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THE ROLE OF LAW ENFORCEMENT AGENCIES IN THE TRANSITIONAL JUSTICE SYSTEM: INTERNATIONAL PRACTICE AND THE UKRAINIAN CONTEXT

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ABSTRACT

Background: This article examines the role of law enforcement agencies within the system of transitional justice, with particular attention to international practice and its relevance for Ukraine's post-conflict recovery. In the aftermath of armed conflicts, regime changes, or systemic violence, societies must simultaneously redress past human rights violations and rebuild public trust in state institutions. As global experience shows, law enforcement bodies occupy a pivotal yet complex position in this process – investigating and prosecuting crimes, contributing to truth-seeking initiatives, protecting victims, and facilitating institutional reform.

The article aims to identify an effective model for the participation of law enforcement agencies in transitional justice, one that balances their retributive, protective, and reconciliatory functions in accordance with international legal standards and public expectations. It argues that the integration of internationally tested practices can enhance the legitimacy of Ukraine's justice system and promote sustainable reconciliation.

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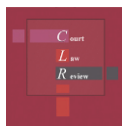
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Methods: *The methodology combines doctrinal, comparative, and interdisciplinary approaches. The research includes an analysis of international and domestic legal frameworks, comparative case studies (South Africa, Colombia, Rwanda, the former Yugoslavia), and an examination of Ukraine's legal and institutional environment. Political and sociological insights are also incorporated to contextualize the role of law enforcement in post-conflict societies.*

Results and Conclusions: *The study finds that law enforcement agencies must undergo both structural and cultural transformation to perform effectively in transitional settings. Their function extends beyond criminal enforcement to securing victims' rights, strengthening public confidence, and preventing the recurrence of mass abuses. Challenges such as political interference, limited expertise in international crimes, institutional distrust, and resource constraints persist. However, through targeted reforms, international cooperation, and a victim-centred approach, law enforcement institutions can significantly contribute to a just and durable peace.*

The article concludes that in Ukraine's context, establishing a transitional justice framework rooted in accountability, professionalism, and human rights compliance within the law enforcement sector is imperative. Such a system can not only deliver legal redress and reinforce institutional legitimacy but also serve as a model for other nations confronting the legacy of mass violence.

1 INTRODUCTION

The urgency of examining the role of law enforcement agencies in transitional justice stems from an increasing need among societies that have undergone large-scale armed conflicts, revolutions, or regime change to restore justice, rebuild public trust in state institutions, and ensure the non-recurrence of mass human rights violations. As international experience illustrates, effectively addressing the consequences of such violations requires a comprehensive approach – one that involves not only holding perpetrators accountable, but also acknowledging the suffering of victims, uncovering historical truth, and creating conditions for reconciliation.¹

In this context, the role of law enforcement agencies warrants particular attention – not only as investigative bodies responsible for gathering evidence and prosecuting crimes, but also as guarantors of victim safety, protectors of witnesses, and facilitators of public engagement with the tragic past.² At the same time, their meaningful integration into transitional justice mechanisms necessitates adherence to the principles of justice, non-discrimination, and the rule of law – a task made particularly difficult in post-conflict settings where trust in coercive institutions has often been severely eroded. In societies

1 Ruti G Teitel, *Transitional Justice* (OUP 2000).

2 Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (WW Norton 2011).

emerging from conflict or authoritarian rule, the credibility and effectiveness of law enforcement become central to restoring public confidence in the state and laying the groundwork for national reconciliation.³

The academic problem this article addresses is the need to define an optimal model for law enforcement participation in transitional justice – one that balances retributive, service-oriented, and reconciliatory functions in accordance with international standards and societal expectations. The working hypothesis is that the adoption of internationally tested approaches to law enforcement conduct during transitional periods can enhance trust in justice and significantly support processes of recovery and reconciliation in Ukraine.

The article's novelty lies in its attempt to systematically analyze the functions of law enforcement agencies within transitional justice frameworks, to correlate them with international standards and best practices, and to adapt these approaches to Ukraine's legal, institutional, and security context. Although the field of transitional justice has attracted increasing scholarly attention, the specific role of law enforcement in its implementation remains underexplored – particularly in the context of Ukraine's ongoing full-scale war.

This article aims to conduct a comprehensive study of the role of law enforcement in the implementation of transitional justice mechanisms, drawing on international experience (including the cases of South Africa, Colombia, the former Yugoslavia, and Rwanda) and reflecting the particularities of the Ukrainian reality.

The object of the study is the system of transitional justice as an instrument of justice in post-conflict societies.

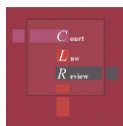
The subject is the activity of law enforcement agencies in the implementation of transitional justice mechanisms.

The article examines the theoretical and legal foundations of law enforcement functions during transition, explores comparative experience, synthesizes international legal standards, and outlines possibilities for their application within the Ukrainian context.

2 METHODS

The methodological foundation of this study is shaped by the complexity and interdisciplinary nature of the topic, which intersects legal, political, and social dimensions. Analyzing the role of law enforcement in transitional justice requires an integrated approach that encompasses both legal norms and the practical operations of relevant institutions in post-conflict settings. To ensure well-grounded and coherent conclusions, the study

3 Paul Gready and Simon Robins, 'From Transitional to Transformative Justice: A New Agenda for Practice' (2014) 8(3) *International Journal of Transitional Justice* 339. doi:10.1093/ijtj/iju013.



employs a set of interrelated methods drawn from general theory, legal doctrine, and interdisciplinary analysis.

Among the general scientific methods used are:

- 1) the dialectical method, for identifying shifts in approaches to the role of law enforcement within transitional justice
- 2) the systemic-structural method, for examining the interaction between judicial institutions, state authorities, and society during transitional periods
- 3) and methods of analysis and synthesis, for studying the functional responsibilities of law enforcement actors in diverse legal systems and synthesizing relevant experience.

Among specialized legal methods, the formal-legal method played a key role in analyzing both national and international legislation governing law enforcement activities during transition. The comparative legal method enabled the study of foreign experience and the identification of best practices applicable to Ukraine, while the historical-legal method made it possible to trace the evolution of legal thought regarding law enforcement's place in post-conflict processes.

The interdisciplinary approach proved indispensable for understanding the broader social context of law enforcement operations, incorporating elements of sociological, political, and conflict studies analysis. This allowed the study to uncover not only legal but also socio-psychological dimensions of law enforcement interaction with victims, witnesses, combatants, and the public within the framework of transitional justice.

3 THEORETICAL FOUNDATIONS OF TRANSITIONAL JUSTICE

3.1. Historical Origins and Development of the Concept

The concept of transitional justice began to crystallize primarily in the second half of the twentieth century, particularly in the aftermath of World War II, when the global community faced unprecedented legal and moral challenges related to punishing war criminals, compensating victims, and reforming state institutions complicit in mass atrocities. Nevertheless, the most dynamic phase in the development of transitional justice occurred during the 1980s and 1990s, as numerous Latin American countries transitioned from military dictatorships to democratic governance, and as South Africa confronted the legacy of apartheid.⁴

4 Tricia D Olsen, Leigh A Payne and Andrew G Reiter, 'Transitional Justice in the World, 1970–2007: Insights from a New Dataset' (2010) 47(6) *Journal of Peace Research* 803. doi:10.1177/0022343310382205.

Transitional justice, in essence, represents the intersection of legal and political approaches aimed at dealing with a legacy of mass atrocities. Its primary objectives include uncovering the truth about past crimes, holding perpetrators accountable, providing reparations to victims, and reforming institutions to prevent the recurrence of such violations.⁵ What distinguishes transitional justice from traditional judicial responses is its forward-looking character: it addresses the past while laying the foundations for a just and democratic order.

3.2. The Concept and Objectives of Transitional Justice

The term transitional justice refers to a society's strategy for acknowledging and addressing a legacy of gross human rights violations during a period of transition from conflict or authoritarianism to peace and democracy. The concept was first articulated by legal scholar Neil Kritz in 1995 in his seminal work *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*.⁶ In 1997, French jurist and UN Special Rapporteur Louis Joinet presented a landmark report to the United Nations General Assembly entitled *Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political)*.⁷ The report laid out 42 guiding principles for combating impunity – later known as the Joinet Principles.

These principles became a cornerstone of the evolving international legal framework for transitional justice and were instrumental in shaping global standards on victims' rights during political transitions. At their core, the Joinet Principles affirm three fundamental rights that must be guaranteed to victims of mass atrocities: the right to know the truth, the right to justice, and the right to reparation.

The Joinet Report gained relevance in post-conflict societies seeking to reckon with systematic human rights violations through legal, social, and institutional reforms. Over time, these principles have been integrated into international jurisprudence and national legal systems alike – both through hybrid tribunals and domestic justice mechanisms.

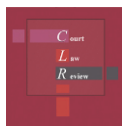
In 2005, the Joinet Principles were revised and updated by human rights advocate Diane Orentlicher, resulting in the Joinet-Orentlicher Principles. This revised framework placed greater emphasis on states' obligations, procedural guarantees for victims, and the preservation of institutional memory concerning crimes addressed through transitional justice mechanisms.⁸

5 Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Beacon Press 1998).

6 Neil J Kritz (ed), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, vol 1–3 (United States Institute of Peace Press 1995).

7 Louis Joinet, *Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political): Revised Final Report* (E/CN.4/Sub.2/1997/20/Rev.1, UN 1997).

8 Diane Orentlicher, *Impunity : Report of the Independent Expert to Update the Set of Principles to Combat Impunity* (E/CN.4/2005/102/Add.1, UN 2005).



Accordingly, transitional justice serves a vital function in post-conflict environments, seeking to realize a range of fundamental rights – including the public’s right to truth, the victim’s right to meaningful reparation, and the collective right to justice. It is equally focused on catalyzing deep institutional reforms aimed at preventing future atrocities.

In the 2004 Report of the UN Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, transitional justice is defined as encompassing both judicial and non-judicial mechanisms. These include criminal prosecutions, truth-seeking initiatives, reparation programs, and institutional reforms.⁹ Such mechanisms may be domestic, international, or hybrid in nature, depending on the context and the scale of violations. The overarching goal of transitional justice is not only to restore legal order and ensure accountability but also to promote societal reconciliation and lay the groundwork for lasting peace.

The UN’s comprehensive approach to transitional justice draws upon four core branches of international law: international human rights law, international humanitarian law, international criminal law, and international refugee law. This is underscored in the document *Transitional Justice and Economic, Social and Cultural Rights*, which affirms that these legal foundations are essential to any meaningful strategy for moving from mass atrocity to restored rule of law.¹⁰

Thus, transitional justice is not limited to punitive measures – it is a transformative process. It seeks to restore the legitimacy of the state, protect the rights of the victims, and reestablish the social contract between the state and its citizens.

Crucially, the aim of transitional justice is neither revenge nor “victor’s justice.” Rather, it aspires to redress wrongs, acknowledge victims’ suffering, and build a framework for lasting peace and national reconciliation. It therefore performs a dual function: on the one hand, it acts as a mechanism of legal accountability; on the other, it is a means of social renewal, rooted in recognition, dialogue, and trust.

4 FUNCTIONS OF LAW ENFORCEMENT AGENCIES IN TRANSITIONAL JUSTICE

In international legal discourse, law enforcement agencies are understood as institutions tasked with maintaining public order, enforcing the law, safeguarding human rights and freedoms, and investigating violations with a view to ensuring accountability. Although there is no universally binding treaty-based definition, several United Nations documents

9 UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report* (S/2004/616, UN 2004).

10 OHCHR, *Transitional Justice and Economic, Social and Cultural Rights* (HR/PUB/13/5, UN 2014).

provide consistent normative guidance on the scope and role of law enforcement institutions. For instance, the Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly in 1979, defines law enforcement personnel as those who exercise powers of law enforcement, including the police, gendarmerie, specialized internal security units, and other bodies authorized to arrest, detain, or imprison individuals.¹¹

A broader interpretation is offered by the United Nations Office on Drugs and Crime (UNODC) in its Criminal Justice Assessment Toolkit (2006), which includes not only police forces but also prosecutors, border guards, customs services, anti-corruption agencies, and specialized investigative bodies within its definition of law enforcement.¹²

From this perspective, law enforcement agencies are state institutions vested with the authority to enforce legal norms – particularly in the realm of criminal law – for the protection of the public interest, national security, and individual rights. International standards require that these agencies operate in compliance with the principles of legality, proportionality, accountability, and respect for human rights – especially regarding the use of force, arrests, detention, and interrogation practices.

Under Ukrainian law, particularly Article 2 of the Law of Ukraine on State Protection of Judicial and Law Enforcement Personnel, the category of “law enforcement agencies” includes both classical institutions of criminal justice (such as the Prosecutor General’s Office, National Police, Security Service of Ukraine, National Anti-Corruption Bureau, State Bureau of Investigation, and Bureau of Economic Security) as well as other specialized bodies that perform law enforcement or regulatory functions in specific areas – e.g., financial oversight, border protection, environmental control, and forest management.¹³

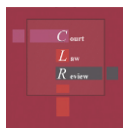
This broad legislative definition reflects a functional approach: law enforcement is not limited to criminal investigation and prosecution but encompasses the general enforcement of legality and public order across various domains of state authority. Accordingly, in the Ukrainian context, law enforcement agencies are best understood as a system of state institutions authorized under the Constitution and laws of Ukraine to protect individual rights and freedoms, defend public and state interests, uphold public order, combat violations of law, and bring perpetrators to legal account.

Importantly, within the framework of transitional justice, law enforcement agencies cannot be viewed solely as instruments of criminal prosecution. Their role is far more expansive: they are agents of truth-seeking, enablers of justice, and guarantors of trust in the legal system. Moreover, they serve as institutional safeguards against the recurrence of mass

11 UNGA RES 34/169 ‘Code of Conduct for Law Enforcement Officials’ (17 December 1979) A/RES/34/169.

12 UNODC, *Criminal Justice Assessment Toolkit* (UN 2006).

13 Law of Ukraine No 3781-XII ‘On State Protection of Court and Law Enforcement Officers’ (23 December 1993) <<https://zakon.rada.gov.ua/laws/show/3781-12>> accessed 9 April 2025.



atrocities. This multidimensional mandate necessitates a deeper analysis of their place and functions in the architecture of transitional justice.

4.1. Investigating Mass Atrocities

Within the framework of transitional justice, law enforcement agencies – particularly investigative units and detective services – play a critical role in uncovering and documenting large-scale human rights violations. These include, but are not limited to, intentional killings, torture, enforced disappearances, sexual violence, war crimes, and crimes against humanity. Often, such crimes were perpetrated with the active participation or silent complicity of state actors affiliated with previous regimes, which adds considerable complexity to investigative efforts. In such contexts, investigators must demonstrate exceptional impartiality, professionalism, and resilience.¹⁴

Law enforcement powers in transitional settings encompass the examination of crime scenes – frequently sites of atrocities committed years earlier – the exhumation of mass graves, identification of remains, interviews with large numbers of victims and witnesses, and the retrieval of documentary evidence from both public and classified archives, including materials held by former security services. These tasks typically require the creation of specialized units dedicated to the investigation of war crimes, enforced disappearances, conflict-related sexual violence, and other grave breaches of international law.¹⁵

Importantly, officers must acquire investigative methodologies tailored specifically for the documentation of international crimes – methods that differ substantially from standard criminal procedure. This includes adherence to evidentiary standards established by international criminal tribunals such as the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC). In many cases, cooperation with forensic pathologists, historians, human rights organizations, and trauma-informed psychologists becomes essential.¹⁶

International practice suggests that in transitional contexts, policing must undergo a fundamental transformation – from being a repressive instrument of authoritarian control to becoming a community-oriented service that operates in the public interest. This shift is not merely institutional, but deeply cultural.

One of the most daunting challenges in this process is the sheer scale of the investigative burden. In the aftermath of systemic violence, the number of potential cases may reach tens or even hundreds of thousands. The situation in post-genocide Rwanda is particularly

14 OHCHR, *Rule-of-Law Tools for Post-Conflict States: Prosecutorial Initiatives* (UN 2006).

15 Asia Justice and Rights, *Transitional Justice Handbook* (AJAR 2023).

16 DCAF and Ministry of Interior Moldova, *Toolkit on Police Integrity* (DCAF 2015).

illustrative: after 1994, more than one million individuals were suspected of participating in genocidal acts. The traditional justice system could not cope with this volume, leading to the creation of community-based gacaca courts, which ultimately adjudicated some 1.9 million cases over a ten-year period.¹⁷

This example underscores the necessity of flexible, innovative approaches in post-conflict investigations. Law enforcement must be prepared to engage with alternative or hybrid justice mechanisms to ensure that truth is established and at least a basic level of accountability is achieved.

Another critical function of law enforcement in this context is the protection of victims and witnesses involved in investigations. Fear of reprisals often deters survivors from testifying – particularly when perpetrators were members of former security forces, military units, or influential political groups. Consequently, police must be equipped to implement robust witness protection programs, swiftly respond to threats or intimidation, and guarantee procedural confidentiality.¹⁸

Equally important is the safeguarding of victims' rights throughout the investigative process. According to the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, victims of gross human rights violations have the right to access justice, to be treated with dignity, to be protected from re-victimization, and to be kept informed of the progress and outcomes of investigations.¹⁹ In this regard, police fulfill not only a retributive role but also a service function – receiving complaints, recording testimonies, facilitating access to medical, psychological, and social services, and maintaining open communication with victims during criminal proceedings.

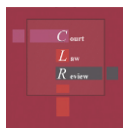
4.2. Criminal Prosecution: The Role of Prosecutors and Courts

In the architecture of transitional justice, the responsibility for ensuring accountability for mass atrocities ultimately rests with prosecutorial and judicial authorities. Prosecutors, investigative judges, and trial courts are key actors in the pursuit of justice for crimes such as war crimes, crimes against humanity, and genocide. Their task is not only to initiate and sustain complex prosecutions, but also to establish legal precedents that acknowledge systemic violence and affirm the primacy of the rule of law.

17 Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice Without Lawyers* (CUP 2010).

18 UNODC, *Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime* (UN 2008).

19 UNGA RES 60/147 'Basic Principles and Guidelines 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' (A/RES/60/147, 16 December 2005).



In many transitional contexts, prosecutorial bodies have established specialized divisions dedicated to transitional justice cases.²⁰ These units are responsible for processing large volumes of evidence, identifying high-level suspects, and preparing legally sound indictments. Crucially, they must also adapt national legal frameworks to accommodate the prosecution of crimes that may not have been previously codified in domestic law – such as crimes against humanity or aggression – and ensure that such prosecutions are consistent with international legal standards.

Prosecutorial strategy often follows a principle of prioritization. In post-conflict environments, limited resources and high caseloads necessitate a focus on those deemed most responsible – the so-called "architects of violence."²¹ These include political leaders, military commanders, and individuals who orchestrated or ordered mass violations. Prioritizing such cases signals to society that justice is not selective or symbolic but targets the most egregious abuses of power.

International cooperation is an indispensable component of effective transitional prosecutions. Domestic prosecutors may coordinate closely with international tribunals or the International Criminal Court – either by referring cases that exceed national capacity or jurisdiction, or by receiving case files, evidence, and guidance from international bodies. The experience of states emerging from the breakup of Yugoslavia is illustrative: national prosecutors worked in tandem with the ICTY, facilitating the arrest of indicted individuals, transferring cases for international adjudication, or receiving jurisdiction over cases for local prosecution. Over the course of its work, the ICTY indicted 161 individuals, resulting in 90 convictions for war crimes and crimes against humanity.²²

Prosecutorial agencies may also serve as intermediaries in alternative accountability mechanisms. In some countries, transitional justice frameworks have allowed for conditional amnesties or reduced sentences for individuals who make full and truthful confessions. In such contexts, prosecutors verify the credibility of disclosures, collaborate with truth commissions, or independently assess whether a case qualifies for non-prosecutorial resolution. A notable example is South Africa's Truth and Reconciliation Commission (TRC), which granted amnesty in only 849 of more than 7,000 applications, forwarding the remainder for potential prosecution.²³

20 OHCHR (n 14).

21 Tine Destrooper, Line Engbo Gissel and Kerstin Bree Carlson (eds), *Transitional Justice in Aparadigmatic Contexts: Accountability, Recognition, and Disruption* (Transitional Justice, Routledge 2024).

22 UN Secretary-General, *Report of the International Tribunal for the Former Yugoslavia: Note (A/72/266 S/2017/662, UN 2017)*.

23 Truth and Reconciliation Commission of South Africa, 'Amnesty Hearings & Decisions' (*Truth and Reconciliation Commission (TRC)*, 2020) <<https://www.justice.gov.za/trc/amntrans/index.htm>> accessed 9 April 2025.

Maintaining the integrity of transitional prosecutions also requires strict adherence to international fair trial standards. Prosecutors and judges are obligated to uphold the presumption of innocence, the right to defense, judicial independence, and procedural safeguards. These guarantees not only protect the legitimacy of individual trials but also reinforce public trust in the process, ensuring that transitional justice is not perceived as an instrument of political vengeance.²⁴

In this light, prosecutorial and judicial bodies carry a dual burden: on one hand, they must ensure that justice is done and seen to be done for the most serious crimes; on the other, they must uphold the principles of due process, impartiality, and proportionality. Only by achieving this balance can they contribute to sustainable reconciliation and a credible post-conflict legal order.

4.3. Special Services and the Security Sector

In a broader sense, the law enforcement domain during transitional periods also encompasses special services – such as internal security agencies, military police, counterintelligence bodies, and intelligence services. Their role in transitional justice is inherently dualistic and, at times, paradoxical. On one hand, these institutions were often directly implicated in political repression or systematic human rights abuses – arbitrary arrests, torture, surveillance, and enforced disappearances. In such cases, they themselves become objects of investigation, vetting, and structural reform.²⁵

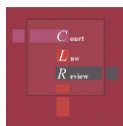
On the other hand, once reformed and brought under democratic control, these same institutions can play a constructive role in truth-seeking and restoring public trust. This may involve declassifying archives, handing over evidence to judicial authorities, participating in the protection of victims and witnesses, and cooperating with mechanisms of truth-telling and memorialization. In Argentina, for instance, after the fall of the military junta, military and intelligence archives provided crucial documentation regarding the fate of the "disappeared".²⁶ A similar process unfolded in Germany following reunification, when the archives of the Stasi (Ministry for State Security) were opened to the public – an act that not only enabled prosecutions but also gave citizens access to long-suppressed information about themselves and others.²⁷

24 International Commission of Jurists, *Indigenous and Other Traditional or Customary Justice Systems: Selected International Sources* (ICJ 2019).

25 Pablo de Greiff, 'The Role of Apologies in National Reconciliation Processes: On Making Trustworthy Institutions Trusted' in Mark Gibney and others (eds), *The Age of Apology: Facing up to the Past* (University of Pennsylvania Press 2008) 120.

26 Emilio Crenzel, 'Argentina's National Commission on the Disappearance of Persons: Contributions to Transitional Justice' (2008) 2(2) *International Journal of Transitional Justice* 173. doi:10.1093/ijtj/ijn007.

27 'Stasi-Unterlagen-Archiv' (*Das Bundesarchiv*, 2021) <<https://www.bundesarchiv.de>> accessed 9 April 2025.



A central mechanism for addressing the legacy of abusive security institutions is lustration, or vetting – a procedure aimed at assessing individuals' involvement in past violations of human rights or collaboration with repressive regimes. In Central and Eastern Europe – Poland, the Czech Republic, Hungary – lustration laws prohibited former security agents of the socialist regimes from holding public office in the new democratic governments. Though politically contentious, such measures were seen as necessary to establish a clear break from authoritarianism.²⁸

Kenya provides a more recent example: following the post-election violence of 2007–2008, a broad vetting process was implemented to identify police officers involved in corruption and human rights abuses. Despite resistance from entrenched interests, institutional inertia, and political pushback, this vetting was a crucial step toward rebuilding public trust in the police and establishing a legitimate security apparatus.²⁹

The effectiveness of security services in a transitional justice framework depends largely on their transparency, accountability, and integration into the post-conflict legal order. These agencies must be subject to democratic oversight and must operate in accordance with human rights norms. Their cooperation with truth commissions, courts, prosecutorial authorities, and civil society actors is especially important when dealing with crimes committed by former state agents.

In transitional contexts, then, the security sector occupies a liminal space: it is simultaneously a subject of justice and an actor within it. Navigating this contradiction demands not only political will and legal precision but also a high degree of professionalism, ethical self-discipline, and institutional openness from within the security community.

5 KEY CHALLENGES FOR LAW ENFORCEMENT IN TRANSITIONAL JUSTICE

Despite the pivotal role that law enforcement agencies play in transitional justice processes, their engagement is often fraught with profound and multifaceted challenges. These challenges are rooted both in external conditions – such as the political climate and the level of public trust – and in internal factors, including the agencies' professional capacity, ethical culture, and institutional resilience. Addressing these obstacles is not merely a matter of operational efficiency, but a foundational requirement for the legitimacy and effectiveness of transitional justice itself.

28 Alexander Mayer-Rieckh and Pablo de Greiff (eds), *Justice as Prevention: Vetting Public Employees in Transitional Societies* (Advancing Transitional Justice Series, Social Science Research Council 2007).

29 Philip Alston, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Mission to Kenya* (A/HRC/11/2/Add.6, UNHRC 2009).

Corruption and Institutional Integrity

Perhaps the most corrosive threat to transitional justice lies in endemic corruption within law enforcement bodies. When police, prosecutors, or other officials engage in corrupt practices, they not only undermine individual investigations – they delegitimize the entire justice process. In such environments, crimes may be covered up, evidence tampered with or destroyed, and perpetrators shielded in exchange for bribes or political loyalty. Corruption hollows out institutional credibility and reinforces public cynicism.

The International Center for Transitional Justice (ICTJ) emphasizes that when law enforcement actors abuse their powers or engage in misconduct, public trust collapses, and the moral foundation of transitional justice is compromised.³⁰ Consequently, vetting corrupt personnel, establishing robust internal accountability mechanisms, and facilitating independent civilian oversight are not peripheral reforms – they are prerequisites for any meaningful pursuit of justice.

Political Pressure and Selective Prosecution

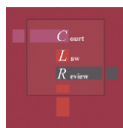
A persistent danger in transitional settings is the instrumentalization of law enforcement for political ends. In many post-authoritarian or post-conflict societies, remnants of the former regime retain influence, or the new elites may be tempted to use legal institutions for settling scores. This opens the door to selective justice: prosecutions that target only opponents of the current regime while ignoring or excusing violations committed by its allies.

In transitional societies, the application of lustration and integrity vetting occupies a precarious space between safeguarding public trust and upholding the rule of law. In the Ukrainian context, the decisive factors are the scope of application, individualization, and proportionality. Overly broad, status-based approaches increase the risk of selective enforcement and complicate judicial oversight.

A more practically viable model is one based on narrow eligibility criteria, individualized assessment of specific circumstances, and realistic procedural safeguards – including reasoned decisions, effective avenues for review, and clearly defined temporal limits. Such an approach aligns with the article's underlying emphasis on the service-oriented and protective roles of law enforcement bodies, and crucially, does not displace the mechanisms of criminal liability.

Another important constraint is institutional capacity during periods of heightened systemic pressure. The implementation of these procedures should proceed gradually, prioritizing positions with the greatest discretionary power and access to coercive tools.

30 International Center for Transitional Justice, 'Policing in Transitional Contexts: Accountability, Reform, and Transitional Justice' (*ICTJ: Justice Truth Dignity*, 2013) <<https://www.ictj.org/publication/policing-transitional-contexts>> accessed 9 April 2025.



Additionally, public, aggregated reporting on the process and its outcomes is essential for ensuring transparency.

Compatibility with European standards ultimately hinges on striking a balance between preventive objectives and procedural safeguards – both in substantive criteria and institutional design. Under these conditions, lustration and vetting serve a supplementary function within the broader process of institutional renewal and the restoration of public trust.

Such practices not only violate the principle of equality before the law but also feed into narratives of “victor’s justice,” fueling polarization and undermining reconciliation. To guard against this, transitional justice systems must secure the institutional autonomy of law enforcement agencies – shielding them from executive interference. This may involve establishing independent investigative bodies, enacting legislative protections against political meddling, and inviting international monitoring to bolster credibility and deter abuse.

Public Distrust and Perceptions of Bias

In societies emerging from violent conflict or repression, law enforcement institutions often inherit a legacy of public distrust. For years – sometimes decades – these agencies may have served as tools of state coercion, associated more with fear and impunity than with justice. Rebuilding trust in such contexts is extraordinarily difficult.

This process requires not only structural reforms but symbolic and communicative gestures: public acknowledgments of past abuses, institutional apologies, and participatory justice processes that give victims a central voice. It also demands transparency in current investigations, consistent application of the law, and the prosecution of wrongdoing within the law enforcement agencies themselves. As the ICTJ notes, the credibility of transitional justice depends not only on punishing the guilty but on visibly practicing the values of fairness and accountability.³¹

Lack of Expertise and Capacity

Investigating and prosecuting international crimes – such as genocide, war crimes, or crimes against humanity – requires specialized legal and forensic skills that most national law enforcement systems lack. In many transitional contexts, police and prosecutors are trained to handle conventional criminal cases and are unprepared for the complexities of mass atrocity litigation. This includes the difficulty of establishing patterns of systematic violence, navigating international legal standards, and working with traumatized witnesses.

Without targeted training, such deficits can result in procedural errors, flawed prosecutions, or the retraumatization of victims. Bridging this gap requires sustained investment in

31 Roger Duthie, *Building Trust and Capacity: Civil Society and Transitional Justice from a Development Perspective* (ICTJ 2009).

professional development: training programs, exchange visits, specialized manuals, and partnerships with international institutions. For example, the Guidelines on Investigating Violations of International Humanitarian Law, published in 2019 by the Geneva Academy and the International Committee of the Red Cross, offer a valuable framework for building investigative capacity in post-conflict settings.³²

Caseload Overload and Resource Constraints

The burden placed on law enforcement institutions in the wake of mass violence is overwhelming. Investigations may number in the tens or hundreds of thousands, far exceeding the administrative and logistical capacity of domestic agencies. Even well-functioning legal systems would struggle under such pressure.

The experience of Rwanda is again instructive: after the 1994 genocide, the national judiciary was so overwhelmed that the government resorted to community-based gacaca courts as an alternative.³³ Similarly, in Bosnia and Herzegovina, despite the creation of a dedicated war crimes division, the volume of cases has long outstripped prosecutorial capacity.³⁴

In such situations, the development of a prioritization strategy becomes essential. Law enforcement agencies must focus their resources on cases involving the most senior perpetrators and the gravest crimes – sending a clear message that justice is being pursued even amid constraints. Equally important is the mobilization of international support – technical assistance, forensic expertise, digital infrastructure, and security for investigators and prosecutors.³⁵

Risk of Human Rights Violations During Justice Processes

Paradoxically, in their pursuit of swift justice, new governments emerging in the aftermath of conflict or authoritarian rule often end up violating fundamental human rights themselves. Typical abuses may include the torture of individuals suspected of war crimes, prolonged detention without trial, or the imposition of collective punishment on entire communities or population groups. Not only do such practices contravene international legal standards, but they also erode the moral legitimacy of transitional justice efforts, heightening the risk of renewed violence in the future.³⁶

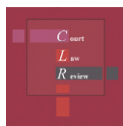
32 Noam Lubell, Jelena Pejić and Claire Simmons, *Guidelines on Investigating Violations of International Humanitarian Law: Law, Policy and Good Practice* (ICRC 2019).

33 Clark (n 17).

34 Ulrich Garms and Katharina Peschke, 'War Crimes Prosecution in Bosnia and Herzegovina (1992–2002): An Analysis Through the Jurisprudence of the Human Rights Chamber' (2006) 4(2) *Journal of International Criminal Justice* 258. doi:10.1093/jicj/mql015.

35 International Center for Transitional Justice, 'What Is Transitional Justice?' (*ICTJ: Justice Truth Dignity*, 2008) <<https://www.ictj.org/what-transitional-justice>> accessed 9 April 2025.

36 OHCHR (n 14).



Law enforcement actors play a crucial role in upholding the rule of law. Even those accused of the most egregious crimes are entitled to a fair trial and protection from torture or other forms of cruel, inhuman, or degrading treatment. International law unequivocally prohibits amnesties for genocide, war crimes, and crimes against humanity,³⁷ at the same time, however, it also strictly forbids vigilante justice or any form of repressive retaliation against suspects. Excessive use of force or arbitrary punishment by police or military personnel in the post-conflict period frequently exacerbates social tensions and undermines the credibility of the new authorities in the eyes of the public.³⁸

This challenge is further compounded by societal pressure for decisive action and rapid outcomes. Yet such actions must remain anchored in the principles of legality. Respect for human rights should not be seen as an obstacle to justice, but rather as its very foundation. For this reason, a systemic approach to professional training is essential – including instruction in international standards such as the Istanbul Protocol – alongside ongoing oversight by both internal and external monitoring bodies.

Psychological Strain and Institutional Burnout

The emotional toll of investigating atrocity crimes cannot be overstated. Prosecutors, investigators, and judges are routinely exposed to traumatic testimonies, disturbing evidence, and graphic forensic material. Prolonged exposure to such material risks secondary trauma, emotional exhaustion, and even burnout or depression among justice sector personnel.³⁹

Unfortunately, few post-conflict systems prioritize psychological support for their own institutions. Without adequate mental health services, personnel may suffer in silence – leading to errors, declining productivity, or even withdrawal from the profession. The implementation of structured support systems – psychological services, peer debriefing, resilience training, and stress-management protocols – is essential.

Internationally, such practices have proven effective in sustaining the morale and capacity of legal professionals engaged in atrocity crimes. In some jurisdictions, “defusing sessions” after particularly demanding cases have helped alleviate stress and prevent cumulative trauma.

In sum, the challenges faced by law enforcement in transitional justice are as extensive as they are complex. Meeting these challenges requires not only institutional reform, but a cultural shift – one that embraces humility, transparency, and service to the public. The journey is long, but it is also necessary. Without a credible and rights-respecting law enforcement apparatus, transitional justice cannot succeed.

37 UNGA RES 60/147 (n 19).

38 International Center for Transitional Justice (n 35).

39 UNODC, *Handbook on Police Accountability, Oversight and Integrity* (Criminal Justice Handbook Series, UN 2011).

6 RECOMMENDATIONS FOR UKRAINE

Ukraine is currently engaged in an ongoing, full-scale armed conflict with the Russian Federation. Nevertheless, the groundwork for a comprehensive system of transitional justice must already be laid. Such a system will form a vital component of postwar recovery, social healing, and the re-establishment of justice. At the heart of this process will be law enforcement institutions, whose readiness, professionalism, and integrity will determine whether victims receive justice, whether perpetrators are held accountable, and whether society can recover from its collective trauma and rebuild trust in the state.

Drawing on international experience while considering Ukraine's unique context, this section offers a set of recommendations for ensuring the effective engagement of law enforcement agencies in transitional justice processes.

6.1. Adapting Best International Practices

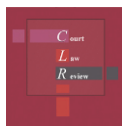
Ukraine should proactively draw on the accumulated global experience in transitional justice to inform the design of its national model. A particularly relevant step would be the establishment of a truth commission focused on documenting systemic human rights violations committed during the armed conflict. Such a body could serve as a crucial mechanism for recording atrocities committed in temporarily occupied territories – such as Bucha, Izium, Mariupol, and other affected regions. International examples – from South Africa, Colombia, and Morocco – demonstrate the potential of truth commissions to uncover facts, acknowledge suffering, and foster societal reconciliation.

Equally important is Ukraine's cooperation with the International Criminal Court (ICC), which has already launched investigations into war crimes on Ukrainian territory. This partnership should be fully integrated into Ukraine's national strategy, with law enforcement agencies providing complementary support to international efforts.

To effectively implement international standards, Ukraine should continue translating, disseminating, and adapting key normative documents – such as UN principles, investigative guidelines, and victim- and witness-protection manuals. This will help ensure a shared understanding and consistent application of transitional justice norms across all levels of law enforcement.

6.2. Developing a Coherent National Policy and Legislative Framework

A functioning transitional justice system requires a solid legislative and institutional foundation. As a first step, Ukraine should adopt a framework law on transitional justice that codifies its principles, objectives, scope, and implementation mechanisms. A draft law – Bill No. 5844 “On the Principles of State Policy for the Transitional Period” – was



introduced in 2021.⁴⁰ While the bill was not passed and contains certain conceptual shortcomings, it can serve as a basis for renewed legislative efforts.

Beyond framework legislation, Ukraine needs to adopt a Transitional Justice Strategy – a programmatic document outlining the implementation of the four key pillars of transitional justice: accountability, truth-seeking, reparations, and institutional reform. This strategy must be context-sensitive and should include a clear division of responsibilities among state institutions.

6.3. Specialization and Training

Effective transitional justice hinges on the institutional capacity of law enforcement to investigate complex international crimes, including war crimes and crimes against humanity. Ukraine has taken initial steps by establishing specialized units within the Office of the Prosecutor General, the Security Service of Ukraine, and the National Police to address conflict-related crimes.

These institutions require further institutional strengthening. Personnel expansion should include veterans with field experience, young lawyers trained abroad, and experts in international humanitarian law, mass atrocity forensics, and trauma-informed interviewing. Gender-sensitive approaches must be emphasized, particularly in investigations involving conflict-related sexual violence.

Regular, interagency training programs should be established, involving international partners such as the ICC, the Geneva Academy, and the International Committee of the Red Cross. Practitioners from the Balkans – with direct experience in war crimes investigations – could offer invaluable insight. Additionally, partnerships with the prosecutorial services of the Baltic states and international missions operating in Ukraine would enhance knowledge exchange and cooperation.

Participation in international networks will not only raise Ukrainian professionals' competence but also reinforce the global credibility of Ukraine's justice system.

6.4. Resource and Infrastructure Support

The successful implementation of transitional justice is not merely a matter of legal frameworks or political will – it also depends on sustained and targeted investment in law enforcement infrastructure. The Government of Ukraine must earmark dedicated funding for the unique demands of the transitional period, particularly around forensic and investigative capacity.

40 Draft Law of Ukraine No 5844 'On the Principles of State Transitional Policy' (9 August 2021) <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72625> accessed 9 April 2025.

One critical priority is the creation of a modern forensic infrastructure, including DNA analysis laboratories. These facilities are indispensable for the identification of remains, establishing the fate of the missing, and collecting scientifically reliable evidence for the prosecution of international crimes.

Another essential step is the digitalization of investigations. Ukraine should develop an integrated electronic registry of war crimes, linked to DNA databases of missing persons and digital archives of documents seized during the de-occupation of territories. These resources must be secure, interoperable, and accessible to authorized investigative bodies.

A centralized information platform would significantly improve interagency coordination. The launch of an interagency transitional justice portal could facilitate information exchange among truth commissions, prosecutors, courts, and victim registration bodies. Beyond operational utility, such a platform would enhance transparency and strengthen public accountability.

To realize these reforms, international assistance will be indispensable – not only in terms of technical equipment (e.g., servers, digital evidence management systems) but also in the form of consultation and training on cybersecurity, digital forensics, and chain-of-custody protocols aligned with European and international standards.

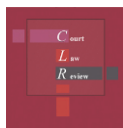
Without robust logistical and technological support, even the best-conceived transitional justice strategies risk remaining unrealized. Material infrastructure, in this context, is not auxiliary – it is foundational.

6.5. Protection of Participants

Guaranteeing the safety and security of all participants in judicial processes – particularly victims and witnesses – is a foundational pillar of effective transitional justice, especially in the context of a still-ongoing conflict. Many potential witnesses to war crimes, crimes against humanity, and other grave violations remain in temporarily occupied territories or have sought refuge abroad. Ensuring their physical safety and procedural confidentiality is crucial – especially when testimonies may implicate high-ranking officials or former state agents.

Ukraine must significantly strengthen its witness and victim protection program. A dedicated coordination unit – possibly within the Ministry of Justice or the Prosecutor General's Office – should be established to manage protection measures, drawing on models developed by the International Criminal Court (ICC) and the ICTY.

Special emphasis should be placed on vulnerable categories of witnesses – including survivors of sexual violence, children, persons with disabilities, and the families of the disappeared. Protection must extend beyond physical measures to include psychological support, relocation assistance, and legal guidance.



The sustainability of this system depends on adequate legal foundations, budgetary provisions, and clear interagency coordination protocols. Protection, in this sense, is not simply about shielding individuals from harm – it is about creating a safe environment in which victims are empowered to participate in the justice process without fear.

6.6. Oversight and Internal Accountability

In the context of transitional justice, it is essential that law enforcement institutions themselves uphold the highest standards of legality, professionalism, and human rights. Post-conflict reforms must go beyond structural adjustments to ensure internal accountability mechanisms capable of identifying, preventing, and addressing misconduct – particularly in sensitive regions, including recently de-occupied territories.

Ukraine should enhance the capacity and independence of internal security divisions within the National Police, State Bureau of Investigation, and other relevant agencies. These units must have the mandate and operational autonomy to investigate complaints, initiate disciplinary proceedings, and, when necessary, refer cases to prosecutorial authorities.

Accountability mechanisms must be substantive, not merely formal. They should function effectively to protect citizens' rights and prevent the resurgence of punitive or abusive practices disguised as anti-collaboration efforts. Special attention must be paid to cases in which law enforcement personnel exhibit prejudiced or hostile attitudes toward local populations, based solely on unsubstantiated suspicions of collaboration.

To reinforce public trust, Ukraine should also consider creating channels for independent civilian oversight. This may take the form of parliamentary ombuds institutions, human rights monitoring missions, or supervisory boards under the Ministry of Internal Affairs. Such bodies could receive complaints, conduct on-site monitoring, and publish periodic evaluations of law enforcement conduct in transitional justice contexts.

These reforms would send a strong public signal: that the reformed law enforcement system is committed not to repression, but to protection – operating under principles of transparency, professionalism, and service to society.

6.7. Victim-Centred Justice and Public Communication

A defining feature of effective transitional justice is its victim-centered orientation. Justice should not be conceived as retribution, but as recognition: a public and institutional acknowledgment of suffering, loss, and dignity. In this regard, law enforcement agencies must extend their role beyond investigation – they must also engage in public communication and outreach to foster trust and mutual understanding.

First, the Ukrainian public must be regularly informed about the progress of war crimes investigations. This could take the form of periodic briefings, public reports from the Prosecutor General's Office, or online dashboards tracking the number of open cases, indictments, and convictions. Transparency is a vital safeguard against manipulation and disinformation.

Second, Ukraine should develop an interactive online portal for victims. Such a platform could offer information on victims' rights, guidance on filing war crimes complaints, and directories of available psychological, legal, and social support services. Reducing access barriers is essential to inclusive justice.

Third, law enforcement units – especially those engaged with vulnerable populations – should integrate trained psychologists and social workers into their investigative teams. Their presence ensures more humane, ethical, and trauma-informed engagement with survivors, helping to minimize the risk of re-traumatization.

Recognition should also extend to the efforts of law enforcement professionals themselves. Publicly honouring officers who demonstrate outstanding integrity and professionalism in the investigation of atrocity crimes not only motivates others – it signals to society that this work is both essential and respected.

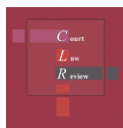
Lastly, in communities affected by occupation or conflict, law enforcement must establish open, ongoing dialogue with the public. Community forums, public hearings, and town hall-style meetings with prosecutors, police, and civil society actors can provide a platform to explain state policy on collaboration, reparations, or vetting. Such engagement can help defuse tensions, clarify misunderstandings, and build a collective vision for just recovery.

6.8. International Support and Coordination

Ukraine's transitional justice process must not unfold in isolation. Rather, it is part of a broader international effort to ensure accountability for violations of international humanitarian law. At present, Ukraine enjoys an unprecedented level of international support – from states, institutions, and global justice networks. The task now is to transform that support into coordinated strategic action.

To this end, Ukraine should establish a Transitional Justice Coordination Council under the Cabinet of Ministers, comprising representatives from the Prosecutor General's Office, Ministry of Justice, Ministry of Foreign Affairs, relevant parliamentary committees, and international partners – including the UN, Council of Europe, European Union, OSCE, and the International Criminal Court.

This body would serve as a strategic forum to harmonize institutional roles, determine jurisdictional priorities (i.e., which cases to refer to international tribunals and which to



retain nationally), and streamline requests for expert assistance – such as forensic support, training of investigative personnel, or temporary deployment of international prosecutors and judges.

International inclusion strengthens not only technical quality but also public confidence. Ukrainians see their justice system acting in concert with global actors; the international community, in turn, recognizes Ukraine as a credible legal and democratic partner. This symbiosis enhances both domestic legitimacy and foreign support.

In short, transitional justice in Ukraine must not be seen as a stand-alone legal exercise, but as a pillar of a comprehensive post-conflict recovery strategy. Its success will depend, in no small measure, on the preparedness and professionalism of law enforcement agencies. These institutions must not only be structurally reformed but also populated by individuals trained to work in the morally and emotionally demanding context of a society emerging from war.

7 CONCLUSIONS

Law enforcement agencies occupy a central position in the architecture of transitional justice. They serve as a bridge between a past marked by egregious human rights violations and a future grounded in legality, dignity, and public trust. Their role is not limited to investigating crimes or enforcing the law. At its core, their mission is also deeply ethical: to restore truth, to amplify the voices of victims, to uphold justice, and – ultimately – to help heal a nation.

International experience offers a compelling lesson: the success of transitional justice is not measured solely by the number of convictions secured or the duration of trials conducted. Rather, it is measured by the system's capacity to inspire confidence, build legitimacy, and prevent recurrence. In South Africa, Colombia, Bosnia and Herzegovina, and Rwanda, reformed and professionalized law enforcement agencies became pillars of a reimagined justice system. Conversely, where security institutions retained the ethos of repression, transitional justice was hollowed out, and cycles of violence remained unbroken.

For Ukraine, these lessons are not theoretical – they are existential. Amid a full-scale war with the Russian Federation, Ukrainian law enforcement institutions are being called upon to fulfill a historically unprecedented dual function: to document atrocities in real time and to build the foundation for a just postwar legal order. Their success – or failure – will shape not only the immediate aftermath of war, but the very legitimacy of the state in the eyes of its citizens.

Yet such success demands more than institutional reforms. It requires a profound internal transformation – a shift in professional mentality toward transparency, accountability, and

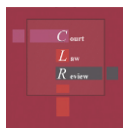
public service. Transitional justice is not revenge, nor a political campaign, nor the imposition of a victor's will. It is a moral choice made by a society: a commitment to justice that balances accountability and restoration, truth and trust, sovereignty and solidarity.

The investigation of serious crimes during the war therefore fulfils – both in practice and as a declared goal – an important function for society, which is essential for the desired pacification. It goes without saying that the domestic Ukrainian authorities and bodies as well as other institutions involved in this process must themselves always be subject to transparent control in accordance with the rule of law. Furthermore, fundamental political decisions in this context must be reserved for the affected population of Ukraine as the competent constitutional sovereign, which is involved in the process within the framework of democratic control to ultimately accept it. The core of the process of dealing with the past is the conflict that needs to be resolved – the military violence that began in 2014 and escalated significantly in 2022, which was brought into Ukraine by state authorities of the Russian Federation, and the inadmissible impairment of Ukraine's sovereign rights. This distinguishes the peace process in Ukraine significantly from numerous other transition processes referred to in this presentation, in which the cause of the conflict was or is of an internal nature.

Only a law enforcement system that is institutionally mature, ethically grounded, and professionally equipped can realize this balance in practice. Such a system is not merely the executor of criminal investigations – it is an architect of public confidence, a defender of human dignity, and a guarantor of non-repetition.

True reconciliation begins where justice is restored. Within these political-legal constraints, lustration and integrity vetting should be understood as auxiliary instruments of institutional reform that complement rather than replace truth-seeking and criminal accountability. Their effectiveness and legitimacy depend on adherence to individualisation, proportionality and procedural predictability. When performed diligently and impartially, the work of law-enforcement officers contributes to democratic renewal by strengthening legal accountability and public trust in the equal protection of the law.

If Ukraine pursues this path with integrity, consistency, and courage, it will not only recover from the devastation of war. It will set a global precedent – a demonstration that justice rooted in humanity and the rule of law can prevail even in the aftermath of immense suffering.



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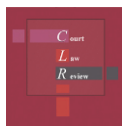
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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

РОЛЬ ПРАВООХОРОННИХ ОРГАНІВ У СИСТЕМІ ПЕРЕХІДНОГО ПРАВОСУДДЯ: МІЖНАРОДНА ПРАКТИКА ТА УКРАЇНСЬКИЙ КОНТЕКСТ

Олександр Дудченко* та Райнер Бірке

АНОТАЦІЯ

Вступ. У статті досліджується роль правоохоронних органів у системі перехідного правосуддя з особливою увагою до міжнародної практики та її значення для післяконфліктного відновлення України. Після збройних конфліктів, змін політичного режиму або періодів системного насильства суспільства стикаються з подвійним викликом: забезпеченням справедливості за минулі порушення прав людини та відновленням довіри до державних інституцій. Як демонструє міжнародний досвід, правоохоронні органи відіграють у цьому процесі ключову, хоча й неоднозначну роль — вони не лише розслідують і переслідують злочини, а й сприяють встановленню правди, захисту потерпілих та інституційним реформам.

Метою статті є визначення ефективної моделі участі правоохоронних органів у перехідному правосудді, яка б забезпечувала баланс між їхніми каральними, захисними та примирливими функціями відповідно до міжнародних правових стандартів і суспільних очікувань. Автор доводить, що інтеграція апробованих на міжнародному



рівні практик може підсилити легітимність системи правосуддя України та сприяти тривалому примиренню.

Методи. Методологія дослідження ґрунтується на поєднанні догматичного, компаративного та міждисциплінарного підходів. Аналіз охоплює міжнародні та національні правові акти, порівняльні кейси (Південно-Африканська Республіка, Колумбія, Руанда, колишня Югославія), а також українське правове та інституційне середовище. Додатково залучаються політичні та соціологічні аспекти щодо функціонування правоохоронних органів у післяконфліктних умовах.

Результати та висновки. Результати свідчать, що для ефективного функціонування у сфері перехідного правосуддя правоохоронні органи мають зазнати як структурних, так і культурних трансформацій. Їхня діяльність виходить за межі класичного кримінального переслідування і охоплює захист прав потерпілих, зміцнення суспільної довіри та запобігання повторенню масових порушень. Попри такі виклики як політичне втручання, брак експертизи, обмежені ресурси та інституційна недовіра – цілеспрямовані реформи, міжнародна співпраця і орієнтація на потреби потерпілих здатні істотно підвищити ефективність правоохоронних структур.

У статті зроблено висновок, що для України побудова системи перехідного правосуддя, заснованої на відповідальності, професіоналізмі та дотриманні прав людини у сфері діяльності правоохоронних органів, є критично важливою. Така система забезпечить не лише юридичну відповідальність і відновлення інституційної легітимності, а й може стати орієнтиром для інших держав, які стикаються зі спадщиною масового насильства.

Ключові слова: перехідне правосуддя, правоохоронні органи, Україна, післяконфліктна відповідальність, міжнародне кримінальне право, інституційна реформа, захист потерпілих.