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# **TRUTH COMMISSIONS - LESSONS LEARNED FOR ARAB COUNTRIES UNDERGOING TRANSITION<sup>1</sup>**

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## **Acknowledgements**

I feel extremely privileged to be living and working in the Arab region during these times of historical transition. My interest in the region dates back to my youthful curiosities in the beginnings and subsequent evolutions of the Christian, Islamic and Jewish faiths. For both my under and post-graduate studies, I chose to focus major thesis on the Arab region in areas including the Gulf War Oil for Food Programme in Iraq and the conflicts and contractions in Saudi Arabia's role as an Arab leader and a western ally.

This paper is continuation of my written interest in the Arab region. I wish to thank colleagues and friends for their input, comments, words of support and guidance in drafting and revising this paper. Amongst others, my special thanks go to Anne Massagee – Deputy Director of the International Centre for Transitional Justice's Middle East and North Africa Programme, Hodane Youssuf – Development Management Officer at UN-ECA, Emebet Mesfin – Governance and Public Administration Officer at UN-ECA, and Alex Heinsjo-Jackson – Associate Social Affairs at UN-ESCWA.

## Introduction

The Arab region is going through unprecedented transition in which undemocratic, unrepresentative, and unpopular regimes have been swept away. In the aftermath, long-held and on-going suspicions and accusations of abuses of power, human rights and corruption have come to the fore. An issue for countries undergoing transition is how to respond to vociferous and justifiable protestations in order to be able to move forward.

In recent (and not so recent) history, a number of countries around the world (including post-apartheid South Africa, Chile following the return to civilian from military rule, post-genocide Rwanda, Peru, Morocco, and East Timor) have undergone similar transitions from autocratic, unrepresentative, and at times brutal rule to more pluralistic and representative forms of government. Following these changes, they engaged in processes to shed light on crimes of the past, ensure that the voices of victims were heard, providing foundations to ensure reparations are paid, perpetrators brought to justice and attempts made to set in place necessary safeguards to ensure that such crimes cannot again take place. A critical element of these processes of transitional justice has been the establishment and undertaking of Truth Commissions. In agreement with the South African TRC's slogan of "Revealing is healing", I have chosen to focus this paper on Truth Commissions.

This paper (i) undertakes analysis of Truth Commissions' conventions and experiences to date from the other parts of the world and the Arab region, to identify different approaches and lessons learned), (ii) assess attempts at truth seeking to date in Egypt, Libya, Tunisia and Yemen, (ii) discuss the viability (in the short, medium and long term) of establishing truth commission in the aforementioned countries, and (iv) outlines key characteristics necessary for viable and effective truth commissions.

### Truth commissions as an element of transitional justice

The UN Secretary General's 2004 Report on 'The rule of law and transitional justice in conflict and post-conflict communities' outlines transitional justice as comprising "the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof".<sup>3</sup> By definition, Truth (and Reconciliation) Commissions are official bodies formed to investigate a pattern of violations of international humanitarian law (such as human rights) over a period of time. They are sometimes established as Truth and Reconciliation Commissions. However it is important to differentiate between the Truth Commissions and Truth and Reconciliation Commissions as there is often confusion between the two. The confusion lies in differentiating between seeking the truth and or also seeking reconciliation. Truth Commissions ordinarily have a specific mandate or goal and operate for a limited duration, working through a variety of organizational arrangements whilst also adopting a range of procedures. As they are not tribunals or judicial bodies, they do not have judicial powers. In addition, they may make public the names of those found responsible for human rights violations, but they cannot prosecute, judge or sanction<sup>4</sup> them. And last but not least, they "conclude with a final report and recommendations for changes".<sup>5</sup> Gonzalez and Varney state their objectives as follows:

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<sup>3</sup> United Nations Secretary General Report (2004), *The rule of law and transitional justice in conflict and post-conflict communities*, pg. 4, 2004.

<sup>4</sup> However, as well be highlighted in due course, a number of truth commissions can and have put forward the names of perpetrators of crimes to the authorities for prosecution.

<sup>5</sup> Enforced Disappearances Information Exchange Centre (2008) Available from <http://www.ediec.org/areas/national-remedies/truth-and-reconciliation-commissions/>.

- Truth commissions should establish the facts about violent events that remain disputed and denied. Some commissions have limited their work to clarifying the factual circumstances of abuses, but most have also analyzed the facts to determine the historical and social contexts that gave rise to them, and whether further or criminal investigation is appropriate.
- Truth commissions should protect, acknowledge, and empower victims and survivors. Commissions establish a relationship with victims and survivors not only as informers, but also as rights-holders, partners, and as people whose experiences deserve recognition.
- Truth commissions should inform policy and encourage change in the behavior of groups and institutions, thus contributing to social and political transformation. The final recommendations of a truth commission identify and address causes and violations in order to prevent their recurrence. Closely related to this objective, some commissions consider reconciliation between former rival communities to be of primary importance.<sup>6</sup>

It is also worth noting that Truth Commissions can vary in terms of:

- Geographical scope - national, regional or local;
- Time frame - the period of time they are covering and also the duration of their own mandate; and
- Operation – who owns and runs them (although most are set up and run by executive order, in El Salvador, the UN ran the Truth Commission whereas in South Africa, the non state actor the African National Congress set up a Truth Commission to look into its own conduct in the years of Apartheid rule).

As well as truth seeking, Truth Commissions may also help to foster reconciliation. Despite its generally acknowledged importance, there remains great disagreement over what reconciliation actually means and in particular, how it relates to other concepts and processes, such as justice, peace building, democratization and political development. Important distinctions exist between interpersonally-based understandings of reconciliation, and what is now developing as a pragmatic approach of political reconciliation. Bloomfield (2006) outlines this by stating, “We observed that one clear cause of the confusion around the term is due to the conflicting definitions of reconciliation as a *process*, and as an end-state or *goal*”. John Paul Lederach, for example, understands reconciliation to be dynamic, adaptive processes aimed at building and healing, and a process of change and redefinition of relationships.<sup>7</sup> For Audrey Chapman, national reconciliation can be best understood as a multi-dimensional and long-term process, and Erin McCandles notes the idea that reconciliation is a process of building or changing relationships is growing.<sup>8</sup>

Gonzalez and Varney (2013) further state that “Many truth commissions have the explicit goal of fostering national reconciliation, with many incorporating the word reconciliation into their official mandate and/or name. Reconciliation should be understood as a long-term social process that cannot be achieved by a truth commission alone, in a short amount of time. At best, commissions can help to create better conditions for reconciliation by encouraging institutional reform and changes in the political culture of a state, and by

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<sup>6</sup> Gonzalez E, and Varney H., (2013)*Truth Seeking: Elements of Creating an Effective Truth Commission*. pg. 9 Paper published the International Centre for Transitional Justice.

<sup>7</sup> Sharqieh, I (2013). *A Lasting Peace? Yemen’s Year Long Journey to National Reconciliation*, Brookings Doha Centre Analysis Paper, pg. 4.

<sup>8</sup> Bloomfield, David (2006). *On Good Terms: Clarifying Reconciliation*, Bergoff Report No. 14 2006, pg. 6 Available from <http://www.berghof-conflictresearch.org/documents/publications/br14e.pdf> Last visited 02/07/2013.

restoring dignity of those most affected by violence”.<sup>9</sup> For the purposes of this paper, I will be following Gonzalez and Varney’s definition.

There are varying approaches to truth commissions as part of transitional justice. These variances also relate to the larger transitional justice framework in the respective country undertaking truth seeking. Morocco’s Equity and Reconciliation Commission (Instance Equité et Réconciliation, IER) took the approach of not sanctioning those who did not comply. In addition, the explicit decision not to pursue criminal accountability received criticisms from a number of human rights observers. Conversely, authorities in Sierra Leone (in conjunction with the UN) established the Special Court for Sierra Leone with a mandate to try those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996<sup>10</sup>. Authorities in the country also threatened those who refused to comply with prosecution. In the same vein, Peru’s Truth and Reconciliation Commission transferred about fifty of its political crimes cases to the country’s courts for prosecution. In South Africa, amnesty<sup>11</sup> for the direct or indirect perpetrators of crimes was conditional on their full and complete cooperation with the Truth and Reconciliation Commission. In total, of the 7116 applications for amnesty that were received, 5143 (two thirds) were rejected. 3500 rejections were because the Amnesty Committee found that the acts / violations did not have a political objective (the TRCs legislation included the assertion that amnesty could not be granted for acts associated with a political objective), a further 650 because the incident for which amnesty was applied for fell beyond the cut-off date for amnesty, 400 applications were defective, and in almost 200 cases, applicants argued that they had been wrongly convicted.<sup>12</sup>

Although Truth Commissions are typically established by governments, El Salvador’s commission (as highlighted previously) was the first example of a commission to be sponsored by, paid for, and staffed by the UN. Rwanda’s commission of 1993 was created, funded, and fully sponsored by international non-governmental organizations, responding to a request by a coalition of Rwandan human rights organizations. Ethiopia, Honduras, Northern Ireland, and Paraguay have also had Truth Commissions that were sponsored by non-governmental actors.

### **Why truth commissions?**

Although this paper focuses on the role of truth commissions in transitional justice, there are other approaches that have been undertaken to deal with past abuses and crimes. Hazan outlines the debate on the nature of sanctions that took place in the late 1990s as being between partisans of international criminal tribunals and those who favored Truth Commissions focusing on two emblematic experiences of transitional justice, that of the International Criminal Tribunal for the former Yugoslavia (ICTY) and South Africa’s Truth and Reconciliation Commission (TRC). He states that partisans of tribunals felt that the perpetrators of mass crimes had to be punished by penal sanctions. They held that without such sanctions, it would be impossible to establish the rule of law, foster a human rights culture and, above all, promote reconciliation. He further outlines the views of proponents of Truth Commissions, in particular those behind South Africa’s TRC as being that holding out the promise of amnesty for those who confessed to their crimes produced a

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<sup>9</sup> Ibid. pg. 6.

<sup>10</sup> Special Court for Sierra Leone (2013). Available from [www.sc-sl.org](http://www.sc-sl.org).

<sup>11</sup> Due to recent changes in international law, it is debatable whether or not the amnesty policy of the TRC would pass legal challenge today. UN-OCHR’s on amnesties states that an amnesty for crimes against humanity would be inconsistent with States’ obligations under several treaties and may be inconsistent with States’ obligations under customary international law.

<sup>12</sup> University of Witwatersrand, Department for Religious Studies and Arabic (2013) *Traces of Truth – Documents relating to the South African Truth and Reconciliation Commission: TRC Category – 3. Amnesty*. Available from [http://truth.wvl.wits.ac.za/cat\\_descr.php?cat=3](http://truth.wvl.wits.ac.za/cat_descr.php?cat=3).

clearer picture of the truth and had a more effective social impact than tribunals – in that it was the fact of seeing the criminals themselves publicly confess their crimes that served to heal the scars of the past.<sup>13</sup>

In addition to the use of Truth Commissions and tribunals throughout the world, Rwanda, East Timor, and Somaliland have used traditional methods of justice to deal with past abuses and promote reconciliation. In Rwanda, *gacaca*<sup>14</sup> courts have been used as a means through which to deliver justice in the aftermath of the country's genocide of 1994. The *gacaca* is a traditional, community based mechanism that is designed to involve the community in the process of dispute resolution, making the process community based.<sup>15</sup> As Brouneus outlines, in 2002, the *gacaca* process was initiated by the (*Rwandan*) government, in order to speed up the trials and promote truth, unity and reconciliation following several years of renewed violence and organized armed conflict. The *gacaca* process involves the entire country, every village or neighborhood having its own *gacaca* court with locally elected judges and mandatory participation by the villagers.<sup>16</sup> However, it is worth noting that the use of traditional *gacaca* courts that previously settled local disputes to try complex genocide cases was controversial due to factors including many (perhaps most) of the 16,000 or so elected judges not having legal qualifications, incidents of defendants not having access to qualified lawyers and doubts as to whether or not the hearings met international legal standards.<sup>17</sup> Somaliland is an example of clan based post conflict reconstruction and constitutionalism. Following the fall of the regime of General Mohammed Siad Barre and its campaign against the Somaliland region, the “culture of locally based reconciliation process”<sup>18</sup> led by and involving the *guurti* (council of elders) was the driving force through which stability and constitutionalism was established in the region. The new constitutional system introduced in Somaliland also introduced the principle of universal suffrage thereby extending to women the right to vote.<sup>19</sup>

David Tolbert, President of the International Centre for Transitional Justice states that “It is fundamentally clear that societies in transition need truth and a confrontation with the past. It is also essential to have recognition of victims suffering through reparations programs and memorialization”.<sup>20</sup> Furthermore, Truth Commissions can allow for the identification of perpetrators. The identification of perpetrators (naming of names) is and continues to be a source of debate. On the one hand, due process of law requires that individuals receive fair treatment and be allowed to defend themselves before being pronounced guilty. On the other hand, in the effort to arrive at the truth, a human rights framework requires that people responsible for human rights abuses be named when there is clear evidence of their guilt - such as eye-witnesses or corroborative evidence, or an admission of guilt. The decision about whether to name people has typically rested with commissioners. Commissions which have named names were those in Chad, El Salvador, Rwanda and South Africa. The official Guatemalan truth commission was not permitted to name.

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<sup>13</sup> Hazan, Pierre (2008). *The nature of sanctions: the case of Morocco's Equity and Reconciliation Commission*. International Review of the Red Cross, vol. 90, Number 870, (June 2008), pp. 400-401.

<sup>14</sup> Crimes of genocide heard by the *gacaca* courts were separated into three categories. Category one for instigators and leaders of the genocide and sexual violence, category two for killings and serious attacks that may or may not have caused death, and category three for offences against property. The accused in categories one and two were tried in the Rwandan National Courts or the International Tribunal for Rwanda in Arusha, Tanzania. Those in categories two and three were dealt with by *gacaca* court in communities in Rwanda itself.

<sup>15</sup> Sarkin, Jeremy (2013). *Preconditions and processes for establishing a Truth and Reconciliation Commission in Rwanda – the possible interim role of Gacaca community courts* pg. 228. Available from <http://www.saflii.org/za/journals/LDD/1999/14.pdf>.

<sup>16</sup> Brouneus, Karen (2013). *Rethinking Reconciliation: Concepts, Methods, and an Empirical Study of Truth Telling and Psychological Health in Rwanda*. pp. 17 – 18. Available from <http://uu.diva-portal.org/smash/get/diva2:171573/FULLTEXT01>.

<sup>17</sup> <http://www.bbc.co.uk/news/world-africa-18490348> (last visited 09/06/2013).

<sup>18</sup> Jhazbhay, Iqbal. (2009) *Somaliland: The Journey of Resistance, Reconciliation Peace* Department of Religious Studies and Arabic, University of South Africa pg. 69.

<sup>19</sup> *Ibid*, pg. 63.

<sup>20</sup> *An Inspiring Time*, Interview with David Tolbert, ICTJ President in ICTJ, 10 Years, April 2011.

Commissions in Argentina and Chile did not also name names.<sup>21</sup> Commissions can also bring to the for the causes that led to abuses and the circumstances and facts of violations.

Hayner (1994) outlines the challenges that truth commissions can be confronted with as including a weak civilian government with a strong, defiant military; a state structure only beginning to move towards democratic governance; opposition forces emerging from a recent past focused on violent overthrow of the state; ethnic or other population groupings threatening a return to violence; a weak civil society and a timid population hesitant to testify on abuses; or, in other cases, an organized opposition or human rights community voicing strong demands for an exhaustive truth commission report and full justice reparations.<sup>22</sup>

Truth commissions are inherently vulnerable to politically imposed limitations. Their structure, sponsorship, mandate, political support, financial or staff resources, access to information, willingness or ability to take on sensitive cases, and the strength of a final report will be largely dependent on the political forces at play.

In addition, there are opposing arguments against the establishment and operation of Truth Commissions. As Sarkin writes, “A possible danger, and something that should be anticipated and proactively addressed, is the fact that a truth and reconciliation commission holds the potential of opening up old wounds, renewing resentment and hostility against the perpetrators of abuse”.<sup>23</sup> The political nature of Truth Commissions may also be a limiting factor in their establishment. A case in point would be Lebanon<sup>24</sup> where after a protracted civil war, a Truth Commission has not materialized which may (in no small part) be part of the political pact among various factions. In addition, although the general amnesty which was granted after the civil war may have helped the political process, families of the thousands of missing have no state sanctioned means of finding out what happened to their loved ones. In response to this, the Committee of the Families of the Kidnapped and Disappeared in Lebanon, Support of Lebanese in Detention and Exile (SOLIDE) has developed a draft law based on the right to truth which proposes the formation of a national commission to investigate the fate of the missing and the disappeared.

However, as highlighted by the example of South Africa and other countries, Truth Commissions have been shown to have a beneficial impact on countries emerging from a history of conflict and or human rights abuses.

### *South Africa*

Perhaps the best-known and most documented Truth Commission is South Africa’s TRC which was created during the country’s transition from apartheid to democratic rule in 1994. The TRC was a unique, tripartite institution with responsibilities to prepare a record of the apartheid era, make recommendations for reparations, and grant amnesty on the basis of individual applications.

The TRC benefited greatly from having a clear, unambiguous mandate and terms of reference that was agreed by major constituents in the country in the then newly formed Government of National Unity (main political parties of the white minority, the National Party as well as major black majority, the African Nation

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<sup>21</sup> Hamber, B. & Kibble, S. (1999). *From Truth to Transformation: The Truth and Reconciliation Commission in South Africa*. Catholic Institute for International Relations Report.

<sup>22</sup> Hayner, Priscilla (1994). *Fifteen Truth Commissions 1974 to 1994: A Comparative Study*. Human Rights Quarterly. Vol. 16, No. 4. (Nov., 1994), pg. 636.

<sup>23</sup> Sarkin, Jeremy (2013). *Preconditions and processes for establishing a Truth and Reconciliation Commission in Rwanda – the possible interim role of Gacaca community courts*. Pp. 226 – 227 Available from <http://www.saflii.org/za/journals/LDD/1999/14.pdf>.

<sup>24</sup> For further information and analysis on the Lebanon case study, please see UN-ESCWA’s upcoming publication on *The Promises of Spring: Citizenship and Civic Engagement in Democratic Transitions*.

Congress - ANC and Inkata Freedom Party) which in turn encouraged truth telling and both victims and perpetrators to come forward (although some did come forward, their numbers were not great). The Commission's mandate did not include an investigation of the violations caused by the implementation of the policies of apartheid themselves, including, for example, the forced removal of people from their homes, restrictions on movement of residence through pass laws and other legislation, or the denial of the vote to the great majority of South Africa's people.<sup>25</sup> Although it could have been argued that these areas should have also been covered, the fact that the TRC was established following intensive negotiations between key stakeholders in cabinet and parliament which led to the Promotion of National Unity and Reconciliation Act helped ensure its political credibility, legitimacy and integrity. These were further enhanced through the participation of victims of human rights abuses. The first of over two years of hearings of testimonies from victims began on 15 April 1996. Public hearings of the TRC's Human Rights Violations Committee in different parts of the country enabled over 2,000 survivors and their family members to describe what happened to them and to tell the committee what they hoped would come out of its work. "The TRC regarded these hearings as vital to achieve one of its statutory objectives – restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of which they are victims".<sup>26</sup>

Despite the ground-breaking nature of the TRC's work, a number of international bodies (namely Amnesty International and Human Rights Watch) raised concerns that the recommendations of the TRC were not being seriously and fully implemented, with particular reference to the payment of reparations to victims of human rights abuses and the lack of prosecutions against individuals about whom there was credible evidence of involvement in gross abuses.<sup>27</sup> In South Africa itself, a number of civil society also raised concerns about the TRC. Amongst these was the Khulumani Support Group which was formed in 1995 by survivors and families of victims of the political conflict of South Africa's apartheid past. Khulumani raised complaints regarding its perceived failings of the TRC in relation to women. These included the lack of a category for gender based violence, women only viewed as victims and not actors in violence (no women were cited as perpetrators of human rights violations even where women political prisoners recited violations committed against them by female prison wardens), rape and gender based violence not falling within the criteria of a political act as defined by the TRC's enabling Act, and the failure to recognize (within the TRC's mandate) apartheid's systematic and institutionalized violations of women's human rights – the TRC's own report stated that "women were subject to more restrictions and suffered more in economic terms than men during the apartheid years".<sup>28</sup> Further criticisms of the South African government's handling of the TRC include its focus on individual instances of gross human rights violations (which served to deflect responsibility from the broader structures of apartheid and those who benefited from them) and the rejection of the TRC's recommendations on a one-off wealth tax on individuals for reparations fund.<sup>29</sup>

At the time, South Africa was also responsible for the only known case of the establishment of a Truth Commission by a non-state (governmental) actor when the African National Congress (ANC) established two separate investigations (the Commission of Enquiry into Complaints by Former African Congress Prisoners and Detainees in March 1992 and the Commission of Enquiry into Certain Allegations of Cruelty and Human Rights Abuses Against ANC Prisoners and Detainees by ANC Members in the summer of 1993) to look into allegations of abuses in ANC detention camps, in and outside of South Africa during the

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<sup>25</sup> Gonzalez E, and Varney H. (2013) *Truth Seeking: Elements of Creating an Effective Truth Commission*. pg. 2.

<sup>26</sup> Ibid, pg. 5.

<sup>27</sup> Amnesty International/Human Rights Watch – February 2003 *Truth and Justice: Unfinished Business in South Africa*, pg. 1.

<sup>28</sup> Available from <http://khulumani.net/truth-a-memory/item/527-how-the-trc-failed-women-in-south-africa-a-failure-that-has-proved-fertile-ground-for-the-gender-violence-women-in-south-africa-face-today.html> (2013).

<sup>29</sup> Valji N. (2003), *South Africa: no justice without reparation*. Available from [www.opendemocracy.net/faith-africa-democracy/article\\_1326.jsp](http://www.opendemocracy.net/faith-africa-democracy/article_1326.jsp).

organization's struggle against apartheid rule. The terms of the first commission were set out by the ANC as being to investigate complaints by former detainees and recommendations on actions that might be taken by the organization based on the commission's findings. However, two of the three commissioners (the third commissioner was not affiliated to the ANC) were ANC members, which called its neutrality into question.<sup>30</sup> In addition, the Commission was also criticized for not providing sufficient opportunities for accused individuals to defend themselves. The second commission was headed by three commissioners, from South Africa, the United States and Zimbabwe respectively who were widely accepted as being independent. The proceedings of the second commission were markedly different from the first. The Commission structured its proceedings in a similar way to formal court proceedings. It held public hearings over a five week period, the accused were given the opportunity to confront and question their accusers – their alleged victims of torture of abuse were allowed representation by attorneys of their choice.<sup>31</sup> Following the ANC's non-state led Commission, countries including Brazil, Guatemala and Uruguay have also had Commissions that were undertaken by non-state actors.

### **Arab experiences of Truth Commissions<sup>32</sup>**

Although Morocco has not undergone the same violent transition as Egypt, Libya, Tunisia, and Yemen, it does have experience of holding a Truth Commission. Its Equity and Reconciliation Commission (Instance Equite et Reconciliation, IER) was established in 2004, and ran for one year (December 2004 – November 30, 2005) with a mandate to (i) investigate forced disappearances and arbitrary detention between Morocco's independence in 1956 and 1999, (ii) rule on reparation requests pending before the former Independent Commission of Arbitration (created in 1999), and (iii) determine "the responsibility of the state organisms or any other party".<sup>33</sup> With regards to structure, the Commission was comprised of sixteen commissioners appointed by King Mohammed VI– of these sixteen, only one was a woman. The IER had structural problems and was far from adequately inclusive of gender justice. The ICTJ's report into it states that "The presence of merely one woman amongst 17 members demonstrates instead a failure to adopt a gender approach in terms of the composition of the IER"<sup>34</sup>. It was headed by a former political prisoner and human rights activist Driss Benzikri. In addition, five of the remaining commissioners were former political prisoners, including two who had been exiled. To this end, it could be argued that although all commissioners were appointed, there was at least a sense of multiplicity of membership in terms of representing different viewpoints. At the same time, the fact that the Commission was not allowed to reveal identities<sup>35</sup> which most of the victims were requesting, brought criticisms from human rights bodies.<sup>36</sup> Further conditions, including the inability of the Commission to mention King Mohammed's predecessor, King Hassan II, report on human rights violations since 1999 (when Mohammed VI was enthroned), or criticize the violation of freedom of speech also drew heavy criticism from human rights bodies.

With regards to conclusions, the IER determined the fate of 742 individuals and established the role of the state in the political violence during the period covered by its mandate. Unlike reports of others such as the South African Truth Commissions, it did not mention individuals responsible for abuses and hearing participants had to sign an agreement not to identify individuals attributed with responsibility. Recommendations included:

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<sup>30</sup> Hayner, Priscilla (1994). *Fifteen Truth Commissions – 1974 – 1994: A comparative Study*. Human Rights Quarterly, Vol. 16, No. 4 (Nov. 1994), pg.626.

<sup>31</sup> Ibid, pp. 632-333.

<sup>32</sup> For further analysis, please see UN-ESCWA's upcoming policy brief on *Participation and Transitional Justice*.

<sup>33</sup> <http://www.usip.org/sites/default/files/file/resources/collections/commissions/Morocco-Charter.pdf>.

<sup>34</sup> International Centre for Transitional Justice (2011) *Morocco: Gender and the Transitional Justice Process* pp. 17-18.

<sup>35</sup> Commissions also do not prosecute perpetrators. It is however possible for Commissions to refer cases for criminal investigation and prosecution which is carried out by a judicial body.

<sup>36</sup> [http://hrw.org/reports/2005/morocco1105/6.htm#\\_Toc119468378](http://hrw.org/reports/2005/morocco1105/6.htm#_Toc119468378).

- A diminution of executive powers, the strengthening of the legislature, and independence of judiciary;
- Reforms in the security sector and changes in criminal law and policies, including the development of laws against sexual violence;
- Morocco ratifying the International Criminal Court (ICC) statute and abolishing the death penalty;
- The pursuance of further investigations; and
- Some communities to receive communal reparations.<sup>37</sup>

The ground-breaking nature of the communal reparations programme was that it included “both a development dimension that meets the social and economic needs of the targeted individuals and communities (including development projects which span from women’s literacy programmes and agricultural initiatives, to citizenship and democracy education), as well as a symbolic dimension that acknowledges past abuses and preserves memory to ensure non-repetition”<sup>38</sup>. Another ground-breaking element of the reparations programme of the IER was the (progressive) decision to ignore the concept of heirs as defined in the Moroccan law of succession and to adopt that of successors (ayants-droit) so as to be able to accord equal treatment to men and women and go beyond the rules of Shari’a.<sup>39</sup>

The recommendations of the Commission’s report resulted in a number of reforms in Morocco including announcements by the King stating that the (i) recommendations should be incorporated in a revised constitution, and that the (ii) Consultative Council on Human Rights shall be replaced by an independent Council on Human Rights, vested with additional competencies and in line with the UN’s Principles relating to Status of National Institutions. However, it is worth noting that to date, Morocco has not ratified the ICC Statute nor repealed the death penalty laws. Furthermore, no trials have taken place since publication of the Commission’s findings. It is also debatable as to whether or not Morocco has undergone real and transient political change as result of the recommendations of the IER or merely cosmetic window dressing.

### **Post transition in the Arab region**

As a number of states in Arab region emerge from transition, it is of critical importance to not only document the crimes and abuses of the past but also those committed in the dying days of previous regimes.

The dynamics of Arab countries going through transition are complex and nuanced by severe, on-going security, political, economic and social challenges. It is worth noting that with varying degrees of vigor and success, new administrations in Egypt, Libya, Tunisia and Yemen have undertaken steps to investigate crimes, committed during the tenure of the predecessors and also in the period of transition.<sup>40</sup> Some regime figures have either been killed (Colonel Gaddafi and a number of his former senior officials), others have fled into exile (former President Ben Ali and members of his family) from which there is no discernable possibility of their return to their homeland to face legal sanctions. Others enjoy immunity from prosecution (former President Saleh) as result of the deal brokered for their relinquishing of power, whilst others have been and are being put on trial for alleged crimes of the past (former President Mubarak).

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<sup>37</sup> More than 16,000 requests for reparations were reviewed, and 9,779 victims recommended to receive financial, medical, and psychological assistance. In August 2007, Morocco’s Consultative Council on Human Rights announced that 23,676 people received compensation for human rights violations during the reign of Hassan II. At the end of 2007, the distribution of individual compensation was almost completed, and \$85 million was distributed to approximately 16,000 individuals.

<sup>38</sup> Skroch, Catherine (2012) *Morocco’s Equity and Reconciliation Commission: A New Paradigm for Transitional Justice* Available at <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?lng=en&id=142823>.

<sup>39</sup> International Centre for Transitional Justice (2011) *Morocco: Gender and the Transitional Justice Process*. pg. 28.

<sup>40</sup> It remains to see whether there will be political appetite to investigate continuing abuses.

The absence of thorough, independent truth seeking, and expunging of misdeeds undertaken by previous rulers and their cohorts (crucially including the military) in countries going through transition could be argued to be one of the factors inhibiting their future political, economic and social development.

Although there have been (and are on-going) trials of former leaders and regime stalwarts, there has been an absence of truth seeking and telling, fact finding on the crimes and misdeeds of military figures. A case in point is Yemen in which former President Saleh left office in February 2012 following sustained, mass protests under an exit agreement brokered by the Gulf Cooperation Council (and backed by the majority of the international community). As part of this agreement, the Yemeni Parliament granted immunity to Saleh, and those who served with him at the civil service, security and military during his reign. The immunity law violates Yemen's international legal obligation to prosecute serious human rights violations, including attacks by government gangs that killed at least 270 protestors and bystanders during the uprising.<sup>41</sup>

Due to the longevity of the reign of recently deposed leaders of Egypt, Libya, Tunisia and the Yemen and the violent nature of their overthrow, peaceful protests turning into violent uprisings which were initially countered by leaders and state security apparatus, there is a pressing need for truth seeking and the holding to account of those responsible for the events and actions undertaken during the dying days of out-going regimes. This is heightened by the need to understand the degree to which violence was deployed and at which point in unfolding events (i.e. by incumbent leaders to counter demonstration or even before demonstrations began to merely keep themselves in power).

### **Tunisia: Commissions of Inquiry, Military Courts and International Actors**

Perhaps the most promising move towards truth seeking in post-transition countries in the Arab region has been in Tunisia where the interim government announced the establishment of Commissions of Inquiry in January 2011. The Commissions of Inquiry included a (i) National Fact-Finding Commission on Abuses, (ii) Fact-Finding Commission on Bribery and Corruption and (iii) Reform Commissions (one for political reform and the other for Media Reform). The National Fact-Finding Commission was established as a public and independent body charged with investigating the abuses and violations committed during the uprising which began in December 2010 and compensating those whom security forces injured or lost family members. The Commission conducted investigations throughout the country and collected testimonies from victims and their relatives. Published in May 2012, the Commission's Report included statistics<sup>42</sup> on the official number of deaths, injuries, as well as age and gender based breakdowns of the dead and injured, and geographic locations of where the incidents took place.

In addition to the Commissions, military courts have tried several groups of defendants for the killing of protestors, and sentenced former President Ben Ali to life in prison for complicity in murder under article 32 of the penal code.<sup>43</sup> Military courts also sentenced Former Interior Minister Rafik Beljah Kacem who held office at the time of the uprisings to a total of 27 years in prison, and sentenced 20 other senior officers to several years in prison for intentional homicide during the uprising. Although the trials appeared to respect

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<sup>41</sup> Human Rights Watch, World Report 2013: Yemen.

<sup>42</sup> The Commission's Report lists 338 deaths and 2147 people as wounded. Of the deaths, 233 were civilian, 5 from the military, 4 police and 86 prisoners. Among the wounded, 2056 were civilians, 62 prisoners, 26 police officers and one military. The majority of the victims were young, with 82% of the dead and 76% of the wounded being under the age of 40. With regards to the gender split, 96% of the dead and 89% of the wounded were men with 15 children also being killed during the period under investigation.

<sup>43</sup> He was first sentenced in June 2011 along with wife Leila to 35 years in prison for embezzlement and misuse of state funds. He has also received two life sentences in prison for his regime's crackdown on protests prior to his fleeing on the country to Saudi Arabia in early 2011. In July 2011, he was also convicted on charges of possessing illegal drugs and weapons after a one day trial and given 15 years in jail. Later that month, he (16 years), his daughter (Nesrine El Materi eight years) and son-in-law (Sakher El Materi 16 years) were given jail terms in absentia over corrupt property deals and ordered to pay \$100m in damages.

the defendants' basic human rights and allow victims to access justice, several factors undermined their contribution to achieving accountability, including the failure to identify direct perpetrators (although senior military figures were tried and many convicted) of the killings and an inadequate legal framework for prosecuting seniors officers for command responsibility for crimes that their subordinates committed.<sup>44</sup>

In May 2013, The European Court reversed its decision<sup>45</sup> to freeze funds of family members of Ben Ali when it realized that there has been no final judgment against Ben Ali's sons-in-law and nephew in the Tunisian judiciary. Unsurprisingly, the Court's decision was not well received by authorities in Tunisia. However, as will later be discussed in regards to Libya and the ICC, the Court's decision (which was partly based on the inability / length of delays in bringing prosecutions in Tunisia against members of the former regime) raises questions about judicial sovereignty of countries in transition and their adherence to international standards and or international obligations. The funds will not be immediately released as the European Union will have two months to challenge the decision of the Court. In pursuing assets stolen by the regime of former President Ben Ali, \$28.8 million was received by the Tunisian government in April 2013 as the first installment of recovered assets.

The case of Commissions established in the aftermath of the overthrow of former President Ben Ali in Tunisia highlights tensions that can arise when overlaps exist between the roles / remits of the judiciary and Commissions, legal boundaries are not defined, agreed or respected. Wahid Ferchichi, Professor of General Law at the University of Tunis discusses these tensions in his paper on the legislative developments in the aftermath of the revolution... "The authority of this Commission (*Fact-Finding Commission on Bribery and Corruption*), while more clearly defined than that of the Commission for the Investigation of Truth and Abuses, raises more fundamental questions, especially in relation to the judiciary..... the overlap between the work of this Commission and that of the judiciary has been criticized, especially as the judiciary is already examining charges of corruption and bribery bought against the former president, members of his family and many former officials. The Commission was subsequently accused of unlawful interference in the work of the judiciary.... The charges were extremely embarrassing for the Commission. The Commission started work immediately after January 20, 2011, despite an absence of any legislation to regulate them or define their remits, frames of reference and working methods, or indeed to define their relationships with the government and the judiciary. This effectively weakened the Commissions, attracting harsh criticism and prompting many calls for dissolution. As a result, a summary court ruling stipulating that the Fact-Finding Commission's work should be suspended. The ruling was upheld when the First Circuit Court of Appeal rejected the Commission's request for an injunction and insisted that its members should hand over all documents in their possession to the public prosecutor."<sup>46</sup>

A recurrent practice in post transition countries in the Arab region has been significant changes following the overthrow of previous regimes. Egypt's State Security Investigation Service was dissolved and replaced with a new National Security Force in March 2011. Earlier that same month, the Directorate of State Security, which was widely held responsible for suppressing and harassing the country's opposition during the tenure of former President Mubarak, was also dissolved. Although there have been significant changes to state security apparatus in the aftermath of the transition, this does not negate or placate the need for an open investigation of misdeeds of the past and identification and collection of testimonies of victims. In addition, there has been a distinct lack of wider security sector reforms in countries in transition.

Examples as those given above of positive institutional reform in the aftermath of transition need to be taken into consideration in light of other less positive developments in the pursuit of political plurality,

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<sup>44</sup> Human Rights Watch, World Report 2013: Tunisia.

<sup>45</sup> 4<sup>th</sup> February 2011, the European Court froze the assets of Slim Chiboub and Sakher El Materi, sons-in-law of Ben Ali and his nephew Mohamed Trabelsi after they were accused of embezzlement of public funds.

<sup>46</sup> Ferchichi, Wahid (2012). *A Chronicle of Legislative Developments in the Aftermath of the Tunisian Revolution*. Available from [http://www.lb.boell.org/downloads/Perspectives\\_02-38\\_Wahid\\_Ferchichi.pdf](http://www.lb.boell.org/downloads/Perspectives_02-38_Wahid_Ferchichi.pdf).

inclusivity and representation. Egypt has experienced further, deepening polarization during and in the aftermath of the rule of the President Mohamad Mursi. The hurried nature in which the new constitution (and its ambiguity regarding freedom of expression) was introduced, the Presidential Decree which placed the Presidency above judicial review, ambiguity regarding freedom of expression and absence of explicit guarantees of the rights of women, religious minorities and NGOs were key contributing factors to President Mursi's subsequent removal from power.<sup>47</sup> In addition to recent events in Egypt countering positive institutional reforms, other countries have also seen the introduction of various vetting laws that can be used as blanket bans with political motives.

As highlighted previously, transition in the Arab region has raised the interesting conflict / conundrum between states' international obligations and the desire to prosecute perpetrators of crimes against humanity on home soil with the case of Saif al-Islam Gaddafi, the most senior surviving member of the inner family, leadership of the regime that ruled Libya for almost fifty years. The wish of Libyan authorities to prosecute Gaddafi on home soil is understandable and could be argued to be a sovereign right (especially as the country struggles for both empirical and juridical statehood). The Libyan authorities have challenged the ICC's<sup>48</sup> right to put Saif al-Islam Gaddafi on trial on the grounds that since it is planning its own proceedings, the international court in The Hague had no jurisdiction because it should intervene only if the local legal system is not up to the task.<sup>49</sup> However, legitimate concerns remain regarding the ability of the Libyan judicial system to grant Gaddafi a fair trial. At the time of drafting, he was being held in Benghazi, from where there have been unconfirmed reports over his ill-treatment and denial of access to proper legal representation.

### **However, are the conditions ripe for the establishment of truth commissions?**

The viability of Truth Commissions in the aftermath of transition in the Arab region is debatable. It is well documented that Egypt, Libya, Tunisia and Yemen have faced and continue to face significant political, security and economic challenges following the overthrow of former regimes, meaning that the necessary conditions of establishment of transparent and effective transitional justice vehicles such as Truth Commissions may not yet exist.

The Office of the High Commissioner for Human Rights' rule-of-law tools for post-conflict states outlines three critical elements that must exist in a country for a truth commission to be established. These are:

- I. Political will to allow, and hopefully encourage or actively support a serious inquiry into past abuses. Ideally the government will show its active support for the process by providing funding, open access to State archives or clear direction to civil servants to cooperate.
- II. Violent conflict, war or other repressive practices must have come to an end. It is possible that the de facto security situation will not yet have fully improved, and truth commissions often work in a context where victims are afraid to speak publicly or be seen to cooperate with the commission. If a war or violent conflict is still actively continuing throughout the country, it is unlikely that there will be sufficient space to undertake a serious inquiry. And

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<sup>47</sup> Egypt has also experienced deteriorating economic conditions since. Foreign currency reserves has plummeted, a possible IMF loan did not materialize, inflation increased, the value of the Egyptian Pound decreased and there were incidents of food shortages.

<sup>48</sup> Only Jordan and Tunisia in the Arab region have signed and ratified the Rome Statute. Algeria, Bahrain, Egypt, Kuwait, Morocco, Oman, Syria, the UAE and Yemen have signed but not yet ratified.

<sup>49</sup> See [www.telegraph.co.uk/travel/destinations/africaandindianocan/libya/10095089/Libya-to-appeal-ICC-ruling-to-hand-over-Saif-al-Islam-Gaddafi.html](http://www.telegraph.co.uk/travel/destinations/africaandindianocan/libya/10095089/Libya-to-appeal-ICC-ruling-to-hand-over-Saif-al-Islam-Gaddafi.html) (last visited 16 June 2013) [I would cite the Libyan position from the original source. It's all on the ICC website.]

III. There must be an interest on the part of victims and witnesses to have such an investigative process undertaken and to cooperate with it.<sup>50</sup>

To this end, it could be argued that these countries do not currently have in place the conditions previously outlined.

## **Egypt**

With regard to post-Mubarak Egypt, Human Rights Watch's 2013 World Report states that "... serious human rights problems remain, including police abuse and impunity; restrictions on freedom of expression, association, and religion; and limits on the rights of women and workers."<sup>51</sup> The country is experiencing deepening polarization that has resulted in clashes between supporters of the military / interim government and those of the deposed former President, and significant loss of life, with the likelihood of a peaceful political resolution to differences seeming distant.

## **Tunisia**

As highlighted previously, there have been attempts at truth seeking in the aftermath of the overthrow of President Ben Ali. With regard to the current situation on the ground, the political environment is increasingly rancorous with ideological and factional divisions as witnessed by splits and withdrawals from the National Constitutional Assembly. Furthermore, senior opposition figures have been assassinated and occasional clashes between opposing political and religious groups resulted in casualties and the proliferation of small arms following the removal of former President Ben Ali. With the current lack of political discourse and on-going lack of security, it would seem highly improbable that conditions are suitable for the establishment of a truth commission.

## **Yemen**

Yemen suffered from two separate insurrections and continues to suffer from civil unrest, and related terrorist activities. In Yemen, President Hadi continues to attempt to push through a National Dialogue, for reorganization of the country's armed forces, and deal with terrorist activity and separatists in the South, destabilizing remnants of the former regime including family members of President Saleh whilst simultaneously undertaking national dialogue<sup>52</sup> in preparation for general elections scheduled for February 2014. Whilst the conditions may not be ripe for a truth commission in Yemen at the present moment, the ICTJ reports that a law on Transitional Justice and National Reconciliation has been under discussion since February of last year. Text of the draft law provides for a truth commission to look into abuses going back to 1990. The ICTJ also reports that the Yemeni government was considering a decree to set up a commission of inquiry into the events since street protests began in January 2011.<sup>53</sup> However, question marks remain regarding whether or not any future transitional justice process would uncover the role of leading figures (who have been granted immunity from prosecution) or merely that of middle and low ranking officers who carried out the orders of more senior rulers.

## **Libya**

Libya continues to suffer from the lack of security as characterized by ongoing violence, with deadly attacks on foreign diplomatic missions and international organizations, tribal clashes, kidnappings for

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<sup>50</sup> Office of the UN High Commissioner for Human Rights (2004). *Rule-of-Law Tools for Post-Conflict States*. pp 2-3.

<sup>51</sup> Human Rights Watch, Report 2013: Egypt.

<sup>52</sup> United Nations Security Council Report (2013) Available at <http://www.securitycouncilreport.org/chronology/yemen.php>.

<sup>53</sup> <http://ictj.org/news/facing-troubled-past-yemen-debates-transitional-justice-measures> (last visited 26 August 2013).

financial and political reasons, and targeted killings of former Gaddafi security officers. In addition, various militia have supplanted the police in maintaining internal security with frequent reports of clashes between rival militias and the ensuing violence which further exacerbates security tensions in the country. However, there is recognition in the country for the need for truth seeking. To this end, the conference on truth-seeking and reconciliation organized by the UN's Support Mission for Libya (UNSMIL) in late 2012 was attended by a multitude of government officials, civil society organizations, victims groups and international experts. Recommendations emanating from the conference included calling on the government to demonstrate the necessary political will to pursue transitional justice in the country, emphasizing truth seeking as a cornerstone of reconciliation, and the need for a new transitional justice law to be put to a comprehensive dialogue with people being informed of its goals and purposes.<sup>54</sup>

Although these countries are going through transition, new governance architectures have been characterized by poor quality of elections and thus require strengthening. Given the current prevailing political, economic and security conditions outlined above, it is highly unlikely that Truth Commissions could be established and allowed to function effectively in the short term in the transitioning countries. However, the medium and longer-term possibilities are better. Tunisia and Yemen are already undertaking steps towards this. In addition, should discourse and stability return to Egypt and Libya alongside the willingness of political leaders to undertake a truth seeking process, it should be possible to establish truth commissions in both countries. Also linked to this is the lack of Disarmament, Demobilization and Reintegration (DDR) (which is essential to creating security and stability in post-conflict environments, and to start recovery and development) .

### **Key characteristics for strong and effective truth commissions**

Truth Commissions tend to be created during periods of political change, such as after the fall of an authoritarian regime or at the end of armed conflict. A commitment to establish a truth commission is often included in peace agreements, transition-to-democracy negotiations (as was the case in South Africa), and in some cases, as a clause in a new constitution.<sup>55</sup> They have in fact been an integral part of almost every post-conflict situation since the early 1990s.

Gonzalez and Varney (2013) outline key characteristics of truth commissions and the necessary conditions for ensuring their strength and efficacy. These include:

- *Commissions need to be credible:* The credibility of a truth commission can be supported by:
  - Selecting members with excellent moral and professional reputations (also who selects them);
  - Guaranteeing full independence from political interference;
  - Establishing transparent procedures for research; and
  - Establishing dialogue with civil society, in particular victims' organizations.
- *Commission's need from stakeholders:* Truth commissions require the support of national political authorities and cooperation from government agencies, in addition to the appropriate provision of resources. When commissions face difficulties during their tenure, they need to rely on the trust and support of the country's political leadership. At the same time, civil society institutions must support the truth commission's mandate while maintaining their own autonomy and vigilance.
- *Commissions should earn the respect of society:* An effective truth commission requires the cooperation of a wide variety of social and political agents. At all stages of its work, from establishment to reporting, a commission should pay particular attention to outreach strategies so that

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<sup>54</sup> <http://unsmil.unmissions.org/Default.aspx?tabid=5292&ctl=Details&mid=9097&ItemID=807652&language=en-US> (2013).

<sup>55</sup> Gonzalez E, and Varney H. (2013) *Truth Seeking: Elements of Creating an Effective Truth Commission*. pg. 9.

its mission and achievements are understood, and communities have the opportunity to offer feedback and ideas that may enrich its work. Facilitating public discussion indicates that there is respect for the citizenry and allows the commissions to gather information and prepare policy recommendations.

- *Commissions must consistently observe a code of conduct:* The operations of a truth commission need to exemplify the new, fairer practices that citizens should expect from their government. Research, management, and public outreach must respect the fundamental standards of human rights and ensure the integrity and highest standards of professional ethics at all times.<sup>56</sup>

The ITCJ also lists key characteristics of Truth Commissions. These include:

- *Complementarity to criminal justice:* Truth commissions are not judicial enquiries. They do not establish individual criminal responsibility for specific crimes, determine punishment, or use the standards of due process applicable in a court of law. If they gather evidence useful for a criminal investigation, their enquiries may precede or complement the work of a court of law..... truth commissions complement the approach of courts of law by establishing the social and historical context of violations and large-scale patterns behind massive numbers of cases.
- *Focus on gross violations of human rights:* Historically, truth commissions have focused their investigations on the rights protecting a person's physical and mental integrity and other serious crimes, such as torture, enforced disappearance, extrajudicial killings, forced displacement, and sexual violence.<sup>57</sup>
- *Period of investigation:* Unlike parliamentary commission of enquiry, which tend to focus on single issues or the circumstances of a specific event, truth commissions typically cover longer periods of abuse, sometimes decades. This allows truth commissions an opportunity to identify historical patterns of violence and systematic violence.
- *Large amounts of violence:* Because of their broad focus, both in terms of violations and time period, commissions may gather massive information from direct witnesses, archives, and other sources. For example, the Truth and Reconciliation Commission of Peru gathered 17,000 testimonies during its two-year tenure, and South Africa's TRC collected over 22,000 testimonies in three years.
- *Victim-centered approach:* Victims and survivors are primary sources of information for truth commissions, and many commissions have a legal mandate to ensure the well-being of victims. Many have developed services for victims, such as emergency help, psychological support, support, security and legal aid. The Truth, Reception and Reconciliation Commission of East Timor employed specialized staff to grant emergency funds and help displaced people to return to their homes.<sup>58</sup>

In summary, the key characteristics above underline the importance of placing victims at the center of Truth Commissions, ensuring that a sufficiently extended period of time is allocated to collect extensive testimonies whilst focusing on human rights abuses and others that may be particular to the country/region or period under consideration.

It is of critical importance that truth commissions: (i) are formed through a consultative approach that is informed by political, religious, civil society bodies as well as direct public participation, (ii) enjoy political independence, (iii) have financial and operational autonomy, (iv) have established guiding

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<sup>56</sup> Ibid. Pp. 11-12.

<sup>57</sup> Due to the nature of transition in the Arab region, it would also be necessary to ensure that focus also includes corruption and embezzlement of state resources.

<sup>58</sup> [www.ictj.org](http://www.ictj.org).

principles to ensure maintenance of their independence, and (v) that commissioners are selected<sup>59</sup> through a transparent and consultative appointment process.<sup>60</sup>

### **Examples of failings of truth commissions**

Although truth commissions have the ability to aid in transformation, a number of truth commissions have had either structural or operational failings that have hindered their efficacy. Examples of structural failing include:

- The ANC's Truth Commission 1 in which two of the three commissioners were current, serving ANC members thereby damaging the perception of its openness and transparency.
- Commissioners to the Democratic Republic of Congo's Truth and Reconciliation Commission were appointed even before the Commission had a legal statute which fuelled allegations that appointments were made due to political allegiances rather than applicable skills and expertise.
- The credibility of some of the Commissioners of Kenya's Truth, Justice and Reconciliation Commission (TRJC) was called into question due to their connection to former President Moi.
- The lack of a legal mandate and subsequent overlap and confusion with the judiciary as previously highlighted by the example of the Commissions of Inquiry in Tunisia.

An example of an operational failure of a truth commission was the inability of the Kenya's TRJC to publish its final report in November 2011 as originally committed, which raised further criticisms.

### **The importance of recommendations and next steps**

In addition to revealing abuses of the past, allowing for the voices of victims to be heard, and paving the way for payment of reparations, an essential function of Truth Commissions is to make recommendations which (if enacted), will provide necessary safeguards, checks and balances, and the framework for institutional, legislative and operational changes to ensure that future abuses cannot take place. The most essential conditions that need to be in place for recommendations and next steps to be implemented include commitment by political elites to abide by and implement recommendations, stable political and security settings, the absence of conflict or civil unrest (especially sectarian, religious and or tribal), and strong and functioning legal and judicial systems.

Hayner (1994) outlines a number of examples of governments disregarding the recommendations of commissions. In Uganda in 1974, Idi Amin set up a commission partly in response to pressure from international human rights organizations. But Amin disregarded the commission's report, and continued his brutality. In Chad, even as the Commission of Enquiry was finishing its report on the past, the government was accused of trying to whitewash its own abuses.<sup>61</sup> In both instances, the political leaders of Uganda and Chad did not have the intention or willingness to implement the various findings of commissions they had established.

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<sup>59</sup> Sierra Leone's Truth Commission included foreign members with the UN SG's Special Representative in Freetown at the time being appointed as selection coordinator. Hybrid truth commissions in which there are both local and foreign commissioners have been created in Guatemala, Kenya, Sierra Leone and the Solomon Islands. The selection panel for commissioners for East Timor's Reception, Truth and Reconciliation Commission included representatives from civil society organizations and political parties.

<sup>60</sup> Gonzalez E, and Varney H. (2013) *Truth Seeking: Elements of Creating an Effective Truth Commission*. pp. 15-19.

<sup>61</sup> Hayner, P B., *Fifteen Truth Commissions 1974 to 1994: A Comparative Study*. Human Rights Quarterly, Vol. 16, No. 4. (Nov., 1994), pp. 608.

Commission reports also have the ability to change government behavior. Hayner (1994) argues that the international pressure on the Rwandan government following publication of the International Commission of Investigation on Human Rights Violations in Rwanda's report forced the military to stop its campaign of terror.<sup>62</sup> The strength of this summation is tested when considered in light of the wide body of knowledge regarding the involvement of the Rwandese government in conflict in the Democratic Republic of Congo.

## **Conclusion**

In conclusion, Truth Commissions have been avenues through which human rights abuses have been brought into the public domain, the voice of victims heard, reparations paid and recommendations made on necessary changes to avoid such occurrences in the future.

The Arab region has witnessed the removal of decades long rule by undemocratic and unrepresentative regimes in Egypt, Libya, Tunisia and Yemen which are now being confined to the annals of history. Following this, the process of transition to democratic governance requires (amongst other things) truth seeking initiatives to enable full disclosure of abuses of the past, the recognition of suffering of victims, and the putting forward of recommendations as to how to put in place necessary reforms and safeguards to ensure such abuses do not happen again in the future. Following the truth seeking process, it is essential that victims are identified and reparations paid.

The challenges highlighted previously as facing Truth Commissions including weak civilian governments, state structures in the early stages of moving towards democracy are applicable to the countries going through transition in the region thereby making the likelihood of their efficacy in the countries listed above remote. The absence of political consensus, lack of effective security across the countries, and continuing economic woes highlight the lack of conducive conditions for the establishment and operation of truth commissions.

Governments in Egypt, Libya, Tunisia and Yemen have demonstrated different levels of commitment and willingness to instigating truth seeking. Whereas conditions may not be currently appropriate, this does not mean that the establishment of truth commissions in these countries is impossible in the longer term. Examples of instances of non-government actors and international partners helping to organize truth seeking, were highlighted previously. Rwanda in 1993 highlights the possibility of international non-governmental bodies being invited by local human rights groups to set up and run truth commissions. However, it is generally advisable that truth seeking process should be nationally designed, owned and run. Input, advice, and resources from international actors can be beneficial but greater legitimacy and acceptance would most likely be gained from the inclusive involvement and ownership by local political figures, civil society organizations and victims groups.

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<sup>62</sup> Ibid, pp. 610

## Annex

Truth commissions: a worldwide phenomenon.

Year	Country	Commission
1974	Uganda	Commission of Enquiry into the Disappearance of people in Uganda
1982	Bolivia	National Commission of Enquiry into Disappearances
1983	Argentina	National Commission on the Disappearance of Persons
1985	Zimbabwe	Commission of Enquiry
1986	Philippines	Presidential Committee on Human Rights
1986	Uganda	Commission of Enquiry into Violations of Human Rights
1986	Uruguay	Investigative Commission on the Situation of Disappeared People and its Causes
1990	Chile	National Commission for Truth and Reconciliation
1990	Nepal	Commission of Enquiry to Locate the Persons Disappeared during the Panchayat Period
1991	Chad	Commission of Inquiry on the Crimes and Misappropriations Committed by the Ex-President Habre, his Accomplices and/or Accessories.
1992	El Salvador	Commission of Truth
1992	Germany	Commission of Enquiry for the Assessment of History and Consequences of SED Dictatorship in Germany
1992	South Africa	Commission of Enquiry into Complaints by Former African National Congress (ANC) Prisoners and Detainees – The Skweyiya Commission
1993	Ethiopia	Investigation by Office of Special Prosecutor investigation in respect of any person having committed or responsible for the commission of an offense by abusing his position in the party, the government or mass organization under the Dergue-WPE regime
1993	Rwanda	International Commission of Investigation on Human Rights Violations in Rwanda since October 1, 1990
1993	South Africa	Commission of Enquiry into Certain Allegations of Cruelty and Human Rights Abuses against ANC Prisoners and Detainees by ANC Members by Former African National Congress Prisoners and Detainees – The Motsuenyane Commission
1994	Sri Lanka	Presidential Commission of Enquiry into Involuntary Removal and Disappearance of Persons in Western, Southern and Sabaragamuwa Provinces, Presidential Commission of Enquiry into Involuntary Removal and Disappearance of Persons in the Central, North Western, North Central and Uva Provinces and Presidential Commission of Enquiry into Involuntary Removal and Disappearance of Persons in the Northern & Eastern Provinces.
1995	Haiti	National Commission for Truth and Justice
1995	South Africa	Truth and Reconciliation Commission
1996	Ecuador	Truth and Justice Commission
1997	Guatemala	Commission for the Historical Clarification of Human Rights Violations and Acts of Violence which Caused Suffering to the Guatemalan People
1999	Nigeria	Human Rights Violations Investigation Commission
1999	Rwanda	National Unity and Reconciliation Commission
2000	Peru	Truth and Reconciliation Commission
2000	South Korea	Presidential Truth Commission on Suspicious Deaths
2000	Uruguay	Peace Commission
2001	Panama	Truth Commission
2001	Yugoslavia	Truth and Reconciliation Commission

2002	Ghana	National Reconciliation Commission
2002	Sierra Leone	Truth and Reconciliation Commission
2003	Chile	National Commission on Political Imprisonment and Torture
2003	Paraguay	Truth and Justice Commission
2003	DRC	Truth and Reconciliation Commission
2004	Indonesia	Truth and Reconciliation Commission
2004	Morocco	Equity and Reconciliation Commission
2007	Ecuador	Truth and Justice Commission
2005	Liberia	Truth and Reconciliation Commission
2008	Kenya	Truth Justice and Reconciliation Commission
2008	Mauritius	Truth and Justice Commission
2011	Solomon Islands	Truth and Reconciliation Commission
2012	Canada	Truth and Reconciliation Commission

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