



PRIMERS FOR INTERNATIONAL ACCOUNTABILITY IN ASIA: TRANSITIONAL JUSTICE

What Is 'Transitional Justice'?

[Transitional justice](#) encompasses the various processes and mechanisms a society employs to confront and address the legacy of widespread conflict, repression, and human rights violations, with the aim of ensuring [accountability, delivering justice, and fostering reconciliation](#). With the evolution of international criminal law and individual criminal responsibility, the [ambit of transitional justice has expanded](#). In this context, additional forms of redress complement and reinforce efforts to achieve criminal accountability. These [processes include](#) truth-seeking, reparations, and preventive measures such as legal reforms, civil society strengthening, memorialisation, cultural initiatives, archive preservation, and education reform.

What Are The Pillars Of Transitional Justice?

According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), there are [several key pillars](#) of transitional justice that are underpinned by international legal standards. They include:

1. **Truth:** The 'right to truth' (or 'the right to know') encompasses the right of victims and their families to obtain information about the circumstances surrounding gross human rights violations, including the identity of perpetrators, the causes behind these actions, and the fate of individuals who have been disappeared. Several 'soft-law' (or non-binding) instruments provide further meaning to the 'right to truth', like [Human Rights Council Resolution 21/7 \(2012\)](#), the [Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity](#), and the [Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#).
2. **Justice:** [The 'right of justice'](#) includes, but is not limited to, the obligation of States to ensure that individuals responsible for violations of human rights and international humanitarian law are prosecuted, brought to trial, and appropriately punished. The legal obligation to prosecute and punish perpetrators, while eliminating obstacles that hinder the fulfilment of this duty, is considered '[the chief expression of the duty of accountability](#)' ([Para 86](#)). This need for justice must be effectively addressed to achieve enduring reconciliation.
3. **Reparation:** States are obligated to provide victims with prompt, accessible, and [effective reparations](#) for the harm they have suffered. This responsibility stems from the general duty of States to ensure remedies for victims of human rights violations and breaches of international humanitarian law, that is outlined in the [Universal Declaration of Human Rights](#), art. 8; [International Covenant on Civil and Political Rights](#), art. 2; [International Convention on the Elimination of All Forms of Racial Discrimination](#), art. 6; [Convention against Torture](#), art. 14; [Protocol I Additional to the Geneva Conventions of 1949](#), art. 91; and [Rome Statute](#), art. 75.
4. **Memorialisation:** The Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (2005) call on States to preserve and transmit the memory of human rights violations (Principle 3). This duty arises from the obligation to [guarantee the right to truth and preserve archives and evidence](#), ensuring collective memory is safeguarded and preventing revisionist or denialist narratives. Some successful memorialisation projects in Asia include the [Tuol Sleng Genocide Museum](#) in Phnom Penh, a memorial site of the S-21 interrogation and detention centre of the Khmer Rouge regime and the [Genocide-Torture Archive & Museum in Bangladesh](#) preserving the memory of the victims of the genocide perpetrated by the Pakistani military force in 1971.
5. **Non-Recurrence:** The [primary goal of this principle](#) is to address and dismantle the structural causes of

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societal violence and systemic human rights violations with a view to preventing the commission of future violations.

These pillars work together to address the consequences of large-scale human rights violations.

Additionally, transitional justice processes [should prioritise and align with the effective fulfilment of a State's human rights obligations](#), with careful attention to the principles of non-discrimination. This includes incorporating a [gender perspective](#) and a [victim and survivor-centered approach](#) and ensuring effecting representation of women and minority groups. These processes should also focus on addressing the root causes of serious human rights violations.

What Are Some Challenges In Pursuing Transitional Justice?

In many cases, the political leadership in post-conflict States are unwilling to fully implement transitional justice processes. This resistance may stem from fear of losing power, being held accountable themselves, or facing backlash from former regime supporters. [In Sri Lanka](#), for example, following the end of the decades-long civil war between the Sri Lankan government and the Liberation Tigers of Tamil Eelam in 2009, there has been [substantial resistance](#) from certain political leaders to transitional justice measures, delaying processes like truth commissions or accountability trials.

Likewise, the collection and preservation of evidence and information—needed to facilitate transitional justice processes—is complex. The demands for comprehensive and systematic evidence collection, including the recording of testimonies of victims and survivors while preventing re-traumatisation, and the subsequent assessment and analysis of the collected evidence, are often complicated by requirements of expertise, resources, and prioritisation. In this context, the establishment of independent investigative mechanisms, such as [the Independent Investigative Mechanism for Myanmar \(IIMM\)](#) mandated by the United Nations Human Rights Council to 'collect, preserve, and analyse evidence, and prepare case files' for any future accountability processes, helps in mitigating the aforementioned obstacles.

Transitional justice processes are also often resource-intensive, requiring legal, financial, and institutional support that many post-conflict countries lack. In Timor-Leste, [following the independence from Indonesia in 2002](#), the Commission for Reception, Truth and Reconciliation (CAVR) [faced political and organizational challenges](#) in fully implementing its recommendations, making it difficult to deliver meaningful reparations to victims.

What Are People's Tribunals & How Do They Contribute To Transitional Justice?

In the absence of formal and institutional transitional justice tools and options, People's Tribunals can be established to break the silence around ongoing and past atrocities, record history, and reaffirm the rule of law and human rights.

People's Tribunals are ad hoc initiatives of private citizens and organisations, including civil society, that set up a forum to adjudicate and assign non-binding responsibility for alleged violations of international law. They do this by considering documentary and oral evidence presented before it, abiding by international legal standards.

As examples of alternative models that have facilitated the goals of transitional justice regarding Asia:

- The [Tokyo Women's Tribunal](#) (2000) was convened to address sexual and gender-based violence against 'comfort women' during World War II;
- The [People's Tribunal of the 1965 Crimes Against Humanity](#) (2015) examined mass killings that took place in 1965–1966 in Indonesia.