

Al Kawakibi Democracy Transition Center



Arab Working Group on Transitional Justice

Reference Document

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Presentation of Al Kawakibi Democracy Transition Center

Al Kawakibi Democracy Transition Center is a technical non-governmental regional organisation, specialised in transferring knowledge, sharing experiences and building capacities in the field of democratic transition.

Al Kawakibi Democracy Transition Center was officially founded in Amman- Jordan (June 2006), following the first meeting of the Center's Board of Trustees under the chairmanship of HRH the Prince Al Hassan Ibn Tallal

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1 - MEANING OF « REFERENCE DOCUMENT »

By « reference document », we mean a framework that provides « theoretical premises » and « guiding rules ».

By « theoretical premises », we mean basic conclusions drawn from the world heritage of national transitional justice experiences worldwide.

By « guiding rules », we mean the grounds relied on by the « Arab Working Group on Transitional Justice », as a collective output that guides its activities and programs of action, and is drawn from the results of its previous meetings, more particularly its constitutive meeting.

2 – TRANSITIONAL JUSTICE AS THEORETICAL PREMISES

2.1 – Nature and functions

The theoretical premises developed within the framework of the International Center for Transitional Justice, as one of the international research institutions concerned with this issue, indicate that Truth, Equity and Reconciliation Commissions :

- Are temporary bodies set up often for one or two years;
- Are officially-sanctioned bodies, empowered by, and drawing their authority from, the state, and sometimes from the armed opposition in addition to the state, or from a peace agreement within the framework of United Nations;
- Are non-judicial bodies in the constitutional sense of judicial power;
- Are independent bodies;
- Are usually established in the midst of a process of transition from war to peace, or from authoritarian rule to democracy;
- Focus on the past;

- Investigate a pattern of human rights abuse over a set period of time, rather than a specific event;
- Complete their work by submitting a final report containing its conclusions and recommendations;
- Focus on human rights violations based on international human rights standards.

The theoretical premises developed within the framework of the International Center for Transitional Justice also indicate that Truth Commissions can be beneficial, in that they :

- Help to reveal truth about the past;
- Help to call to account those responsible for human rights violations;
- Provide a public forum for victims;
- Promote and enrich public debate;
- Recommend compensatory reparations for victims;
- Recommend the necessary legal and institutional reforms;
- Promote social reconciliation;
- Help to enhance democratic transition.

2.2 - Notion and components

The Security Council's dealing with national democratic transition experiences has helped move ahead in developing and adopting an international conception for this issue, given the needs and requirements of rule of law and transitional justice in conflict and post-conflict societies. According to a Security Council report,

- *“Justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives. Advancing all three in fragile post-*

conflict settings requires strategic planning, careful integration and sensible sequencing of activities.”

- *“Our experience in the past decade has demonstrated clearly that the consolidation of peace in the immediate post-conflict period, as well as the maintenance of peace in the long term, cannot be achieved unless the population is confident that redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice.”*
- *The notion of transitional justice discussed in the present report comprises the full range of processes and mechanisms associated with a society’s attempts 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 both 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.*

Aware of the challenges and complexities posed by the issue of transitional justice in terms of its interaction with the requirements of peace, respect for human rights, and non-impunity, the Security Council recognized the need for adopting unified and complementary methods that take into consideration the voice of victims as part of a comprehensive approach. The Security Council report goes on to say that :

- *“In other cases, the international community has rushed to prescribe a particular formula for transitional justice, emphasizing either criminal prosecutions or truth-telling, without first affording victims and national constituencies the opportunity to consider and decide on the proper balance.”*
- *“The international community must see transitional justice in a way that extends well beyond courts and tribunals.”*
- *“The challenges of post-conflict environments necessitate an approach that balances a variety of goals, including the pursuit of accountability, truth and reparation, the preservation of peace and the building of democracy, and the rule of law.”*

- *“A comprehensive strategy should also pay special attention to abuses committed against groups most affected by conflict, such as minorities, the elderly, children, women, prisoners, displaced persons and refugees, and establish particular measures for their protection and redress in judicial and reconciliation processes. For example, protection measures for children can include provisions for hearings in camera, prerecorded testimonies, videoconferencing and the use of pseudonyms to protect the identity of child witnesses.*

In light of the component elements of the concept of transitional justice, the nature, frames of reference, reasons for establishment, and objectives of Truth and Reconciliation Commissions, at the level of the State and society, can be presented as follows:

2.3 – Nature

Truth and Reconciliation Commissions are :

- Official national bodies set up by virtue of a law issued under the legal prerogatives of the head of state, the head of government, or the parliament, or within the framework of a peace agreement that results in the issuing of a framework agreement among internal parties, or between internal parties, on the one hand, and the United Nations as a supervising party, on the other hand;
- Non-judicial and non-parliamentary bodies in the constitutional sense of the two powers;
- A mediator between the State and society.

2.4 – Frames of reference

Truth Commissions draw upon various frames of reference, the common denominator of which being the principles of human rights, the rule of law, and the values of democracy. These frames of reference include :

- The International Human Rights Law
- The International Humanitarian Law

- The judgments and decisions of regional human rights tribunals
- The jurisprudential opinions of specialized experts
- The conclusions and results of the work of Truth Commissions
- The national legal requirements that are in conformity with the International Human Rights Law and the International Humanitarian Law
- The values and principles of democratic culture
- The principles of human rights inherent in religious beliefs, national culture, and local cultures.

2.5 – Reasons for establishment and the condition of transition

The reasons for establishment are tightly linked to the question of context, especially as regards transition toward peace or toward democracy. It follows that the reasons for establishment vary as follows :

- Transition from a closed political environment ruled by an authoritarian regime to an environment of democratic transition;
- Peace agreements between two or more parties, after an armed political conflict, or a political dispute accompanied or permeated by an armed conflict.

2.6 – Objectives of Truth Commissions : Serving the interests of victims

- Rehabilitation of the inherent human dignity;
- Rehabilitation of individual citizenship;
- Investigation, truth-telling and public acknowledgment of past human rights violations;
- Individual and collective reparation.

2.7 - Objectives of Truth Commissions : Serving the interests of society

- Removing taboos in the relationship between society and violations, breaking the culture of fear, and spreading the culture of public acknowledgement of violations.
- Public acknowledgement of the citizens' right to hear and know about past human rights violations, and their right to express their views and take part in public debate.

2.8 – Objectives of Truth Commissions : Revealing abuses

- Combating human rights violations through investigation and the collection of proofs, evidence and testimonies from various sources;
- Analyzing violations in light of the International Human Rights Law and the International Humanitarian Law, depending on the case;
- Analyzing violations in light of the related, public or private, contexts, with emphasis on their direct and indirect effects on victims and society;
- Documenting violations within a historical record, as violations that took place in the past, in order to preserve individual and public memory.

2.9 – Objectives of Truth Commission : Promoting the culture of democracy

Since they emerge within specific contexts characterized by transition from authoritarian rule to democracy or from war to peace, Truth and Reconciliation Commissions contribute to enriching the culture of democracy in its universal, human rights and socio-political conception, through :

- Providing a propitious climate for free argumentation and debate on the past of the nation or society, and the way violations were dealt with;

- Enriching dialogue among specialists and academics on the contexts of violations and the role of the state and communities in addressing violence-related issues;
- Enhancing artistic and literary creativity and other forms of expressions;
- Ensuring the coverage and analysis of transitional justice events by the audiovisual and written press.

2.10 – Objectives of Truth Commissions : Promoting the rule of law

Given their experience in terms of transition, peace promotion, rule of law and democracy, Truth Commissions contribute to developing a political, legal and intellectual output, through:

- Examining the shortcomings that, in the past, marked the constitutional and legal guarantees, especially as regards the separation between the executive, legislative and judicial branches, and the promotion of national political, civil and academic dialogue concerning the consolidation of constitutional guarantees, as countries often start revising their national constitutions during or after the preparatory works for transitional justice;
- Conducting studies on the shortcomings, weaknesses and vacuums in procedural and substantive legal systems as regards human rights protection and all that relates to the right to life, treatment, detention, and fair trial guarantees.
- Analyzing the working methods of institutions related to security governance, criminal prosecution and legal control, by providing answers concerning the promotion of the state's public policies in terms of rule of law and security governance.

Truth Commissions are a strong force of suggestion, and are held in high regard, given the noble mission with which they are entrusted, and the moral value of their members. These commissions contribute to :

- Devising solutions for institutional reforms related to the judiciary, in such a way as to strengthen the guarantees of its independence and increase its protective role in terms of justice and human rights;
- Providing suggestions and alternatives for reforming and promoting criminal systems, fair trial guarantees, and penitentiary institutions;
- Providing suggestions to strengthen the power of parliament in fighting violations and monitoring the work of executive agencies;
- Promoting the systems of mediation for the settlement of disputes related to the exercise of civil and political rights.

2.11 – Objectives of Truth Commission : Strengthening civil society

Truth Commissions effectively contribute to strengthening the mechanisms, role and efficiency of civil society. On their part, transitional justice experiences help enhance and consolidate the roles of civil society.

- Some Truth Commissions constituted an extension of the dynamics launched by human rights activists and victims' movements, as some of them included leaders of such movements or leaders of human rights organizations;
- Some Truth Commissions were set up in light of deep consultations involving representatives of civil society organizations, victims' movements, and families of missing persons;
- Truth Commissions have provided a propitious environment for the emergence of new associations concerned with the preservation of public memory, collective reparation, and the follow-up of recommendations.

In general, the experiences of Truth Commissions have offered civil society organizations and associations wider opportunities to deal with the issues of truth, equity and reconciliation, and with the dynamics of rule of law. At the same time, these experiences have placed them in front of new challenges concerning the renewal and development of their approaches and means of action.

2.12 – Objectives of Truth Commissions : Promoting the culture of human rights

Truth and Reconciliation Commissions help to trigger large-scale public debates concerning the promotion of human rights culture. Through their recommendations, they contribute to launching important initiatives and public policies. These include :

- Calling for establishing a national plan of action in the fields of democracy and human rights education, with the participation of all the concerned parties, including the Government, civil society, and the university;
- Developing training programs for judges, security forces and law-enforcement officers.
- Publishing the reports issued by Truth Commissions, while making sure they are disseminated on the widest scale.

In light of the foregoing, one can say that Truth and Reconciliation Commissions are strong moments in the process of democracy, for they represent :

- A moral and ethical force and a live conscience that emerges from the changes, effects, challenges and conflicts in society and in politics;
- An expression of the triumph of the force of reason and peace, after guns were silenced, and the time of “dawn visitors” was over;
- A moral and ethical authority that works for the rehabilitation of victims and the preservation of public memory;
- An ethical, political and human rights mechanism that contributes, with its noble cause, courage, perspicacity, and care for the interests of victims, to rebuilding relations of confidence between the state and society;
- A moral and cultural judgment on past tragedies, grievances and violations;
- A moment of announcing a break with serious, intensive and systematic violations;
- A bridge for building the future and for dealing with the violations, abuses and transgressions that would happen immediately under the rule of law

which guarantees the interests of victims in terms of reparation and the fair trial guarantees for those responsible for violations;

- A sign that a society or a nation has decided, with courage, to break with past abuses and to turn toward the future;
- The true founder of the process of non-impunity.

3 – GUIDING PRINCIPLES FOR THE WORK OF THE ARAB WORKING GROUP ON TRANSITIONAL JUSTICE

3.1 – Considerations related to the regional historical context

The birth of the « Arab Working Group on Transitional Justice » was an event of crucial cultural and human rights significance, as it came within national and regional contexts that are attached, more than ever before, to the noble objectives of transitional justice in terms of truth-telling, democratic reform, civil peace, justice, reparation, rule of law, and reconciliation.

This intellectual dimension is further reinforced by the important positive cultural, political and human rights gains accomplished by the first Arab national transitional justice experience, through the Moroccan Equity and Reconciliation Commission. Through its historic acts, this commission proved that it is possible to create a new mechanism that reflects the triumph of the force of reason and peace, and establishes bridges between the parties involved in past conflicts, without undermining the noble objectives of transitional justice in terms of truth-telling, reparation, justice, identifying those responsible for violations, and providing guarantees of non-recurrence.

Interacting with national transitional justice experiences worldwide is of vital importance, considering their expertise and contributions as an international heritage. Seeking to transfer this common heritage to the Arab national environments can only help to positively respond to the expectations of victims and the aspirations of civil society, and meet the challenges confronting institutions and governments. It is, in general, an endeavor to promote civil peace and to provide the necessary conditions for breaking with the situations of human rights abuse.

On the other hand, this interaction reflects support to the noble causes of transitional justice whose aim is to help prepare, promote, consolidate and accompany the

environments of peaceful transition to democracy in the Arab world, one of the regions most affected by troubles, conflicts and serious human rights abuse.

With its positive action in the complex Arab environment, the Working Group will seek appropriate ways and means to establish and promote the culture of dialogue as a means to address the painful legacy of the past, at a time when embryonic elements and positive opportunities are available, given the evolution of the notion of human rights which is increasingly imposing itself as an element of pressure. This positive environment finds its illustration through :

- The existence of a political will among some decision-makers or parties influencing political decision-making in some Arab countries, seeking a solution to the crises of the past;
- The existence of political initiatives concerning transitional justice in a number of Arab countries. These initiatives may be described as limited, or not necessarily compatible with the philosophy of transitional justice. But still, they do exist as a tangible reality. Many national experiences worldwide went through this situation which reflects the slow and difficult nature of the process of past accumulations preparing for the emergence of Truth Commissions. This is an important factor to be taken into consideration in the process of comparing experiences.
- The political considerations and tendencies of decision-makers involve a concern for dealing with the legacies of the past and establishing civil peace, through promoting the processes of openness on democracy and respect for human rights. There is also concern for serving the legitimate interests and wishes of victims in terms of truth-telling and reparation, as well as for satisfying the requests of serious civil society associations concerning the determination of responsibilities. In general, every strategy should find solutions to very complex problems through a process of mediation; thereby increasing confidence between the state and society.

3.2 - Considerations and orientations of the Arab Working Group

The Arab Working Group on Transitional Justice can assert its presence within regional research institutions specialized in democracy, premised upon the following considerations:

- The strategic importance of a permanent mechanism concerned with the issues of transitional justice, by the people of the region; an open mechanism that cooperates with all parties, centers and institutions, at the national, regional, and international levels, on issues pertaining to civil peace, national reconciliation and democratic transition.
- Adherence to the dynamics of victims' movements in societies where there is a divergence between the just and legitimate claims of victims and their families, and the compulsions and complexities underlying the politicians' hesitation and fear to open some of the pages of the past, given the problems related to the political process of reconciliation and democratic openness. The Arab Working Group's interaction with this particular situation as a positive element, not as a sign of deadlock, can only enhance the transitional justice strategy.
- The intellectual contribution to removing some of the ambiguities and uncertainties surrounding the contexts of establishing peace and democracy. Dealing with these problems, which face all reform issues, as a positive element is another challenge to be met by any transitional justice strategy.
- The importance of defining the functions and missions of the Group in the context of entrenching the shining human rights heritage and renaissance thought in the Arab region, in an endeavor to preserve individual and public memory, the latter being cultural elements necessary for preserving memory and guaranteeing non-recurrence.

In light of the foregoing, the Arab Working Group can act in the following fields :

- Following up the international situation of the countries showing embryonic or advanced signs of democratic transition processes;
- Continuously interacting with environments which, because of their special or complex nature, witness a debate or initiatives concerning the culture of transitional justice, through establishing contacts with the parties involved in this situation, so as to deepen knowledge and help to establish strategies and enhance national debate on reconciliation issues;

- Striving to deepen knowledge of transitional justice among all parties including decision-makers, political actors, political parties, parliamentarians, victims' movements, NGOs, the media, and academics;
- Endeavoring to provide forums for dialogue among the different parties getting out, or trying to get out, of periods of conflicts and tensions;
- Acting for integrating and invoking the principal missions of transitional justice in terms of truth-telling, reparation, justice, determination of responsibility, ensuring genuine non-impunity, and guaranteeing non-recurrence, in the various civil, political and academic forums of dialogue.
- Dealing with transitional justice as an endeavor to address the heavy legacy of human rights, through a comprehensive perspective involving political, social and cultural justice.
- Institutionalizing the Group by providing efficient mechanisms for its action, especially in terms of communication among its members, scientific library, intellectual work, technical support and symbolic initiatives to preserve the memory of the victims of violations, develop skills, provide technical services, promote research in transitional justice, transfer the expertise of national experiences worldwide, and enhance cooperation and partnership with similar centers and institutions.

References :

- Documents of the International Center for Transitional Justice
- A Security Council document on transitional justice
- Proceedings of the Constitutive Meeting of the Arab Working Group on Transitional Justice
- Research findings of the independent expert Dr. Ahmed Chaouqui Benyoub on the Moroccan experience in equity and reconciliation, in light of national experiences worldwide.

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