

# Different Types of Institutional Reform

Institutional reform is the process of examining and reshaping state and social structures. Following a period of conflict involving mass human rights violations, states are required by several international human rights instruments to ensure that such atrocities do not happen again. This requirement is known as the “guarantee of non-repetition,” and it is specifically through reform of institutions that contributed to or permitted the violations to occur to become functioning, non-partisan institutions, that this requirement may be satisfied. Different types of institutional reform include reform of the constitution, criminal law, judicial system, security sector, education system, and media.

## Constitutional Reform

Constitutional reform revises laws that govern the basic structures of a society in transition to ensure stability, democracy, accountability, and adherence to the rule of law. Constitutional reforms may include the following:

- removing discriminatory provisions;
- inserting mechanisms to support inclusion;
- creating a bill of rights;
- reforming provisions that govern the security sector;
- securing the separation of powers;
- limiting the scope of military courts; and/or
- adopting a brand-new constitution.

## Criminal Law Reform

Serious international crimes committed in conflicts and contexts of repression need to be prosecuted to secure the rule of law and ensure a foundation for peace in post-conflict societies. Domestic criminal laws may need to be revised to allow for the prosecution of serious international crimes and to ensure such crimes are not subject to a statute of limitations. These crimes constitute an “affront to humanity” and a lapse in time should not provide perpetrators an escape from responsibility. In addition, emergency, anti-terrorism, or other security-related laws must be made fully compatible with human rights standards to prevent rights violations by state and non-state actors. This can be achieved by:

- prohibiting arbitrary detention;
- eliminating amnesty provisions;
- guaranteeing access by detainees to lawyers and private doctors;
- prohibiting evidence or confessions obtained through coercion or torture; and
- providing legal aid to indigents accused of serious crimes.

## Judicial Reform

Post-conflict societies are characterized by an absence of the rule of law, past and present gross human rights violations, impunity, and economic devastation and decay. Often, the judicial system has become so compromised that the system and its supporting services need to be reformed or

even rebuilt in order to support prosecutions, truth-seeking, and reparations. Judicial reform may include vetting judicial personnel, strengthening judicial independence, building judicial capacity, and establishing ongoing judicial training. Reforms that focus on the role and treatment of judicial personnel may include:

- recruiting on the basis of merit and objective criteria;
- providing the security of tenure;
- offering adequate remuneration and predictable conditions of retirement;
- subjecting personnel to transparent, fair procedures and proportionate sanctions, promotions, dismissals, and transfers; and
- providing guarantees of physical safety.

Other reforms that may be needed to strengthen the judiciary as an independent organ of the government may include:

- enshrining the separation of powers in the constitution;
- appointing judges and magistrates on the basis of competence and independence, not political affiliation;
- providing the judiciary with sufficient resources, and budgetary and administrative autonomy;
- ensuring that cases are assigned on the basis of objective criteria; and
- respecting and enforcing the decisions of courts, even when they are contrary to the interests of the government.

### **Security Sector Reform**

Under authoritarian rule or during conflict, the police, military, and intelligence agencies, as well as non-state security actors (i.e., armed rebel groups), are often responsible for serious and systemic human rights violations. Reform of the security sector is often essential in transitional contexts to prevent recurrence of abuse, and to provide effective and accountable security to communities. In post-authoritarian societies, it may be possible to reform abusive institutions, whereas in societies that have sustained intense conflict it may be necessary to entirely rebuild institutions. The following are often key elements of effective security sector reform:

- removal (lustration) of personnel who supported a prior oppressive or authoritarian regime;
- thorough vetting of future personnel;
- disarmament, demobilisation, and reintegration (DDR) of former combatants;
- revision of policies (e.g. codes of conduct, policies regarding the treatment of detained individuals) that allowed security agents to engage in abusive practices; and
- inclusion of marginalised groups within the security sector.

### **Educational Reform**

Though often overlooked, education can play a key role in guaranteeing non-repetition of past abuses. Educational curriculum can promote truth about the past and contribute to lasting peace. Education has the formative potential to help shape new norms, mediate between contending narratives of the past, and nurture a culture of respect for human rights across generations.

### **Media Reform**

A hallmark of many authoritarian regimes is the control or suppression of the media. For that reason, it is imperative that a transitioning society reflects on the character of its media and introduces reforms to ensure that it is open and free, and that journalists are adequately protected.

#### *Sources*

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- 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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