

Workbook 4

Prosecutions and Peacebuilding



Cour
Pénale
Internationale

International
Criminal
Court



TRANSITIONAL JUSTICE
ASIA NETWORK



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Workbook 4

Prosecutions and Peacebuilding

Asia Justice and Rights

Transitional Justice and Peacebuilding Workbook Series

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Transitional Justice and Peacebuilding Workbook Series

- 1. Transitional Justice and Peacebuilding**
- 2. Strategizing for Justice and Peace**
- 3. Truth-Telling to Sustain Peace**
- 4. Prosecutions and Peacebuilding**
- 5. Reparations to Strengthen Peace**
- 6. Institutional Reform for Guarding Peace**
- 7. Gender Justice and Peace**
- 8. Emerging Approaches for Climate Justice and Indigenous rights for peace**

Each volume is written as an interactive companion workbook to the chapters
in **Transitional Justice Handbook**

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Introduction

Transitional justice and peacebuilding emerged as coherent disciplines along a similar timeline. Practitioners in each field gained experience working after periods of violent conflict, repression, and mass violations of human rights. Especially since the 1990s, ad hoc mechanisms and activities developed into more integrated and strategic approaches.

However, while transitional justice and peacebuilding often take place in the same context, they do not always work hand-in-hand. Tensions between the approaches, or a lack of joint planning, often prevent the two fields from working in complementary ways. Materials often target practitioners in one field or the other

A second gap in the literature concerns local action. Studies of peacebuilding often focus on the big picture. They examine strategies and actions by international entities, such as Security Council, peacekeeping missions, and UN agencies, and national actions and bodies such as peace agreements, constituent assemblies, parliaments, and special commissions. While these subjects are all important parts of peacebuilding, often the most profound and transformative actions are by individuals and families at the local level.

The same can be said for transitional justice, such as a victim-survivor learning to come to terms with her pain and loss, developing her agency, and living a full life within family and community. Change is experienced and consolidated at the local level, where everyday life is lived, even while national strategies provide critical frameworks.

These workbooks address both these challenges. First, they are designed for NGOs and civil society organisations that focus on transitional justice, while operating within peacebuilding contexts. Second, the workbooks encourage analysis and offer practical ideas and strategies for local action. Examples demonstrate that in the complex political, security and institutional settings created by conflict, meaningful local civil society action is not just possible, but essential.

Purpose of This Workbook

Workbook Four explores the challenges of bringing perpetrators of serious crimes to court. This workbook explains the importance of accountability to peacebuilding, helping transitional justice NGOs advocate for prosecutions during peacebuilding, periods despite competing priorities. This workbook links to Chapter Four in the 2023 AJAR Handbook on Transitional Justice.

The Workbooks are designed as tools for reflection and analysis by individuals and small groups. Activities prompt practical ideas and strategies for local action, while examples demonstrate possibilities to achieve significant results even in the most challenging conditions.

Learning Outcomes of This Workbook

- An understanding of the relationship between prosecutions and peacebuilding
- Review of relevant lessons from experience in this area, including common obstacles
- An understanding of the types of domestic and international tribunals possible in a peacebuilding context
- Capacity to analyse domestic advocacy to initiate or improve prosecutions
- Awareness of informal prosecutions and tribunals initiated by NGOs
- An understanding of the limitations of prosecutions, including with respect to gender inclusiveness and equity

Prosecutions, Peacemaking and Peacebuilding

Prosecutions fulfill the obligation to protect human rights, aid restoration of the dignity of victims, and rebuild essential trust between citizens and the state. As an essential part of an integrated response to mass human rights violations, criminal justice should be pursued whenever possible, particularly at the national level.

Where conflict and violations are ongoing, prosecutions may help restore peace, particularly when undertaken at the international level.

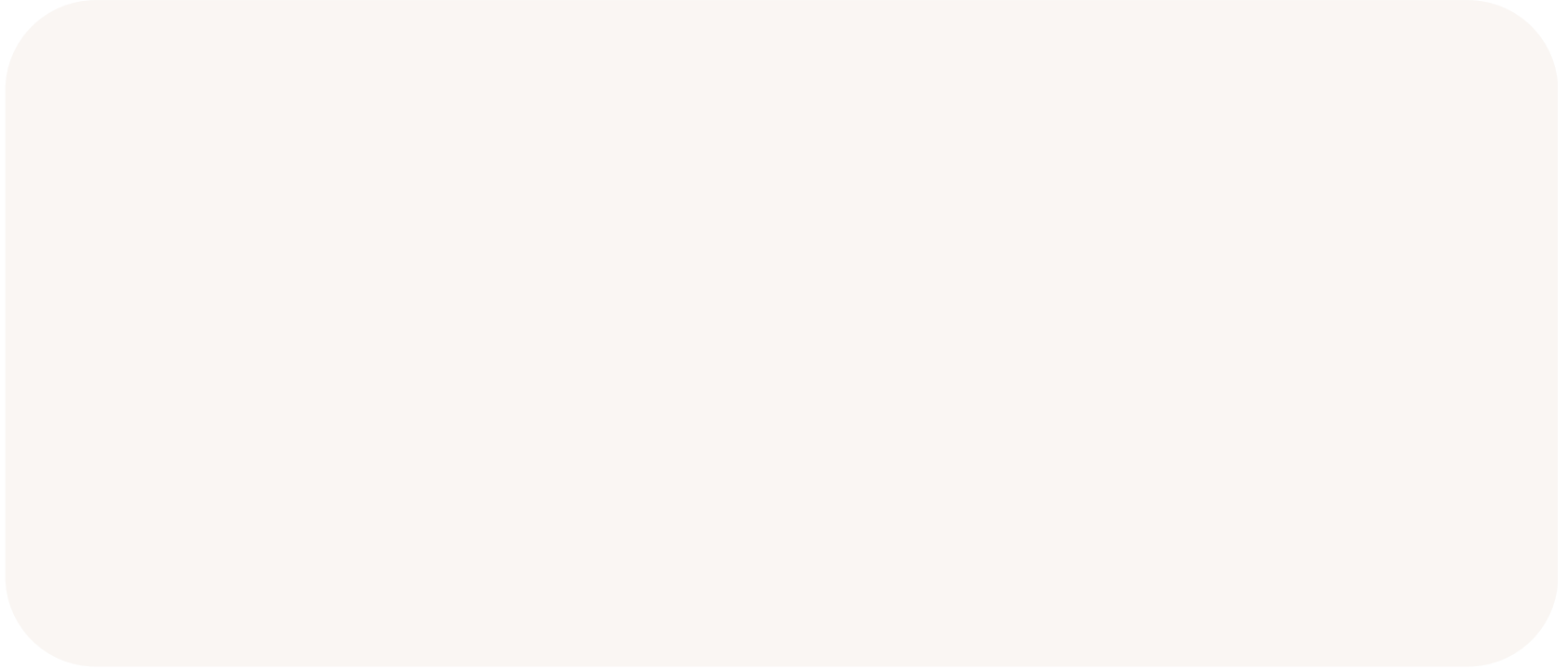
If investigations or prosecutions are not possible, action is needed to preserve options in the long term. Parallel efforts to document evidence for future prosecutions may be undertaken by local human rights groups, international NGOs, and official UN investigations, such as in ongoing mechanisms on the conflicts in Syria, Myanmar, and the Ukraine.

Investigation and prosecution of those responsible for mass crimes often become important elements of peace negotiations. Peace agreements may include promises to establish special courts for those most responsible for mass crimes, as well as truth commissions and reparations programs. Alternatives to criminal prosecutions, including amnesty provisions, may also arise as part of peace negotiations.

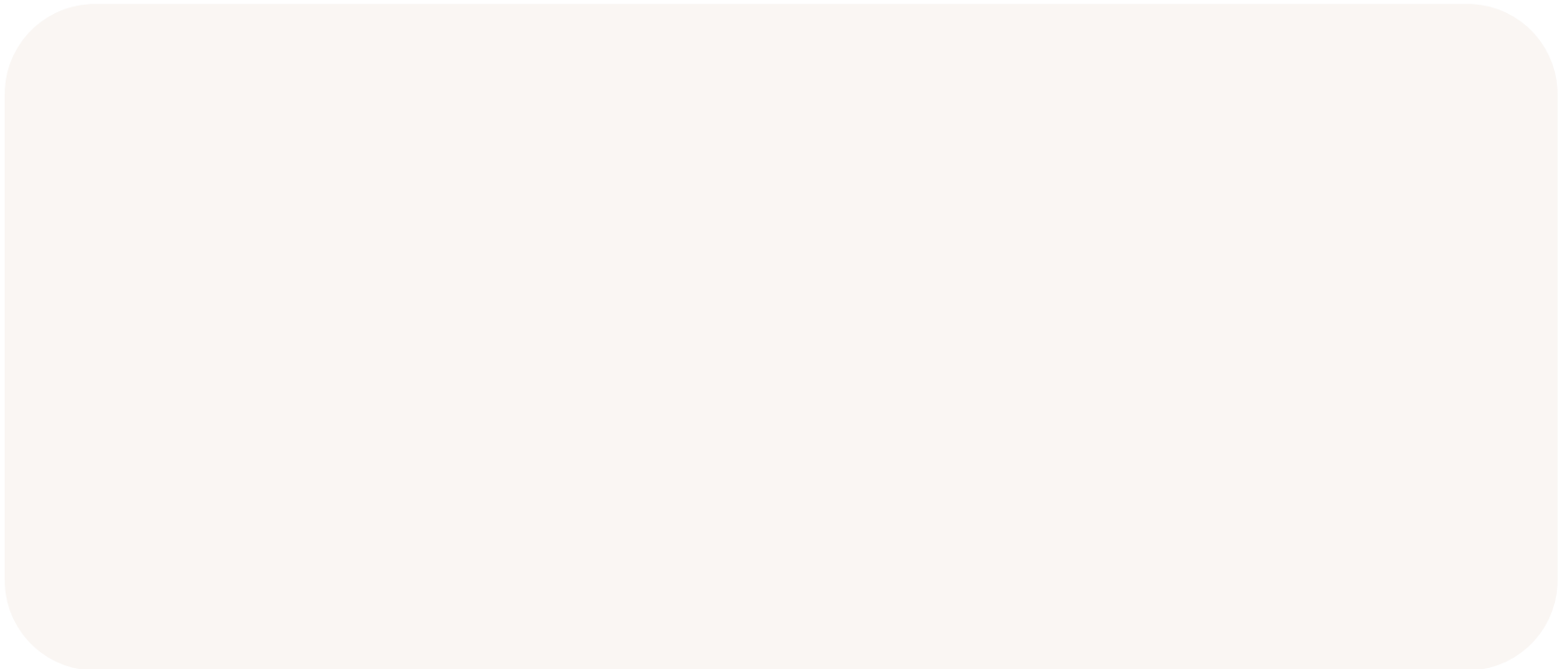


Worksheet 1: Accountability in Situations of Ongoing Conflict

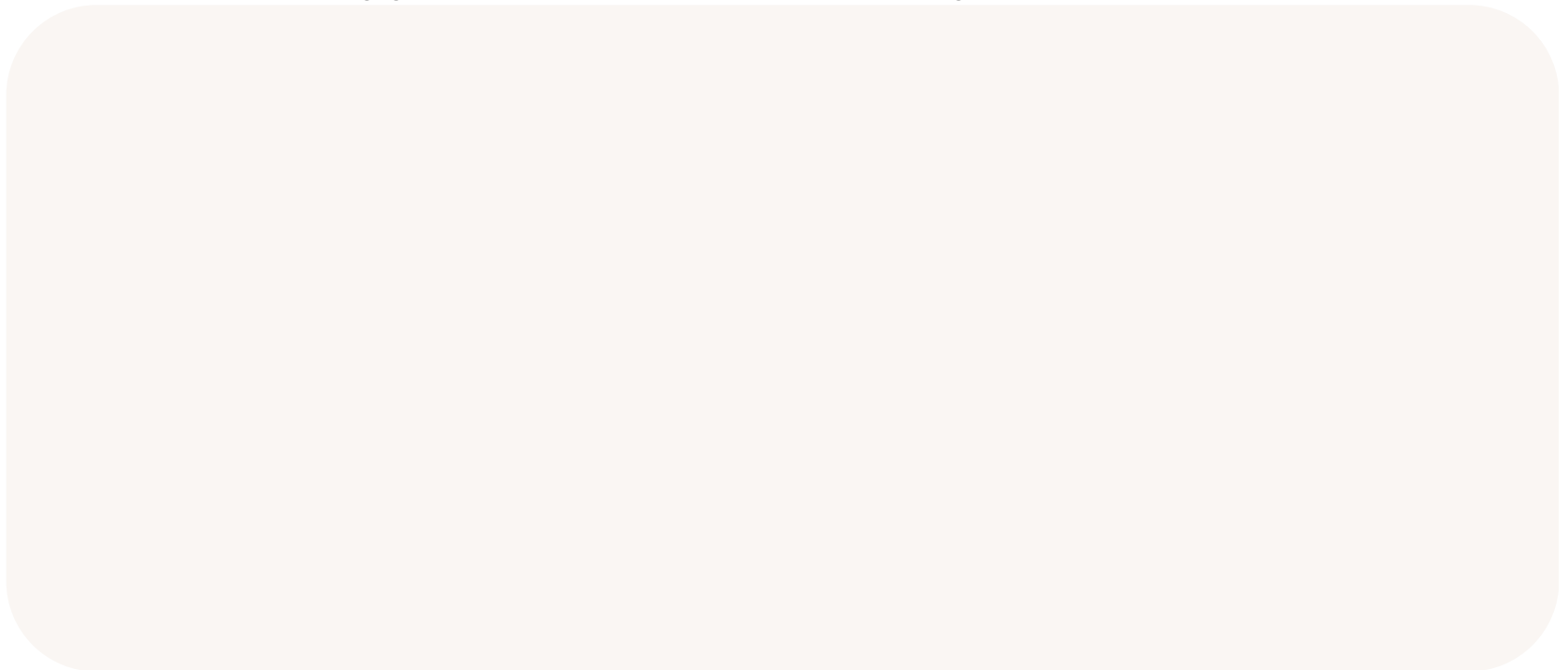
If conflict or violent repression is continuing, are there efforts to document ongoing crimes? Who is leading this process?



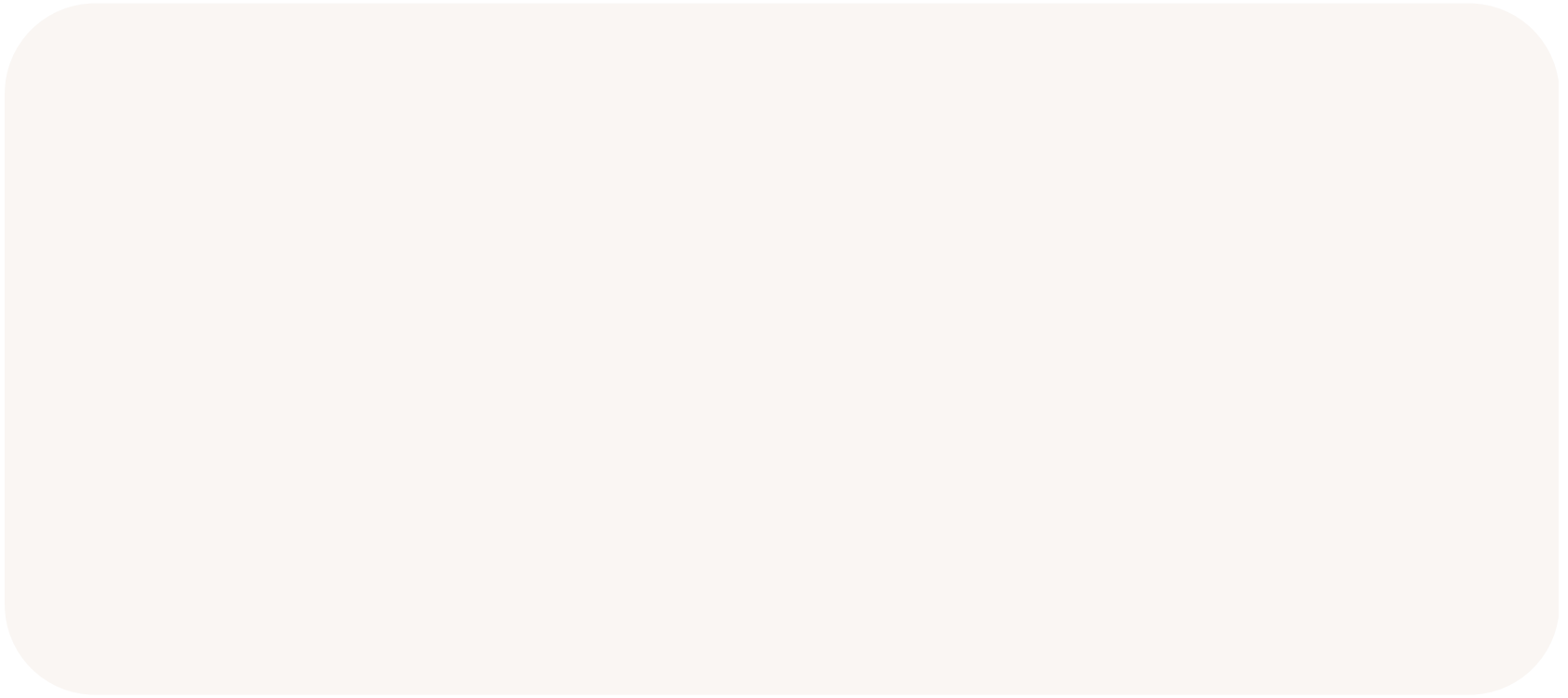
Do mechanisms effectively engage with victim-survivors, especially women and girls, and local communities?



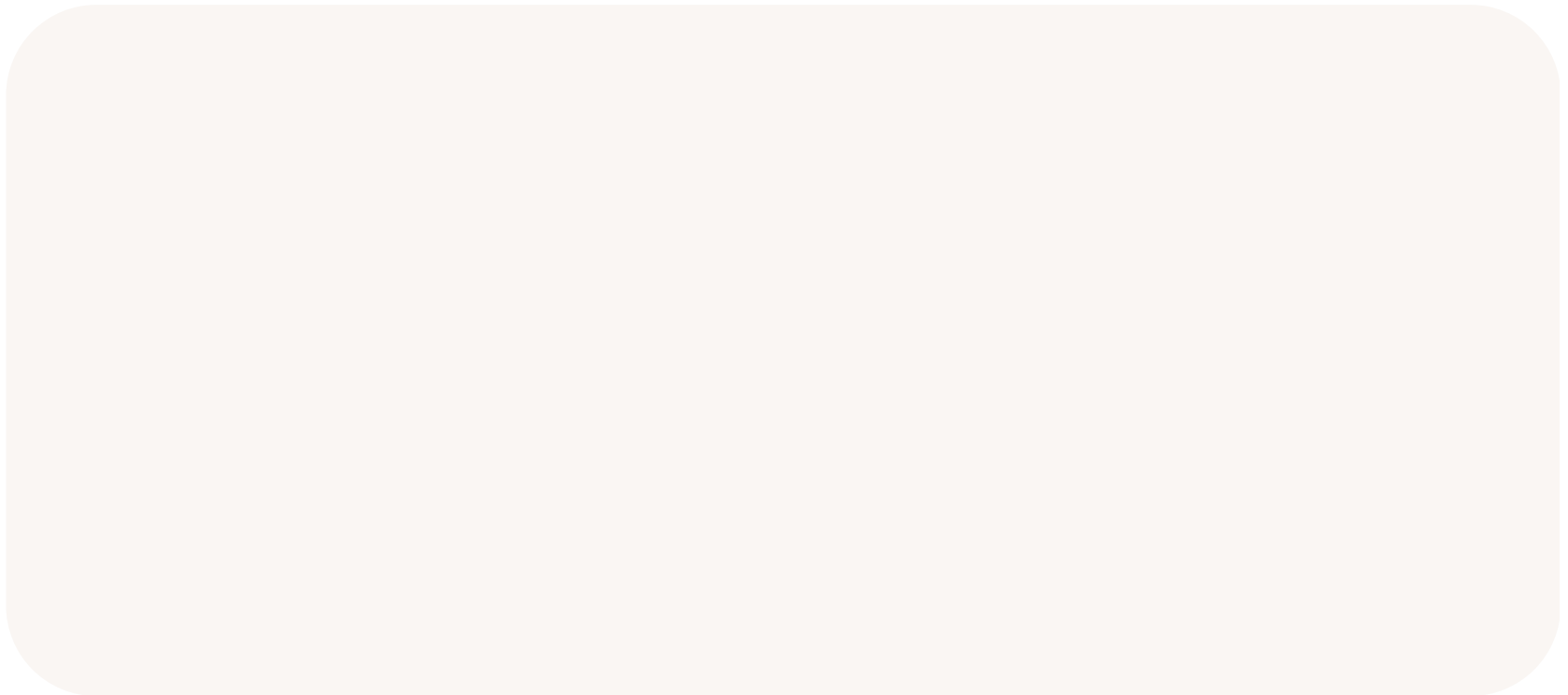
Do mechanisms effectively engage with victim-survivors, especially women and girls, and local communities?



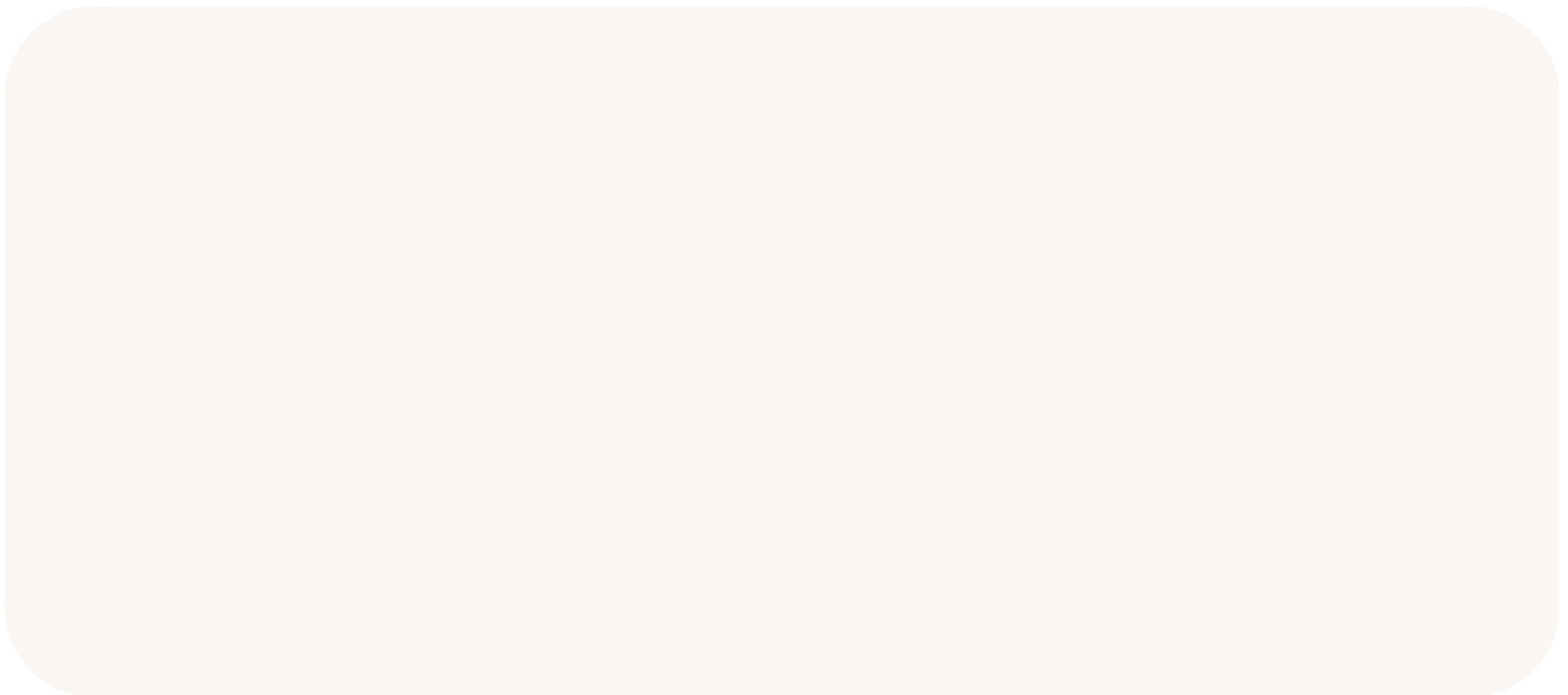
How can local human rights defenders secure the protection, funds, and support needed to do this work?



If peace talks are underway or planned, what role might prosecutions play?



What do you think would be the impact on longer term peace building if there is no accountability through prosecutions?



Lessons for Prosecutions and Peacebuilding

Some lessons emerging from experiences with prosecutions around the world have important implications for peacebuilding contexts, especially with regard to likely obstacles:

- Prosecutions after mass violations present a critical opportunity to restore faith in the rule of law. Ignoring or frustrating calls for justice may cause the population to lose faith in the rule of law and institutions in the post-conflict social order, making peacebuilding much more difficult.
- However, securing the political will to prosecute perpetrators in post-conflict situations is notoriously difficult. During peace negotiations, fear of prosecution may be a barrier to bringing parties to agreement. After a conflict, political actors protect themselves and others from prosecution, often in the name of stability. In many peacebuilding contexts those responsible for mass human rights violations remain in positions of influence, or wait for the opportunity to return to power.
- The road to criminal justice is often long, with some prosecutions taking place decades after violations were committed. NGOs have an important role to play during this delay, such as gathering evidence, advocating for victim-survivors, supporting their practical needs, and restoring their place in society. NGOs need long-term advocacy strategies for criminal justice, spanning the peacebuilding period and beyond. Lasting partnerships and coalitions with the international human rights community is important.
- Even if investigations and prosecutions go ahead, ensuring they meet international standards is difficult. Institutions may have been weakened by conflict and repression, and some prosecutions are undertaken in a deliberately compromised way, purely to avoid international intervention. Restoring the capacity and integrity of the judicial system is a key to credible prosecutions.

Worksheet 2: The Impact of Conflict on the Courts

It may be best to think about prosecutions of serious crimes as a long-term goal, especially if protracted conflict or repression has impacted the independence of the judiciary. The time frame will depend on the level of political will to deal with past violations, but also the condition of the judicial system.

In your context, how have courts been shaped by conflict? Were police, judges, prosecutors, and lawyers able to function independently? Were laws and courts used to control certain groups or the population as a whole?

Have reforms brought the judicial system more in line with international standards? What weaknesses still need to be addressed? To what extent credible investigators, prosecutors, and judges being hired, trained, and allowed to carry out their work without interference?

Types of tribunals and prosecutions

Domestic or national courts

Under international law, states have the primary responsibility to exercise jurisdiction over serious crimes. Their options include:

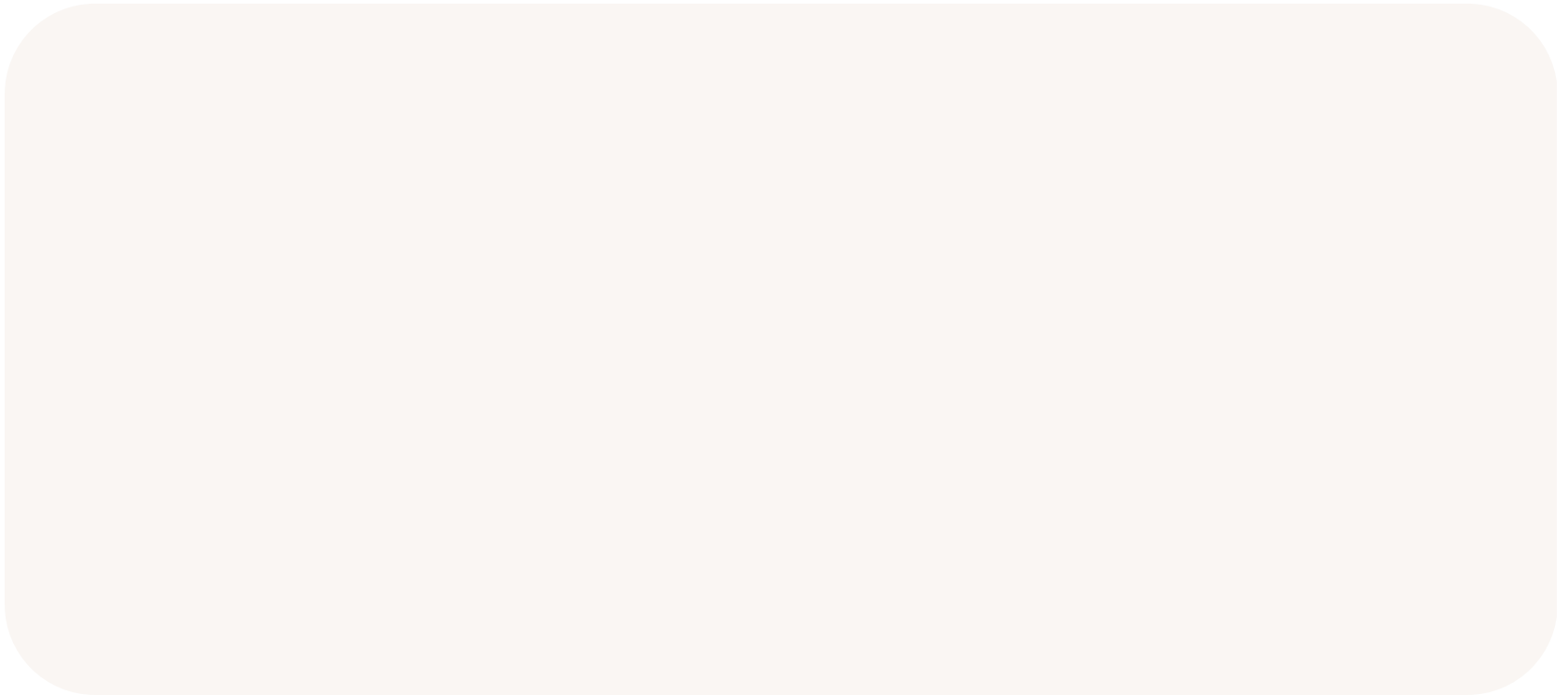
- civilian criminal courts
- military courts (courts martial)
- special courts within the justice system

Such courts are cheaper than international courts, and have greater access to witnesses, evidence, and victims. The proceedings are more accessible to the public, and can contribute to domestic judicial reform.

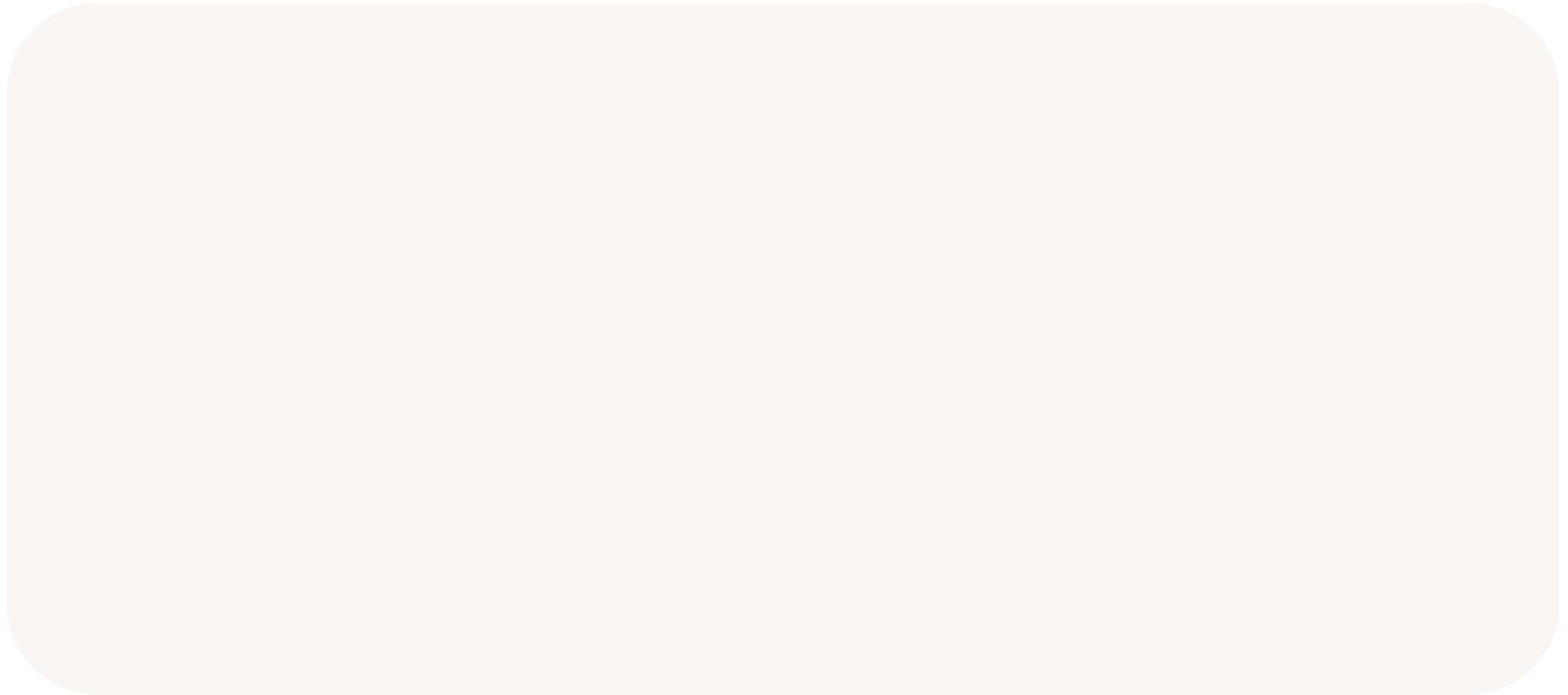
However, the challenges are significant. National prosecutions can easily become manipulated if judicial and prosecutorial independence are weak. National prosecutions can become 'show trials' designed to avoid international court processes. Other weaknesses of national prosecutions may include inadequate laws; endemic corruption; incompetence; poor conditions of service and pay; and lack of access to justice.

Worksheet 3a: advocating for domestic prosecutions to take place

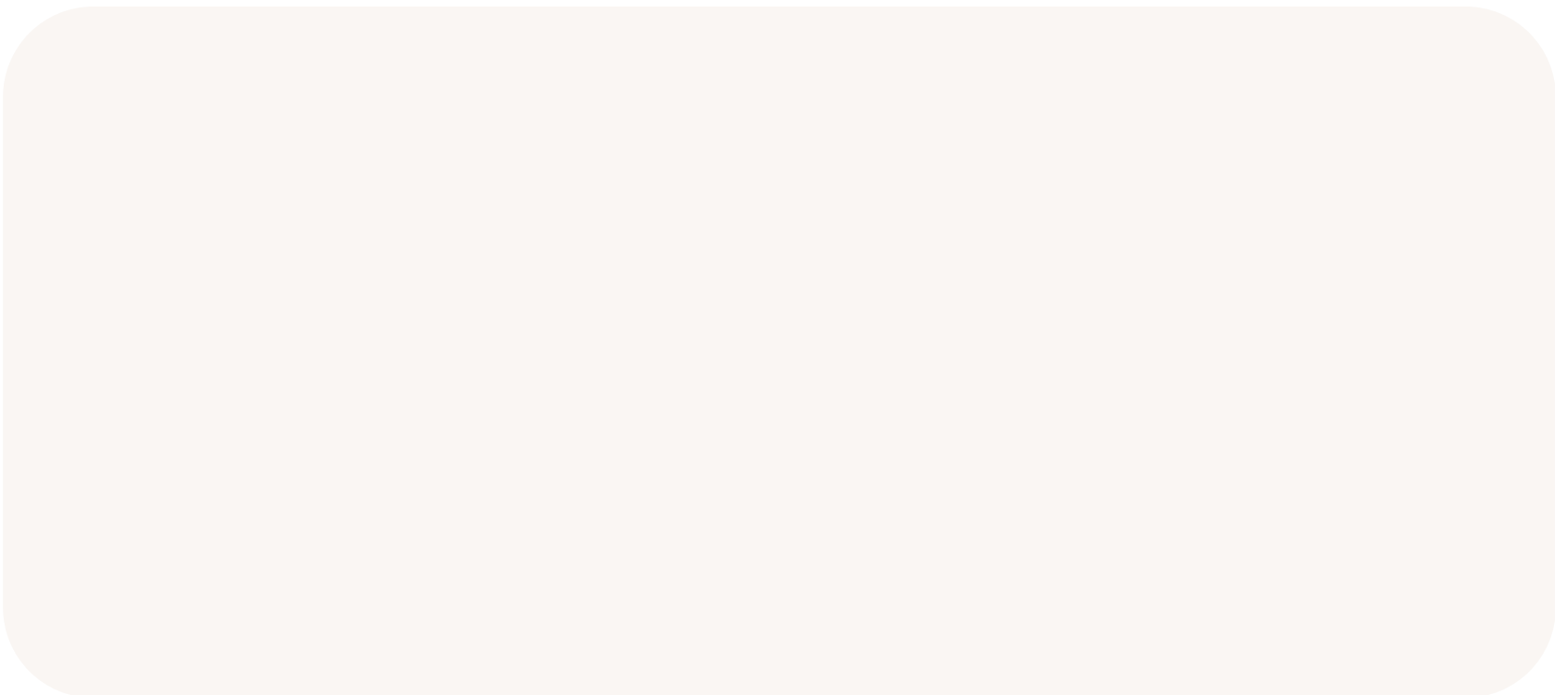
How much demand is there for prosecutions from victim-survivors or the wider community?



Do national political leaders support prosecutions, or are they hostile toward the idea?



Based on worksheet 3, is the judiciary independent enough to run a fair trial?



Based on worksheet 3, is the judiciary independent enough to run a fair trial?

Map out the obstacles, supporters, and opportunities for effective advocacy in the table below

Obstacles	Supporters	Opportunities

Worksheet 3b: analysing domestic prosecutions

If prosecutions for conflict-related crimes have begun, or even concluded, what is your view of them? How do victim-survivors perceive them, as well as the wider community?

To what extent do they meet international standards?

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Do the courts have adequate gender expertise, and do prosecutions focus on sexual and other gender-based violence?

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Does they have the resources and expertise to enable victim-survivors to participate? For example, are there victim support units? Are there specialist resources to support victim-survivors of SGBV, Indigenous peoples, people from ethnic minority communities, people living with disabilities, or others with special needs?

A large, empty, light beige rounded rectangular box intended for a written response to the question above.

How can NGOs and civil society organisations improve these processes and results for victim-survivors?

International Courts

If states fail to prosecute in their domestic courts, international options include:

- **International Criminal Court (ICC):** Following the 1998 founding treaty known as the Rome Statute, the ICC was established in 2002. As of 2024, 124 states are state parties to the Rome Statute with 13 of those states located in Asia.
- **Universal Jurisdiction:** Courts in other countries may claim criminal jurisdiction over an accused person, regardless of nationality or where the alleged crime was committed.
- **Ad Hoc tribunals:** Courts established for a specific situation, such as for the Former Yugoslavia and Rwanda.
- **Hybrid courts:** In some instances, such as Cambodia and Timor-Leste, mixed or hybrid courts combine national and international components.

See Chapter Four of the *Transitional Justice Handbook* for further explanations and examples

International Criminal Courts

Although the ICC has raised expectations for international action on justice, it is not the first option for prosecutions, and is not an option at all in some countries. This can leave a gap between expectations and delivery.

The ICC has a **mandate** to investigate and bring to justice those who commit the most serious crimes: genocide, crimes against humanity, war crimes, and the crime of aggression.

Under Article I of the Rome Statute, the ICC “shall be **complementary** to national criminal jurisdictions.” That means the ICC will only pursue a case if a State Party is “unwilling or unable” to carry out an investigation or prosecution.

The ICC has **jurisdiction** only for crimes committed after the Rome Statute’s entry into force in 2002 and after the state in question ratified the statute. The ICC can obtain jurisdiction in three ways:

- A State Party may refer a situation to the court.
- The UN Security Council may refer a situation to the court, including one involving a state not party to the Rome Statute. However the five Permanent Members often use their veto power to block a referral.
- The ICC Prosecutor may initiate investigation of crimes alleged to have occurred in a State Party or committed by nationals of a State Party.

The ICC has a poor ratification record in the Middle East and Asia, and lacks the support of some major nations, including the United States.

Universal Jurisdiction

National courts can generally prosecute:

- crimes committed in their country
- crimes committed by their nationals outside of their country
- crimes committed against their nationals outside of their country (rare)

However, some countries have recognized the principle of universal jurisdiction, allowing their national courts to prosecute serious crimes even if they did not take place in their country and the perpetrator is not a national.

The concept applies only to crimes that are so serious they are considered crimes against the whole international community and are therefore of universal concern. While the concept was initially used to address piracy and the slave trade, it now applies to the most serious international crimes, such as war crimes, crimes against humanity, and genocide, as well as torture and terrorist acts. Countries that recognize universal jurisdiction in their laws include: Belgium, Germany, the UK, Spain, Australia, and Argentina. Famous defendants include Adolf Eichmann, Augusto Pinochet, Ariel Sharon and George Bush, Sr. Recent cases include:

United Kingdom: the case against Kumar Lama

Colonel Kumar Lama, accused of torture in 2005 during the Nepalese civil war, was arrested at home in the United Kingdom in 2016. He was arrested under Section 134 of the Criminal Justice Act 1988, which criminalises torture by a person acting in an official capacity “in the United Kingdom or elsewhere.” Though the case did not result in conviction, it stands out as one of the few instances where the UK exercised universal jurisdiction.

Sweden: the case against Mohammad Abdullah

Mohammad Abdullah, a low-ranking Syrian soldier who became a refugee in Sweden, was convicted of a war crime by a Swedish court in 2012. For the crime of violating human dignity by posing with his boot on a corpse, he was sentenced to eight months in a Swedish prison. As the first conviction in any court of anyone from the Syrian government side, the case brings hope that war criminals from Syria will be held accountable.

Switzerland: the case against Ousman Sonko

From 2000 to 2016, Ousman Sonko served as Minister of Interior, commander of the Presidential Guard, and Inspector General of Police under the Gambian dictator Yahya Jammeh. He was arrested in Switzerland for crimes against humanity and convicted in a Swiss court for crimes against humanity on 15 May 2024. He was sentenced to 20 years in prison, a major landmark in the practice of universal jurisdiction that was marred only by the dismissal of sexual violence charges against him.

Hybrid Courts

Hybrid courts usually take place in the state where the crimes were committed, with both international and national judges and prosecutors. These ‘mixed courts’ combine the benefits of international involvement (such as more independence, resources, personnel, and security) with the merits of national prosecutions (such as proximity to victims and positive impact on state institutions). Hybrid courts have been criticized for being expensive (compared to local justice budgets), trying relatively few suspects, and leaving little impact on the domestic justice system.



Worksheet 4: international justice mechanisms

Do you believe that human rights NGOs, lawyers, victim-survivors and communities understand the options for prosecution in your context? What more can transitional justice NGOs do to increase knowledge of options and strategies for prosecutions?

Has your country ratified the Rome Statute of the ICC? Are their perpetrators who might fall within their jurisdiction? If yes, what are the next steps towards a referral?

Are alleged perpetrators from your context living in a country where universal jurisdiction is recognized? What are some steps to take to explore this option, such as documenting the case, or connecting with international lawyers and NGOs?

Would accountability and the justice system benefit from a hybrid court in your context? Do you think political conditions would allow, now or in the future, for such courts?

Unofficial “prosecutions” and “trials” by civil society

Where there is no progress on national, hybrid, or international trials, NGOs and lawyers have initiated informal “trials”. While perpetrators are absent and do not face any official sanction, such trials can demonstrate the gravity of alleged crimes and act as powerful advocacy tools for official prosecutions. Examples include:

Stockholm and Roskilde, Sweden (1967):

The Russell International War Crimes Tribunal investigated war crimes in the Vietnam War by the United States and its allies. Named for the British philosopher of logic and mathematics Bertrand Russell, who alleged the United States was “conducting a war of annihilation,” this tribunal was perhaps the first effort at informal prosecutions for international crimes.

The Russell Tribunal on Palestine (2012):

Hearings took place in four cities, capped by a final March 2013 session in Brussels. A Barcelona hearing focused on the complicity of the European Union and its member states regarding the occupation and Israel’s alleged violations of international law. A London session examined corporate complicity in violations of international human rights law, humanitarian law, and war crimes. Cape Town proceedings considered Israel’s policies and actions as apartheid practices. New York proceedings focused on US and UN complicity.

Kuala Lumpur, Malaysia (2011-13):

The Kuala Lumpur War Crimes Tribunal examined the actions of the US-led coalition in its invasion of Iraq.

Indonesia/The Netherlands (2015):

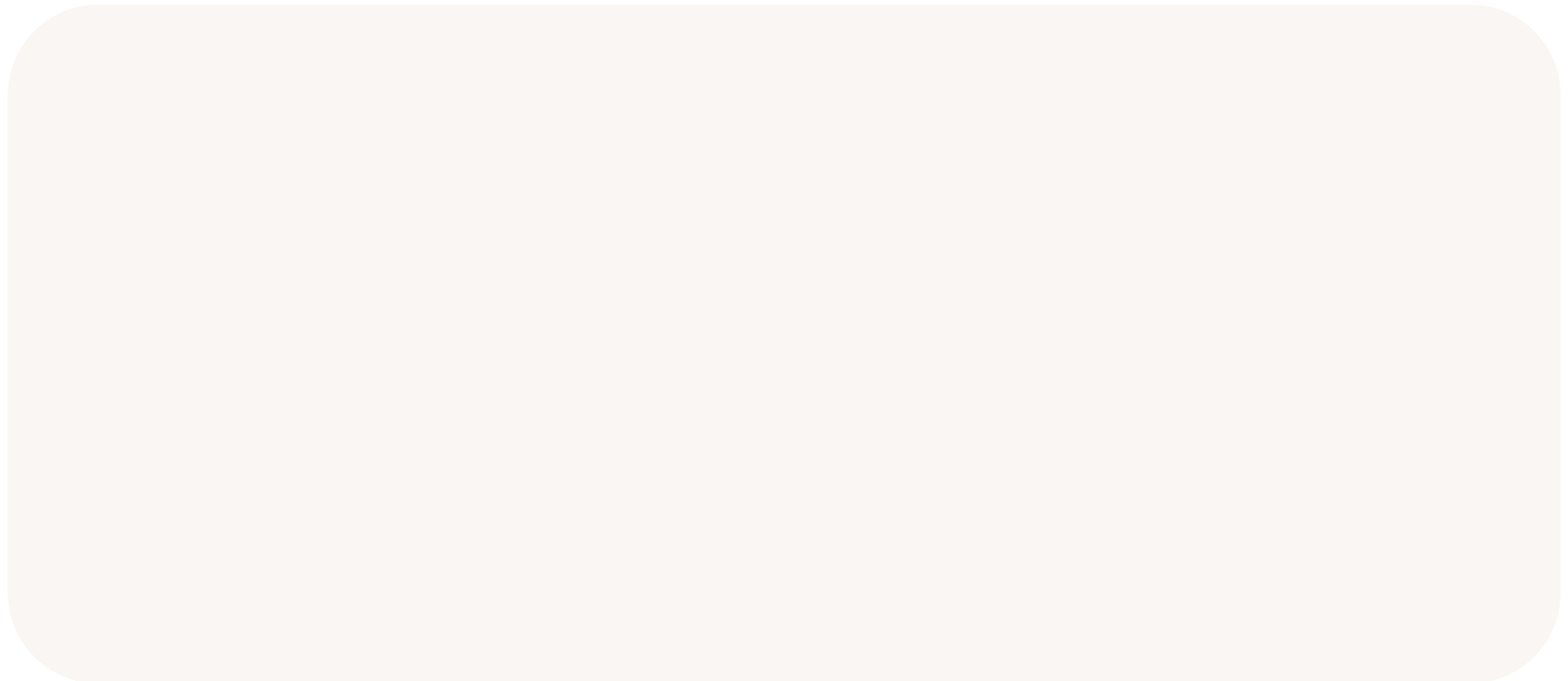
The International People’s Tribunal brought an unofficial indictment against the state of Indonesia for mass crimes committed in 1965-66. It was led by international judges and by international and Indonesian human rights NGOs.

The Hague, The Netherlands (2022):

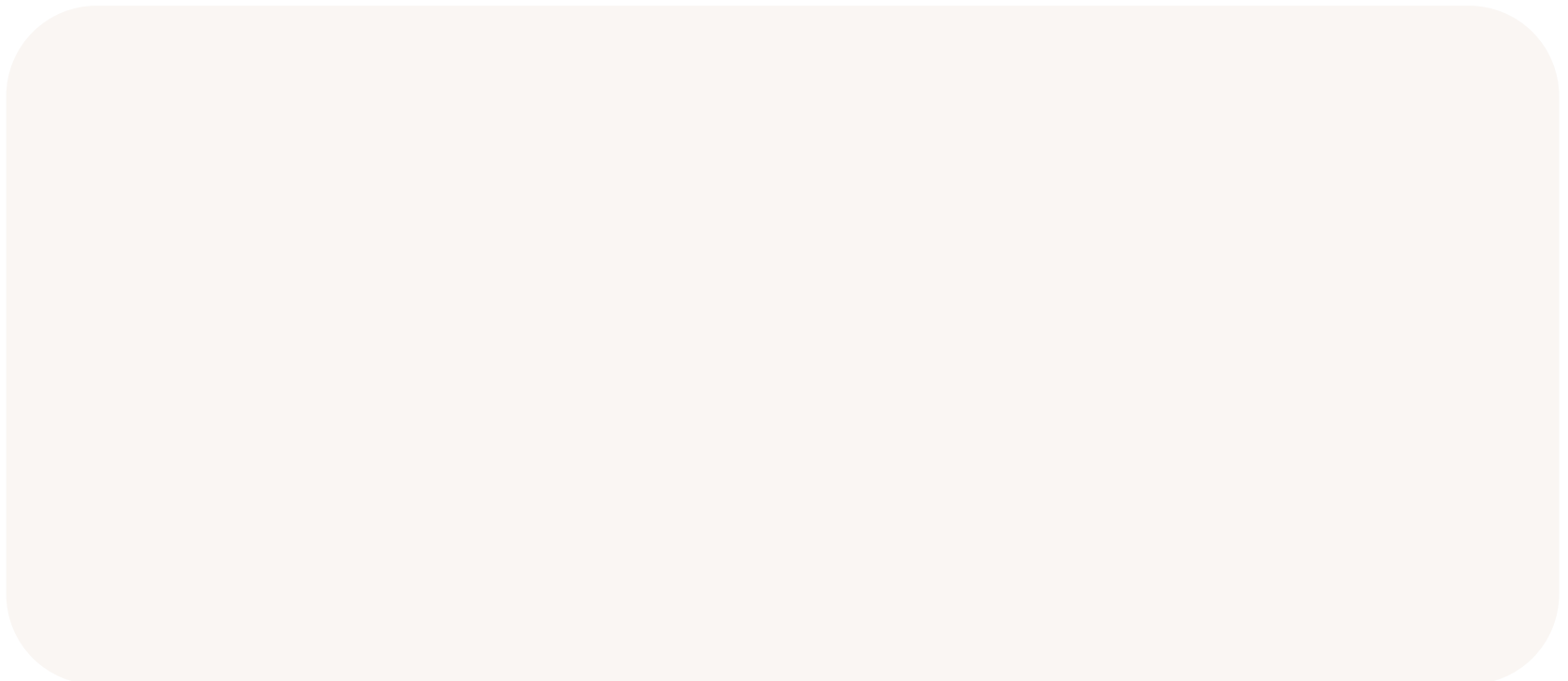
Three press freedom organisations set up the People’s Tribunal on the Murder of Journalists. This grassroots initiative was a response to the more than 1,400 journalists murdered worldwide since 1992.

Worksheet 5: Unofficial, civil society-led processes

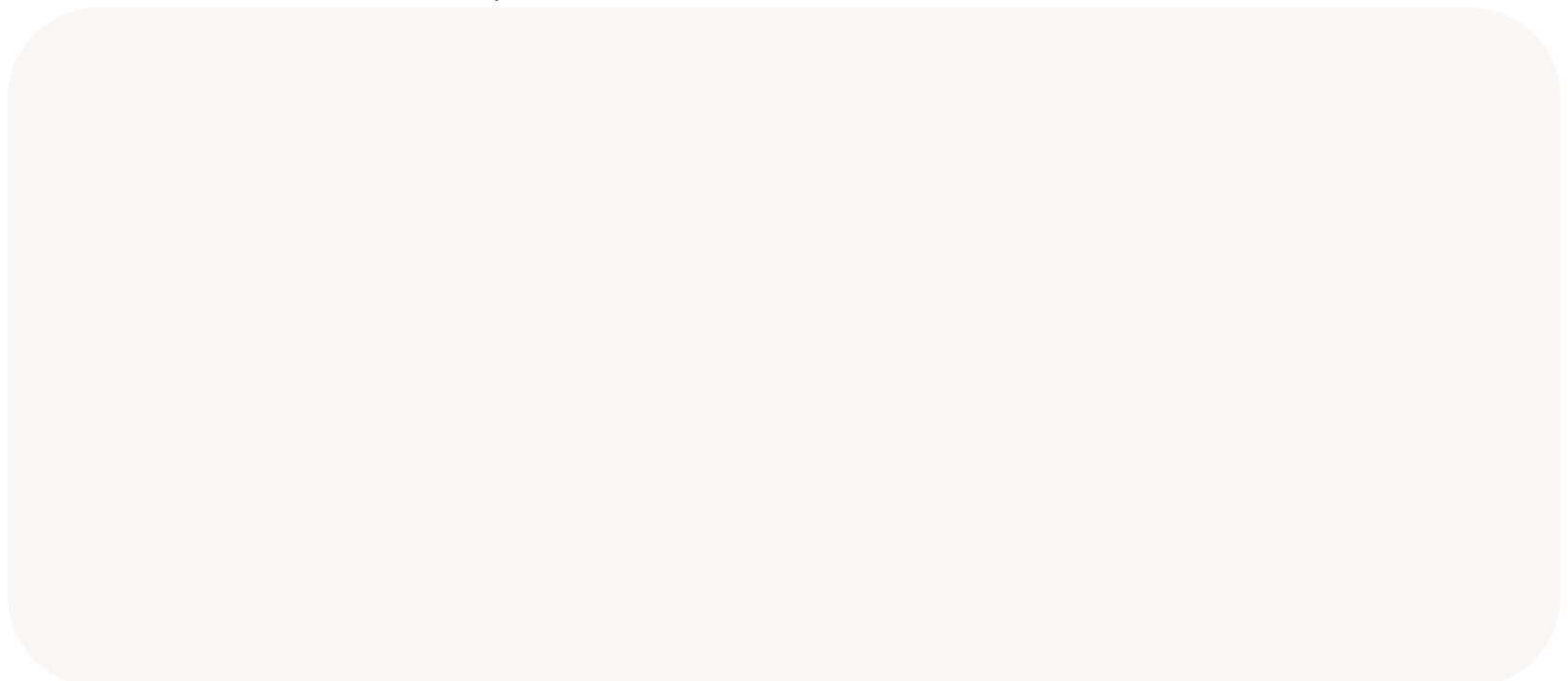
If there is no near-term possibility of prosecutions, are there creative initiatives that NGOs and lawyers could instigate to establish unofficial trials?



What would be the objectives of such an initiative?



What are the constraints and how would you address them?



Can you identify national and international partners?

Limitations of prosecutions

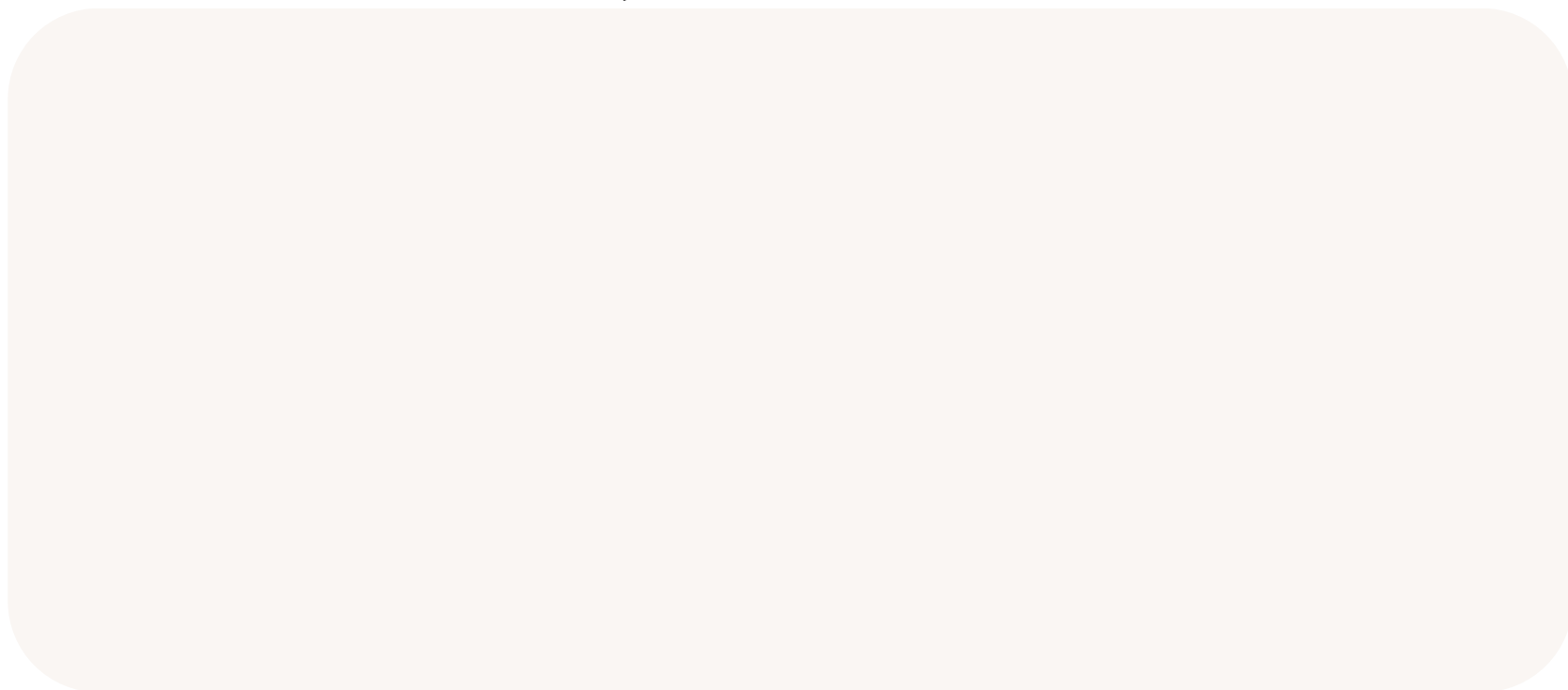
There are many challenges in pursuing judicial accountability in peacebuilding contexts. Understanding these limitations, and strategizing to prevent or respond to these issues can encourage a strong holistic approach. Limitations may include the following:

- Prosecutions usually focus on a small number of perpetrators, and are partly symbolic. This limitation is linked both to financial constraints and the time-intensive work of investigation and prosecutions, and usually leaves many perpetrators free of accountability.
- Military leaders often evade judicial processes, especially where national constitutions and laws protect them from accountability in the civilian system (e.g. Myanmar).
- Some national prosecutions are undertaken as a shield from international judicial intervention. Prosecutors lacked resources and political will to secure verdicts. For example, Indonesia's Human Rights Tribunal on Timor-Leste produced no guilty verdicts that survived appeals. Only the form of prosecutions is carried out as an empty shell.
- National leadership may see any international or hybrid tribunals as an imposition and a threat. They may then undermine the process, as in Cambodia and the ECCC, or Timor-Leste and the Dili Special Courts.
- Judicial systems are traditionally male-dominated and have a poor history of gender orientation, especially with regard to prosecuting sexual and other gender based violence (SGBV). There have been widespread failures to develop prosecution strategies, limited expertise or training for judges and other court personnel, and a lack of resources and support for women, girls, and other victims of SGBV. These failures contribute to the invisibility of SGBV in conflict situations, leading to impunity. Women and girl victims are then excluded from reparations programs and other recognition and support.
- Prosecution processes have failed to adequately involve victim-survivors or to link their outcomes to reparations. Gradual improvements have been seen in this regard, as in some of the latter cases of the ECCC in Cambodia.
- Prosecutions have a limited capacity to unveil the wider truths of a conflict. They may not reveal the root causes and drivers of conflict, as well as the impact on individual victims and communities. If they result in reparations, these are usually limited to people listed as victims in cases.

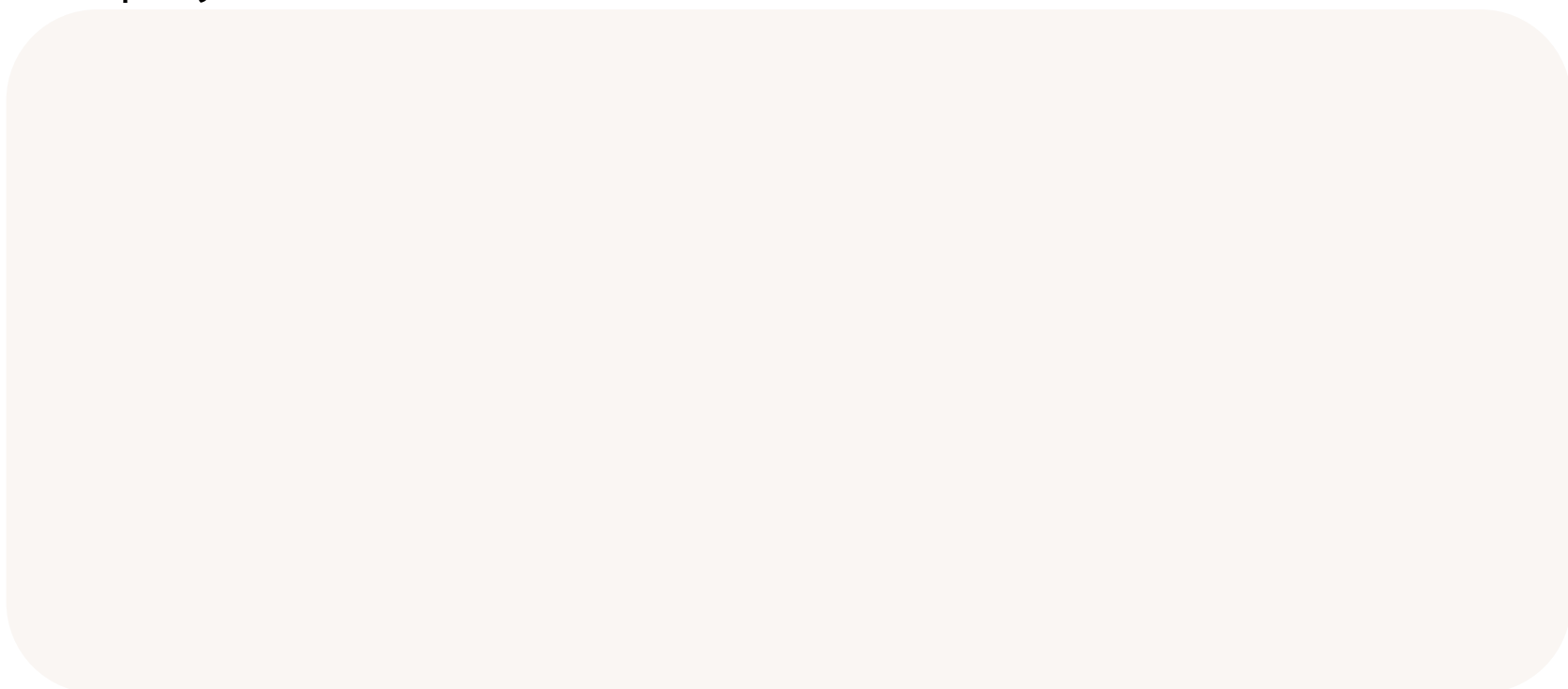
Although prosecutions are an important part of the transitional justice toolkit, they are not adequate to address all transitional justice needs in peacebuilding contexts.

Worksheet 6: Final reflections

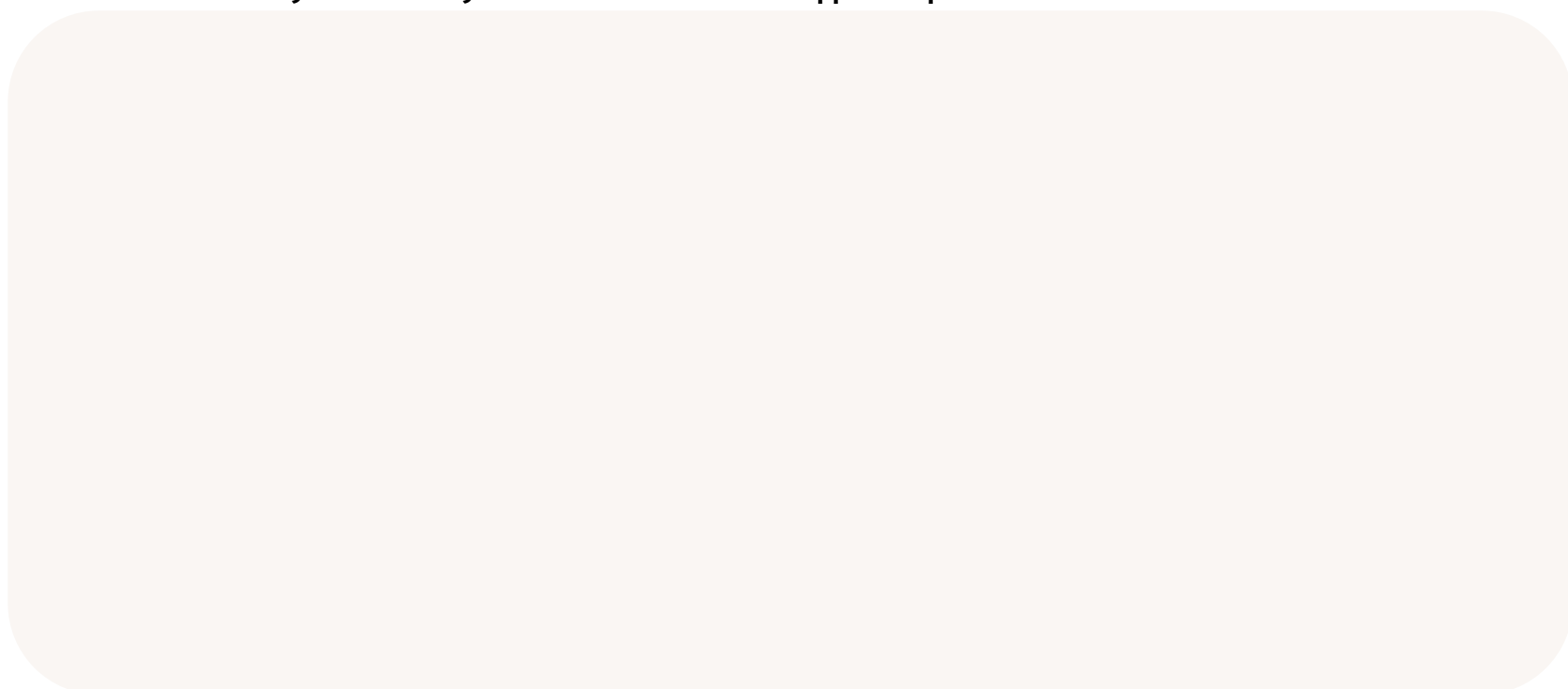
Which of the above limitations are most relevant in your context?



What steps can you take to address them?



What other actions can you take locally to build awareness of and support for prosecutions?



Workbook Four resources

Primary sources

Rome Statute and the International Criminal Court (ICC.1988)
<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

Background reading

AJAR Transitional Justice Handbook, Chapter 4
<https://asia-ajar.org/resources/books-research/transitional-justice-handbook/>

UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Accountability: Prosecuting and punishing gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes. Report of UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli. 9 July 2021. A/HRC/48/60
<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/176/75/PDF/G2117675.pdf?OpenElement>

Civil society-led unofficial “trials” and “prosecutions”

1967: Russell Tribunal on Vietnam and the evolution of citizens’ tribunals, see “Citizens’ War Crimes’ Tribunals”, Binoy Kampmark. Social Alternatives Vol. 33 No 2, 2014. https://socialalternatives.com/wp-content/uploads/2021/02/Binoy-Kampmark-Vol-33_2.pdf

2011-13 Kuala Lumpur, Malaysia. Kuala Lumpur War Crimes Tribunal on the actions of the US-led coalition in its invasion of Iraq in November 2011. The Globalist, December 2011.
http://lib.perdana.org.my/PLF/Digital_Content/Articles/000005/Kuala%20Lumpur%20War%20Crimes%20Tribunal/The%20Kuala%20Lumpur%20War%20Crimes%20Tribunal%20-%20guilty%20overdict%20on%20Bush%20and%20Blair.pdf

2012: The Russell Tribunal on Palestine. See “Citizens’ War Crimes’ Tribunals”, Binoy Kampmark. Social Alternatives Vol. 33 No 2, 2014.
https://socialalternatives.com/wp-content/uploads/2021/02/Binoy-Kampmark-Vol-33_2.pdf

2015 Indonesia/The Hague, The Netherlands: International People’s Tribunal brought an unofficial indictment against the state of Indonesia for mass crimes committed in 1965-66.

“The IPT 1965 is a historic moral intervention. Will it finally lead to action?” Katherine McGregor and Jemma Purdey. 29 July 2016. University of Melbourne.

<https://indonesiaatmelbourne.unimelb.edu.au/the-ipt-1965-is-a-historic-moral-intervention-will-it-finally-lead-to-action/#:~:text=They%20found%20the%20Indonesian%20state,deemed%20complicit%20in%20the%20violence.>

See also:

“1965, Today: Living with the Indonesian Massacres,” Gerry van Klinken. Inside Indonesia. October 2015.
<https://www.insideindonesia.org/editions/edition-122-oct-dec-2015/1965-today-living-with-the-indonesian-massacres>

2022 The Hague, The Netherlands. The People’s Tribunal on the Murder of Journalists, set up by press freedom organisations Free Press Unlimited, Reporters Without Borders, and the Committee to Protect Journalists. See Reporters Sans Frontiers report:
<https://rsf.org/en/peoples-tribunal-murder-journalists-delivers-judgment-hague>