

Helpdesk Research Report

Transitional justice lessons for Syria (revised report)

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Question

- *Which particular lessons can be drawn from transitional justice in the Arab world and might be useful for the conflict in Syria?*
- *What is the impact of the sectarian nature of a conflict for transitional justice?*
- *What are the opportunities and limitations of an international actor and donor, such as the EU, in transitional justice?*
- *Which elements of transitional justice pose a concrete risk to the post-conflict stabilisation process and how can this be avoided?*

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1. Overview

While literature on transitional justice (TJ) experiences in the Arab world is limited, there is **emerging analysis** of experiences in ‘Arab Spring’¹ countries, and some analysis of previous TJ experiences. From a rapid review of this literature, the following key findings have been identified:

Lessons from TJ experiences in the Arab world

- **Factors that are common in the region** have implications for TJ processes: weak state legitimacy and capacity; decades of authoritarian rule and deep societal divisions; deep-seated socio-economic inequalities; the recent wave of political transitions and, in some countries, rising Islamist powers; and historical-cultural frameworks with context-specific interpretations of peace and justice.
- **Key lessons** include: the importance of prioritising the local, undertaking consultation and understanding cultural sensitivities and practices; the importance of timing; the mixed, often negative, impact of limited TJ; the risk of victor’s justice and political purges; the challenges of establishing effective criminal justice; meeting the needs of groups of victims; and widening the concept of TJ to address socio-economic rights.

Impact of a sectarian² conflict

- Sectarian conflicts have accentuated **divides in communities**, distrust and fear. It is even more important that TJ processes are balanced, inclusive and facilitate a shared understanding of events. When sectarian divisions are not addressed, violence can continue (e.g. Iraq).
- **Coexistence initiatives** (e.g. dialogue facilitation and intergroup projects) have been essential. Victims’ groups and women’s groups have often become effective leaders of outreach and consultation.
- The Syrian conflict has been complex, with an interplay of issues of class, access to and exercise of political power and economics, and religion. **Challenges for TJ arising** from this include the impact of widespread violence, the risk of retributive justice, the lack of a consensual vision for post-conflict Syria and the potential impact of religious radicalisation.

Opportunities and limitations of international actors in TJ

- **Opportunities** include: to provide financial, logistical and technical support to national TJ; support regional TJ processes; and respond to increasingly internationalised human rights abuses and economic crimes. International actors need to take account of pre-existing resources.
- **Risks and challenges** include: distrust of international motives and low legitimacy of international criminal law in the region; the risk of ignoring the ‘local’; the risk of unintended political consequences; the need for cultural sensitivity; and the challenge of addressing foreign involvement in conflict.

¹ The report uses the expression ‘Arab Spring’ as it has become the mainstream way to refer to the uprisings / revolts, though the expression is challenged by a number of scholars.

² Sectarianism is a highly debated concept with many definitions. One way of understanding sectarianism is as ethno-religious divisions into groups or ‘sects’ that determine familial, local, regional, national and even broader kinds of loyalty and affiliation (informed by Abdo, 2013).

Risks to post-conflict stabilisation

- There are many claims about the potential positive impact of TJ but there is **little empirical evidence** of either positive or negative effects (Thoms et al, 2010).
- Experts identify **key risks** in stabilisation processes for 'Arab Spring' countries, including: still powerful actors linked to previous regimes; the risk of politicisation of TJ processes; and the potential for mass protests to continue.
- Experts identify **specific risks in Syria**: limited awareness and misconception of TJ; the challenges in designing a process perceived as fair by all; the militarisation of society; the need to undertake major institutional reform; inexperienced civil society; and limited resources.
- Experts identify that such risks can be **mitigated by**: a focus on legitimacy and local ownership; political or governmental support for rule of law and democratic principles; utilising civil society effectively; prioritising outreach; linking TJ to efforts to strengthen the rule of law; giving time and space for evolutionary change; combining different mechanisms to satisfy a greater range of objectives; and undertaking empirical research to inform decision-making.

2. Summary of transitional processes in the Arab world

Most recently there are **experiences with TJ in 'Arab Spring' countries** such as Egypt, Tunisia and Libya, and to a lesser extent in Bahrain and Yemen. **Prior implementation** of TJ mechanisms in Arab countries include the varied experiences in Algeria, Iraq, Lebanon, Morocco and Sudan.³

Here is a brief summary of TJ experiences in Arab countries. Further details are provided in Annex 2.

- **Algeria**: Following nearly two decades of conflict, there have been reparations programmes and a series of amnesties (2000, 2005, 2006). There has been little accountability for the thousands of disappeared (Wiebelhaus-Brahm, n.d.).
- **Bahrain**: Some TJ measures have been attempted without a regime change. A 2011 commission of enquiry, however, 'failed to identify perpetrators or attribute responsibility for serious human rights violations' (Mistry, 2012, p. 11). Meanwhile oppression and human rights abuses continue (Perish et al, 2012).
- **Egypt**: Some TJ measures have been undertaken, with national trials of former President Mubarak and others (ongoing), and a commission of inquiry (2011) investigating violations during the protests. There are criticisms that basic international standards of due process, investigation and prosecution are not being met (Mistry, 2012, p. 10; Perish et al, 2012). In the context of a volatile and incomplete transition, with human rights abuses continuing, experts note that TJ discussions may be 'premature' (Abou-El-Fadl, 2012, p. 1).
- **Iraq**: A variety of TJ measures have been implemented, including the prosecution and execution of Saddam Hussein (2006) and the de-Ba'athification programme (started 2003), but critics

³ What constitutes an Arab country remains debated. The standard definition of the Arab world adopted in this report comprises the 22 countries and territories of the Arab League: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen. This report has selected the countries with recent substantive experience of transitional justice and therefore does not cover the following countries: Comoros, Djibouti, Jordan, Kuwait, Mauritania, Oman, Palestine, Qatar, Saudi Arabia, Somalia and United Arab Emirates.

conclude that TJ 'has been politicized and manipulated to settle old scores' and has 'exacerbated tensions and jeopardized future stability' (Wiebelhaus-Brahm, n.d., p. 2).

- **Lebanon:** A blanket amnesty was issued in 1991. The creation of the Special Tribunal of Lebanon by the UN Security Council (UNSC) was controversial, and has been criticised for its limited scope, protracted investigations (Burgis-Kasthala, 2013) and absence of arrests (Mistry, 2012). Thousands of people who disappeared remain unaccounted for.
- **Libya:** The UNSC referral of the situation in Libya to the International Criminal Court (ICC) has led to tensions, with Libyan authorities demanding that the former Libyan leader (Saif Gaddafi) and the former Libyan intelligence chief (Abdullah Al-Senussi) be brought to court. Grives and Thornton (2011) find the 2012 blanket amnesty for 'revolutionaries' to set 'an unfortunate and dangerous precedent' that 'will likely lead to repetition of serious human rights violations' (p. 48).
- **Morocco:** Morocco has investigated past abuses and provided reparations to victims. The first example of a truth commission in an Arab country (2005), it is 'generally praised as a positive contribution but within a very circumscribed transitional process' (van der Merwe, forthcoming, p. 5-6). Questions over the credibility of these measures remain given that human rights abuses continue. (Mistry, 2012, p. 9)
- **Sudan:** The UNSC referred the situation in Darfur to the ICC in 2005. Two arrests have been issued for President Omar al-Bashir who continues to hold office.
- **Tunisia:** Some conclude that Tunisia 'has made more progress' in TJ than the other 'Arab Spring' countries (Perish et al, 2012, p. 6), despite initial hastily conducted trials of questionable merit resulting in the conviction of former President Ben Ali for lesser economic crimes. There are newly elected state bodies, a ministry of human rights (2012), a national civil society consultation (2012) and a draft TJ law (before the Constituent Assembly) (Mistry, 2012, p. 8). There are, however, 'contested visions of the post-Ben Ali state' (Lamont and Boujne, 2012, p. 32) and recent reports of 'paralysis' of the TJ process and political violence (Lamont, 2013, no page number).
- **Yemen:** Mistry (2012, p. 11) finds that the TJ mechanisms which have been implemented with incomplete regime change 'hint at the checklist mentality' of TJ, without apparent consultation, and there has been no investigation yet of decades of human rights abuses (Sharqieh, 2013). Some commentators conclude that the immunity deal for President Saleh (2012) has 'blocked' TJ in the short term (Reiter, forthcoming, p. 20; Salloukh forthcoming, p. 15).

3. Lessons learned from the Arab world

3.1 State of the evidence

Recent literature has **started to look at TJ experiences in Arab countries**⁴. Most references focus on individual countries but there are some early attempts at cross-country analyses and a forthcoming publication on lessons learned (Fisher & Stewart, forthcoming). In addition conferences of experts have begun to consider prospects for future TJ in the region (e.g. Mistry, 2012). With violent conflicts and

⁴ Prior to this, the expansive TJ literature has tended to focus more on other areas of the world, rather than TJ experiences in Arab countries.

confrontations ongoing in a number of Arab countries, there are gaps in the evidence. In particular, while newspapers report local opinion, there is little academic work so far on ‘end-user attitudes towards or experiences of transitional justice debates and policies’ (Macdonald, 2013, p. 20).

3.2 Common factors impacting on TJ

The literature identifies **factors that are common in the region** that have important implications for TJ processes in the countries studied in this report. These factors include:

- **Weak state legitimacy and state capacity.** The historical process of state formation and colonial interference has generally resulted in weak identifications with a nation, while other forms of identity – tribal, sectarian, ethnic – have often remained as or more important (Al-Momani and Rennick, 2011, p. 11). There are contentions over territorial borders, with ‘the transboundary nature of ethnic, religious, and social systems’ reinforcing Arab states’ interference in each other’s internal affairs (Al-Momani and Rennick, 2011, p. 12). The states also tend to have weak capacity in terms of human, organisational and material resources (Ghali et al, 2012).
- **Decades of authoritarian rule and deep societal divisions.** Concentrated, coercive political power (based on family, sect, tribe, class, region or a combination) has alienated and excluded other groups (Salloukh, forthcoming, p. 7). There is a legacy of state institutional involvement in serious human rights abuses, a culture of impunity, low levels of accountability and an erosion of public trust (Salloukh, forthcoming; Dawlaty & NPWJ, 2013, p. 46-47; Ghali et al, 2012, p. 81-82). At the same time, after decades of political oppression, there is a clear awareness in these countries, from political parties, civil society and the broader population, of the need to ‘deal with the past’ (Haugbolle & Hastrup, 2008, p. 141). In these contexts TJ is not just about accountability but reconstituting the country and its national unity (Salloukh, forthcoming, p. 10)
- **Long-standing socio-economic inequalities** with systemic discrimination against women and high levels of economic inequality, rising poverty, high levels of unemployment (in particular among the youth), and rampant economic crimes and corruption.
- **Wave of transitions.** The recent transitions have varied, for example in terms of the extent of violence involved or the role of the military. Many are still volatile and incomplete.
- **Rising powers.** With rising Islamist power in some countries, questions are being raised as to their behaviour vis-à-vis upholding rule of law, human rights and democracy (Line, forthcoming, p. 1).
- **Historical-cultural frameworks with context-specific interpretations of peace and justice** (including in relation to Arab and Muslim frameworks) which, according to Al-Momani & Rennick, 2011:
 - Value continuity and harmony, and a restorative justice that implies ‘just resolution ... of the immediate conflict cause rather than a deeper process of addressing historical or deeply entrenched grievances’ (p. 16).
 - Link to social and religious norms and values, and emphasise ‘preserving honour and avoiding shame for both parties’ in conflict resolution (p. 17).
 - Have a practice of compensation ‘whereby the party with lesser losses compensates the party who has suffered more, regardless of fault or guilt’ (p. 17).

- Include a key role for third-party mediators who, unlike facilitators, are ‘to come up with a judgment and propose a settlement’ (p. 17).

There are, however, **caveats to learning from the Arab world experiences**:

- Some experts caution that experiences to date in the region give more pointers of **what not to do than constructive lessons** (Wiebelhaus-Brahm, n.d.).
- Given that most transitions in Arab countries are incomplete, the lessons identified so far are **preliminary**.
- Other regions’ TJ experiences can also be insightful. Reiter (forthcoming) recommends Latin America’s extensive TJ experience given a shared history of deeply entrenched authoritarian rule and armed conflict, international intervention and rapid waves of regime change.
- There will always be **limitations to drawing on other experiences** (Reiter, forthcoming, p. 14). Every country has unique circumstances that require a different TJ approach (Mistry, 2012, p. 7). Experts warn against template approaches (e.g. Yemen’s misappropriation of some of Morocco’s truth commission experience, given the very different political structures in the two countries (Mistry, 2012, p. 11)).
- **Unique contextual factors in Syria** include the remarkable speed of conflict escalation (Daley, expert comments); the prolonged nature and intensity of the fighting; the type and extent of regional and international involvement in the conflict; and Syria’s particular cultural and religious diversity and history (Dawlaty & NPWJ, 2013, p. 45, p. 60).

3.3 Lessons learned

From the rapid review of the literature, the key lessons that emerge can be grouped into the following general themes:

Prioritising the local, undertaking consultation and understanding cultures

Experts agree that a ‘**fundamental principle**’ is to **prioritise the local**: critical questions such as deciding the TJ objectives and the choice of TJ mechanisms and processes need to be decided on a ‘case-by-case basis’ in each country (Mistry, 2012, p. 5 and p. 14).

Consultation is considered key (OHCHR, 2010). Mistry (2012) finds that ‘the process leading to the adoption of a transitional justice measure can be as important as the end result’ (p. 6). Lessons can be learned from the overall **positive Tunisian experience of consultation** on its TJ law (supported by UNDP)⁵. As the Syrian conflict is ongoing and outcomes are still unknown, it may be premature to plan the TJ process from outside Syria and without proper consultation. Instead it would be more helpful to plan the consultation process for the TJ process (expert comments).

Experts highlight the importance of **understanding cultural sensitivities and traditions** when designing TJ processes. For example, Al-Marashi and Keskin (2008, p. 258) argue that in the Iraqi cultural setting, televised broadcasts of apology and forgiveness (as used in South Africa) would have been ‘an insensitive medium damaging to the honour of either the victim or the accused’ (p. 108). In Syria rebel-held areas

⁵ This included an intensive media outreach campaign, regional consultations on the issues of truth, reparations, trials and reforms, and the creation of a Technical Committee including civil society representatives tasked with drafting the TJ law (Amnesty International, 2011).

are turning to Islamic courts and family/tribal connections in areas where the legitimacy of secular law is low. Burgis-Kasthala (expert comments) suggests that, with, lessons can be learnt from experiences in Lebanon, Palestine and Iraq about how to incorporate such institutions and actors into a post-conflict, formal, state-sponsored TJ process.

Importance of timing

Mistry (2012, p. 15) notes that in some countries TJ is 'almost being used as a metric for the success of the revolution' and as a result there has been a **tendency to 'rush** into the adoption of TJ measures ahead of the emergence of any consensus on a political settlement'. Wiebelhaus-Brahm (expert comments) notes that experiences in Iraq, Tunisia, Egypt and Libya point to the 'risks of engaging in TJ before security and political stability are in place'. At the same time Mistry (2012) also notes that this has to be balanced with the need for a timely start to allow for due investigation of crimes and fair trials, and to respond to societies desire for 'closure'.

Impact of limited TJ

A number of Arab countries have decided to limit TJ scope, often claiming that a deeper TJ process would worsen societal divisions. Experts, however, raise concerns that TJ processes that focus only on the most recent issues (e.g. as is happening in Bahrain, Egypt and Tunisia) leave decades of abuse and corruption unaccounted for (Perish et al, 2012). Experts caution that such restricted accountability **'cannot produce systemic social and political renewal'** (Burgis-Kasthala, 2013, p. 20). Likewise blanket amnesties may be considered politically expedient and contribute to stability but ultimately 'will not placate demands for justice and accountability' (as Wiebelhaus-Brahm notes in the case of Algeria, expert comments).

Importance of collective narratives and memorialisation

Mistry (2012, p. 14) emphasises that systems that 'facilitate the telling of a collective narrative' are important in **reconciling individuals and the wider society**. For example, Szekely (forthcoming, pp. 11-12) finds that in the Middle East contexts, Lebanon's experience should serve as a warning that memory and memorialisation matter. Szekely finds that in Lebanon the avoidance of any broad national conversation about the events of the civil war, the lack of official memorialisation or a standardised national history curriculum, and a heavily sectarian-divided media, has contributed to the reinforcement of sectarian narratives and barriers between communities. Szekely (forthcoming, p. 12) notes that this has done little to promote national reconciliation and contributes to the country's 'continued fragility and vulnerability' to internal conflict.

Risk of victor's justice and political purges

Lamont (expert comments) argues that the most important lesson from TJ experiences to date in the Arab world for Syria is that there 'is an increased tendency to focus on **affiliation-based accountability** over individual accountability', which can result in political purges. **Iraq is an extreme example** of this. The 'de-Ba'athification' process and disbanding of the army has been termed 'disastrous' by some (Salloukh, forthcoming, p. 14) and 'demonstrates the risk of applying vetting procedures without adequate safeguards (Wiebelhaus-Brahm, n.d.). Sissons and Al-Saiedi (2013) identify key lessons from Iraq's 'unhappy experiment' (p. 1). These include having a vetting programme with clear terms of reference, realistic objectives and accurate data. They argue that such a programme should consider how to protect against future abuse, by considering promotions and recruitment, not just dismissals.

Challenges in establishing effective criminal justice

So far, literature on criminal justice in Arab countries highlights the challenges involved. Here are three key risks and examples:

- **Risk of low credibility.** According to Wiebelhaus-Brahm (n.d.) the **Iraqi tribunals** suffered ‘a lack of international participation, poorly trained judges and legal counsel, political manipulation, controversy over the use of the death penalty, procedural and evidentiary shortcomings, and security problems’ (p. 3). Wiebelhaus-Brahm goes on to point out that trials that ‘appear vindictive and target particular groups... send the wrong message and increase tensions’ (n.d., pp. 15-16).
- **Risk of bias.** Along with others (e.g. Mistry, 2012), Fisher (forthcoming, p. 4) finds that in the Middle East context the ICC is compromised by being dependent on the ‘potentially politically-biased and self-interested referral’ of UNSC members.⁶ The **referral of the situation in Libya to the ICC** has been contentious and has led to protracted dissension between the ICC and Libyan authorities who want to try Abdullah Al-Senussi and Saif al-Islam Gaddafi in Libya. Fisher (forthcoming) finds this is compounded by ICC’s indictment choices which ‘further entrench perceptions of partiality’ (p. 4). For example the ICC has indicted actors from one side of the Libyan conflict although it has recognised crimes against humanity and war crimes committed by both sides (p. 21).
- **Risk of delays.** The **Special Tribunal of Lebanon** has also faced difficulties. Mistry (2012, p. 8) finds that the benefits are that it has emphasised individual responsibility thereby alleviating sectarian tension. Also that it has enabled the government to function ‘without the question of the assassination hanging over it’ and relations to be resumed between Lebanese and Syrian governments (Mistry, 2012, p. 8). However, with limited scope, a forum far from Lebanon, protected investigations and a lack of arrests, and without other restorative mechanisms, Burgis-Kasthala (2013, p. 21) fears ‘the SLT cannot deliver on its broad goals of ending Lebanon’s culture of impunity’.

Meeting the needs of specific groups of victims

Sexual and gender-based violence has been prevalent in recent conflicts, but Manea (forthcoming, p. 17) finds that so far TJ processes in ‘Arab Spring’ countries have failed victims of sexual and gender violence. It is ‘one of the most neglected categories of crime in conflict’ (Dawlaty and NPWJ, 2013, p 58). Dawlaty and NPWJ (2013) provides some recommendations on how the TJ process in Syria should address sexual and gender-based violence, including by proactively addressing such crimes; being aware of cultural and religious sensitivities; engaging with the communities involved; and addressing the shame associated with these crimes to encourage more victims to come forward (p. 59).

Also often neglected as a group of victims, **children** have been affected by the violence in recent conflicts in Arab countries (Dawlaty and NPWJ, 2013, p. 60). Dawlaty and NPWJ (2013, p. 61) warn that special

⁶ The International Criminal Court has jurisdiction over crimes of genocide, crimes against humanity and war crimes, when national courts are unwilling or unable to deal with the cases. However the ICC does not have jurisdiction to the majority of Middle Eastern countries as they have not acceded to the Rome Statute. The UN Security Council (UNSC) can make referrals to the ICC, as it has in the case of Libya.

efforts are needed to engage children and young people in transitional justice processes to ensure their voices are heard⁷.

TJ also has to work with **refugees and the internally displaced**, another large group of victims in the Syrian crisis. Challenges will include ensuring that communities perceive a fairness of treatment and distribution of resources, tackling issues of contested ownership of housing and private property in situations of poor or destroyed public record-keeping, and being sensitive to changes to communities which may make return difficult (Dawlaty & NPWJ, 2013, pp. 63-64).

Widening the concept of TJ to address socio-economic rights

A number of experts report 'a growing recognition of the need to treat **social inequalities and economic exploitation as systematic abuses** that qualify as central transitional justice priorities in international law' (van der Merwe, forthcoming, p. 10; Dawlaty & NPWJ, 2013; Mistry, 2012). Conventionally TJ views broader justice agendas as 'a second stage of transition after civil-political rights are secured, treating political rights as a foundation for promoting socio-economic rights' (van der Merwe, forthcoming, p. 5). Challenges for gender justice include long-standing discrimination against women and challenges from rising Islamist powers against women's rights (p. 22). Challenges for addressing economic crimes include how to address systemic corruption and how to distribute assets belonging to former rulers (Mistry, 2012, pp. 11-12).

4. Impact of a sectarian conflict

4.1 General

Looking at countries that have experienced violent intergroup conflict, Haider (2011b) finds that the legacy of this type of violence includes '**divided communities** and widespread distrust and fear of the 'other'' (p. 175). Experts argue that sectarian conflicts make it even more important that TJ processes 'are balanced' (Wiebelhaus-Brahm, expert comments) and facilitate 'an inclusive and shared understanding' of events (Szekely, forthcoming, p. 12).

Burgis-Kasthala (expert comments) finds that Iraq and Lebanon, both sectarian societies that have experienced civil wars, illustrate **what can happen when sectarian divisions are not dealt with**. In Iraq, although there is now state authority, 'sectarianism has not been confronted in a systematic and honest manner' and the inability to address the 'deep structural grievances' for all sides has resulted in continued daily violence. Meanwhile, Lebanon's approach of amnesties and ignoring 'social scars', combined with armed groups and regular use of force by Israel, 'has undermined a national feeling of truly moving on from war and atrocity'.

Haider (2011b) notes that TJ 'is unlikely to repair intergroup relationships, transform communities or eliminate tensions in the absence of **specific attention to promote coexistence**' (p. 176). Coexistence initiatives 'are essential' (p. 176). These include dialogue facilitation, intergroup projects and associations aimed at achieving shared goals, and media campaigns designed to reframe the 'other'. Others (Haugbolle, expert comment) suggest that divided societies 'need a protected forum, where people can

⁷ Dawlaty and NPWJ (2013, p. 62) draw parallels with the treatment of young children during the conflict in Sierra Leone and identify lessons that can be learnt from the subsequent dedicated efforts to facilitate their participation in Sierra Leone's truth commission and the court proceedings.

speak out without fear of recrimination'. Dawlaty and NPWJ (2013) looks at lessons learned in bridging societal divides and finds that **victims' groups and women's groups** often emerge as effective leaders of outreach and consultation initiatives, for instance in South America, South Africa and the Balkans (pp. 77, 84).

4.2 Syria

Experts point out that the conflict in Syria is not just sectarian, but that 'issues of class, access to and exercise of political power, economics and identity (including both community and national identity) are at play' (Daley, expert comments). Others note that 'a sectarian, tribal, regional and ethnic Pandora's Box' has been opened up by the uprisings (Salloukh, forthcoming, p. 7).

Experts identify the following challenges for Syrian TJ due of the sectarian nature of the conflict:

- **Impact of widespread violence:** With ever-increasing levels of violence, Line (forthcoming) notes that 'almost every family in Syria is directly touched by the violence' and wonders whether restorative justice – 'concerned with healing the community as a whole involving all' – will be possible in this context of extreme factionalism and human rights abuses on both sides (p. 16).
- **Risk of retributive victor's justice:** Salloukh (forthcoming) is concerned that the experience in Libya of retributive acts against Gaddafi followers, which 'threaten to ignite a tribal civil war', 'are a bad omen of what may await some minorities in a post-Assad Syria' (p. 15). In Syria, there is 'considerable public hostility' to state institutions and a risk of revenge targeting whole communities (Dawlaty & NPWJ, 2013, p. 49). Reforming the state institutions and (re-)generating public trust will be an 'important focus' for transitional justice (Dawlaty & NPWJ, 2013, p. 47).
- **Lack of consensual vision for a post-conflict Syria:** there are multiple groups fighting on both sides for diverse reasons, including religious or political ideologies, protecting their communities, and influence from outside Syria (Dawlaty & NPWJ, 2013, pp. 48-49). There is no single narrative accepted by all, even those on the same side (p. 50). Dawlaty and NPWJ warn that this will 'inevitably create a difficult political context' for transitional justice (p. 49).
- **Concerns of potential impact of religious radicalisation:** some observers state that some Free Syrian Army members are 'becoming increasingly religiously radicalised and turning to political Islam' (Salloukh, forthcoming, p. 22).

5. International actors in transitional justice

International intervention has become **increasingly prominent** in transitional justice process. Experts note a proliferation of international TJ actors, from international justice mechanisms (such as the ICC or internationalised tribunals) to the intervention of NGOs, intergovernmental organisations and the unilateral actions of individual states or coalitions (Mistry, 2012, p. 14).

5.1 Opportunities

Experts find that there is a **role for international actors** to assist in TJ. They have a role when post-conflict countries are unable to establish TJ mechanisms due to total destruction of institutions and 'the social fabric', as occurred in Sierra Leone and Liberia (Gierycz, 2008, p. 15). They also have a role when national

institutions are incapable of dispensing ‘fair and impartial justice’ (Mistry, 2012, p. 4). International actors could provide financial, logistical and technical support. Technical support can involve helping to set working definitions of reconciliation and justice, and facilitating the local population to develop its understanding of what it wants from TJ (Daley, expert comments). Also, international actors could help support lesson learning from the experiences of other Arab countries (Haugbolle, expert comments). Gierycz (2008, p. 16) states that, for best results, TJ should combine international expertise with local knowledge and professional involvement.

Van der Merwe (forthcoming, p. 7) argues that TJ cannot treat countries as ‘insulated and autonomous’. In Syria there are **regional dimensions** to the conflict and any solution should aim to produce not only national but regional stability (Daley, expert comments). There may be a role for international actors in this regard. Van der Merwe (forthcoming) and Mistry (2012, p. 12) also see a role for international actors to facilitate responses to the **increasingly internationalised nature** of human rights abuses and of exploitative economies, noting in particular the ability of human rights abusers to secure international financial support and to hide their illegal gains outside their borders.

5.2 Risks and challenges

- **Distrust of international motives:** Experts highlight that there ‘is a deep historical distrust of the West in the Arab World’ (Wiebelhaus, expert comments; van der Merwe, forthcoming). The high degree of outside interventions has ‘fuelled suspicion of neo-colonialism and ulterior motives’ (Al-Momani & Rennick, 2012 p. 13). With the perceived failure of Western discourse to address old human rights abuses in the region, many European states have lost credibility (van der Merwe, forthcoming, p. 7; Mistry, 2012, p. 15). Van der Merwe also claims that there is a fear of ‘cultural imperialism’ because international TJ norms can present ‘a very Western and sometimes Christian ethos of individual morality, social order and understanding of the meaning of citizenship and nationhood’ (p. 8). Mistry (2012) also states that there has been a shift to a demand and expectation for international assistance for justice in Libya, Syria and Yemen, but notes that these calls have been strongest when useful in advancing internal revolutionary struggles and weaken ‘markedly’ during post-conflict periods (p. 16). Moreover, the ICC and frameworks of international criminal law more generally ‘require a better track record of intervention to prove that these constitute a fair and responsive system that can be drawn on and constructively engaged with in these contexts’ (van der Merwe, forthcoming, p. 7).
- **Challenges in playing a supporting role:** Nevertheless there is also recognition of international ‘good actors’ and ‘solidarity providers’ (including but not limited to civil society) who are well known to those pursuing TJ locally (Mistry, 2012, p. 15). Therefore, Mistry (2012, p. 15) suggests that ‘the question is more one of *who* provides assistance and advice, and *how* it is presented, rather than the substantive content of that advice and assistance’. Wiebelhaus (expert comments) concludes that, given this context, the best strategy would be for external actors to ‘play a supporting role... and, to the extent possible, engage actors from the Global South... to play more of a lead role’.
- **Risk of diminishing the ‘local’:** Learning lessons from Iraq, Kosovo and potentially Libya, experts caution of the need to ward against the proliferation of international actors diverting attention away from the ‘local’ towards a ‘standardisation of TJ’. They point out the risk of ‘marginalising local knowledge and broad local participation as well as local priorities in the rush to secure immediate policy gains’ (van der Merwe, forthcoming, p. 4). They stress the importance for international actors to consult with local actors (Mistry, 2012, p. 16). Stover et al (2005) outline

the backfiring or ‘hopelessly flawed’ policies that resulted from a lack of consultation by the US authorities in Iraq. Moreover, Abou-El-Fadl (2012) notes that, in the context of volatile and incomplete transitions (e.g. in Egypt) international actors should take their cues from domestic actors rather than rushing in prematurely.

- **Ignoring pre-existing resources:** Experts warn against international actors presuming that TJ processes will start from ‘ground zero’ (Mistry, 2012, p. 14; van der Merwe, forthcoming). Dawlaty and NPWJ (2013, p. 66) cautions that any TJ in Syria should take into account the existing valuable resources for TJ that are already in place. These include resources such as:
 - Emerging civil society organisations, ongoing civil society documentation initiatives inside and outside of Syria, civil society campaigns within Syria; civil society research and policy recommendations⁸.
 - Capacity and resource available within pre-existing state institutions (large and educated class of professionals.
 - The penal code that can form ‘the backbone’ of criminal prosecutions).
 - Judicial structures being developed with the territory under control of opposition forces.
- **Political consequences:** International involvement can have unintended domestic political consequences. Lamont (expert comment) advises that international actors should remain as inclusive as possible to avoid ‘becoming identified with a certain segment of the political spectrum’ as has happened in some cases, e.g. in Tunisia. Daley (expert comments) stresses this means speaking ‘not only to *both* sides of a conflict, but to *all* sides’.
- **Cultural sensitivity:** As described in section 3, in the Arab countries there are context-specific historical-cultural definitions of peace and methods of peacebuilding, with implications for the role and objectives of TJ. International actors need to take care to understand these and work with them (Al-Momani & Rennick, 2012, p. 16). Daley points out that being culturally sensitive requires considering ‘not only what do Muslims think about this, or what do Sunnis want, but what do *these people* want in *this* situation, at *this time*’ (expert comments).
- **Foreign involvement in conflict:** Van der Merwe (forthcoming, p. 8) finds that, with foreign direct involvement in conflict in the Arab region, difficult questions are being asked about how international actors can be held accountable for their actions and what type of actions should be included in such accountability. Another challenge will be to ensure that TJ international interveners work in conjunction with international or UN forces while ensuring that they are seen as distinct and independent (Daley, expert comments; Macdonald, 2013, p. 20).

⁸ The Syrian Centre for Political and Strategic Studies has set up a National Preparatory Committee for TJ which is mapping existing transitional justice work in Syria and producing reports detailing proposed reforms and TJ processes, including the Syrian Transition Roadmap (Syrian Center for Political and Strategic Studies and Syrian Expert House, 2013). Other research organisations producing valuable research for TJ are: the Strategic Research and Communication Centre, The Day After and the Damascus Centre for Human Rights Studies in Syria. (Dawlaty and NPWJ, p. 71)

6. Risks to post-conflict stabilisation

6.1 Evidence on impact of TJ mechanisms

The **evidence is mixed and limited** on the impact of TJ mechanisms on post-conflict stabilisation. There are many claims of the positive impact TJ can have on societies recovering from violent conflict. The limited but growing body of research on the impact of TJ finds that **specific combinations of mechanisms** can contribute positively to human rights and democracy (Haider, 2011). Each mechanism has different roles⁹. Macdonald provides a comprehensive overview of the arguments for each element of a TJ process (2013, pp. 21-26).

Sceptics argue, however, that many TJ measures have the **potential to undermine** negotiated settlements and exacerbate divisions (Haider, 2011a, p. 2). Experts caution against looking for ‘quick fix solutions’ to complex challenges such as mass trauma and reconciliation (van der Merwe, forthcoming, p. 3) and point out that ‘assumed best practice models’ are being increasingly questioned¹⁰. Moreover, local experiences often ‘do not conform to widely held normative assertions about what TJ ‘should’ ... accomplish’ (Macdonald, 2013, p. 4). Others conclude that there is a **lack of empirical evidence** of either positive or negative effects (Thoms et al, 2010).

There has been **recent macro quantitative research** attempting to establish the causal links between TJ and broader objectives such as peace, democratisation and human rights. In her review, Macdonald finds that the findings across the studies are inconclusive¹¹. For example, using large cross-country data-sets:

- Kim and Sikkink (2010) find that human rights prosecutions during and after transitions lead to improvements in human rights.
- Reiter et al (2012) find that in 151 cases of civil war, ‘TJ – regardless of the particular form it takes – does not jeopardize the peace process, and that amnesties may be an effective tool to help end conflict’ (p. 138).
- Synder and Vinjamuri (2003) find that ‘trials present a range of unnecessary risks during peace processes, the success ascribed to truth commissions is misplaced’, whereas amnesties that accompany these processes really allow for constructive dialogue (Macdonald, 2013, p. 10).

Qualitative analyses tend to stress the **importance of local context**. For example, looking in-depth at seven case studies, Fletcher et al (2009) find that ‘it is important to consider what the affected society wants and how a response can be tailored to the particular cultural, social, and economic contexts’ (p. 216).

Fisher (2011) argues that with insufficient research on the impact of TJ mechanisms, they should be applied with caution, calling for ‘more sustained comparative analysis and, above all, more interdisciplinary and mixed methods research’ (p. 423).

⁹ Trials can provide accountability; amnesties can provide stability, advancing democracy and respect for human rights; truth commissions can provide accountability and guidance for reforms to improve human rights protections; and memorialisation can contribute to reconciliation, violence prevention or respect for human rights when linked to other wider mechanisms of reform (Crichton et al, 2012).

¹⁰ For example the effectiveness of truth commissions and other TJ intervention in preventing torture reoccurring (van der Merwe, forthcoming, p. 4 citing McGregor, 2013). Transitional Justice and Torture, IJTJ, 7(1)).

¹¹ And a recent study outlines methodological and data issues with large-N comparative studies on TJ impacts (see Thoms et al, 2008).

6.2 Types of risks

There is substantial literature debating the norms of TJ – ‘what goals and values should prevail in a particular context’ – and **what is feasible** and ‘can be realistically achieved’ (van der Merwe, forthcoming, p. 1). Many experts stress the **need for balance** when pursuing ‘justice’. Daley notes that in situations of escalating violence, hatred and rancour, focusing on the truth may be ‘extremely counter-productive’ and that while each side may need the feeling of ‘being heard’ it may be too much to expect each side to accept the other’s truth (expert comment).

Turning to the Middle Eastern context, Reiter (forthcoming, p. 22) identifies **key risks** in the stabilisation processes for ‘Arab Spring’ countries:

- Still powerful actors linked with previous regimes may react harshly if TJ processes move ‘too far too fast’ (p. 22).
- Those with strong views on shaping the new regimes may use TJ debates as political opportunities to mobilise and influence political opinion (p. 23).
- Populations (particularly the youth) now know the usefulness of protest as a political tool so mass protests can be expected over controversial TJ decisions (p. 23).

Turning to look at Syria, Dawlaty and NPWJ (2013, p. 81) identify specific challenges in Syria for the TJ process:

- **Limited awareness and misconception of TJ** that can undermine its legitimacy and effectiveness, including the risk that it will be perceived as **unwelcome international interference** (p. 75).
- **Designing a process that is ‘perceived as fair, even-handed and neutral by all Syrians’**. Dawlaty and NPWJ (2013, p. 76) advises that this requires commitment to seek accountability for all crimes committed by and against all sides.
- **Proliferation of weapons and militarisation of society**. This makes it difficult for governments to recover control. Armed groups may take the law into their own hands to settle community disputes and/or they may transition into organised crime.
- **Reforming major government institutions** is a complex task, especially for weak transitional government, and requires careful planning and coordination, sustained political will, and authority and legitimacy. Also, government and civil society need to build trust in each other.
- **Inexperienced civil society**: civil society can be crippled by decades of oppression. This inexperience may lead to poor coordination and duplication of effort.
- **Limited resources**: rebuilding Syria will require most of the resources available to the State, with likely few resources for TJ; efforts must focus on keeping expectations in line.

6.3 Mitigating the risks

TJ literature identifies factors that can mitigate the risks and contribute to the effectiveness of TJ. A rapid literature review by Haider (2011a) summarises these as:

- Moving away from prescriptive ‘best practices’ to a **focus on ‘legitimacy and local ownership’**, through greater attention to factors such as culture and history, and studying local preferences, perceptions and existing practices of TJ. Legitimacy is strengthened by consultation, effective outcomes, and active participation by victims in TJ processes (pp. 2-3).

- **Governmental or political support for rule of law and democratic principles.** Some experts argue that it may be necessary to bypass governments with poor human rights records, to work with civil society organisations and victims' groups (pp. 3-4).
- **Civil society's important and varied role.** With close links to victims, civil society groups are important information sources for TJ initiatives and can facilitate the 'outreach' of TJ into communities (pp. 4-5).
- **Outreach, as there is an emerging consensus that it is 'an essential component of any TJ process'.** Public awareness is essential for the basic functioning and transformative impact of TJ mechanisms. Outreach needs to ensure transparency of proceedings, promote understanding (in particular to stop perceptions that TJ mechanisms target any one group) and facilitate participation. There is continuing debate on how best to reach out to communities in post-conflict societies (pp. 5-6).
- TJ should be linked to **efforts to strengthen domestic rule of law and help establish a culture of human rights**, through communication and capacity-building (pp. 6-7).
- TJ needs **time and space for 'evolutionary change'** in how countries confront the past'; hastily designed TJ measures in the immediate aftermath of conflict tend to have mixed results. However, allowing too much time to pass can also be problematic (pp. 7).
- A **combination of different mechanisms** can satisfy a greater range of objectives. Some experts find that there is 'an important interaction' between mechanisms that allows for 'better human rights and democracy outcomes'. It is important, however, that the roles of multiple mechanisms do not become confused or at odds with each other (pp. 8).
- **Empirical research** of the state-level impacts of TJ and the key factors affecting societal responses to TJ, will 'improve decision-making and the effectiveness of policy choices' (p. 8).

7. References

- Abdo, G. (2013). *The new sectarianism: the Arab uprisings and the rebirth of the Shi'a-sunni divide*. Analysis Paper, Number 29. The Saran Center for Middle East Policy at Brookings. Washington D.C.: Brookings Institution.
<http://www.brookings.edu/~media/research/files/papers/2013/04/sunni%20shia%20abdo/sunni%20shia%20abdo>
- Abou-El-Fadl, R. (2012). Beyond conventional transitional justice: Egypt's 2011 revolution and the absence of political will. *International Journal of Transitional Justice*, 6(2).
<http://dx.doi.org/10.1093/ijtj/ijs011>
- Al-Marashi, I. and Keskin, A. (2008). Reconciliation Dilemmas in Post-Ba'athist Iraq: Truth Commissions, Media and Ethno-sectarian Conflicts. *Mediterranean Politics*, 13(2).
<http://dx.doi.org/10.1080/13629390802127562>
- Al-Momani, H. & Rennick, S.A. (2011). *EU's peace building efforts in the Middle East: political and cultural dilemmas*. DJUCO - Working Papers No. 2.
<http://www2.ju.edu.jo/sites/Academic/H.almomani/Lists/Published%20Research/Attachments/1/Abstract.pdf>
- Amnesty International (2013). *Human rights and transitional justice In Tunisia. One step forward, two steps back?* Introductory Paper for a meeting on 14 March 2013 at the Verzetsmuseum, Amsterdam
https://www.amnesty.nl/sites/default/files/public/geuzenpaper_def.pdf
- Barsalou, J. (2012). *Transitional justice in Egypt: one step forward, two steps back*. NOREF policy brief. (June 2012). Norwegian Peacebuilding Resource Centre. <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?lng=en&id=145030>
- Beaumont, P. (2013). *Egypt's 'trial of two regimes': Mubarak and Brotherhood in court over killings*. Retrieved Sunday 25, August 2013 from <http://www.theguardian.com/world/2013/aug/25/egypt-mubarak-brotherhood-court>
- Burgis-Kasthala, M. (2013). Defining justice during transition? International and domestic contestations over the special tribunal for Lebanon. *The International Journal of Transitional Justice*, 2013, 1–21.
<http://dx.doi.org/10.1093/ijtj/ijt014>
- Crichton, J., Scott, Z. & Haider, H. (2012). *Topic guide on justice*. Governance and Social Development Resource Centre, University of Birmingham. <http://www.gsdr.org/docs/open/justice.pdf>
- Dawlaty & NPWJ (2013). *Transitional justice in Syria*. Dawlaty and No Peace Without Justice.
http://www.npwj.org/sites/default/files/ressources/TJSyria_EN.pdf
- Eramo, G. (2012). *Yemen: transitional justice is needed to build a democratic future*. No Peace Without Justice. Retrieved September 4, 2013 from <http://www.npwj.org/node/4809>
- Fischer, M. (2011). Transitional justice and reconciliation: theory and practice. In Austin, B., Fischer, M. & Giessmann, H.J. (Eds.) *Advancing Conflict Transformation: The Berghof Handbook* (pp. 406-430). Opladen/Framington Hills: Barbara Budrich Publishers.
<http://www.gsdr.org/go/display&type=Document&id=4240>

- Fisher, K. & Stewart, R. (Eds.) (forthcoming, 2013). *Transitional justice and the Arab Spring*. Routledge.
<http://kirstenfisher.com/books/transitional-justice-and-the-arab-spring/>
- Fisher, K.J. (forthcoming). Selectivity, legitimacy and the pursuit of post-Arab Spring international criminal law. In Fisher, K. & Stewart, R. (Eds.) (forthcoming, 2013). *Transitional justice and the Arab Spring*. Routledge.
- Fletcher, L., Weinstein, H. & Rowen, J. (2009). Context, timing and the dynamics of transitional justice: a historical perspective. *Human Rights Quarterly*, 31(1), 163-220.
<http://www.gsdr.org/go/display&type=Document&id=3504>
- Ghali, A., Hegazy, I., Kawakibi, S., Kienle, E., Manea, E., Saadawi, S., Schumacher, T. & Völkel, J. (2012). *The Arab spring: one year after. Transformation dynamics, prospects for democratization and the future of Arab-European cooperation*. Europe in Dialogue 2012, 02. Bertelsmann Stiftung.
http://www.bti-project.de/uploads/tx_jpdownloads/Europe_in_Dialogue_2012_Arab_Spring.pdf
- Gierycz, D. (2008). *Transitional justice – does it help or does it harm?* NUPI Working Paper 737. Norwegian Institute of International Affairs.
<http://dspace.cigilibrary.org/jspui/bitstream/123456789/27760/1/Transitional%20Justice%20-%20Does%20It%20Help%20Or%20Does%20It%20Harm.pdf?1>
- Grives, C.V. & Thornton, C.L. (2012). *The contribution of the Arab Spring to the role of transitional justice and amnesty laws: a review of Tunisia, Egypt and Libya*. http://works.bepress.com/clarinsa_grives/1
- Haider, H. (2011a). *Helpdesk research report: factors contributing to transitional justice effectiveness*. Birmingham, UK: GSDRC, University of Birmingham. <http://www.gsdr.org/docs/open/HD762.pdf>
- Haider, H. (2011b). Social repair in divided societies: integrating a coexistence lens into transitional justice. *Conflict, Security and Development*, 11(2), 175-203.
<http://dx.doi.org/10.1080/14678802.2011.572458>
- Haugbolle, S. & Hastrup, A. (2008). Introduction: outlines of a new politics of memory in the Middle East. *Mediterranean Politics*, 13(2), 133-149. <http://dx.doi.org/10.1080/13629390802127497>
- ICTJ. (2009). *Truth and reconciliation in Morocco*. International Center for Transitional Justice.
<http://ictj.org/sites/default/files/ICTJ-Morocco-TRC-2009-English.pdf>
- ICTJ. (2011). *Addressing the past, building the future: justice in time of transition conference report*.
<http://ictj.org/sites/default/files/ICTJ-Tunis-Conference-Report-2011-English.pdf>
- ICTJ. (2013b). *Egypt. Background: a history of repression, cautious optimism*. Retrieved: August 31, 2013 from <http://ictj.org/our-work/regions-and-countries/egypt>
- ICTJ. (2013c). *Sudan. Background: a civil war, a new nation*. International Center for Transitional Justice. Retrieved September 2, 2013 from <http://ictj.org/our-work/regions-and-countries/sudan>
- ICTJ. (2013d). *Tunisia background*. Retrieved September 2, 2013 from <http://ictj.org/our-work/regions-and-countries/tunisia>

- Kersten, M. (2012). *Justice after the war: the ICC and post-Gaddafi Libya*. In Fisher, K. & Stewart, R. (Eds.) (forthcoming, 2013). *Transitional justice and the Arab Spring*. Routledge. http://www.academia.edu/1947980/Justice_After_the_War_The_ICC_and_Post-Gaddafi_Libya
- Khatib, L. (forthcoming). *Challenges of representation and inclusion: a case study of Islamist groups in transitional justice*. In Fisher, K. & Stewart, R. (Eds.) (forthcoming, 2013). *Transitional justice and the Arab Spring*. Routledge.
- Kim, H. J., & Sikkink, K. (2010). Explaining the deterrence effect of human rights prosecutions for transitional countries. *International Studies Quarterly*, 54(4). <http://dx.doi.org/10.1111/j.1468-2478.2010.00621.x>
- Lamont, C.K. (2013). *Tunisia: in search of a political exit from political violence*. <http://www.opendemocracy.net/christopher-k-lamont/tunisia-in-search-of-political-exit-from-political-violence>
- Lamont, C.K. & Boujneh, H. (2012). Transitional justice in Tunisia: negotiating justice during transition. *Croatian Political Science Review (Politička Misao)*, issue: 05, pages: 32-49
- Macdonald, A. (2013). *Local understandings and experiences of transitional justice: a review of the evidence*. JSRP Paper 6. London: LSE. <http://www.lse.ac.uk/internationalDevelopment/research/JSRP/downloads/JSRP6.Macdonald.pdf>
- Manea, E. (forthcoming). *Transitional justice and the Arab Spring from a gender perspective*. In Fisher, K. & Stewart, R. (Eds.) (forthcoming, 2013). *Transitional justice and the Arab Spring*. Routledge.
- Middle East Online (2013). *Special Tribunal for Lebanon sets provisional date for Hariri murder trial*. Retrieved September 2, 2013 from <http://www.middle-east-online.com/english/?id=60519>
- Mistry, H. (2012). *The Arab Spring: one year late: transformation dynamics, prospects for democratization and the future of Arab-European Cooperation*. Meeting Summary. London: Chatham House. <http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/010212summary.pdf>
- OHCHR (2010). *Rule of law tools for post-conflict states: national consultations on transitional justice*. Office of the United Nations High Commissioner for Human Rights. New York and Geneva: United Nations. http://www.ohchr.org/Documents/Publications/NationalConsultationsTJ_EN.pdf
- Perish, E.C., Shook, J. & Wiebelhaus-Brahm, E. (2012). *Transitional justice in the wake of the Arab Spring*. <http://dx.doi.org/10.2139/ssrn.2087696>
- Reiter, A.G. (forthcoming). *Difficult but ultimately rewarding: lessons from transitional justice in Latin America*. In Fisher, K. & Stewart, R. (Eds.) (forthcoming, 2013). *Transitional justice and the Arab Spring*. Routledge.
- Reiter, A.G., Olsen, T.D. & Payne, L.A. (2012). Transitional justice and civil war: exploring new pathways, challenging old guideposts. *Transitional Justice Review*, 1(1), 137-169. <http://129.100.242.151/xampp/ojs/index.php/TJR/article/view/39/38>
- Salloukh, B.F. (forthcoming). *The Arab World after the popular uprisings: a spirit restored?* In Fisher, K. & Stewart, R. (Eds.) (forthcoming, 2013). *Transitional justice and the Arab Spring*. Routledge.

- Sharqieh, I. (2013) *A lasting peace? Yemen's long journey to national reconciliation*. Brookings Doha Center Analysis Paper. Washington D.C.: Brookings Institute. http://www.brookings.edu/~media/research/files/papers/2013/02/11%20yemen%20national%20reconciliation%20sharqieh/bdc_yemen%20national%20reconciliation_sharqieh
- Sissons, M. & Al-Saiedi, A. (2013). *A bitter legacy: lessons of De-Baathification in Iraq*. International Center for Transitional Justice . <http://ictj.org/sites/default/files/ICTJ-Report-Iraq-De-Baathification-2013-ENG.pdf>
- Stover, E., Megally, H. & Mufti, H. (2005). Bremer's gordian knot: transitional justice and the US occupation of Iraq. *Human Rights Quarterly*, 27(3), 830-857. http://muse.jhu.edu/login?auth=0&type=summary&url=/journals/human_rights_quarterly/v027/27.3stover.pdf
- Snyder J., & Vinjamuri L. (2003) Trials and errors: principles and pragmatism in strategies of international justice. *International Security* 28(3), 5-44. http://belfercenter.hks.harvard.edu/publication/343/trials_and_errors.html
- Syrian Center for Political & Strategic Studies and Syrian Expert House (2013). *Syria transition roadmap*. Washington D.C.: Syrian Center for Political and Strategic Studies. <http://syrianexperthouse.org/archives/775>
- Szekely, O. (forthcoming). *Lessons from Lebanon: The Costs of Avoiding Transitional Justice*. (draft, May 2013). In Fisher, K. and Stewart, R. (Eds.) (forthcoming, 2013). *Transitional justice and the Arab Spring*. Routledge.
- Thoms, O. N. T., Ron, J., & Paris, R. (2008). *The effects of transitional justice mechanisms*. Centre for International Policy Studies (CIPS) Working Paper. http://aix1.uottawa.ca/~rparis/CIPS_Transitional_Justice_April2008.pdf
- Thoms, O. N. T., Ron, J., & Paris, R. (2010). State-level effects of transitional justice: what do we know? *International Journal of Transitional Justice*, 4(3), 329–354. <http://dx.doi.org/10.1093/ijtj/ijq012>
- Van der Merwe (forthcoming). *Transitions in north Africa: new trajectories and challenges for transitional justice*. In Fisher, K. and Stewart, R. (Eds.) (forthcoming, 2013). *Transitional justice and the Arab Spring*. Routledge.
- Wiebelhaus-Brahm, E. (n.d.). *False starts: transitional justice in the Arab World*. <http://www.aihr-resourcescenter.org/administrator/upload/documents/SSRN-id1647362.pdf>

Key websites

- The International Center for Transitional Justice <http://ictj.org/>
- Transitional Justice in the Arab World <http://www.arabtj.org/english/news.php?ras>
- University of California Hastings College of Law Library – Transitional Justice Research Guide <http://librarysource.uchastings.edu/sp/subjects/guide.php?subject=transitional-justice>

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Annex 1: Annotated bibliography

References with an asterisk (*) were not included in the rapid literature review informing the main report but have been identified as potentially useful additional literature.

Quotes are taken from reference abstracts/executive summaries unless otherwise indicated.

General

Abdo, G. (2013). *The new sectarianism: the Arab uprisings and the rebirth of the Shi'a-sunni divide*.

Analysis Paper, Number 29. The Saran Center for Middle East Policy at Brookings. Washington D.C.: Brookings Institution.

<http://www.brookings.edu/~media/research/files/papers/2013/04/sunni%20shia%20abdo/sunni%20shia%20abdo>

'This paper examines the rise of the new sectarianism within the Arab world, specifically looking at Bahrain, Lebanon and Iran, and offers key policy recommendations for the United States. In the midst of the Arab Awakening, there is a new Sunni-Shi'a divide which has greatly complicated the diplomatic and geopolitical challenges facing the United States by demanding that serious consideration be given to religious difference in its own right, and not simply as an epiphenomenon stemming from social, economic, or political contestation. ... This paper addresses important U.S. foreign policy concerns. ... [Among others] Highlights include: how popular perceptions of outside intervention and interference have created a virtual proxy war with Iran, Syria, and Hizballah on one side and Saudi Arabia, the United States, and Turkey on the other; [and] Why the Shi'a-dominated uprising in Bahrain is now a struggle, not just for the Bahrainis, but for the standing of the collective Shi'a in the Middle East. ...' <http://www.brookings.edu/research/papers/2013/04/sunni-shia-divide-abdo>

Crichton, J., Scott, Z. & Haider, H. (2012). *Topic guide on justice. Governance and Social Development Resource Centre, University of Birmingham*. <http://www.gsdrc.org/docs/open/justice.pdf>

'This topic guide provides an introduction to development assistance in the justice sector. As well as being an important aim in itself, an accessible and effective justice sector is essential for development in a number of ways (p. 2)'. ... 'Transitional justice processes may have a variety of aims, such as to resolve the divisions in society caused by the human rights violations; to contribute to the healing process for victims and witnesses; to determine legal accountability; and/or to establish a historical record of the war and to educate. There is widespread debate about whether the particular transitional justice strategy developed entails a choice between peace and justice. ... Efforts should be made to devise a comprehensive strategy that incorporates various mechanisms and approaches that can complement one another – and that can provide the greatest voice to survivors and deliver the greatest impact to local communities. (p. 40)'

*** Daly, E. & Sarkin, J. (2004). Too many questions, too few answers: reconciliation in transitional societies. *Columbia Human Rights Law Review*. 35, 661-728.**

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1334876

'With a large number of countries in recent years seeking to make the transition from a period of violence and human rights violations to a more democratic and stable society, the language of

reconciliation has become prominent; the pursuit of reconciliation has been touted as the cure for the ills and divisiveness in each country. Jeremy Sarkin and Erin Daly acknowledge both the prevalence and the appeal of the idea of reconciliation. At the same time, they believe that there are serious questions and issues connected with the notion and pursuit of reconciliation, and that these questions and issues are not being adequately considered and addressed by policy makers. Hence, Sarkin and Daly explore certain questions that confront an incipient government in promoting reconciliation as the cure for ills in a transitional society. They first raise broad conceptual questions about reconciliation. This leads to discussion of historical factors fostering reconciliation initiatives, the effectiveness of the pursuit of reconciliation, and mechanisms by which nations pursue reconciliation.’ <http://www.restorativejustice.org/articlesdb/articles/4902>

* Daley, E. & Sarkin, J. (2006). *Reconciliation in divided societies: finding common ground*. University of Pennsylvania Press. <http://www.upenn.edu/pennpress/book/14274.html>

‘Looking to the future as much as to the past, Erin Daly and Jeremy Sarkin maintain that reconciliation requires fundamental political and economic reform along with personal healing if it is to be effective in establishing lasting peace and stability. Reconciliation, they argue, is best thought of as a means for transformation. It is the engine that enables victims to become survivors and divided societies to transform themselves into communities where people work together to raise children and live productive, hopeful lives. *Reconciliation in Divided Societies* shows us how this transformation happens so that we can all gain a better understanding of how and why reconciliation is actually accomplished.’ <http://www.upenn.edu/pennpress/book/14274.html>

Fischer, M. (2011). Transitional justice and reconciliation: theory and practice. In Austin, B., Fischer, M. & Giessmann, H.J. (Eds.) *Advancing Conflict Transformation: The Berghof Handbook* (pp. 406-430). Opladen/Framington Hills: Barbara Budrich Publishers. <http://www.gsdrc.org/go/display&type=Document&id=4240>

‘Transitional justice is prominent in academic debates on democratisation, nation-building and state reconstruction, and has gained widespread support from international organisations. This chapter examines these debates and their practical relevance for conflict transformation and peacebuilding. It argues that not enough research has been done into the impact of transitional justice mechanisms and that therefore they need to be applied with caution. There is a need for more sustained comparative analysis and, above all, more interdisciplinary and mixed methods research on this issue.’ (p. 1)

Fletcher, L., Weinstein, H. & Rowen, J. (2009). Context, timing and the dynamics of transitional justice: a historical perspective. *Human Rights Quarterly*, 31(1), 163-220. <http://www.gsdrc.org/go/display&type=Document&id=3504>

‘This article from the Human Rights Quarterly questions the presumption that trials and/or truth commissions should be an early response in initiating a transitional justice process. A multi-factorial, qualitative analysis of seven case studies suggests the need for a fuller appreciation of the dynamic system in which transitional justice interventions occur. It is important to consider what the affected society wants and how a response can be tailored to the particular cultural, social, and economic contexts.’ <http://www.gsdrc.org/go/display&type=Document&id=3504>

Gierycz, D. (2008). *Transitional justice – does it help or does it harm?* NUPI Working Paper 737.

Norwegian Institute of International Affairs.

<http://dspace.cigilibrary.org/jspui/bitstream/123456789/27760/1/Transitional%20Justice%20-%20Does%20It%20Help%20Or%20Does%20It%20Harm.pdf?1>

‘This paper examines the value of transitional justice with regard to coming to terms with the past and building just and peaceful societies. The author reviews some past experiences and models of transitional justice and points to their weaknesses and strengths. The paper features a set of recommendations on how to improve the effectiveness of reconciliation commissions established in post-conflict countries in the context of the UN peace operations.’ <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=57381>

Haider, H. (2011). *Helpdesk research report: factors contributing to transitional justice effectiveness.*

Birmingham, UK: GSDRC, University of Birmingham. <http://www.gsdr.org/docs/open/HD762.pdf>

Many claims have been made about the positive impact that transitional justice can have on societies recovering from violent conflict. Sceptics argue, however, that many transitional justice measures can undermine negotiated settlements and exacerbate divisions. There is growing recognition of the need to engage in more systematic research on the effects and impact of transitional justice; however such empirical research is still in the early stages. Nonetheless, the literature identifies some factors which contribute to the effectiveness of transitional justice (whether supported through international assistance or domestic resources). These include: legitimacy and local ownership; government commitment; involvement of civil society; outreach; capacity building; appropriate timing; the use of a combination of mechanisms; and empirical research.

Haider, H. (2011). *Social repair in divided societies: integrating a coexistence lens into transitional justice. *Conflict, Security and Development*, 11(2), 175-203.*

<http://dx.doi.org/10.1080/14678802.2011.572458>

‘This paper explores the importance of integrating a coexistence lens into transitional justice theory and practice. Transitional justice seeks to address a legacy of large-scale past abuses. In societies that have suffered from violent intergroup conflict, this legacy includes divided communities and widespread distrust and fear of the ‘other’. Transitional justice processes and mechanisms, however, are unlikely to repair intergroup relationships, transform communities or eliminate tensions in the absence of specific attention to promote coexistence. ... Coexistence initiatives—such as dialogue facilitation, intergroup projects and associations aimed at achieving shared goals, and media campaigns designed to reframe the ‘other’—are essential to restoring trust, transforming perceptions and rebuilding relationships. Looking at countries that have experienced violent intergroup conflict, in particular Bosnia and Herzegovina, the paper provides examples of coexistence initiatives that have achieved successes’

<http://www.tandfonline.com/doi/abs/10.1080/14678802.2011.572458#.UiWxKjamiSo>

Kim, H. J., & Sikkink, K. (2010). *Explaining the deterrence effect of human rights prosecutions for transitional countries. *International Studies Quarterly*, 54(4).* <http://dx.doi.org/10.1111/j.1468-2478.2010.00621.x>

‘Human rights prosecutions have been the major policy innovation of the late twentieth century designed to address human rights violations. The main justification for such prosecutions is that sanctions are necessary to deter future violations. In this article, we use our new data set on

domestic and international human rights prosecutions in 100 transitional countries to explore whether prosecuting human rights violations can decrease repression. We find that human rights prosecutions after transition lead to improvements in human rights protection, and that human rights prosecutions have a deterrence impact beyond the confines of the single country. We also explore the mechanisms through which prosecutions lead to improvements in human rights. We argue that impact of prosecutions is the result of both normative pressures and material punishment and provide support for this argument with a comparison of the impact of prosecutions and truth commissions, which do not involve material punishment.’ (p. 939)

Macdonald, A. (2013). *Local understandings and experiences of transitional justice: a review of the evidence*. JSRP Paper 6. London: LSE.

<http://www.lse.ac.uk/internationalDevelopment/research/JSRP/downloads/JSRP6.Macdonald.pdf>

This review sets out ‘to examine and interrogate the extant literature on the local effects of transitional justice debates and processes. The review is ‘discursive rather than conclusive and does not seek to impose a summary judgment on whether transitional justice ‘works’ or not. The evidence review uses a rigorous bibliographic search methodology to identify existing literature that includes ‘local-level’ empirical data.’ Key findings and implications for future research and policy are: ‘Overall knowledge of local experiences of transitional justice remains limited and fragmented; Local attitudes and experiences are complex ...; The ‘end-user’ evidence base is made up primarily of ethnographic work and public attitude surveys; There are areas that are particularly ‘under-researched’ ...; ... transitional justice ... does not really know what it is; Transitional justice is a concept that is highly contested and very difficult to ‘translate’; There is a need for cautious mixed-methods approaches ...; There is a risk of ‘over-localising’ transitional justice research at the expense of a broader understanding of the national, regional and international dynamics’ <http://www.lse.ac.uk/internationalDevelopment/research/JSRP/JSRP%20Papers/JSRP-Paper-6.aspx>

OHCHR (2010). *Rule of law tools for post-conflict states: national consultations on transitional justice*.

Office of the United Nations High Commissioner for Human Rights. New York and Geneva: United Nations. http://www.ohchr.org/Documents/Publications/NationalConsultationsTJ_EN.pdf

This report stresses the importance of comprehensive processes of national consultation for ensuring that transitional justice remains focused on the rights and needs of conflict-affected people. ‘... A process of consultations ensures that there is local ownership and participation and can bolster transitional justice programmes by reigniting stalled peace processes and triggering community debate. Donors should periodically conduct consultations during the implementation of a transitional justice programme, with a view to recalibrating it and enhancing its impact.’

<http://www.gsdr.org/go/display&type=Document&id=3841>

Reiter, A.G., Olsen, T.D. & Payne, L.A. (2012). Transitional justice and civil war: exploring new pathways, challenging old guideposts. *Transitional Justice Review*, 1(1), 137-169.

<http://129.100.242.151/xampp/ojs/index.php/TJR/article/view/39/38>

‘Transitional justice has shifted from its primary use in addressing past atrocities of authoritarian regimes to those acts of violence committed during civil wars. Yet the use of transitional justice mechanisms in this new context is not well understood. Drawing from the existing transitional justice literature, this article generates a set of testable hypotheses to explore which factors influence the use of particular mechanisms during and after conflict. It then tests those hypotheses in 151 cases of

civil war by using a cross-national data base of all countries in the world and their adoption of transitional justice processes from 1970-2007. This article further provides a preliminary analysis of the success of those mechanisms in obtaining and securing peace. The article concludes that amnesties remain more prevalent than trials during and after conflict, particularly in Africa and Asia. During conflict, higher death tolls are associated with the use of trials and amnesties, and longer wars with the use of all types of mechanisms. After conflict ends, however, longer wars and higher death tolls are associated with accountability, and the presence of international peacekeepers is associated with all types of mechanisms. Finally, we find that transitional justice—regardless of the particular form it takes—does not jeopardize the peace process, and that amnesties may be an effective tool to help end conflict.’ (p. 137-138)

Snyder J., & Vinjamuri L. (2003) Trials and errors: principles and pragmatism in strategies of international justice. *International Security* 28(3), 5-44.

http://belfercenter.hks.harvard.edu/publication/343/trials_and_errors.html

‘Do international criminal tribunals prevent mass atrocities and other gross human rights abuses? According to Jack Snyder ... and Leslie Vinjamuri ..., recent tribunals such as those convened to prosecute war crimes in Yugoslavia and Central Africa “have utterly failed to deter subsequent abuses.” In contrast, amnesties and truth commissions have succeeded largely because they solicit cooperation from powerful actors with vested interests in the outcome. Snyder and Vinjamuri maintain that preventing atrocities and strengthening respect for the law often require “striking politically expedient bargains that create effective coalitions to contain the power of potential perpetrators of abuses.” This pragmatic approach, the authors argue, is key to the establishment of a norm-governed political order and effective administrative institutions.’ http://belfercenter.hks.harvard.edu/publication/343/trials_and_errors.html

Thoms, O. N. T., Ron, J., & Paris, R. (2008). *The effects of transitional justice mechanisms*. Centre for International Policy Studies (CIPS) Working Paper.

http://aix1.uottawa.ca/~rparis/CIPS_Transitional_Justice_April2008.pdf

‘This working paper reviews the state of empirical knowledge on the effects of transitional justice mechanisms. Does TJ strengthen or threaten peace in transitional societies? Does it lead to greater or less respect for human rights and the rule of law? Does it foster reconciliation or exacerbate divisions? The time has come for local and international policymakers to engage these questions with systematically collected and analysed evidence.’ <http://cips.uottawa.ca/publications/the-effects-of-transitional-justice-mechanisms/>

Thoms, O. N. T., Ron, J., & Paris, R. (2010). State-level effects of transitional justice: what do we know? *International Journal of Transitional Justice*, 4(3), 329–354. <http://dx.doi.org/10.1093/ijtj/ijq012>

‘At the core of policy debates on the state-level effects of transitional justice is a series of competing claims about the causal effects of various transitional justice mechanisms. A review of recent scholarship on transitional justice shows that empirical evidence of positive or negative effects is still insufficient to support strong claims. More systematic and comparative analysis of the transitional justice record is needed in order to move from ‘faith-based’ to ‘fact-based’ discussions of transitional justice impacts’ (p. 1).

Arab world

Al-Momani, H. & Rennick, S.A. (2011). *EU's peace building efforts in the Middle East: political and cultural dilemmas*. DJUCO - Working Papers No. 2.

<http://www2.ju.edu.jo/sites/Academic/H.almomani/Lists/Published%20Research/Attachments/1/Abstract.pdf>

This working paper (which was presented at the Conference 'Squaring the Circle – The Arab-Israeli Conflict and the Future Middle East' at University of Southern Denmark, December 2011) reflects on the EU's peacebuilding efforts in the Middle East. It outlines the EU's vision and approach. It concludes that after two decades, 'this peacebuilding approach has yet to bear fruits'. It finds that this 'is partially because the functionalist-liberal approach in fact does not correspond to the political reality of the Middle East, and specifically of the Arab states. The extent to which the regional system is amenable to integration and cooperative relations is questionable as the region's actors operate through a far more realist lens, marked by the fragility of the state system. Beyond this question of the political applicability of the EU's approach, though, is the cultural relevance of its peacebuilding efforts and indeed its vision of peace in general. While the EU holds a liberal vision of peace and a practical, reform-oriented process of peacebuilding, traditional Arab-Islamic notions of conflict and its resolution do not entirely coincide, being based more on immediate conflict resolution and management with the objective of returning to the status quo rather than moments of rupture and deeper processes of transformation. While the European Union's peacebuilding approach in the region is not without merit, it faces both political and cultural impediments that cannot be discounted' (p. 1).

Fisher, K. & Stewart, R. (Eds.) (forthcoming, 2013). *Transitional justice and the Arab Spring*. Routledge.

<http://kirstenjfisher.com/books/transitional-justice-and-the-arab-spring/>

'This book presents a varied and critical picture of how the Arab Spring invites a re-examination and re-conceptualization of issues of transitional justice. It demonstrates how unique features of this wave of revolutions and popular protests that have swept the Arab world since December 2010 give rise to distinctive concerns and problems relative to transitional justice, and explores how these issues in turn add fresh perspective and nuance to the field more generally. In so doing, it explores fundamental questions of social justice, reconstruction and healing in the context of the Arab Spring.' (<http://kirstenjfisher.com/books/transitional-justice-and-the-arab-spring/>)

Chapters on general themes (chapters on individual countries are listed in the country sections):

Salloukh, B.F. (forthcoming). *The Arab World after the popular uprisings: a spirit restored?*

The chapter offers a multi-level overview of the dynamics of recent Arab uprising, unpacking the emerging challenges and opportunities of authoritarian regime breakdown, democratic transitions, domestic upheavals and societies reconstituting themselves. It examines the new role of the very different Islamist groups in Arab politics, and the concomitant struggles over alternative visions of the political, moral and social orders.

Reiter, A.G. (forthcoming). *Difficult but ultimately rewarding: lessons from transitional justice in Latin America*.

This chapter draws out the parallels between Latin America (LA) and Middle East/North Africa (MENA) that mean LA TJ experiences have particular resonance for Arab countries. It provides a brief

overview of TJ in LA and then discusses four lessons that can inform TJ in MENA: 'First, Latin America demonstrates the inevitability and importance of unique national circumstances in shaping transitional justice responses. Second, the region reveals that these will not be short-term decisions; rather, engaging the past should best be viewed as a process, not an outcome, taking place over decades instead of months. Third, transitional justice is not solely a national phenomenon, but is influenced by a variety of international actors. Fourth, engaging the past is not easy. Latin America demonstrates the intrinsic challenges and potential pitfalls of pursuing transitional justice in uncertain political environments' (Reiter, p. 7). The chapter concludes by reflecting on the overall effectiveness of transitional justice as an endeavour, arguing that Latin America illustrates the positive value of transitional justice: in the long term.

Manea, E. (forthcoming). *Transitional justice and the Arab Spring from a gender perspective*.

This chapter explores the relevance and dimensions of the gender question in the processes of transitional justice in the MENA region. It argues that the participation of women in revolutions 'does not necessarily lead to concrete gains from a gender perspective'. It describes how women participated in the Arab spring and 'how, more often than not, they have been excluded from the political and constitutional bodies created during the transitional periods'. It argues that a TJ process 'should not only focus on measures addressing grave sexual violations that occurred in some of these countries ... it must also focus on targeting the systematic gender discrimination engrained in Arab legal systems' (pp. 2-3).

Fisher, K.J. (forthcoming). *Selectivity, legitimacy and the pursuit of post-Arab Spring international criminal law*.

This chapter discusses the potential implications of post-Arab Spring criminal trials on the conception of international criminal law (ICL). It first outlines 'historical criticism of partiality levelled against ICL'. It goes on to explore the application of ICL to the Arab Spring transitions. It explores the Libyan situation, which demonstrates that 'both the limitations of the ICC that make it dependant on the potentially politically-biased and self-interested referral of UNSC members and the ICC's own choices in regards to indictments help to further entrench perceptions of partiality and biasness'. The author argues that 'neglect of objectivity and the appearance of objectivity in the enterprise of ICL is a dangerous oversight that can seriously affect the perception of legitimacy and, therefore, the effectiveness of ICL as an arbiter of actions on the international stage'. The author concludes that 'Arab Spring transitional justice is a significant episode in the history of ICL and one that could potentially influence its future trajectory' (pp. 4-5).

Khatib, L. (forthcoming). *Challenges of representation and inclusion: a case study of Islamist groups in transitional justice*.

This chapter explores whether the region's Islamists can 'oversee and constructively take part in transitional justice ... through processes predicated on liberalism'. It first examines the content of the putatively Islamist political discourse looking at 'the complex issues of culture, democracy, and religion and ... how these understandings impact the process of justice'. It then looks at some of the actions, proposed policies and laws promoted by the Islamists, discussing the relationship between these and transitional justice. It focuses on three themes that 'highlight the tension between liberal and illiberal conceptions of rights and the public sphere' – women's rights, freedom of expression, and factionalism – and three countries: Tunisia, Egypt and Syria. The author concludes that the main challenge is that Islamists 'incorporate "traditional" elements that are at odds with the values

fundamental to liberal democracy, and in so doing compromise the ability of transitional justice to successfully achieve its goals' (pp. 1-2).

Van der Merwe (forthcoming). *Transitions in north Africa: new trajectories and challenges for transitional justice*.

This concluding chapter summarises the debates covered in the book. It provides an overall assessment of the contribution of the Middle East and North African uprisings 'to the trajectory of the transitional justice field', first sketching out the key developments of the field up until 2011 and then explaining how this field has grown out of particular transitional challenges. The author then assesses the continuities and shifts presented by the Middle East and North African contexts to 'gain some understanding of how they are impacting on the meaning of transition and transitional justice'. The author concludes that the Arab Spring 'clearly pushing the boundaries of transitional justice and sharpening debate about its motives, its control and its feasibility' (pp. 1 and 11).

Ghali, A., Hegazy, I., Kawakibi, S., Kienle, E., Manea, E., Saadawi, S., Schumacher, T. & Völkel, J. (2012). *The Arab spring: one year after. Transformation dynamics, prospects for democratization and the future of Arab-European cooperation*. Europe in Dialogue 2012, 02. Bertelsmann Stiftung.
http://www.bti-project.de/uploads/tx_jdownloads/Europe_in_Dialogue_2012_Arab_Spring.pdf

'This paper offers an interim appraisal: from a stock-taking of last year's political developments and an analysis of the current transformation dynamics in the Middle East and North Africa, to the prospects for stronger and overall better Arab-European cooperation. More than a year after the inception of the transformation processes, who among our southern neighbours are emerging as (possibly new) partners in dialogue? Which developments in the Mediterranean region can be expected and demand our special attention? And closer to home, how advanced is Europe's own capability to engage in dialogue with the Arab world?' <http://www.iemed.org/observatori-en/arees-danalisi/documents/arxiu-externs/2012/the-arab-spring-one-year-after-transformation-dynamics-prospects-for-democratization-and-the-future-of-arab-european-cooperation>

Grives, C.V. & Thornton, C.L. (2012). *The contribution of the Arab Spring to the role of transitional justice and amnesty laws: a review of Tunisia, Egypt and Libya*.
http://works.bepress.com/clarinsa_grives/1

'Given the uncertainty of the role of amnesty laws in international law and with the uprisings in the Middle East and North Africa, most commonly known as the "Arab Spring," this paper assesses what these countries will contribute to transitional justice and the role of amnesty laws in the international forum. The two predominant questions that this paper addresses is whether transitional justice, as we know it, will be useful for the Arab Spring countries and whether their use of transitional justice will change the way its viewed in international law. In this assessment, emphasis will be on the role and contribution of amnesty laws in the transition process. The goal of this paper is to provide a comprehensive view and some insight into transitional justice and the role of amnesty laws, particularly in Arab Spring countries by focusing on Tunisia, Egypt, and Libya, beginning with their uprisings in late 2010 up to the situation in early August 2012. A brief overview of the contributions of other regions of the world, including Europe, the Americas, Africa, and Asia, to the role of transitional justice and amnesty laws has been included as a background of the role amnesty laws played in those regions of the world.'

Haugbolle, S. & Hastrup, A. (2008). Introduction: outlines of a new politics of memory in the Middle East. *Mediterranean Politics*, 13(2) 133-149. <http://dx.doi.org/10.1080/13629390802127497>

‘While the historical trajectories of emergent attempts to deal with legacies of political violence in the Arab Middle East differ widely, certain commonalities can help us understand this new field across the region. On the one hand, evidence presented in this volume suggests that grassroots movements have to some extent succeeded in ending the politics of pretence and denial that long dominated Arab states. On the other hand, particular political groupings and media monopolize discourses of a universally applicable process of truth and reconciliation in a way that consciously makes use of international idioms, but effectively obfuscates other aspects of social and political justice and reform’ (p. 133).

*** Haugbolle, S. & Hastrup, A. (2009). *The politics of violence, truth and reconciliation in the Arab Middle East*. Published as a special issue of *Mediterranean Politics*. London and New York: Routledge.**

“This book examines the politics of political violence, truth and reconciliation in the contemporary Arab Middle East. It includes studies of state institutions, civil society and international organizations in Algeria, Morocco, Sudan, Iraq, Lebanon and Syria.”
<http://www.arabtj.org/english/news.php?id=19&idC=21>

Mistry, H. (2012). *Transitional Justice and the Arab Spring*. Meeting Summary. London: Chatham House.

<http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/010212summary.pdf>

“This is a summary of an event held at Chatham House on 1 February 2012. The event examined the role of transitional justice mechanisms after the Arab Spring, and in particular, the role of international mechanisms of justice and the role of international actors. Discussion focused first upon the transitional justice context within individual countries, before expanding upon a number of themes that emerge from all or a number of those situations. Included in this discussion was the Lebanese experience of the Special Tribunal for Lebanon, Tunisia, Morocco, Libya, Egypt, Bahrain, and Yemen.” (<http://www.chathamhouse.org/publications/papers/view/182300>)

Perish, E.C., Shook, J. & Wiebelhaus-Brahm, E. (2012). *Transitional justice in the wake of the Arab Spring*. <http://dx.doi.org/10.2139/ssrn.2087696>

‘[This paper provides] an overview of transitional justice in Tunisia, Egypt, and Bahrain. We begin each section with a brief overview of the violence and repression that gave rise to transitional justice demands. Then, we outline transitional justice processes to date, offering some preliminary conclusions on their strengths and weaknesses. We conclude by examining some of the factors shaping transitional justice in each country and offer some thoughts on the likely future course of transitional justice.’

Wiebelhaus-Brahm, E. (no date). *False starts: transitional justice in the Arab World*. <http://www.aihr-resourcescenter.org/administrator/upload/documents/SSRN-id1647362.pdf>

“Throughout the so-called Third Wave of democratization, transitional justice became a prominent issue as democratizing polities frequently wrestled with addressing human rights violations perpetrated under the prior regime. Up until recently, the Middle East has been impervious from this trend. However, questions of transitional justice have recently become salient issues across the

region. Morocco, Iraq, and Afghanistan are among those that are in the process of constructing or conducting some form of transitional justice experiment or have recently completed their effort.” The paper describes the timeline of events of the conflict and TJ processes in Morocco, Iraq and Afghanistan, and concludes with illustrative examples from these cases of how not to conduct transitional justice.

Afghanistan

ICTJ (2013). *Afghanistan*. Retrieved September 2, 2013, from <http://ictj.org/our-work/regions-and-countries/afghanistan>

A brief description and critique of transitional justice processes in Afghanistan.

Winterbotham, E. (2012). *Healing the legacies of conflict in Afghanistan: community voices on justice, peace and reconciliation*. Afghanistan Research and Evaluation Unit Synthesis Paper. <http://www.areu.org.af/Uploads/EditionPdfs/1201E-Healing%20the%20Legacies%20of%20Conflict%20in%20Afghanistan%20SP%202011.pdf>

A detailed description and critique of transitional justice processes in Afghanistan.

Egypt

Abou-El-Fadl, R. (2012). Beyond conventional transitional justice: Egypt’s 2011 revolution and the absence of political will. *International Journal of Transitional Justice*, 6(2). <http://dx.doi.org/10.1093/ijtj/ijts011>

‘After Egypt’s January 2011 revolution ousted former President Hosni Mubarak, a conversation began amongst a number of international and Egyptian human rights groups regarding the need to promote international transitional justice precedents within the Egyptian context and to raise public awareness of them. This note argues that, in many ways, the Egyptian revolution surpassed the bounds of reformist transitional justice agendas. It begins by identifying two specific limitations in their scope: regarding the accountability of external actors and regarding the guarantee of economic and social rights. The article then describes the more far-reaching conceptions for change that were communicated in the key demands and subsequent campaigns of the 2011 revolution. Finally, it argues that Egypt’s transition itself has stalled, as the ruling military council lacks the political will to propel transitional justice, rendering such discussions premature. It recommends that international practitioners take their cues from Egyptian actors negotiating these challenges, rather than proceeding without sufficiently questioning the context’ (p. 1).

Barsalou, J. (2012). *Transitional justice in Egypt: one step forward, two steps back*. NOREF policy brief. (June 2012). Norwegian Peacebuilding Resource Centre. <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?lng=en&id=145030>

A brief description and critique of TJ processes in Egypt.

Beaumont, P. (2013). Egypt's 'trial of two regimes': Mubarak and Brotherhood in court over killings. Retrieved Sunday 25, August 2013 from <http://www.theguardian.com/world/2013/aug/25/egypt-mubarak-brotherhood-court>

A brief news report on events in Egypt.

ICTJ (2013). *Egypt. Background: a history of repression, cautious optimism*. Retrieved: August 31, 2013 from <http://ictj.org/our-work/regions-and-countries/egypt>

A brief description and critique of TJ processes in Egypt.

Iraq

Al-Marashi, I. and Keskin, A. (2008). Reconciliation Dilemmas in Post-Ba'athist Iraq: Truth Commissions, Media and Ethno-sectarian Conflicts. *Mediterranean Politics*, 13(2). <http://dx.doi.org/10.1080/13629390802127562>

'Based on field work conducted in post-Ba'ath Iraq, as well as a study of official statements, print and broadcast media and insurgent communiqués and interviews with proponents of truth and reconciliation in post-war Iraq, this article examines attempts to create a truth and reconciliation committee to settle differences and tensions between former members of the party and communities affected by its collective policies. It shows that in 2003 the Coalition Provisional Authority failed to endorse plans based on the South African model. Instead, it embarked on a policy of de-Ba'athification which eventually fed into the insurgency. Since then, the Arab League and Prime Minister Maliki have launched attempts to foster national reconciliation. The article argues that these initiatives failed because the idea of reconciliation from the outset was tied to greater political dynamics.'

<http://www.tandfonline.com/doi/abs/10.1080/13629390802127562#.UidjGcamiSo>

* Clappier, B., Lawrence, C. & Wiebelhaus-Brahm, E. (forthcoming). *The best laid plans: how the failure to effectively implement DDR and transitional justice fueled Iraq's instability*. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2319345

'The instability that followed the 2003 US invasion of Iraq was the result of the Bush administration's last-minute rejection of pre-war planning in favour of a plan based on unrealistic expectations and a poor understanding of conditions in Iraq. In particular, the failure to implement a disarmament, demobilization, and reintegration (DDR) program for Iraq's massive army was a grave, but perhaps unavoidable, mistake. Moreover, the US recognized the importance of transitional justice and facilitated a process, but it has been politicized by Iraqis and has exacerbated tensions.'

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2319345

Daley, E. (forthcoming, 2014). Transitional justice in Iraq: learning the hard way. *Israel Law Review* 47(1). http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2274288

'The relationship between transitional justice and democracy is fraught and complex, and nowhere more so than in Iraq since the fall of Saddam Hussein. Iraq has experienced a range of transitional justice initiatives, including the trial and execution of its former leader, purges from the civil service and the military, and a series of reconciliation conferences. And yet, democracy has not fully taken root and violence continues to plague many parts of the nation on a regular basis. This article argues that initiatives aimed at changing the structure of society – including but not limited to constitutionalism, frequent elections, and the development of an independent judiciary -- are more likely than purely symbolic efforts to contribute to the consolidation of

democracy in the long term. It is these structural developments have the greatest potential to transform society into a true democracy under the rule of law.'

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2274288

Sissons, M. & Al-Saiedi, A. (2013). *A bitter legacy: lessons of De-Baathification in Iraq*. International Center for Transitional Justice . <http://ictj.org/sites/default/files/ICTJ-Report-Iraq-De-Baathification-2013-ENG.pdf>

'The report - based on significant field research and interviews with the Higher National De-Ba'athification Commission - summarizes the structure and impact of de-Ba'athification from 2003 to 2011, gives insight into de-Baathification's goals, framework, impact, and problems, and offers several recommendations for designing an effective vetting program.'

<http://ictj.org/news/lessons-de-baathification-iraq>

Stover, E., Megally, H. & Mufti, H. (2005). Bremer's gordian knot: transitional justice and the US occupation of Iraq. *Human Rights Quarterly*, 27(3), 830-857. http://muse.jhu.edu/login?auth=0&type=summary&url=/journals/human_rights_quarterly/v027/27.3stover.pdf

'Shortly after the US invasion and occupation of Iraq, L. Paul Bremer III, in his capacity as the chief administrator of the Coalition Provisional Authority (CPA), introduced several transitional justice mechanisms that set the course for how Iraqis would confront the legacy of past crimes for years to come. In developing these mechanisms, Bremer consulted with a select group of Iraqi exiles that had returned to Iraq or were still living abroad. However, he failed to solicit the opinions and attitudes of the Iraqi people as a whole. He also failed to consult many of the governmental and nongovernmental entities that could pass on to the CPA and future Iraqi governments the "lessons learned" and "best practices" gleaned from transitional justice processes in other countries. As a result, many of the mechanisms introduced by Bremer either backfired or were hopelessly flawed.' (pp. 830-831)

Lebanon

Burgis-Kasthala, M. (2013). Defining justice during transition? International and domestic contestations over the special tribunal for Lebanon. *The International Journal of Transitional Justice*, 2013, 1–21. <http://dx.doi.org/10.1093/ijtj/ijt014>

'This article explores the Special Tribunal for Lebanon (STL) as a site of contestation and consolidation for the fields of international criminal justice (ICJ) and transitional justice (TJ). Created in response to the assassination of former Prime Minister Rafiq Hariri in 2005, the STL exhibits the particularly confined notions of 'justice' that are at play across the ICJ field. An examination of domestic Lebanese debates surrounding the Tribunal reveals, however, that 'justice' in the Lebanese case possesses many meanings. Rather than accept the false binary of the international over the domestic and the trial over broad-based social dialogue, this analysis of the STL reveals ways in which meanings of justice remain open to contestation both on the ground and in ICJ and TJ. The article illustrates this by examining the international-domestic law binary at play in the STL's establishment and the way local Lebanese actors have challenged it in the country's ongoing struggle for post-conflict political stability.' (p. 1)

- * Berti, B. (2013). *Balancing justice, stability and legitimacy: Lebanon and the UN Special Tribunal – understanding the domestic impact of international criminal justice. Mediterranean Politics, 2013.* <http://dx.doi.org/10.1080/13629395.2013.811902>

‘The article analyses the record of the United Nations Special Tribunal for Lebanon, focusing on its domestic impact as well as on the main obstacles the tribunal has faced since its establishment. The study looks at how the legitimacy problems of the STL have deeply affected the tribunal's capacity to deliver justice for the political assassination of Lebanese Prime Minister Rafic Hariri, as well as its potential to foster peace and stability within Lebanon. Analysing the shortcomings of the STL can highlight the inherent challenges international criminal tribunals face in ensuring that the ‘Justice’ delivered by the tribunal meets local perceptions of ‘justice’ as well as the community's need to preserve internal stability and foster reconciliation.’ (p.1)

- * Haugbolle, S. (2012). *Dealing with Lebanon's past. Remembering, reconciliation, art and activism. Accord, Issue 24.* <http://www.c-r.org/accord-article/dealing-lebanons-past-remembering-reconciliation-art-and-activism>

‘Sune Haugbølle reviews Lebanese efforts to pursue reconciliation and deal with the past. He explores issues of memory and remembering: Lebanon's ‘state-sponsored amnesia’ over the war years; and the role of culture and of civil society in documenting and discussing them. Haugbolle considers options to integrate civil and national reconciliation initiatives and to involve political elites, as well as the potential of rural and traditional conflict resolution structures to engage grassroots in national reconciliation processes.’ <http://www.c-r.org/accord-article/dealing-lebanons-past-remembering-reconciliation-art-and-activism>

- Middle East Online (2013). *Special Tribunal for Lebanon sets provisional date for Hariri murder trial.* Retrieved September 2, 2013 from <http://www.middle-east-online.com/english/?id=60519>

News report of the order by the pre-trial Judge at the Special Tribunal for Lebanon setting a new tentative date for the start of the trial.

- Szekely, O. (forthcoming). *Lessons from Lebanon: The Costs of Avoiding Transitional Justice.* (draft, May 2013). In Fisher, K. and Stewart, R. (Eds.) (forthcoming, 2013). *Transitional justice and the Arab Spring.* Routledge.

This chapter looks at a number of questions raised by the Lebanese experience, in particular identifying what lessons can countries currently undergoing their own transitions from authoritarianism learn from Lebanon's post-war transition. It begins with a brief history of the civil war in Lebanon, followed by a discussion of the Taif Agreement and the political order it established. It then discusses five lessons from Lebanon for other Arab Spring states: 1) cosmetic changes are not enough, 2) foreign sponsorship comes with strings attached, 3) blanket amnesties are risky, 4) militias can choose to change and 5) memory and memorialisation matter.

Libya

Kersten, M. (2012). *Justice after the war: the ICC and post-Gaddafi Libya*. In Fisher, K. & Stewart, R. (Eds.) (forthcoming, 2013). *Transitional justice and the Arab Spring*. Routledge.
http://www.academia.edu/1947980/Justice_After_the_War_The_ICC_and_Post-Gaddafi_Libya

'This chapter represents an in-depth and critical overview of events pertaining to the ICC's role and impact in post-Gaddafi Libya. It becomes clear that the pursuit of justice in post-Gaddafi Libya has been characterized by ongoing mistrust and rancour amongst actors with competing and conflicting interests. ... The chapter begins with an examination of the capture of Abdullah al-Senussi in Mauritania and Saif al-Islam Gaddafi by Zintani forces in southern Libya². In section two efforts on the part of the ICC and Libya to gain custody of and prosecute Senussi and Saif to date are critically assessed. In section three, laws passed by Libya's National Transitional Council (NTC) pertaining to transitional justice are described and addressed in the context of their implications for the ICC and post-conflict accountability. Section four details efforts to represent Saif, focusing on the arrest and detention of Saif's Defence Counsel following their visit to Zintan. The chapter concludes with some reflections on the relationship between the ICC and Libya and suggests that neither are likely to emerge from the relationship unscathed.' (pp. 2-3)

Morocco

* Amnesty International (2010). *Broken promises: the Equality and Reconciliation Commission and its followup*. <http://www.amnesty.org/en/library/asset/MDE29/001/2010/en/63d99172-428d-4717-8c25-866c879c80e9/mde290012010en.pdf>

'This report provides an assessment by Amnesty International of the work of the Equity and Reconciliation Commission and the efforts of the Advisory Council on Human Rights to follow-up on its work and recommendations after the end of the Commission's mandate in November 2005. It outlines Amnesty International's concerns that the rights of victims to truth, justice and adequate reparation have not been fully met as set out in international human rights law and standards; and offers recommendations in light of Morocco's international obligations.'

<http://www.amnesty.org/en/library/info/MDE29/001/2010/en>

ICTJ (2009). *Truth and reconciliation in Morocco*. International Center for Transitional Justice.
<http://ictj.org/sites/default/files/ICTJ-Morocco-TRC-2009-English.pdf>

'As the first truth commission in the region, Morocco's Equity and Reconciliation Commission sought to address the legacy of more than 40 years of repression and human rights violations known as the "Years of Lead." The commission was part of a gradual process of dealing with the past, an opening that began in the early 1990s. Since completion of the commission's final report in 2005, Moroccans have taken further steps toward reckoning with the past.' (p. 1)

* ICTJ & Foundation for the Future (2011). *Morocco: gender and the transitional justice process*. International Center for Transitional Justice.
<http://foundationforfuture.org/en/Portals/0/PDFs/Morocco%20-%20Gender%20&%20the%20TJ%20Process%20-%20EN.pdf>

'[This report] analyses whether the various transitional justice processes undertaken by [Morocco's Equity and Reconciliation Commission (IER)] sufficiently fulfil the gender-specific focus of its mandate. ... Based on oral testimonies, interviews, and surveys conducted in seven different regions of the country, the IER attempted to distinguish between the experiences of male and female victims

through qualitative research. Though gender is included at various points in the IER program, this report concludes that the data does not adequately reflect the different types of abuses perpetrated against women and men. ... In order to achieve greater success in redressing female victims of abuse, [the authors recommend] further institutionalizing a gender-sensitive approach by expanding the capacities of the recently-formed gender committee ... , [making] studies on female victims of human rights abuse ... more accessible to public institutions and civic actors, [and] ... for the IER to deepen collaborations with Morocco's rich women's rights movement, which has previously had little impact on the broader transitional justice measures that are being implemented.'

<http://ictj.org/news/morocco-gender-and-transitional-justice-process>

Sudan

ICTJ (2013). *Sudan. Background: a civil war, a new nation*. International Center for Transitional Justice. Retrieved September 2, 2013 from <http://ictj.org/our-work/regions-and-countries/sudan>

A brief description and critique of TJ processes in Sudan.

Syria

Dawlaty & NPWJ. (2013). *Transitional justice in Syria*. Dawlaty and No Peace without Justice. http://www.npwj.org/sites/default/files/ressources/TJSyria_EN.pdf

"In the framework of their common engagement to support Syrian civil society groups, human rights and democracy activists in promoting a culture of accountability, the Syrian human rights organisation Dawlaty and No Peace Without Justice (NPWJ) are releasing a publication dedicated to "Transitional Justice in Syria". The purpose of this publication is to increase public awareness of transitional justice as a crucial to enable a transition towards future Syrian institutions that embrace principles of democracy, rule of law and pluralism, and that offer redress and accountability for human rights violations and promote reconciliation and civic values. This publication has been produced in part with the financial assistance of the German Federal Foreign Office (AA) and the Heinrich Böll Stiftung (hbs) MENA - Beirut." <http://www.npwj.org/ICC/Syria-Dawlaty-and-NPWJ-release-publication-support-Transitional-Justice-and-Accountability.html>

The report provides a brief overview of transitional justice as a concept, its objectives, and the various mechanisms. It then goes on to describe in detail the Syrian Context and implications for a transitional justice process. The third section looks at regional influences. The final section outlines the resources, formal institutions and challenges to transitional justice in Syria.

Syrian Center for Political and Strategic Studies and Syrian Expert House (2013). *Syria transition roadmap*. Washington D.C.: Syrian Center for Political and Strategic Studies. <http://syrianexperthouse.org/archives/775>

'The Syrian Expert House is an initiative launched by the Syrian Center for Political and Strategic Studies to analyse and study the transitional period in Syria. The Syrian Expert House is a combined group of approximately three hundred human rights activists, academics, judges, lawyers, doctors, opposition politicians, defected government officials, defected military officers, members of local revolutionary councils, and commanders of the armed opposition who are committed to holding periodic meetings to build a final vision of the transitional period and produce considered, deliberate recommendations for the political, social, economic, military, and security aspects of the future of

Syria. The Syrian Expert House consists of six thematic working groups: Constitutional Reform and the Rule of Law; Political and Administrative Reform; Electoral Reform and Political Parties Law; Security Sector Reform; Economic Reform; and Transitional Justice and National Reconciliation. The gatherings of these working groups resulted in the publishing of Syria Transition Roadmap, an exhaustively researched document detailing the Syrian Expert House's final vision for the post-Assad Syrian transition.' <http://syrianexperthouse.org/archives/775>

- * Ziadeh, R. (2013). *Transitional justice in Syria: accountability and reconciliation*. Keynote Address, January 26-27 2013, Istanbul. <http://www.arabtj.org/english/news.php?id=84&idC=12>

In this keynote address Dr. R. Ziadeh outlines current events in Syria, sets out the benefits of international intervention in transitional justice and describes the TJ methods that will be required in the Syrian context.

Tunisia

- * Amnesty International (2013). *Human rights and transitional justice In Tunisia. One step forward, two steps back?* Introductory Paper for a meeting on 14 March 2013 at the Verzetsmuseum, Amsterdam https://www.amnesty.nl/sites/default/files/public/geuzenpaper_def.pdf

'Positive developments notwithstanding, questions remain as to the extent that the Tunisian people have seen accountability for past abuses and assurances that human rights abuses will not be repeated. We will discuss the effectiveness of transitional justice measures, the obstacles to establishing truth, justice and reparations, and the role of the international community. In particular, this meeting will consider investigations into the human rights violations committed under the previous regime, investigations of recent cases of torture and other abuse, guarantees for independence of the judiciary, and the bringing to justice of perpetrators.' (p. 1)

- * Ghali, A. (2013). *Tunisia in transition: Start of a third wave of transitional justice?* Retrieved September 2, 2013 from http://www.frient.de/en/publications-service/news-details/article/tunisia-in-transition-start-of-a-third-wave-of-transitional-justice.html?tx_ttnews%5BbackPid%5D=5&cHash=e0b7ccf41211d0a52965fd497e07521d

Blog post outlining the pros and cons of Tunisia's consultation process with civil society on the TJ law.

- * Gray, D.H. & Coonan, T. (2013). Notes from the field: silence kills! Women and the transitional justice process in post-revolutionary Tunisia. *The International Journal of Transitional Justice*, 2013 (7), 348–357. <http://dx.doi.org/10.1093/ijtj/ijt002>

'This article is based on the first collection of testimonies of female former political prisoners in Tunisia. Relying on purposive rather than random sampling, the interviews were aimed at contributing to an authentic Tunisian process of transitional justice that takes cultural, religious and gender-based norms into consideration. To date, the voices of conservative Islamist women detained under the Tunisian dictatorship have been significantly absent from the national discourse on transitional justice. Select voices of women are presented here that can begin to address this gap. The newly elected provisional government, in which the Islamist Ennahda Party enjoys a majority, has established a Ministry of Human Rights and Transitional Justice, the first of its kind in the world. While this augurs well for Tunisia's future, there is fear that the transitional justice process may nonetheless be captured by political agendas.' (p. 348)

**ICTJ (2011). *Addressing the past, building the future: justice in time of transition conference report*.
<http://ictj.org/sites/default/files/ICTJ-Tunis-Conference-Report-2011-English.pdf>**

'ICTJ's Middle East and North Africa Program, in partnership with the Arab Institute for Human Rights, the Tunisian League for Human Rights, and the Office of the High Commissioner for Human Rights, convened an international conference entitled "Addressing the Past, Building the Future: Justice in Times of Transition" in Tunis, Tunisia on April 14-15, 2011. This report summarizes the five sessions focusing on criminal accountability, security sector reform and vetting, truth-seeking, gender justice, and reparations, as well as the concluding observations of the conference.'

<http://ictj.org/publication/addressing-past-building-future-justice-time-transition-conference-report>

ICTJ. (2013). *Tunisia background*. Retrieved September 2, 2013 from <http://ictj.org/our-work/regions-and-countries/tunisia> <http://ictj.org/our-work/regions-and-countries/tunisia>

A brief description and critique of transitional justice processes in Tunisia.

Lamont, C.K. (2013). *Tunisia: in search of a political exit from political violence*.

<http://www.opendemocracy.net/christopher-k-lamont/tunisia-in-search-of-political-exit-from-political-violence>

'In addition to the transitional process falling into paralysis, there is also a palpable sense of insecurity. The political assassinations, once relatively unknown in Tunisia, are now picking up their own deadly momentum.' This report provides a brief description of current political and TJ events in Tunisia.

Lamont, C.K. & Boujneh, H. (2012). *Transitional justice in Tunisia: negotiating justice during transition. Croatian Political Science Review (Politička Misao), issue: 05, pages: 32-49*

'On 14 January 2011 the overthrow of President Zine al-Abidine Ben Ali left Tunisia confronted with the task of addressing the dual legacy of Ben Ali's violent crackdown on protesters in the weeks preceding his ouster and decades of widespread human rights abuses. In the immediate aftermath of 14 January, interim governments launched a number of improvised efforts to deal with the past. These efforts included investigative commissions, compensation, vetting of former regime officials, and criminal trials. However, it was only after the election of the National Constituent Assembly in October 2011 that there was a concerted effort to draft a comprehensive law on transitional justice. ... This article argues that although Tunisia's national consultation on transitional justice can be heralded as a novel consultative initiative to transmit transitional justice demands into transitional justice legislation, it has also served to highlight contested visions of the post-Ben Ali state and contested memories of Tunisia's secularist and Islamist political traditions.' (p. 32)

*** No Peace Without Justice & Al-Kawakibi Democracy Transition Center (2013). *Accounting for the past in Tunisia. An assessment of accountability and transitional justice expectations and perceptions across the country*. <http://www.npwj.org/node/6907>**

'No Peace Without Justice (NPWJ) and Al-Kawakibi Democracy Transition Center (KADEM) ... conducted, in September 2011, a survey ... to capture people's understanding and general knowledge about transitional justice in Tunisia among various sectors of society before major measures on the topic were carried out. The survey was administered in different regions and cities of Tunisia ... o 403 people representing the general public and specific Target Groups ... The Survey findings demonstrate that the general perception towards transitional justice is very positive in Tunisia and that a great

majority of respondents are eager to participate in transitional justice to contribute directly to the democratic transition of their country ... [The report identifies] the main recommendations and lessons learnt that have emerged as a result of this survey and that are important to measure the impact of the various initiatives carried out so far as well as to identify the main challenges that should be addressed to establish an effective transitional justice system in Tunisia’.

<http://www.npwj.org/node/6907>

Yemen

Eramo, G. (2012). *Yemen: transitional justice is needed to build a democratic future. No Peace Without Justice*. Retrieved September 4, 2013 from <http://www.npwj.org/node/4809>

A brief description and critique of transitional justice processes in Yemen.

Sharqieh, I. (2013) *A lasting peace? Yemen’s long journey to national reconciliation*. Brookings Doha Center Analysis Paper. Washington D.C.: Brookings Institute.
http://www.brookings.edu/~media/research/files/papers/2013/02/11%20yemen%20national%20reconciliation%20sharqieh/bdc_yemen%20national%20reconciliation_sharqieh

‘The Gulf Cooperation Council (GCC)-brokered settlement signed in November 2011 successfully induced Yemeni President Ali Abdullah Saleh to step down and laid the foundations for a new transitional government. The deal, however, fell short of providing solutions to the massive and intractable problems facing unity and sustainable peace in Yemen. Yemen has not yet investigated and grappled with its past, including the numerous human rights abuses that occurred during Saleh’s 33 years of dictatorship. Yemen’s former ruling party, meanwhile, continues to be a major player in the country’s politics without having engaged in serious internal reform. These and other major underlying sources of conflict in Yemen have thus gone unaddressed. While the GCC initiative provided a framework for a political settlement in Yemen, more work must be done for it to be a transformative mechanism that brings lasting stability.’ (p. 1)

Annex 2: Transitional justice in Arab countries

Algeria

1999	<ul style="list-style-type: none"> Civil Harmony Law: immunity from prosecution for any armed rebel who surrendered within six months of the law entering into force. Individuals who committed serious crimes were ineligible but by coming forward would be eligible for reduced sentences.
2000	<ul style="list-style-type: none"> Presidential Decree 2000-03: individuals from any organisation who laid down their arms granted a full amnesty and blanket immunity from prosecution. An estimated 5,500 Islamist fighters retired.
2003	<ul style="list-style-type: none"> National Consultative Commission on the Promotion and Protection of Human Rights established with the mandate to help find the persons declared as 'disappeared' and identify any bodies found.
2005	<ul style="list-style-type: none"> Commission submitted unpublished report to government that concluded government forces were responsible for over 6,000 disappearances. The commission had no power to compel cooperation by government officials or subpoena documents. Referendum supported the Charter for Peace and National Reconciliation: offered immunity or clemency to Islamist fighters and measures for Islamists who had lost their jobs in the 1990s; absolved government forces and armed militias from responsibility for human rights abuses; and promised compensation for victims.
2006	<ul style="list-style-type: none"> Ordinance No. 06-01, implemented the Charter and broadened it (e.g. it provided blanket immunity for security forces and government-sponsored militias). Commission on the Promotion and Protection of Human Rights closed September 2006. It reviewed over 13,000 claims for compensation from families of disappeared individuals, eligible for compensation of up to DZD 1 million. Some reports that no more than DZD 50 million in compensation issued. Families of disappeared individuals have filed hundreds of complaints in Algerian courts.
Source	Wiebelhaus-Brahm, n.d.

Bahrain

2011	<ul style="list-style-type: none"> Independent investigation by foreign experts – the Bahrain Independent Commission of Inquiry (BICI) appointed by the King to look into the 2011 violence. Undertaken by foreign experts. It collected about 9,000 testimonies related to abuses, found serious human rights violations but did not identify perpetrators or attribute responsibility. Number of recommendations made (e.g. government to establish an independent body to further investigate allegations of HR abuse and punish those responsible). Government established a 19-person commission to oversee implementation of BICI recommendations and announced that alleged abuse by government forces would be prosecuted and that victims would be compensated. It also has
2012	<ul style="list-style-type: none"> Commission announced that a special chamber to be established in the civil courts to expedite compensation cases.
Source	Perish et al, 2012

Egypt

2011	<ul style="list-style-type: none"> Two commissions of inquiry established – one by the Mubarak government and other by the National Council for Human Rights (NCHR) and the Arab Organization for Human Rights (AOHR). (March) NCHR and AOHR commission released findings, concluding that Ministry of Interior, the National Democratic Party (NDP) and state media responsible for violence against
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	<p>protestors during the period of unrest.</p> <ul style="list-style-type: none"> • (March) National referendum backed constitutional changes. • (March) State Security Intelligence branch of the Ministry of Interior dissolved. Egyptian Homeland Security created. • (April) Prosecutor General ordered the detention of former President Hosni Mubarak, amid investigations of alleged corruption and abuse of authority, and his two sons, joining half a dozen of former officials and ministers facing investigation. • (April) Egypt's High Administrative Court dissolved the National Democratic Party, ordering its assets to be transferred to the government. • (April) Commission of inquiry established by former government reported that approx. 846 people were killed in the protests and documented cases of serious human rights violations. Criticisms that the commission was not transparent or participatory. • Supreme Council of the Armed Forces (SCAF) called for the establishment of a fund for compensation, social services, and health care for victims and their families. The National Council of Care for the Revolution Martyrs' Families and Wounded has provided some compensation, but reportedly victims and survivors are Very unhappy about the way the council has operated. • (April) 2011 Egypt's then-foreign minister signalled the country's intention to join the ICC (no action since then) • (July) Commission of inquiry established to investigate the funding of civil society organisations functioning in Egypt. • (July) Several hundred security service officers dismissed but no substantial overhaul of police and security services. • (August) Hosni Mubarak's trial began held by a regular judiciary accordance to normal laws, something 'unprecedented in the Arab world'. • (November) SCAF issued lustration law banning former leading members of Egypt's National Democratic Party from People's Assembly elections. Ratified in April 2012 to prevent former high-level Mubarak associates and appointees from running for president.
2012	<ul style="list-style-type: none"> • (January) The Muslim Brotherhood won nearly half the parliamentary seats. • (February) Ministry of Education announced intention to revise middle-school history textbooks to rewrite the history of the Mubarak era. • (June) Mohammed Morsi elected president. • (November) Constitutional Declaration granting President Morsi sweeping powers ratified by the Constituent Assembly despite the boycott of liberal and Christian members and the objections of an array of civil groups and political parties. • Draft 'blanket' amnesty law for persons suspected or convicted of political charges under the Mubarak regime remains draft as Parliament continues to be dissolved.
2013	<ul style="list-style-type: none"> • (January) Hosni Mubarak's initial guilty verdict quashed due to 'procedural irregularities'. • (July) Mohammed Morsi removed from the presidency by SCAF; Mansour appointed as interim president tasked with overseeing the promulgation of a new Constitution and arranging for parliamentary elections followed by presidential elections. Justice portfolio in new cabinet renamed the Transitional Justice and National Reconciliation Ministry. • (August) Hosni Mubarak released to house arrest. • Muslim Brotherhood's spiritual leader, Mohammed Badie and 32 others charged with incitement to kill protesters. • Prosecutorial and judicial authorities lacked capacity to deal with the overwhelming demand for prosecuting thousands of cases.
Source	Barsalou, 2012; Beaumont, 2013; Grives and Thornton, 2011; ICTJ, 2013b; Perish et al, 2012; Salloukh (forthcoming).

Iraq

2003	<ul style="list-style-type: none"> • De-Ba'athification: a series of legal and administrative measures with overriding goal to prevent the Baath Party from returning to power in Iraq. Includes exclusion of senior party members and high-ranking civil service managers; and dissolved the Iraqi armed forces, security services, party militias, other organisation. • Higher National De-Ba'athification Commission (HNDDC) created which expanded the scope of de-Ba'athification: prohibited certain categories of people from holding high-level positions in the new state bureaucracy, politics, civil institutions, or the media. created de-Ba'athification committees in each ministry. • Statute for Iraqi Special Tribunal for Crimes Against Humanity (IST) issued giving the tribunal jurisdiction over all Iraqis for the crimes of genocide, crimes against humanity, war crimes, and crimes under existing Iraqi law that had occurred in Iraq, Iran, and Kuwait.
2004-5	<ul style="list-style-type: none"> • Interim government attempted to curtail power of HNDC.
2005	<ul style="list-style-type: none"> • New government reinforced HNDC's power. • New Constitution written. • (October) ICT replaced by the Iraqi High Criminal Court (IHCC).
2005-6	<ul style="list-style-type: none"> • IHCC held the Dujail Trial and after just over a year found Saddam Hussein and seven other defendants guilty of crimes against humanity for torture, forced deportation, imprisonment, wilful killing, and other inhumane acts committed against Shi'as.
2006	<ul style="list-style-type: none"> • Anfal Trial of Saddam Hussein and Ali Hassan al-Majid started. • Saddam Hussein executed prior to the conclusion of the Anfal trial. • Internal Tribunal de-Ba'athification Committee created.
2008	<ul style="list-style-type: none"> • Law of the Supreme National Commission for Accountability and Justice (known as the Accountability and Justice Law) passed; implemented after 18 months: <ul style="list-style-type: none"> - created the Higher National Commission for Accountability and Justice – which became the Accountability and Justice Commission. - simpler, clearer basis for de-Ba'athification efforts. - established an independent appeals chamber. - created a public prosecutor's office to investigate allegations against individual former Ba'ath party. - made some mostly low-level former Ba'athists eligible for a pension. - allowed tens of thousands of low-level dismissed Iraqis to return to work without going through the appeals process.
Source	Wiebelhaus-Brahm, n.d.

Lebanon

1989	<ul style="list-style-type: none"> • Taif agreement signed by Parliament which 1) provided for a redistribution of political power to the benefit of the (then) Muslim majority; the official disarmament of militias; and the establishment of Syria as guarantor of security and final authority.
1991	<ul style="list-style-type: none"> • Amnesty for all 'political crimes' related to the civil war, with widespread political support.
2000	<ul style="list-style-type: none"> • Government established a commission of inquiry to investigate the more than 17,000 victims of kidnappings and disappearances during the war. Criticised for a lack of independence, no terms of reference and short reporting timeframe.
2005	<ul style="list-style-type: none"> • Lebanese Forces leader widely believed to be responsible for wartime killings of civilians, released from prison and granted amnesty once Syrian forces withdrawn from the country. • UNSC Resolution 1595 established an international independent investigation commission [UNIIC] based in Lebanon to assist the Lebanese authorities in their investigation of [the assassination of former Prime Minister Rafik Hariri.
2007	<ul style="list-style-type: none"> • UNSC acted under Chapter VII of the UN Charter to create the Special Tribunal of Lebanon

	through a narrow margin (five states abstaining, including Russia and China). Its jurisdiction was limited to: 1) starting with the allegation of facts to be investigated and then moving to prosecution; 2) investigation of the Hariri bombing, a number of politically motivated killings that occurred between October 2004 – December 2005 and some later killings.
2008	<ul style="list-style-type: none"> Government promised to act on human rights organisations and victims' groups demands that the issue of the disappeared be made a national priority. No action as of 2011.
2009	<ul style="list-style-type: none"> Inauguration of the Special Tribunal of Lebanon (STL).
2011	<ul style="list-style-type: none"> STL filed indictments against four men for murder of former Lebanese PM Rafik Hariri.
2013	<ul style="list-style-type: none"> The fate of thousands of disappeared remained unknown. SLT set new tentative date of January 2014 for the start of the trial. The trial was due to start in 2012 but was postponed after defence lawyers said that prosecutors had not yet given them all the relevant information to prepare their cases.
Source	Burgis-Kasthala (2013); ICTJ, 2013; Middle East Online, 2013; Szekely (forthcoming).

Libya

2011	<ul style="list-style-type: none"> (February) UN Human Rights Council created the Independent International Commission of Inquiry (IICQ) to investigate violence against civilians in Libya. (February) UNSC referral of the situation in Libya to the ICC. (June) ICC issued arrest warrants against Abdullah Al-Senussi and Saif al-Islam Gaddafi as "indirect perpetrators" of two counts of crimes against humanity – murder and persecution. (August) Constitutional Declaration. (November) Saif al-Islam Gaddafi arrested by rebels. (December) The National Transitional Council (NTC) established the National Council for Civil Liberties and Human Rights with the authority to receive complaints on violations of human rights and to file cases in court. Subsequently the NTC adopted a Transitional Justice Law, which created a National Fact-Finding and Reconciliation Commission.
2012	<ul style="list-style-type: none"> (March) Abdullah Al-Senussi arrested and held in Mauritania (extradited September) (March) IICQ released its report, concluding that crimes against humanity and war crimes were committed by Gaddafi and anti-Gaddafi forces in Libya. (May) Libya filed an admissibility challenge at the ICC, arguing that the Libyan government is actively investigating and willing to prosecute Saif al-Islam Gaddafi and Abdullah Al-Senussi. By May the NTC had passed 38 laws on varied issues, including: <ul style="list-style-type: none"> Law 37 defining Libya as remaining in a state of war, criminalized support for the former ruling Gaddafi family, and decrees the possibility of life sentence for enemies of the state. Critics call it a breach of fundamental human rights and in contravention to Libya's 2011 constitutional commitment to free speech. Law 38 granting a blanket amnesty for military/security/civil action if their actions were aimed at "promoting or protecting the revolution" against Gaddafi. Law 35 ensures crimes such as torture and rape are excluded from the amnesty; other crimes such as murder and forced displacement are not explicitly omitted. (July) Elections for the National Assembly were held in July 2012 with a reported turnout of approximately 60% of registered voters. (August) National Transitional Council handed over power to the National Assembly.
2013	<ul style="list-style-type: none"> Hundreds of other former regime supporters awaited trial in Libya. (April) Libyan government filed a challenge to ICC to the admissibility of the cases against Saif al-Islam Gaddafi and Abdullah Al-Senussi. (May) ICC decided against Libya's challenge.
Source	Fisher, forthcoming; Grives and Thornton, 2011; Kersten, 2012.

Morocco

1990	<ul style="list-style-type: none"> King Hassan II established the Advisory Council on Human Rights (CCDH). Within a few years, authorities released several hundred political opponents, and the king allowed the ratification of several international human rights conventions
1998	<ul style="list-style-type: none"> King Mohammed VI created the Independent Arbitration Commission (IAC) to compensate victims of arbitrary detention and forced disappearance. During almost four years of work the IAC decided more than 7,000 cases and awarded about \$100 million in reparations
2004	<ul style="list-style-type: none"> Equity and Reconciliation Commission (IER) inaugurated in January 2004 to: establish the truth about past violations; provide reparations to victims and families; and recommend measures to prevent future violations. Authorized to investigate HR violations committed during a 43-year period and to identify institutional but not individual responsibility. Victims defined narrowly, limiting investigation to forced disappearances and arbitrary detention (Wiebelhaus-Brahm, n.d.).
2005	<ul style="list-style-type: none"> IER final report delivered, determining the responsibility of state actors and some other parties for past abuses, outlining extensive individual reparation plans, proposed adoption of a communal reparations program, recommended that the prime minister issue a public apology for past abuses, made recommendations for new legislation and reforming state institutions (ICTJ, 2009) and called on government to investigate unresolved cases (Wiebelhaus-Brahm, n.d.).
By 2009	<ul style="list-style-type: none"> Since 2006 the CCDH has carried out the IER's reparations programs: <ul style="list-style-type: none"> Distribution of individual compensation to victims nearly completed, with \$85 million distributed to some 9,000 people (ICTJ, 2009) or 10,000 people according to Wiebelhaus-Brahm (n.d.). The CCDH signed agreements with ministries and official agencies to provide victims and their families with medical care and vocational training at the state's expense. It also identified 11 regions and communities as deserving of communal reparations, and a program has been established to manage that effort and to make sure that national and local actors are involved. Communal reparations programs were still in their initial phase; a number of disappearance cases remained unresolved; the IER's legal and institutional reform recommendations remained in embryonic form.
2010	<ul style="list-style-type: none"> Presidential statement that all IER recommendations were either implemented or in the process of being implemented Amnesty International report published that was more pessimistic about the future of IER recommendations and the ability of the Moroccan government to improve its human rights practices (Amnesty International "Broken Promises: The Equality and Reconciliation Commission and • its Followup," at http://www.amnesty.org/library/info/MDE29/001/2010/en)
Source	ICTJ (2009); Wiebelhaus-Brahm (n.d.)

Sudan

2005	<ul style="list-style-type: none"> UNSC referred the situation in Darfur to the ICC.
2007-2010	<ul style="list-style-type: none"> The ICC issued four arrest warrants and three summonses to appear. Two of the arrest warrants were for President Omar al-Bashir for war crimes, crimes against humanity and genocide. As of 2013 he continues to hold office.
Source	ICTJ, 2013c

Tunisia

2011	<ul style="list-style-type: none"> • (January) Overthrow of President Ben Ali. Interim authorities undertook various measures: <ul style="list-style-type: none"> - International arrest warrant issued seeking the extradition of Zine Al-Abidine Ben Ali and family members from Saudi Arabia. - Symbolic one-off payment to victims of the latest events and their families as a gesture of good will - All political parties recognised - Senior security officials replaced - Amnesty for all political prisoners who were promised reinstatement in their jobs and the option of seeking compensation - Three commissions set up on political reform, human rights abuses (received a total of 1,965 cases, including 238 for homicide as of mid-2011) and corruption (examined about 5,000 cases, referred 320 of them to the Public Prosecutor, and held more than 120 hearings. • (March) Constitutional Rally party in Tunisia disbanded by the courts. • (June) Tunisian court sentenced in absentia former President Ben Ali and his wife to 35 years in jail and fined them \$66 million dollars for embezzlement and misusing public funds. • (September) Charges filed against Zine Al-Abidine Ben Ali and other high officials. • (October) First democratic multi-party elections: election of the National Constituent Assembly.
2012	<ul style="list-style-type: none"> • Established Ministry of Human Rights and Transitional Justice, the first of its kind in the world. • (April-October) Launched national consultation to define transitional justice mechanisms. • (October) Draft transitional justice law presented to the Constituent Assembly.
2013	<ul style="list-style-type: none"> • (July) Elections promised for December 2013 (but w/o a constitution unclear what these elections are for). • Zine Al-Abidine Ben Ali had not faced charges for human rights abuses. A tribunal was attempting to press murder charges against Zine Al-Abidine Ben Ali for the deaths of protesters during the revolution (UPI, 2012). No attempts to charge Zine Al-Abidine Ben Ali or other former government official for the many human rights abuses committed during his more than two decades in power. • Several high-ranking officials allegedly responsible for human rights abuse during and before the protests were in custody awaiting trial.
Source	<ul style="list-style-type: none"> • ICTJ, 2011; ICTJ, 2013d; Perish et al, 2012.

Yemen

2011	<ul style="list-style-type: none"> • Negotiation of immunity deal for President Saleh by the Gulf Cooperation Council (GCC).
2012	<ul style="list-style-type: none"> • (January) Acceptance by Parliament of the immunity deal. • Draft Law on Transitional Justice and National Reconciliation and beginning of the drafting terms of reference for a truth commission. • Purges of Saleh loyalist from upper and lower echelons of the bureaucracy and military-security services. • (June) Resolution 2051 sought 1) the creation of an all-inclusive and comprehensive process of national dialogue (2) initiate a process of national reconciliation through transitional justice mechanisms; and (3) support constitutional and electoral reforms that should lead to general elections by February 2014.
Source	<ul style="list-style-type: none"> • Eramo (2012); Mistry (2012); Salloukh (forthcoming).