

Institutional Reform

Institutional reform and its functions

Institutional reform is the process of examining and reshaping state and social structures that seeks to provide a post-conflict society with functioning, non-partisan institutions. Its mandate is broad and may include changes to, among others, the constitution, the military, the police, the judiciary, the parliament, the educational system, and the media. Those institutions might have been abusive, unaccountable, and corrupt. Reform is needed to ensure that such institutions are:

- accountable for their actions
- democratically controlled
- grounded in rule of law and respect for human rights
- legitimate in the eyes of the public
- responsive to the needs of all groups within society, not only the political or economic elite, but also the needs of victims, the poor, and those marginalized.

The “guarantee of non-repetition”

The “guarantee of non-repetition” is enshrined in several international human rights instruments and decisions. It means that following a period of conflict in which mass human rights violations occurred, states are required to ensure that such atrocities never happen again. In practice, this guarantee is satisfied by institutional reform, particularly the reform of those institutions that committed violations or allowed them to take place.

Legal sources of the guarantee of non-repetition are:

- Article 2 of the International Covenant on Civil and Political Rights (ICCPR) requires state parties to take legislative and constitutional steps, and other measures, to give effect to the rights recognised in the Covenant and to ensure that any person whose rights are violated has an effective remedy.
- The International Convention for the Protection of All Persons from Enforced Disappearance contains an explicit provision regarding “guarantees of non-repetition”.
- The Inter-American Court of Human Rights in the case of Velásquez Rodríguez held that States are obliged “to organise the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights” (para. 166).
- The legal mandates of truth commissions often require such commissions to make recommendations to ensure the non-repetition of violations.

The preconditions for effective institutional reform

In 2015, the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence issued a report that set out basic preconditions for effective institutional interventions. These include:

- provision of effective security for the population
- issuance of legal identity materials (e.g., birth certificates, ID cards) so that citizens can exercise their rights and gain access to state services
- ratification of human rights treaties and their incorporation into domestic law to signify intent, and to allow for enforcement and monitoring.

A justice-sensitive approach to institutional reform

Justice-sensitive reform seeks to reshape institutions by addressing past operational practices that contributed to human rights violations (e.g., cultures of torture in police investigations) and holding individual perpetrators to account. A justice-oriented paradigm is needed to ensure that institutions are responsive to the needs of all citizens (including women, children, and other vulnerable groups), and not just responsive to select or partisan interests. This responsiveness is a critical component for rebuilding trust, and lies at the heart of the social contract between the state and its citizens. Just and well-functioning institutions contribute to the transformation of victims and survivors into rights-bearing citizens who are able to participate in society rather than suffer as victims of state oppression.

A justice-sensitive approach to reform focuses on the following four mutually-reinforcing objectives that also often serve as principles to guide how reforms are pursued. Institutional reform seeks to:

- *build the institutional integrity* of a society's institutions to discourage abuses, and increase responsiveness and accountability to citizens;
- *promote the legitimacy* of a society's institutions to overcome the population's fear and lack of trust arising from a legacy of serious abuse;
- *represent and empower* all citizens, especially victims of oppression and violence, and other marginalised groups; and
- *enhance coherence* with the other transitional justice pillars (i.e., truthseeking, prosecutions, and reparations) to enhance the effectiveness of each component.

Some challenges to institutional reform

Decisions about institutional reform, including decisions about security sector reform (SSR) and vetting processes, take place within a country's broader context of political transition and/or peacebuilding. The most serious challenges, therefore, appear to be:

- a scarcity of financial and human resources,
- competing political or economic interests,
- a fragile political and socio-economic context, and
- a lack of political will.

Sources

- *United Nations Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/HRC/30/42, 7 September 2015, <<https://undocs.org/en/A/HRC/30/42>>*

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