Hello and welcome to the Public International Law & Policy Group’s series on Post-Data Analysis & Information Sharing. My name is Nikhil Narayan and I will be providing an overview of documentation as a tool for transitional justice, including formal prosecutions, truth seeking, memorialization, reparations, and institutional reform.

Documentation can be used for a number of short and long-term purposes, including to facilitate the process known as transitional justice.

Transitional justice encompasses a broad range of processes and mechanisms that are used by societies to address the legacy of gross human rights abuses and serious violations of international humanitarian law in the past, and to advance reconciliation for the future.

Thus, the central objective of transitional justice is for societies affected by serious abuses of rights to find ways to move forward from past trauma in a manner that is just, peaceful, and healing.

A successful transitional justice process is tailored to the needs of the local population and does not follow a prescribed agenda.

To tailor the process appropriately, states or international organizations should consult with victims, civil society, affected communities, and the public as a whole to identify which mechanisms are best suited for the specific context.

In seeking the correct balance of measures to adopt, a state may also analyze the successes and failures of transitional justice processes in other countries. Through this comparative analysis, a state may identify the appropriate mix of mechanisms that fit the unique history and contemporary needs of affected communities.

Although there is no set “menu” of transitional justice options for a state to pursue, a common set of mechanisms has emerged out of state practice. These include:
Prosecuting human rights abuses for the accountability of perpetrators
Conducting truth-seeking and reconciliation processes
Measuring and delivering reparations
Facilitating institutional reform and national consultations
Conducting memorialization

Let’s have a look at each of these mechanisms in more detail.

Prosecutions involve criminal investigations and judicial proceedings against alleged perpetrators of grave violations of international human rights law, international humanitarian law, and international criminal law.

The purpose of criminal prosecutions is to provide accountability for serious rights violations, establish a record of atrocities, and acknowledge the suffering of victims.

Collected documentation can be used as evidence to support the prosecution of a crime in court. However, courts generally require specific processes of information collection in order to be used as evidence in prosecutions, and often, civil society documentation does not always suit this purpose.

But, even where documentation does not serve as evidence, it can provide leads to further the official investigation.

Prosecution mechanisms can include:
- Domestic trials
  - These are national-level criminal courts.
  - The ability of civil society to support domestic criminal proceedings will vary from country to country.
- Hybrid tribunals
  - Hybrid tribunals are temporary domestic courts with international support.
  - These may be useful in instances where the local community is willing to prosecute mass-atrocity crimes but needs additional international assistance or expertise.
  - Examples include the Special Court for Sierra Leone and the Special Criminal Court in the Central African Republic.
- The International Criminal Court (or ICC)
  - The ICC is the permanent international court empowered to conduct investigations or initiate prosecutions for core international crimes in situations
involving States Parties to the ICC, where the relevant domestic authorities in those contexts prove unable or unwilling to do so.

- The ICC was established by an international treaty and hears cases against individuals who bear the most responsibility for perpetrating the core international crimes of genocide, crimes against humanity or war crimes.

- Traditional justice mechanisms
  - These incorporate indigenous and customary practices into the transitional justice process.
  - Traditional justice mechanisms focus on achieving accountability at a grassroots level through local customs and traditions, which may be more familiar and accessible to local communities.

- Truth-seeking is the process of investigating past abuses to determine:
  - what happened;
  - why it happened, and
  - the consequences of what happened for the affected community.

Truth-seeking mechanisms do not generally focus on punishment, as they can help create a historical record to prevent denial of past events and help victims and communities come to terms with the past.

This is where human rights documentation can come in handy, depending on the rules and procedures of different truth commissions.

Reparations provide redress for past abuses and attempt to establish a remedy proportional to the gravity of the abuses that a victim or community suffered.

- Reparations are more likely to serve justice when combined with other transitional justice mechanisms involving truth telling and accountability.
- The information collected through documentation may be essential for victims of human rights abuses to claim the redress they are entitled to under international law.

Types of Reparations include:

- **Restitution** - seeks to restore victims to the same position they were in before suffering violations of human rights or international humanitarian law.
- **Compensation** – seeks to provide economic or material damages for physical and mental harms suffered, often including costs incurred for legal or medical assistance.
- **Rehabilitation** - incorporates medical and psychological care, legal services, and social services.
- **Satisfaction** - includes a variety of measures ranging from ending abuses to symbolic reparations such as commemorations, sanctions, and public apologies.
Institutional reform is the process of transforming institutions, such as the police, judiciary, military, and intelligence agencies, into accountable, effective, and fair public service institutions that promote peace and the rule of law.

A successful institutional reform process can restore the public’s trust in state institutions, especially the security sector, and maintain stability in a fragile post-conflict environment.

For this process, documentation is often best used in advocacy that pushes for specific institutional reforms.

Memorialization is a process of honoring the victims of human rights abuses by establishing a permanent record of past violations.

- Examples of memorialization may include:
  - Constructed Sites –
    - These are sites that are built with the specific purpose of remembering persons or events. These may include monuments or museums.
  - Found Sites –
    - Found Sites are preserved for the purposes of remembering or honoring specific individuals or events. These may include graves, sites of massacres, or other important sites.
  - Memorial Books –
    - These books offer a published record, whether in hard copy or online, of the persons or events to be memorialized. These may include lists of people killed or affected by atrocities committed, as well as narratives of the events or violations.
  - Other activities could include the collection of oral histories, public apologies, or the establishment of public holidays.

Information collected through documentation can be used to advocate for creating these various means by which past atrocities are commemorated.

This brings us to the end of this lecture. We hope this video has helped you in understanding some of the ways to use documentation for transitional justice processes.