


Chapter 10

North Africa's Truth and Reconciliation Commissions and Transitional Justice in the Maghreb

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ABSTRACT

The Truth and Reconciliation Commission in South Africa was a watershed case for African countries seeking to move forward with a legitimate transitional justice process. Drawing on previous lessons and various theoretical approaches, this chapter explores transitional justice in the Maghreb. In the past decades, governments in the Maghreb developed reconciliation commissions to confront injustices in previous regimes to transition towards stability, security, and peace. The chapter will examine Bouteflika's Commission of Inquiry following the Algerian Civil War, Mohammed VI's commission on human rights abuses during his father's reign, and the Tunisian commission on the former Bourguiba and Ben Ali regimes that sparked the Arab Spring. The chapter will identify the strengths and shortcomings of each commission and provide recommendations from the application of Truth and Reconciliation Commissions in the region for Libya's proposed commission once fighting between the different factions ceases.

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INTRODUCTION

The past few decades have raised many questions about war, state repression, political instability, terrorism, and criminal justice. Justice varies depending on the philosophical outlook nations adopt in political violence. During the War on Terror, the United States, for example, embraced a retributive stance on dealing with suspected terrorists by either sending them through the American justice system, the Guantanamo Bay prison camp, or to allied countries for torture and interrogation, often in locations called black sites. Some countries adopt an equally unsympathetic deterring stance on political violence as a way to keep terrorist organizations from recruiting new members or prevent the cycle of violence between groups. Others utilize a restorative process as an alternative to the conventional policies grounded in retribution, incapacitation, and deterrence. Each approach is an essential component of transitional justice defined by the United Nations as “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” breaking transitional justice into an assortment of processes and mechanisms, situations of implementation, and stated goals (Zunino, 2019, p.3).

Many political commentators struggle to understand the rationale for restorative approaches in the face of the atrocities committed during a conflict. In the years since the declaration of the War on Terror, the world continues to be threatened by oppressive regimes, violent non-state actors, powerful militaries, and conflicts that continue to cost thousands of lives. In the Maghreb or the western part of North Africa and the Arab world, government regimes perpetrated political violence on their citizens rather than non-state actors (El Guabli & Jarvis 2018). The challenge in transitional justice remains: what are the most effective strategies to counter political violence? Restorative justice is one of the prevalent methods of keeping the peace and reintegration between diverse groups following a conflict (Clamp & Doak, 2012; Clamp, 2016). The chapter utilizes Tony Marshall’s broad definition of restorative justice as a process “whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future,” emphasizing the restoration of relations between the state, victims, offenders, and the public (in Llewellyn & Howse, 1999, p. 20).

In the study of restorative justice, amnesties, clemencies, pardons, or reconciliation commissions are popular methods of conflict resolution (Tait, 2001; Novak, 2015; Gavrielides, 2018). These practices provide alternatives to justice systems rigid in traditional retributive forms of punishment that encourage perpetual hostility. According to Villa-Vicencio and Verwoerd (2000, p. 72), restorative justice “will succeed where punishment has failed; reducing the recurrence of human rights abuses and enabling the emergence of a more just social order.” In the cases of political

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