, the evidences obtained through the inquiries done by those institutions, can in some cases, help to establish not only an historical record of the facts in order to elaborate the past, but also, if provided by the law, it can recommend remedial action by regular criminal tribunals<sup>35</sup>.

After the enactment in 2011 of the new crimes of genocide, crimes against the humanity, war crimes and crimes against the population in the Swiss Criminal Code, the Swiss Federal Department of Foreign Affairs built the new “*Task force Dealing with the past and prevention of atrocities*”. This structure has as objective to coordinate and manage conflict situations, to mediate the after-conflict development. In broad sense, this body, has as task to facilitate transitional justice. Probably a unique role, worldwide.

Also, the “*Section on restitution of illicit Assets*” of the *Swiss Federal Department of Foreign Affairs (FDFA)* has the role to support and coordinate the administrative procedure of freezing and the procedure of international assistance in criminal matters, led by the Justice Department.

*The Federal Act on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons* provides also at Art. 10 the possibility to propose “amicable solutions” between the involved parties.

The “amicable solution” can be built through coordination between the criminal procedure and a procedure of a *Truth and reconciliation commission*, for instance by a voluntary renounce to specific amounts of money by the foreign accused party, with, as return, the waiver and withdrawal by the new State of the rights as person suffering harm according to Art. 120 of the Swiss Criminal Procedure, with the parallel waiver and withdrawal of the criminal procedure abroad. With both waiver and withdrawal of both criminal proceedings in Switzerland and abroad, also the autonomous criminal proceedings (for instance for Money Laundering in Switzerland) can also be closed, as after the closure of the foreign criminal procedure, it will lack the needed offence abroad required in order to be able to continue the prosecution in Switzerland.

Therefore, the coordination activity of the *Task force Dealing with the past and prevention of atrocities* and of the *Section on restitution of illicit Assets*, together, with the *Division for International Legal Assistance*, with the competent Prosecution office, can offer a solution that copes also with the interests of a Transitional justice body, integrating it in the asset restitution procedure.

Finally, according art. 17 FIAA, the restitution of assets should pursue Transitional Justice objectives, as: programs of public interest, the way of use of the returned assets, the inclusion of parties in the restitution process or control and monitoring of the use made of the returned assets. In substance, through this

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<sup>33</sup> Of 22.06.2011, RS 351.6, in force on 01.07.2002.

<sup>34</sup> Of 21.12.1995 «Loi fédérale relative à la coopération avec les tribunaux internationaux chargés de poursuivre les violations graves du droit international humanitaire» (former Yugoslavia and Ruanda tribunals), RS 351.20, in force 22.12.1995.

<sup>35</sup> “But while tribunals are important, our experience with truth commissions also shows them to be a potentially valuable complementary tool in the quest for justice and reconciliation, taking as they do a victim-centred approach and helping to establish a historical record and recommend remedial action.” The Security council of the United Nations on August 24, 2004, in the report of the Secretary General regarding “The rule of law and transitional justice in conflict and post-conflict societies”, Summary, page 2.

restitution disposition, it is possible that the Tribunals locate and forfeits the assets through a criminal procedure with assistance request, and that afterward part of the recovered assets are distributed as reparation according to the evidences of violations collected in the meantime by the Transitional justice body. Such a solution can also be taken outside form a criminal conviction, is the defendant parties agrees to proceed with an “amicable solution”, in which also Transitional justice bodies can be integrated in order to proceed with the distribution to the victims.

A last interesting aspect is to note that Art. 11 of the *Foreign Illicit Assets Act* (FIAA) provides also the possibility that Switzerland gives technical support measures trough experts, in order to help the recovering of illicit assets.

## 5. Conclusion

Every post conflict society should remain free to self-determine how to cope with his past.

As stated by Mr. Ruben Carranza “*An impunity gap is created when transitional justice mechanisms deal with only one kind of abuse while ignoring accountability for large-scale corruption and economic crimes.*”<sup>36</sup>.

Transitional justice structures like *Truth and reconciliation commissions*, are interesting and important hybrid mechanisms of reparation justice, with the task to conciliate, settle privately the relations between the new government, the departing Government, their relations with the different social structures and their troubled past.

As seen, now, for Transitional Justice structures, without a specific legal empowerment, it is impossible to ask for international assistance in criminal matters as known and recognized in Switzerland by IMAC.

Nevertheless, according to *Foreign Illicit Assets Act (FILA)*, is it is possible to coordinate amicable solutions that can also include the Criminal prosecutions pending abroad and in Switzerland. It is at the stage of the distribution of the recovered assets that the inquiry work and results of the Transitional Justice body can be of great utility, giving him the responsibility to restitute for reparation to the victims shares of a dedicated part of the recovered assets.

— Niccolò Salvioni, Tunis the 3<sup>rd</sup> February 2020 – Locarno the 9<sup>th</sup> April 2020

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<sup>36</sup> Ruben Carranza “Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?”, *The International Journal of Transitional Justice*, Vol. 2, 2008, page 329.

*Truth, Accountability and Asset Recovery: How transitional Justice Can Fight Corruption*

*02-03 March 2020*

*Hotel Africa*

*Tunis –Tunisia*

# Switzerland:

## How can Transitional justice support asset recovery and the right to reparation?

By

Avv. Niccolò Salvioni (attorney at law), Locarno, Switzerland

# 1. Language of the procedure

Precedente

Art. 5 Lingue ufficiali

Successivo

+ 441.1

+ Sezione 1:  
Disposizioni  
generali

- Sezione 2: Lingue  
ufficiali della  
Confederazione

2: Lingue ufficiali  
della  
Confederazione

Art. 4 Campo  
d'applicazione

Art. 5 Lingue  
ufficiali

Art. 6 Scelta della  
lingua

Art. 7  
Comprensibilità

Art. 8 Camere  
federali

Art. 9 Consiglio  
federale e  
Amministrazione  
federale

Art. 10

Art. 5 Lingue ufficiali

1 Le lingue ufficiali della  
Confederazione sono il  
tedesco, il francese e  
l'italiano. Il romancio è  
lingua ufficiale nei  
rapporti con le persone  
di lingua romancia.

2 Le autorità federali  
usano le lingue ufficiali  
nella loro forma  
standard.

Art. 5 Amtssprachen

1 Die Amtssprachen des  
Bundes sind Deutsch,  
Französisch und  
Italienisch.  
Rätoromanisch ist  
Amtssprache im Verkehr  
mit Personen dieser  
Sprache.

2 Die Bundesbehörden  
verwenden die  
Amtssprachen in ihren  
Standardformen.

Art. 5 Langues officielles

1 Les langues officielles  
de la Confédération  
sont l'allemand, le  
français et l'italien. Le  
romanche est langue  
officielle dans les  
rapports avec les  
personnes de cette  
langue.

2 Les autorités fédérales  
utilisent les langues  
officielles dans leur  
forme standard.

Art. 5 Linguas uffizialas

1 Las linguas uffizialas  
da la Confederaziun èn  
il tudestg, il franzos ed il  
talian. Il rumantsch è  
lingua uffiziala en il  
contact cun persunas da  
questa lingua.

2 Las autoritads  
federalas dovran las  
linguas uffizialas en lur  
furmas da standard.

Art. 5 Official languages

1 The official languages  
of the Confederation  
are German, French and  
Italian. Romansh is an  
official language in  
dealings with persons  
who speak this  
language.

2 The federal authorities  
shall use the official  
languages in their  
standard forms.

☒ Italiano

☒ Deutsch

☒ Français

☒ Rumantsch

☒ English

☒ Scorrimento sincronizzato

*Art. 5 of the Federal Act on the National Languages and understanding between the Linguistic Communities, RS 441.1*

## 2. Ill-gotten assets?

Cases of known recovered amounts in Switzerland:

- 2002 Peru / Montesinos 92 million US dollars
- 2003 Philippines / Marcos 684 million US dollars
- 2005 Nigeria / Abacha 700 million US dollars
- 2005 Angola I 24 million US dollars
- 2007 Kazakhstan I 115 million US dollars
- 2008 Salinas / Mexico 74 million US dollars
- 2012 Kazakhstan II 48 million US dollars
- 2012 Angola II 43 million US dollars
- 2014 Haiti / Duvalier 5,7 million of US dollar



- 2107 Tunisia 3,5 million €
- 2017 Nigeria / Abacha 321 million US dollars under the control of the World Bank;
- 2020 Turkmenistan 1.3 million US dollars for a United Nation Sanitary project

*On 2016 following amounts was still **frozen** and waiting for their future:*

- Egypt 570 million USD
- Tunisia / 60 million CHF
- Siria / 120 million CHF connected to Syria, and Syrian companies (EU sanctions)
- Libya / 90 million CHF (UN sanctions)

### 3. The continuedly changing working frame

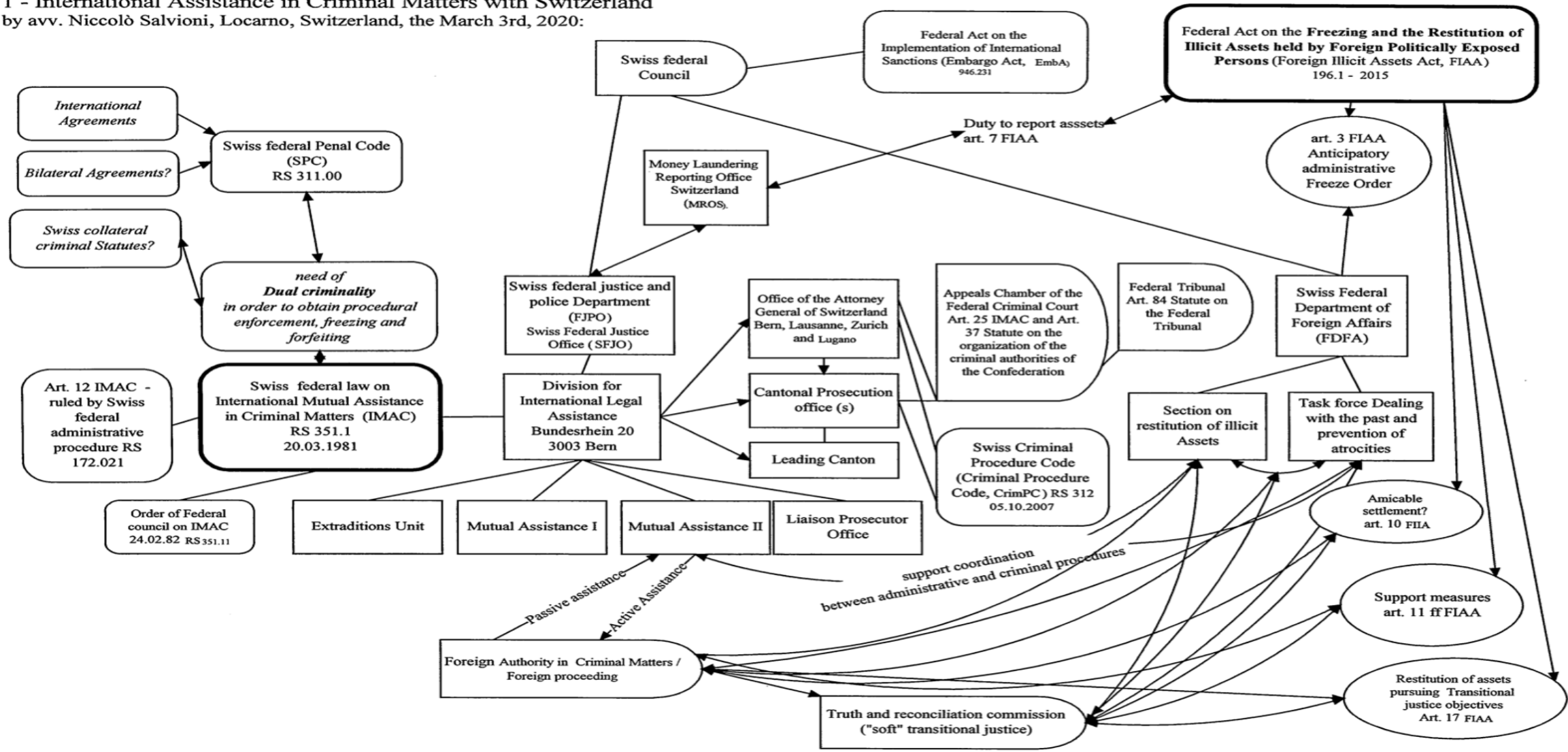
Chronology of most important Swiss legal mechanism related with international assistance in criminal matters:

- 1983 Law on ***International Mutual Assistance in Criminal Matters*** (IMAC)
- 1994 ***Money laundering*** crime
- 1994 Unlawful association (***Criminal associations***) crime
- 1994 Forfeiture of assets of a ***Criminal associations***
- 1998 Enactment of the ***Anti-Money Laundering Act*** and building of the ***Money Laundering Reporting Office Switzerland (MROS)***
- 2000 ***Corruption*** and ***bribery crimes***
- 2002 Building of the new jurisdictional competences of the ***Federal Prosecution Office***

- 2003 Institution of ***corporate Criminal Liability***
- 2003 ***Terrorism*** crime
- 2004 The ***Federal Criminal Tribunal*** in Bellinzona begins his activity
- 2004 Federal Act on ***sharing of the forfeited goods***
- 2005 ***Traffic of stolen Cultural property*** crime
- 2009 Control of the financial market through the Swiss Financial Market Supervisory Authority **FINMA**
- 2007 Institution of the ***Swiss federal administrative tribunal*** in St. Gallen
- 2011 New unified ***Swiss federal Criminal Procedure Code***

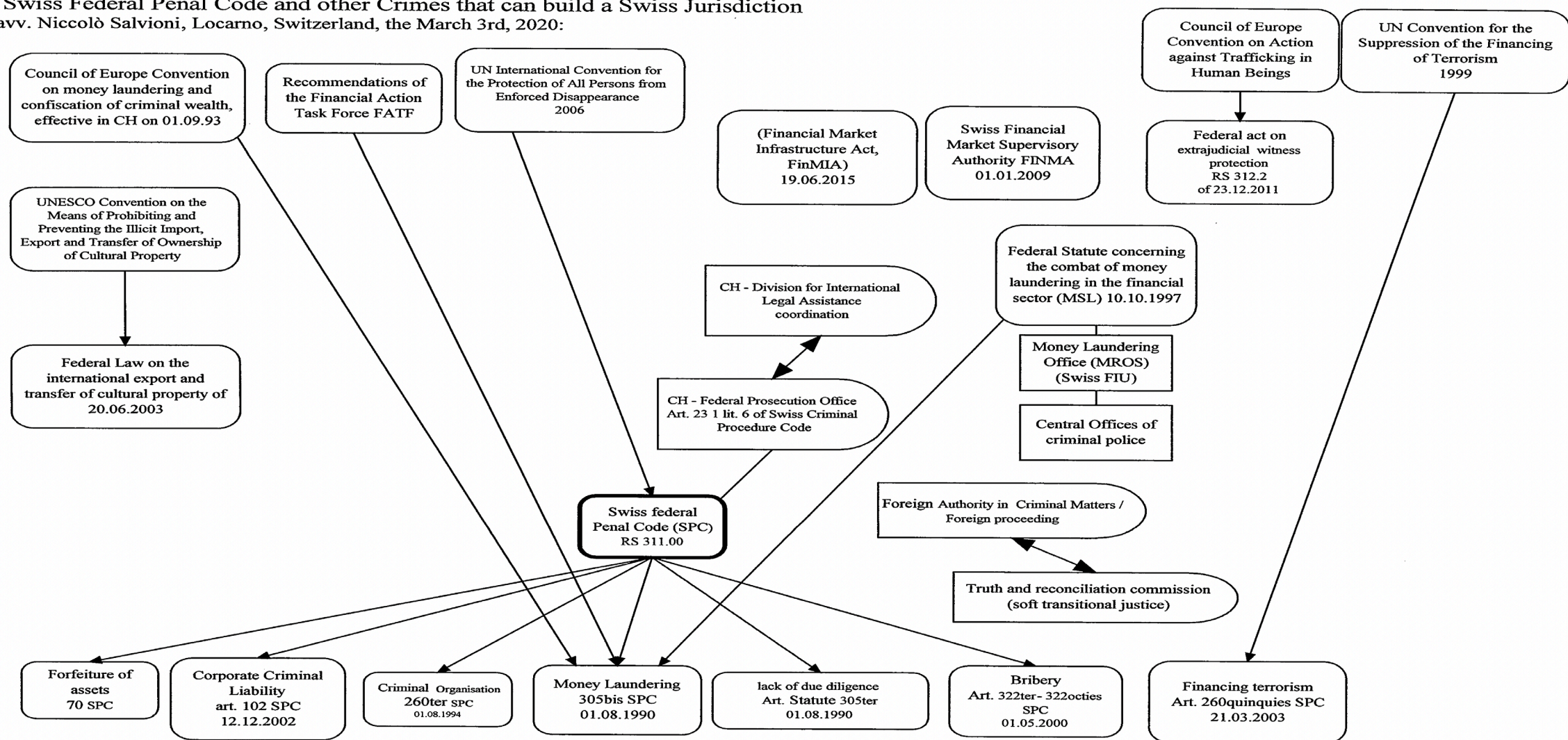
- 2011 ***Genocide, crimes against humanity*** and ***war crimes*** according to the Rome Statute of the International Criminal Court in the Hague and the **Geneva Convention** and **Additional protocols** relating to the ***protection of victims of international armed conflicts*** crimes
- 2011 the ***Task force dealing with the past and prevention of atrocities*** of the Federal Department of foreign Affairs begins his activity.
- 2013 Federal act on ***extrajudicial witness protection***
- 2016 Federal Act on **Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons** (Foreign Illicit Assets Act), FIAA
- 2016 the ***Section on restitution of illicit Assets*** of the Swiss Federal Department of Foreign Affairs begins his activity
- 2016 Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Act, (***FinMIA***))

1 - International Assistance in Criminal Matters with Switzerland  
by avv. Niccolò Salvioni, Locarno, Switzerland, the March 3rd, 2020:





## 2 - Swiss Federal Penal Code and other Crimes that can build a Swiss Jurisdiction by avv. Niccolò Salvioni, Locarno, Switzerland, the March 3rd, 2020:



3 - Swiss Federal Penal Code - Amendment of Federal Legislation in Implementation of the Rome Statue of the International Criminal Court -  
Swiss relative complementary universal Jurisdiction for acts carried out abroad:  
by avv. Niccolò Salvioni, Locarno, Switzerland, March 2, 2020:

