

IMPUNITY FOLLOWING FOUR ARAB REVOLUTIONS

**ON THE ABSENT TRANSITIONAL JUSTICE:
IN TUNISIA, EGYPT, LIBYA AND YEMEN**

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The Report

The Arab revolutions erupted but they did not come to an end.

Six Arab revolutions, "Tunisia, Egypt, Bahrain, Libya, Yemen and Syria", carried the same mottoes demanding change, freedom, human dignity and social justice.

The revolutions are not over yet and none of their demands were achieved. One important thing has been achieved, however, not only in the six countries with the revolutions but in the entire Arab world, and that is breaking through the fear.

As it has attracted a wide sector of the Arab citizens who were not interested, before, in public discussions regarding their issues, their governments' performance, officials' criticism and monitoring their practices.

This report tackles the four Arab countries in which the head of the authority was changed while the whole regimes have not, "Tunisia, Egypt, Yemen and Libya." Bahrain and Syria revolutions were excluded as they did not lead to the change in the regime until now, regardless of the reasons.

The regime's form has changed; its essence has not. Whoever left has left, whoever ran has run and whoever ruled has ruled but most

of the criminals were impune! From the granted immunity to Ali Abdullah Saleh, the former Yemen dictator, to Zine El-Abidine Ben Ali's escape to Saudi-Arabia, to the comic trials following inaccurate investigations to Mubarak and his regime figures, to the murder of Qaddafi and arresting his son, to the impunity of the SCAF in Egypt until now.

No rule of law, no serious and sharp consistent justice.

This report was prepared and finalized at the end of June 2013, only few days before deposing president Mohamed Morsi after millions Egyptians took to the streets against him.

Therefore, it does not include the events that followed his deposition and the bloody events that call for fair and serious investigations so that every criminal gets fairly punished and not added to the impunity list.

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The Arabic Network for Human Rights Information (ANHRI)

Introduction

Most likely, as he was setting himself on fire, Mohamed Bouazizi was thinking of no alternative but to put an end to humiliated and desperate life after he was slapped by a Tunisian policewoman and having his wretched vegetables caret of which he made living confiscated.,. Had Bouazizi been conscious weeks later as he was dying in his bed at the hospital and when the tyrant came down to visit the victim who shook his lands of power, maybe then, he would have grasped a glance at the sweeping impact of his last desperate act. Bouazizi was not destined to see the tyrant flee his palace that was surrounded by the chants of angry people; while different streets of Arab cities were full of similarly angry millions, most of whom do not know Bouazizi, nor did they hear of him, but they have all shared the obvious conviction that their miserable lives have to see an end.

Yet, those millions did not think giving up life is way to end the misery, but it is holding on to it, holding too tight to lose it if necessary. Not willingly, though, but by their tyrants' executioners' will.

One tyrant fled; another was forced to step down; while the third was crushed and killed; the fourth bargained to leave authority for immunity. The fifth has managed to oppress his people's revolution

against him; whereas the sixth is waging a bloody war that is already three years old holding on to his father's legacy. No end has been put to the life of misery that made millions take to the streets, but after what Bouazizi did, the world is not the same. The spark of the revolution that was flamed by the same matchstick in Bouazizi's hands is still flamed in the hearts of many people. The path to achieve justice as they wish must pass by retribution for the souls that were reaped.. Indeed, the path is filled with obstacles and flanked by more blood, not to mention the vision lack of clarity and blurredness. It cannot be viewed as a natural phenomenon as much as it is caused by a player or more.

"Retribution for the martyrs' blood" is the motto that is carried by most revolutionaries who still hold the ember of the Arab spring revolution, in Tunisia, Bouazizi's country, in Egypt, Libya, Yemen and Bahrain. Along with several manifestation of infanticiding their revolutions that doesn't make the revolutionaries feel rest is "Impunity", the opposite face to retribution. In fact, both terms do not exist as is in the theoretical and legal frames that were set by the international community to address the situations that emerge as a result of popular revolutions against oppressive regimes that can be generally categorized under the title "transitional justice." That in itself is a manifestation of the vision's lack of clarity, maybe on the unintentional part. But the intentional fogginess/blurredness

starts at the point where different parties do not clarify the distance between three different concepts: retribution as demanded by the people, legal penalty as provided by the regular system of justice, and lastly the comprehensive concept of transitional justice which should go deeper in removing the roots of the injustices that not only arise in regime oppressing its people's revolutions, but become the main reason why those revolutions broke out.

Transitional Justice Concept

It is a title that includes several procedures taken by different communities at times in their history, characterized by tyrant practices and human rights violations- either under a dictatorship or an apartheid and civil war regime- to achieve the social peace that is lost between categories that were exposed to injustice and others that are convicted by practicing such injustice. International organizations, on top of which is the UN, began showing interest in these experiences, especially with the increasing demand of transferring their experiences when relating conditions take place. This clearly started when the Eastern European countries went out of the Stalinist parties rule and it was repeated with the successive falling of the military dictatorships in the Latin American in addition to the apartheid regime in South-Africa and so on.

Because of the ambivalence of prior experiences between different

levels of success in achieving their goals, a theoretical framework that could determine the mechanisms to achieve the goals of the transitional justice was in need. The International Center for Transitional Justice, an independent international and non-governmental organization that began its work on March 2001, contributed largely in this area. In addition to its theoretical publications that present in details the various basic elements of a transitional justice system, it has provided assistance to large number of countries to build their systems of transitional justice, according to their different circumstances.

The International Center for Transitional Justice defines the system as "a response to widespread or systematic human rights violations, aiming to achieve the due recognition to what the victims endured of violations, and to promote the possibilities of peace, reconciliation and democracy."

The procedures included in a transitional justice system are all or some of the following:

- 1- Criminal claims/procedures in the frame of a traditional system of justice;
- 2- Truth Commissions are official commissions that are allowed to investigate the violations, issue detailed reports with the results and

propose recommendations to treat the impacts of such violations;

3- Compensation programs or reparations are initiatives that the government shall adhere to and they include providing financial and in-kind reparations to the victims and affected people.

4- Reforming security bodies in order restructure them to perform their role and guarantee they will not commit rights violations;

5- Commemoration efforts, including museums, trophies and documentary publications that preserve the memory of the victims and their suffering. On one hand, it is a form of compensation to those victims; on the other hand, it is s a permanent motive for the society to resist the recurrence of such violations.

It should be noted that any of these procedures solely or the incomplete application of them cannot achieve the system' goals in full and would bring the entire system to failure.

Accountability and punishment mechanisms and restructuring in the system of transitional justice

In the previously mentioned brief presentation of the transitional justice concept, it is clear that among the different five types of these procedures, there are three that relate directly to accountability and punishment and restructuring while the fourth

(reparations) depends necessarily on the right execution for the rest. In practical application of transitional justice, we find that the incorrect application of these procedures will lead to the failure of the whole system in achieving the desired goals. This shows in the more successful experiences, of which post-apartheid South African the prominent model.

In 1995, the parliament in South Africa issued a law through which the Truth and Reconciliation Commission (TRC) was established. This commission undertook its work; 2000 public testimonies were given while the commission published the testimonies of more than 22 thousand human rights violations victims in its final report during the apartheid era. But this right beginning began to stumble as a result of loopholes made by political compromises that allowed more paths to impunity. Some of these loopholes were included in truth and reconciliation law itself from the beginning, as the law established a principle of "the right of pardon for the truth." While it is understandable to have a justification to reach the truth; yet it has neglected, in general, creating the balance between two requirements of justice. The first is reaching the truth and the second is accountability and punishment. We cannot neglect any of the requirements for the other. According to the principle of "pardon for the truth", many violators admitted their crimes to the commission in exchange for obtaining a full pardon right and

immunity. Not only did this lead the impunity of those criminals but it also hindered their victims from obtaining compensations due to the lack of possibility to file a civil claim against them because they were pardoned. It reached a point where the in-kind reparations and the violation commemoration were blocked from the victims, for the law allowed the violators to sue victims for just publishing details of their crimes claiming that this would be defaming to who commit the crime as they became innocent and pardoned!

In addition to those who gained the right of pardon by confessing in the TRC hearings, South Africa former President, "Thabo Mbeki" issued pardons for a number of perpetrators of human rights violations to file for what is missing in the work of the (TRC). Those earned a comprehensive pardon following secret trials that victims or their families were not allowed to attend or call for the right of civil prosecution at. At the end, additional number of perpetrators of crimes and human rights violations received impunity without delivering confessions before the commission and without even getting a presidential pardon as a result of an amendment to the prosecution policies which granted immunity from prosecution.

It should be noted that the attempts of the victims and their families to achieve justice did not totally fail as in 2008 Pretoria High Court

ruled that the amendments of the prosecution policies under the apartheid regime are unconstitutional. Hence, the pardon is no longer valid and it is theoretically possible for them to be prosecuted. In 2010, the Constitutional Court upheld a requirement necessary to consult the victims before any political amnesty for the perpetrators of crimes committed against them. Although these moral victories for justice were not translated in practice because they did not oblige the government itself to hunt down the perpetrators, but only allowed the victims and their families to sue them. Due to the lack of the resources needed, there has not been a single trial for any of those who escaped being held accountable for their crimes up until this time.

In conclusion, the experience in South Africa proves that it is of utmost importance to apply accountability and punishment procedures for the success of any transitional justice system. Despite the apparent success of this experience, many still feel that justice has not been achieved and that the perpetrators were not punished after 18 years since the start of the transitional justice path in South Africa. That will lead to many problematic issues, which means that the goal of peace and reconciliation has not been achieved in reality.

The Goals and the Methodology of the Study

This study begins with on the ground scenes where it clearly shows that after two years from the outbreak of what has come to be known as the Arab Spring revolutions, in four countries specifically Tunisia, Egypt, Libya and Yemen, none of these countries achieved any tangible steps to establish the transitional justice system to treat what these countries have witnessed of grave human rights violations by tyrant regimes in previous periods of its history. The study basically hypothesizes that the general tendency in the five countries towards impunity blocks in the development of any of them into a transitional justice system.

In order to prove its basic hypothesis, the study resorts to monitoring the attempts of each country of the five to execute various procedures, which fall under the heading of transitional justice. It monitors the shortcomings of these procedures on a practical level, with a special focus in the conclusion, on the role of the deliberate policy to facilitate the impunity of the perpetrators based on these shortcomings to create a reason for these procedures to be a clear failure.

It is worth mentioning that the apparent role for the impunity policy in obstructing the reform process and the achievement of democracy, in general, in the countries of the Arab Spring does not, for many, necessarily need evidence, especially from the revolutionaries in these countries. But this study aims firstly at supporting this general feel by observing its evidence. Then secondly put this impunity phenomenon in the larger framework of the transitional justice concept. An accurate understanding of such concept is absent from the prevalent discourse in these countries, including reform and achieving justice advocates. Thirdly, the study aims at proposing recommendations to correct the track and treat the shortcomings of what has been made of procedures, in addition to proposing additional or alternative ones.

Egypt

The Egyptian revolution broke out on Tuesday, January 25th, 2011, as the Tunisian revolution inspired Egyptian activists who called for demonstrations all over Egypt on that day, which marks the Egyptian Police Day, and they named it the day of anger. The turnout of tens of thousands of Egyptians who went out to protest that day was surprising. After the protesters had managed to occupy Tahrir Square, the Central Security forces intervened to evacuate the square, using tear gas and birdshots. But the success of the call to demonstrate had paid off that day and the call for demonstrations again on the following Friday, known as "Friday of Anger", began. Sporadic demonstrations have not stopped from January 25th till January 28th, which was the peak of the Egyptian revolution, as the estimated number of protestors across the main Egyptian cities was millions. The Egyptian security forces confronted them violently, using tear gas and birdshots in addition to live bullets. Hundreds of martyrs fell within hours and eventually the security forces had to retreat at the same time that thousands of outraged people attacked police stations and the National Democratic Party (NDP) headquarters in most Egyptian cities and set them on fire. The following evening, Egypt's president ordered the army forces to the streets to maintain order and he declared the curfew in the major cities.

Following the Friday of Anger, Tahrir was occupied by protesters and they sat-in, fighting all attempts to evacuate it, including regime-loyal “thugs” attacks on the Bloody Wednesday known in the media as the Camel's Battle. Million-man marches were successively organized in Tahrir Square and squares of the major cities in different governorates on Tuesdays and Fridays. Workers and government employees went on open strikes in every institution, placing an enormous pressure on the regime. Eventually, Egyptian President Mohamed Hosni Mubarak was forced to step down on February 11th, 2011 and handed over powers to the Supreme Council of the Armed Forces (SCAF).

Revolution and Post-Revolution Human Rights Violations

Friday of Anger January 28th, 2011

Following Tuesday 25th of January 2011 demonstrations (Day of Rage), the demonstrations continued daily on 26th and 27th of January, while the mobilization for Friday 28 of January continued, and "Friday of Anger" it was. Former President Mohamed Hosny Mubarak's regime violations started early that with pre-protests preventive steps, which were represented in two matters:

1. At the dawn of Friday, the security forces launched a wide arrest campaign of politicians, young activists and young people from

opposition parties.

2. With orders from the security forces, tele-communications companies (mobile networks) stopped their services completely. Internet companies also cut off their services in order to obstruct communication among protestors.

These preventive procedures did not affect the volume of the demonstrations that came out of the major mosques in large numbers across the republic, especially, in Cairo, Alexandria and Suez. The target of these demonstrations in Cairo was to reach to Tahrir square at the heart of the capital to occupy it again. The Ministry of Interior plan was to prevent that at any price, which led to bloody clashes between the security forces and demonstrators on the roads leading to the square. The security forces used water cannons, tear gas bombs and then resorted to birdshots and live bullets. Snipers, disturbed on the top of buildings surrounding the square, also used live bullets so tens were killed in a massacre that left more than 830 martyrs and hundreds of injured according to official estimates; while independent estimates exceed the 1000 martyrs figure.

The confrontations continued between the security forces and the protesters until before the sunset as the troops ran out of ammunition and got exhausted so they withdrew in an organized

manner at times and randomly at other times. People of the popular areas (impoverished areas) began attacking police stations and NDP headquarters in all over the republic where tens of these buildings were burnt and destroyed, most significant of which is the main NDP headquarter on Cornish El-Nil near Tahrir square.

Friday of Anger represents the main event in the Egyptian uprising. It is the day that saw the fall of the largest number of this uprising's martyrs in a matter of hours. Unlike the events of Bloody Wednesday, the legal prosecution of the martyrs' killers has been limited so far to those who fell dead on that day. In spite of the large numbers of martyrs and the injured in the following events in the revolution, the prosecution happened to be against the demonstrators

Camel's Battle

On Wednesday morning, February 2nd, 2011, NDP members (the ruling party at Mubarak time) state-officials organized a demonstration supporting Mubarak in Mostafa Mahmoud Square in Mohandsin, Giza. The news circulated about this demonstration's intention to crawl to Tahrir to evacuate it from Mubarak opposition sit-in. Afternoon that day, a number of the supporters arrived in Tahrir and verbal and physical clashes erupted between the supporters and the protestors to develop later into stone throwing.

Suddenly, a group of camel, horse and donkey riders invaded Tahrir from the Egyptian Museum side in a tragically comic scene. While the protestors succeeded in responding to the camel and horse riders' assaults, organized and armed groups of thugs began attacking the various entrances of the square. The attack using stones, "Molotov" bottles and balls of flame continued till the next morning.

The army troops stationed around the square stood neutral on the events and did not move a finger to respond to the aggression that lasted for hours. An exception was an individual act by a military officer who confronted the attackers at one of the entrances and fired in air from his pistol and then from heavy machine gun.

The thugs attack, known in the media as the Camel Battle, left eleven dead at least and close to 2000 injuries on the protestors' side, no death or injury toll was reached on the attackers' side.

Maspero's Events

In protest to demolishing a church in Almarenab village in Aswan, some Copts and Muslims who show solidarity with them went on a sit-in from October 4th, 2011 in front of Maspero building on Cornish el-Nil, nearby Tahrir. The excessive use of force by the Central Security Forces and military police to disperse the sit-in

and attack the protesters was a reason to call for a major march on Sunday, October 9th, from Shubra and to Maspero.

Upon the arrival of the march, where thousands demonstrators, mostly Copts, (with the participation of many Muslims activists) to Maspero, the shooting began, (the source of which is not known until now). Clashes followed between protesters and the military police, then military police armored vehicles began to move randomly among the demonstrators crushing many of them. The violent events continued and the residents of nearby areas intervened after state TV claimed that the Copts were the ones attacking the army personnel.

The clashes led to the death of 27 persons, mostly Copts and many of them died being crushed under the armored vehicles.

The Legal Frame

Throughout the period following the Egyptian revolution, the discussions to draft a law to regulate the transitional justice process were all theorization. In contrast, the unsteady political scene was the cause for the emergence of motions dealing with the pre-revolution period in a way that prevents the return of Mubarak regime's figures to political action, which would threaten some

political forces interests. The political isolation law, which was passed by the dissolved parliament and one of the most prominent efforts at that front., it is a law designed specifically to rule out presidential candidates who belong to the former regime. These efforts failed, in the end, after the Supreme Constitutional Court ruled the law unconstitutional, allowing Ahmed Shafik, the last Prime Minister in Mubarak's time to continue in the presidential elections race to reach the run-off and compete with the Freedom and Justice Party (FJP) candidate (the Muslim Brotherhood (MB) political arm) Mohamed Morsi, who won at the end by a narrow margin.

The idea of political isolation came back to take its course in the new Egyptian constitution that passed in December 2012, where its article no. 232 stated:

"The leaders of the dissolved NDP shall be banned from exercising political action and running for presidential and legislative elections for a period of ten years from the date of the constitution. The term "Leaders" is inclusive of any member in the party's general secretary, the policies committee, or the political office or any member of the People's Assembly or the Shura Council in the two legislative terms prior to the 25th of Januarys revolution".

The political use of legislation also lies at the background of

attempts to pass a new law for the judicial authority under the premise of purging the judiciary at a time when there intense conflicts between the executive authority and the presidential institution backed by the MB and its political arm (the FJP) on one side, and the judicial authority on the other. Such conflict influenced the discussions held at a workshop held by the Shura's Human Rights Committee (in charge temporarily of full legislative tasks, in the absence of the House of Representatives at the time) on transitional justice in Egypt. The same conflict itself pushed the civil parties in the Shura Council to try to push the transitional justice law to pass before the judicial authority one.

Truth Commissions

Forming fact-finding commissions to investigate the events of killing and injuring protesters began during the Egyptian uprising and the early subsequent events of the revolution. The first of these commissions was formed one day before the ousted president stepped down by a decision of his PM, Ahmed Shafik. Forming more commissions for various events followed either by ministerial, parliamentary or presidential decisions. Besides, The National Council for Human Rights issued a number of reports that included the findings of committees formed by its members. They included most of the events that Egypt witnessed the past two years. Below we will show some of the information related to these

committees and their issued reports. .

Fact-find committee formed by Ahmed Shafik

On February 10th, 2011, Shafik, PM at the time, issued a decree no. 294 for 2011 to form a "fact-finding and investigation commission about the youth uprising". The committee was to be formed of: Consultant Dr. Adel Koura, Judge Mohamed Amin El-Mahdi, counselor Dr. Alexander Ghattas, Prof. Dr. Mohamed Badran and Prof. Dr. Nagwa Khalil. The decree assigned the commission "to investigate the facts and take necessary action regarding what the Egyptian scene witness of events at the peaceful youth uprising". The main points of specifications were:

- Finding facts about the illegal practices that happened at the above-mentioned events;
- Taking necessary actions to hear witnesses collect information and summon whoever is in connected to the fore-mentioned events.
- Assigning all state and concerned agencies to provide the commission with whatever it asks of information and data..

The commission announced on April 19th, 2011 submitting the report to Consultant Mohamed Abdel- Aziz al-Gendy, former Minister of Justice, and Abdel Meguid Mahmoud, former

Prosecutor General. It has also distributed a summary of the report to the media. According to what was announced by Chancellor Omar Marwan, the Commission Secretary –General, the report was of 300 pages and included an explanation for the incidents of firing and running over the demonstrators and the resulting deaths and injuries. The report also included the events of Camel Battle, carried out by thugs, illegal detention of some citizens, the state of lawlessness and what was accompanied of events and cutting off communications services, the Internet and some media channels.

It is worth mentioning that according to available information, what the report documented was not used to file any criminal claim, and it was not attached as a document in any of the killings and injuring of protesters cases before the court at the time.

National Council for Human Rights Report

The National Council issued its 24-page report on the events of the revolution in March 2011 and it presented the results of fact-finding and investigation under the following headings:

- A brief of the events development and chronological order in the period from January 25th, 2011 to February 11th, 2011.

- Crimes and violations committed during the revolution events.
- Murder crimes during police attempts to disperse demonstrations.
- Demonstrators killing by the NDP militias.
- Physical assaults and injuries resulting from demonstrators' oppression.
- Kidnapping, arrests and torture crimes.
- Media blackout.
- Misinformation and incitement in the state media.
- Journalists and human rights activists' oppression.

Fact-finding Commission, formed by Presidential order

On July 5th, 2012, former Egyptian President Mohamed Morsi, issued presidential decree no. 10 for 2012, amended on the same day, to form commission to collect information and evidence and find facts in the events of demonstrators murder, attempted murder and, injury all over the country.

The decree states in its first article on the formation of the committee to be headed by Counselor Mohammed Ezzat Aly Cherbash and include members Counselor Omar al-Khatib Marwan , Counselor Mohamed Mohamed Badran , General Emad Hussein Hassan, Mohammed Eldamaty, Khalid Mohamed Badawi , Mohsen Bahnasi; Prosecutor General Assistant and Interior Minister's Public Security Assistant, the Head of the National Security Agency in the Egyptian Intelligence and six representatives of the martyrs and the injured families as well as the revolution youth as observing members namely: Ali Hassan, Ali El Sayed Muhammad Junaidi, Ramadan Ahmed Abdou, Suleiman Hassan Mohamed, Ahmed Ragheb and Randa Sami Mohammed .

The decree included setting the commission powers in what follows:

- Reviewing all procedures carried out by the state executive bodies, stating the extent to which they are cooperating with the judiciary in this regard and stating any form of ineffectiveness for these bodies, if any.
- Examining events locations across the country.

- Collecting information and evidence about the mentioned incidents to reach the truth.
- Discussing the forces, the witnesses and the circumstances that participated in the incidents.
- Collecting material traces and all the evidence of the incidents in question.
- Stating the facts, information and incriminatory evidence on crimes committed against the demonstrators and were never investigated.
- Reviewing the investigations and prosecutions.

The decree obliged the committee to issue a report with the results of its work with recommendations in no later than two months from the date of issuance. The Commission handed in its report to President Morsi on the January 3rd, 2013, who ordered a copy to be handed to the Prosecutor General.

The report's content is not publicly published until today. Other than that, local and foreign newspapers published what they claimed to be leaked parts of the report.. The most significant leaks were testimonies for eye-witnesses who claimed that the army

tortured and illegally killed detainees. Some claimed an unspecified number of killed people were buried in mass graves.

Criminal Trials

The Trial of Mubarak, his two sons and his Interior Minister and his top aides

Case no. 1227 for year 2011. It was annexed to Case no. 3642 for 2011

the charges: killing and injuring of protesters in Egypt cities - profiteering and financial corruption

The defendants: former President Hosni Mubarak, former Interior Minister Habib al-Adli and six of his former top assistants: Gen. Ahmed Ramzi, former Head of the Central Security Forces, Gen. Adly Fayed , former head of the General Security Authority, Gen. Hassan Abdel Rahman, former head of the State Security Investigations Service, Gen. Ismail al-Shae'r , former Cairo Security Chief, Gen. Osama al-Marasy, former Giza Security Chief and Gen. Omar Faramawy,^{6th} of October City Security Chief.

Trial Happenings :

–On April 10th, 2011, former Prosecutor General "Abdel-Meguid Mahmoud" summoned Mubarak for interrogation on the killing of demonstrators, and his two sons Alaa and Gamal Mubarak for investigation in charges of profiteering and abuse of power;

–On April 13th, 2011, Prosecution issued an order to detain Mubarak and his two sons for 15 days pending investigation after the first investigating hearing. On the same day, Mubarak was transferred to a hospital in Sharm el- Sheikh after a sudden deterioration in his health, while his two sons were transferred to Tora prison in Cairo.

–On April 18th, 2011, the Prosecution heard the testimony of General Omar Suleiman, former Vice-President and Director of the General Intelligence for a long time at Mubarak's era, on the crimes under investigation.

–Alternately, provisional detention of Mubarak and his two sons kept on being extended on April 22nd and then on May 10th for 15 days at a time before the Prosecutor General decided on May 24, 2011, to send them to the Criminal Court.

– Counselor Ahmed Refaa't, Head of Cairo Criminal Court began to review the two cases separately on Wednesday, August 3rd. Reviewing the first case (Adly and his assistants) continued on the following day and it was decided to postponed to August to 14th.

–On September 7th, 2011, the court decided to summon Field Marshal Mohamed Hussein Tantawi, Head of the Supreme Council of the Armed Forces (SCAF), his deputy, Lieutenant Gen. Sami Annan, Chief of Staff of the Armed Forces, Gen. Omar Suleiman, former Vice-President and Former Interior Ministers Gen. Mohamed Wagdy and Gen. Mansour al-Issawi, to hear their testimony on the happenings of the cases at hand.

- Reviewing the case was on freeze to review a request of revoking the court's board, which was rejected in the end;

–On January 5th, 2012, Public Prosecution Representatives demanded Capital Punishment to former President Hosni Mubarak and his Interior Minister, Habib al-Adly at the end of their pleading.

–On February 22nd, 2012, the hearings were closed and the court decided to postpone the hearing to June 2nd to rule. The number of hearings until then reached 48 in which exhibits of the case were unsealed, the defense and plaintiffs' requests were heard, witnesses were cross-examined and prosecution, defense and plaintiffs' pleadings were heard.

– Cairo Criminal Court, headed by Judge Ahmed Refaat, sentenced, on June 2nd, 2012, each of the ousted president Hosni Mubarak and his Interior Minister Habib al-Adly a life

imprisonment, acquitted his assistants, and ruled an abatement on charges of profiteering, abuse of power and manipulation prices of exporting gas to Israel, that were filed against Mubarak, his two sons and businessman Hussein Salem.

–On June 4th, 2012, the Prosecutor General decided to appeal the acquittals of el-Adly’s assistants and the abatement of the cases of profiteering and abuse of power. On July 31st, 2012, Mubarak and al-Adly’s defense filed the appeal to their verdict.

- On January 13th, 2013, the Court of Cassation decided to cancel all sentences ruled for the case and put them on re-trial.

–On March 3rd, 2013, Cairo Court of Appeal decided in the hearing of April 13th, 2013 to start a re-trial before the Tenth Circuit Criminal Court of Cairo, headed by Judge Mustafa Hassan Abdullah.

- On April 13th, 2013, Judge Mustafa Hassan Abdullah stepped down from the case.

–On May 11th, 2013, the case was reviewed again before Northern Cairo Court headed by Judge Mahmoud Kamel al-Rashidi, who decided to postpone the hearing to June 8th, 2013.

Camel’s Battle

Case no. 2506 for 2011

The charges: intentional murder, attempted murder and causing permanent disabilities and feeding incitement against the demonstrators in Tahrir and Abdel Moneim Riad squares downtown Cairo.

Defendants: 25 defendants of members and leaders of the dissolved NDP, businessmen and public figures, most notably; Ahmed Fathi Sorour, former Speaker of Parliament; Mohamed Safwat Sherif, former Head of the Shura Council, and the NDP's Secretary-General; Aisha Abdel Hadi, former Minister of Manpower; Murtada Mansour, well-known lawyer.

Trial Happenings:

– The referral order of the case included; a list of incriminatory evidence, which included the testimonies of 87 witnesses for prosecution and 29 notes for investigation advisors that prove the charges against the defendants, in addition to a number of medical reports for victims and the injured, photographs and CDs which contain video clips.

–It was decided to review the case on August 20th, 2011 hearing before the Fourth Circuit Criminal Court of Cairo, headed by Judge Adel Abdel Salam Gomaa. But he excused himself for not handling

the case; to be transferred to the Department of Counselor Mustafa Hassan Abdullah.

- The case review began on September 11th, 2011 hearing and the court decided to ban the broadcast of the case hearings.

- In successive hearings, the court has been listening to Gen. Hassan Ruwaini, Commander of the Central Military Region and a former SCAF member. The court has also listened to testimonies of a number of politicians and public figures including Mohamed El-Beltagy, dissolved Parliament FJP; Engineer Mamdouh Hamza, and the media personnel such as Khairy Ramadan and Tawfiq Okasha.

- After 10 court sessions, the trial was stopped as one of the defendants (Murtada Mansour) requested a callback request for the court. The hearings resumed after five months after the Court of Appeal rejected the request.

- On October 10th, 2012, Cairo Criminal Court, headed by Judge Mustafa Hassan Abdullah, ruled with abatement for one of the defendants, "Abdul Nasser al-Jabri" for his death, and acquitted.

- On Wednesday, May 8th, 2013, the Court of Cassation rejected the appeal filed by the prosecution in the Criminal Court provisions of the case form. That is due to the General Prosecution delay in filing the appeal on its due date as prescribed by law!

Martyrs Killers Trials

In dealing with the happenings of killing and injuring the demonstrators on Friday of Anger (January 28th, 2011), the Public Prosecution chose to dissect the incidents according to geographical areas where they took place. It then assigned sub-prosecutions located across the country the task of investigating the incidents that happened in their geographical scope. This led the prosecutors to refer 34 different demonstrators murder, attempted murder and injury cases to about 26 different criminal courts that list as follows:

Dar el-Salaam; Darb al-Ahmar ; Kerdasa Center; Shubra Al Khaimah Police Station I; al-Mareg; Sayeda Zeinab; al-Arab; Sharabeya; Damanhur; Boulaq Dakrour; Ain Shams; Hadayek al-Koba; Mansheya; Tanta Police Station II; Beni Suef; Damietta Police Station; Mansoura Police Station II; Zagazig Police Station II; Suez; al-Zayawa al-hamraa; Shubra; Naser City Police I; Waili; Maser al-Qademah.

In many cases, more than one case were referred to one court as for instance, 6 cases were referred to the criminal court of Zawyah al-Hamraa, and four cases were referred to the Shubra's criminal court.

Defendants: Heads of security and police officers, it is noted that almost all of the defendants except for a limited number have not been detained on pending investigation or put to trial. They were released bailed on their police jobs in which they remained or were transferred but many of them were promoted!

The charges: murder and attempted murder, and incitement, as well as vandalizing public and private property.
Happening of the case:

–In the past two years, the majority of these courts issued a ruling light first degree sentences, and in an inventory that goes back to October 2012, out of 192 defendants, there had been sentences against 20 defendants only (including the ousted president and his Interior Minister). 101 defendants were acquitted, and 71 defendants are still awaiting trial.

- Models of sentences issued in killing and injuring protesters cases: –

–On November 30th, 2011, The Criminal Court of Zawyah al-Humraa its first ruling in the murder and attempted murder of protesters cases, and acquitted the only defendant in Case no. 3958 for 2011,-policemen " Subhi Abdul Wahab Ismail " from the charge of attempted murder of an injured in front of Zawyah al-Humraa police station, Northern Cairo.

–On March 20th, 2012, Criminal Court of Hadayek al-Koba settled in Tagmou al-Kahmis issued its ruling in the Case no. 2370 for 2011, in which 14 police officers from Hadayek al-Koba police station (Eastern Cairo) were accused of killing 26 martyrs and injuring 49. It released three of the officers and sentenced 11 a year's imprisonment with probation.

–On May 22nd, 2012, Boulaq Dakroul Criminal Court ruled in Case no. 5536 for 2011, where 14 policemen and officers were accused of killing five martyrs and injuring 17. The court sentenced five of the policemen and officers to 10 years rigorous imprisonment, a year's imprisonment with probation for two, and acquitted of the remaining.

–On June 6th, 2012, in Criminal Court Kerdasa, settled in Tagmou al-Khamis, ruled in Case no. 3410 for 2011 where 13 policemen and officers were accused of killing of 12 martyrs and injuring of 33. It acquitted all the defendants.

Tunisia

On December 17th, 2010, Mohammed Bouazizi flamed his body to be the spark of the revolution whose demonstrations broke-out the following day directly in the area of Sidi Bouzid. It has continued to grow and expand to include all the areas across Tunisia until the president was forced to flee out of the country on Friday, January 14th, 2011.

According to the final report of the fact-finding committee, that was formed later, the number of those who died due to the excessive use of force and live ammunition by security forces to deal with the protests is 338 people while more than 2000 were injured.

After the departure of Ben Ali, the country's Prime Minister Mohamed Ghannouchi announced himself an interim president, a case that did not last for more than one day, for the Constitutional Council decided to use article no. 57 of the constitution, concerned with regulating the transfer of power in the event of a vacant president's post due to his inability to perform his duties.

According to this article, the House of Representatives Head, "Fouad Mebazaa", took over the position of an interim President.

On October 23rd, 2011, the Tunisian people elected the Constituent Assembly, to be the temporary parliament and it would be entrusted with writing a new constitution for the country. The Assembly consisted of 217 members and the members chose "Moncef Marzouki" a new president and a government head.

The Legal Framework

Transitional Justice Motion

In terms of shape and form, the process of preparing a draft law of transitional justice in Tunisia enjoyed ideal characteristics that were supposed to produce satisfactory results. A National Dialogue Committee on transitional justice and its law was formed. Then, this committee branched several regional committees that held their respective meetings, seminars and hearings in Tunisian cities in order to gather the views of all parties on what should be included in the law to achieve the goals of uncovering the truth,

accountability, reconciliation, compensation and reparation. But these arrangements faced many obstacles including poor material resources, which did not allow access to all those who were interested to participate in the dialogue, especially from the affected victims and their families. The path of military trials for the killers of the revolution martyrs, plagued with many loopholes, had a negative impact on the turnout of the families of the victims to participate in the dialogue committees. They have also largely doubted the intentions of the special dialogue committees on reconciliation, expecting them to be a prelude to finding a legal basis to grant immunity to the perpetrators of crimes and abuses. On the opposite side, the misunderstanding of the dialogue committee's purpose behind discussing compensation and reparations had resulted in a large turnout of attendance to its meetings, thinking it gathers applications for those wishing to obtain compensation.

In addition to the problems that accompanied the national dialogue sessions on the motion, the project itself was disappointing to many people, including those who participated in the dialogue, especially in the suburbs, and many expressed their resentment regarding ignoring specific demands and recommendations for them.

On the other hand, observers and human rights activists saw that the motion has been used as an opportunity to polish the current

government by repeating the ceremonies of handing it over from one place to another. The Ministry of Human Rights and Transitional Justice announced completion of the project at a ceremony held beginning of November 2012, followed by holding another ceremonial in the presidency of the government on November 2nd, 2012 in which the bill was delivered to Prime Minister, Hamadi Jebali. While waiting for the Cabinet Council to pass the project, it was handed over to the President Moncef Marzouki with a new ceremony on November 5th, 2012. And while the Cabinet's Council approved the draft law early December, 2012, its delivery to the constituent assembly was delayed until January 22nd, 2013. And it has been on hold till the time of writing this report.

The most important contents of the motion

The motion consists of two titles (key parts), the first deals with the foundations of transitional justice, while the second deals with the truth and dignity committee assigned to implement the tasks that constitute the transitional justice system.

The first chapter contains definitions that include transitional justice, revealing the truth, memorization, accountability, reparations, institutional reform and reconciliation.

The bill's most important provisions regarding the Truth and Dignity Body:

1. The body's work covers the period from January 1st, 1955 to the issuance of the law..
2. The body's time frame is four years from its founding date to be renewed once for one additional year with an explained decision by the body to be raised to the Council of Representatives 3 months prior to its original working time date.
3. The body shall consist of 15 members with a representation of either gender not less than one-third and it is to be selected by the National Constituent Assembly.
4. Among the members, there shall be two representatives of victims' associations and two representatives of the human rights associations nominated by their respective organizations. The remaining members are to be chosen from disciplines related to transitional justice.

5. The body shall enjoy the powers to receive complaints of violations and will be for a period of a year since the start of its work with an extension for an additional 6 months if deemed necessary by the body.

6. The body shall enjoy the privilege of holding public or secret hearings and have the right to summon anyone it sees beneficial to listen to their testimony. It has the right to ask all government agencies and executive bodies to provide it with the information it considers useful in completing its work.

7. Nobody is allowed to refuse the body's requests for information or documents under the pretext of maintaining professional secrecy.

8. Whoever scorns the body (with whatever is considered scornful to a judicial body) is punished with six months imprisonment and shall be punished with the same penalty in case of refraining to appear before it when summoned. Whoever hinders the body's work deliberately or discloses any confidential information accessed during working there is punished in the same way.

9. The motion obliged the body to submit an annual report for the duration of its work to the House of Representatives and a final report that shall include; the facts reached; setting responsibilities; reasons that led to the occurrence of violations and the recommendations to prevent the occurrence again; and measures to

be taken to maintain the national reconciliation and protect the rights of individuals, particularly women and children.

10. The government shall, within a year after the end of the body's term, develop an action program to implement the body's recommendations and suggestions.

Military Judicial Laws Amendment and Restructure

Having the civil justice referring the majority of the cases to military judiciary was one of the most controversial issues raised with respect to prosecuting those involved in the killing and wounding of protesters during the revolution, as well as putting former regime figures on trial for different corruption cases. In an attempt to alleviate the fears of many, and in particular international human rights organizations regarding the independence of the military judiciary and fulfilling the requirements for fair trial procedures, the interim government issued, on July 29th, 2011, two decrees numbered 69 and 70. The first amends and adds new articles to the journal of the pleadings and military sanctions (military procedures and sanctions law). The second organizes the military judiciary structure and the military

judges' statute. The two decree laws have introduced basic amendments, the most important of which:

1. Revoking the Minister of Defense authority to suspend the execution of the military judiciary sentences.
2. Revoking the obligation of the public prosecution to notify the Defense Minister and take his approval before beginning criminal procedures.
3. Developing a Military Appeal Court that has the right to review the rulings of primary military courts.
4. Developing appeal circuits to review and confirm the charges issued by the investigating judges. These circuits shall consist of a military judge and two civilian judges.
5. Obliging the military courts to apply the criminal (penal) code in all phases of litigation.
6. Appointing the heads of the Military Appeal Courts and the heads of the Permanent Military Courts in Tunis, Sfax and Kef as civilian judges.

Truth commissions

Besides the Fact-Investigating National Committee concerning the events of the Tunisian uprising, two committees were formed to investigate the facts concerning the events of violence in Bourguiba Avenue (April 9, 2012) , and the events of Siliana (end of November 2012) . As it is noted, the latter two committees were formed as a result of public pressure that resulted from the two events, disregarding many violence and human rights violations events in multiple regions of Tunisia for more than the revolution's two years.

1 –Fact-Investigating National Committee

This committee was announced on January 17th, 2011 and was formed virtually on February 2nd, 2011, before the interim president "Fouad Mebazaa" decree no. 8 for 2011 on the committee's functions, formation, and prerogatives was issued on February 18th, 2011., The decree stated that the chief is to be appointed from national public figures and shall appoint not less than 10 members in consultation with the concerned organizations. One of the members is to be the committee's rapporteur. The decree limited

the committee work to "finding facts in the abuses and violations recorded in the events in Tunisia in the period from December 17th, 2010 to the end of its purpose".

The decree defined the committee mission in: receiving complaints from citizens whose rights or any of their relatives rights were violated; accessing documents related to administrative or private facts under investigation; summoning normal people or their representatives to testify on the facts under investigation. Otherwise, the decree deemed all testimonies to the committee and the documents it reviews secret. Moreover, it prohibited the publication of the committee final report before it is submitted to the president.

2 –Fact-Finding Parliamentary Committee on April 9th, 2012 Events

April 9th, 2012 events took place when demonstrators challenged the decision of the Interior Minister “Ali Laird”, affiliated to Annahdah Party, to ban demonstrations on Habib Bourguiba Avenue at the heart of the capital, Tunis. The security forces used excessive violence against the demonstrators, injuring dozens.

While the Interior Ministry announced the commencement of an internal investigation about the events, it has not issued any statement or report later to reveal the results of this investigation and did not identify those responsible for it or issued any disciplinary decisions against any of the officers and security personnel involved in the use of violence against the demonstrators. The Fact-Finding parliamentary Committee was formed as public pressure mounted. The Constituent National Assembly formed a committee of 22 people from its members; yet, for a year of its formation, the committee did not issue any report on its work. It also did not hear but only two testimonies. Its president claimed that the committee's members are preoccupied with the Constituent Assembly work and that they lack the experience for that kind of committee's work especially that it is the first of its kind in the history of Tunisia.

But, in reality, the most important reason why the committee lacked effectiveness is that the current laws do not provide it with any authority to carry out its mission, which has led to the resignation of some members as they did not see the point of its continuity. The first resignation was in December 2012, while ten others resigned in April 2013.

Criminal proceedings

According to statements attributed to a source at the Ministry of Defense in an interview with the media on June 17th, 2011, the Civil Justice has referred, until then, 182 cases of security forces killing and injuring people in the revolution events of which the fugitive president "Zine El-Abidine Ben Ali", his Minister of Interior "Rafik Belhaj Kacem" and other leaders, officers and security personnel are accused, all with their cases. The cases were distributed among the three permanent military courts in Tunis, the capital (130 cases), Sfax (51 cases) and El Kef (one case). According to the same statements, the first of cases was awaiting a hearing by the Military Court in Sfax on June 27th, 2011. Following the statements date, more cases were referred to the three courts. Military Appeal Courts issued final rulings on some cases, while the majority is still being reviewed before the Military Primary and Appeal courts. Some are not open for review up until writing these lines. Below we present models of these cases:

Kef Permanent Military Court

The Case of Thala, Kasserine, Kairouan and Tajerouine Martyrs

Defendants: 23 defendants that are former Tunisian president "Zine El Abidine Ben Ali", former Interior Minister "Rafik Belhaj Kacem", former Head of Security "Ali Aseraati", National Security General Director "Adel Taioiri", former Interior Minister "Ahmed Friaa" and number of Security Forces leaders, officers and personnel.

Charges: murder and participating in the murder of dozens of protesters in Thala, Kasserine, Kairouan and Tajerouine.

The proceedings

–On August 17th, 2011, Fawzi Ayari, Military Investigation Judge in the Permanent Military Court of El Kef, issued the charges against the 22 defendants in the case.

- On September 6th, 2011, Criminal Circuit of the Military Court of Appeals of El Kef reviewed the list of charges and endorsed it.
- The El Kef Primary Military Court began the hearing the case on

November 28th, 2011 and began the pleading (proceedings) on May 21st, 2012.

–On May 23rd, 2012, at the final hearing, the Public Prosecutor requested a death penalty to "Zine El-Abidine Ben Ali" and maximum punishment to the rest of defendants from his assistants.

–On June 13th, 2012, the Criminal Circuit in the Permanent Primary Court of El Kef ruled in absentia life imprisonment to "Zine El-Abidine Ben Ali", 12 years to "Rafik Belhaj Kacem" former Interior Minister, 15 years to "Wesam Alorttani" former Head of Hayy El Nour police station in Kasserine; and it sentenced imprisonment period from 10 months to 10 years against 10 other defendants and rejected hearing the case against nine defendants.

Permanent Military Court of Sfax

Sfax and Kerkennah Martyrs Case

Case no. 12096 - Martyr Omar al-Hadad from Sfax and the two injured Makram Buashehadh and Najib Khcharm Kerkennah.

Defendants: Tunisian president "Zine El-Abidine Ben Ali", former Interior Minister "Rafik Belhaj Kacem" and Head of Security "Ali

Aseraati", Public Security Majors "Badr al-Din Hachanh" and "Maher al-Faqih", and the security inspector "Hassan al-Naaway".

Charges: murder and participating in it and causing injury.

The proceedings

- In the court hearing on Monday, February 25th, 2013, former Prime Minister "Mohammed Ghannouchi" appeared before court and denied all the accusations of shared responsibility in the killings charged against him and confirmed that sovereign ministries, including the Ministry of the Interior, were receiving and following the orders of former President Ben Ali directly.
- On Tuesday, April 30th, 2013, the court ruled life imprisonment in absentia to Tunisian President "Zine El-Abidine Ben Ali ", 10 years in presence, to former Interior Minister "Rafik Belhaj Kacem" and to dismiss the case against both; Head of Security "Ali Aseraati" and Public Security Majors "Badr al-Din Hachanh" and "Maher al-Faqih" and Security Inspector "Hassan al-Nawawy" (who is accused of murder).

Permanent Military Court in Tunis

Alordanin Case

The Alordanin events occurred on the nights of 15th to 16th January, 2011 when the residents of the area tried to stop a car carrying "Qais Ben Ali" the fugitive president's nephew as he was trying to flee with the help of a number of policemen and officers who opened fire on the people, which led to the deaths of four (six?) people and wounding dozens.

Defendants: former President "Zine El-Abidine Ben Ali" and his wife " Leila Trabelsi", and his nephew "Qais ben Ali" and 14 policemen and officers.

Charges: conspiring against the State Internal Public Security, forcing the masses to attack one another with weapons, provoking disorder, murder and looting.

The proceedings

–On Wednesday, May 4th, 2011,Sousse Primary Court investigating judge referred the defendants’ files to the charging circuit at Sousse Court of Appeal.

–On Thursday, June 23rd, 2011,Circuit 20 at the Court of Cassation, headed by former Interior Minister "Farhat Rajhi" decided to uphold referring the case to the military judiciary.

- On November 2nd, 2011, the Primary Permanent Military Court in Tunis began to review the case.

- On March 14th, 2012, “Qais Ben Ali” was arrested.

-On June 13th, 2012,the Primary Permanent Military Court in Tunis sentenced former president "Zine El-Abidine Ben Ali" in absentia to 20 years and acquitted his wife "Leila Trabelsi" ,the court sentenced in absentia the fugitive defendants to 10 years, some of the detainees to 5 years, while the case was dismissed for other defendants. It ruled 150 and 250 thousand dinars compensation to the victims’ families.

–On August 16th, 2012, the Criminal Military Court of Appeal began reviewing the appeal on the Primary Military Court rulings.

–On March 26th, 2013, the Criminal Military Court of Appeal upheld the sentences to imprison "Zine El-Abidine Ben Ali" for 20

years and the acquittal of his wife "Leila Trabelsi"; while it reduced prison sentences to four of his assistants (personnel) security to two years each.

Yemen

The demonstrations of opposition forces and factions against former president "Ali Abdullah Saleh", in office for over 33 years of which 22 he was president to Unified Yemen, began in January 2011 inspired by the Tunisian revolution. The protests escalated with the outbreak of the Egyptian revolution on January 25th and it took the form of squares sit-ins and mass demonstrations starting February 11th, 2011 in conjunction with the ousting of former Egyptian President "Hosni Mubarak". The first day of these mass demonstrations was called the Day of Anger; named after the day of anger in Egypt 25th of January and 28th, the Friday of Anger.

Practically, the demonstrations continued until current president "Abed Rabbo Mansour Hadi" was elected in February 2012. An action resulted from "Ali Abdullah Saleh" signing an arrangements agreement in Riyadh on November 23rd, 2011 that handles the transfer of power in Yemen, prepared according to an initiative by the Gulf and sponsored by the United Nations, the United States and the European Union.

According to international organizations estimates, the suppression of Yemeni Central Security Forces, army and Saleh supporters to the demonstrations resulted in a number of martyrs that reached

270 in the period from January to December in 2011. Victims are estimated to be 2,000 with thousands injured in the events of the revolution itself or of armed clashes between regime forces and Saleh loyal gunmen or dissidents.

The legal framework

The direct reason behind the intervention of regional and international forces to impose the arrangements of peaceful transfer of power in Yemen is their fear of escalating confrontations between "Ali Abdullah Saleh" and his opponents to an open armed conflict that would threaten their interests, especially with the strong presence of al-Qaeda in Yemen. It began with the Gulf Cooperation Council (GCC) initiative, which Saleh refused to accept until the US and EU intervened, resulting in the issuance of the Security Council resolution no. 2014 to support the initiative. Saleh signed the transfer of power arrangement agreement in the Saudi capital, Riyadh on November 23rd, 2011.

The Security Council resolution with the Riyadh Agreement represented a starting point of the legal framework for the

transitional justice system in Yemen. In fact, both set the first brick of the impunity policy as both desire to settle political conflict in favor of their interests, which makes the goal of achieving justice less of a priority.

1 - UN Security Council Resolution no. 2014

The resolution was issued on Saturday, October 22nd, 2011; here it's most important items:

- 1 . Stressing the need to conduct impartial, independent and comprehensive investigations consistent with international standards on the abuses and human rights violations (alleged).
- 2 . Stressing on the perspective of the Human Rights Council of the United Nations on not granting any immunity to ensure full accountability.
- 3 . Calling upon Ali Abdullah Saleh to the immediate signing and implementing of the initiative adopted by the (GCC).
- 4 . Expressing serious concern over the rising threat from al-Qaeda in the Arabian Peninsula and the risk of recent terrorist attacks in some areas in Yemen!

In resolution phrasing shows the contradiction between stressing

the need for impartial investigations and as well as the refusal to grant any immunity on one side and the invitation to sign the (GCC)initiative, which explicitly obliges the Yemeni parliament to grant Ali Abdullah Saleh the complete immunity from prosecution on the other side. Then, it turns out that the real motive behind the resolution is the concern for the growing threat of al-Qaeda in Yemen, which has in fact led the Security Council to support the political settlement in a way that wasted in part the principle of accountability and punishment.

2 - Arrangements for the Transfer of Power Agreement

Drafting the initiative began in April 2011, and while Saleh expressed his approval, the opposition rejected it for granting immunity to Saleh. But with time, they approved it and signed it by the end of May 2011, while Saleh procrastinated signing it till the end of November 2011. The initiative's most important points are:

- 1 . Forming a national unity government between the General People's Congress (GPC)party, headed by Saleh, and the opposition forces within a week.

- 2 . Having the House of Representatives, including the opposition,

adopt the laws that grant immunity from prosecution to the president (Saleh) and those who worked with him during his reign.

3 - Law No. 1 for 2012

Based on the transfer of power arrangements agreement in Yemen, the Yemeni House of Representatives passed the law in January 2012; its most important points are:

- 1- Granting Ali Abdullah Saleh full immunity from prosecution.
- 2 . Applying immunity from the criminal prosecution to officials who have worked with the president in the state's civil, military and security institutions that were in connection with politically motivated acts taken while performing their official duties; and this does not apply to terrorism.
- 2- 3 . Obliging the National Unity Government to provide a transitional justice law.
- 3- 4 . Immunizing this law from being challenged by placing it as part of state sovereignty.
- 4- 5 . Applying the law's provisions on the incidents during the rule of Ali Abdullah Saleh and until the law was passed.

4 - Transitional Justice Motion

This law was drafted by the National Unity Government, formed on the basis of the transfer of power arrangements agreement. Its first draft appeared in February 2012 and it has been discussed in the House of Representatives of Yemen, yet the debate has seen increasing conflicts; besides, many protested against it in the Yemeni street, as they considered it inadequate to achieve the desired justice, especially that it is based on the immunity law, which was issued a month before its preparation.

The most important provision of law is establishing "the National Equity and Reconciliation Body" and the law in its second chapter reviews (Articles 5 to 12) the description of the body, its composition, tasks, and funding... etc. The law's most important provisions on the body, are what follow:

- 1 . The body is an independent non-judicial entity, which aims at establishing national reconciliation with regard to political conflicts consequences since 1994; while allowing it to consider victims complaints of gross violations that have occurred since 1990.
- 2 . The body shall consist of nine members of men and women with

specifications; most important of which is that none of them have worked in the police, any other security body or joined the army or any armed organization in the last five years and at least three members not belonging to any parties of the recent conflict (2011 revolution).

3 . The body's work is to investigate allegations of human rights violations; hear the victims of these abuses and eyewitnesses in relation thereto; report the means of compensation and moral and material reparations necessary, ensure the treatment and rehabilitation of patients; reveal the truth on what happened from the events of the period prescribed by law; and determine responsibilities of state agencies and any other parties for human rights violations under investigation.

4 . The law grants the body the powers to summon witnesses and to hear them and get all the official documents required, access government archives and information from all sources; develop and implement reparations standards; search places that have seen violations and crimes; and form specialized committees to assist in carrying out its functions.

5 . The law obliged the body to deliver two reports, one is an interim report that shall be submitted to the National Dialogue Conference and the other is a comprehensive one that shall be provided at the end of the body's term set by law, to maximum 4

years since its establishment.

Besides the "National Equity and Reconciliation Body", the law provides a set of procedures in its third chapter to achieve the promotion and protection of human rights; the most important of which is forming an impartial independent permanent national body or institution for human rights according to international standards.

Truth commissions

All efforts to establish any independent commissions to investigate human rights violations, whether what happened with the revolution events or in conjunction with it, or what happened during Ali Abdullah Saleh's 33-year rule have stumbled. As the transitional justice bill did not see the light up until writing this report, the National Equity and Reconciliation Body that the law states its establishment was not yet formed or performed its work.

On September 22nd, 2012, current president of Yemen "Abd Rabbo Mansour Hadi " issued decree no. 140 for 2012 to form a committee to investigate allegations of human rights violations

during the Yemeni revolution. The law provided some features for this committee, most important of which are:

1 . To be consisted of ten members qualified with efficiency, integrity and independence, and never to have been linked to any entity or organization that is a subject of accusations of human rights violations, and women to constitute at least 30 % of the members.

2 . Besides the powers and functions that are similar to those of the National Equity and Reconciliation Body, stipulated by the transitional justice law, this committee granted was granted the authority to take the necessary legal procedures to refer those accused of crimes to the judiciary.

3 . The committee's time frame is from January 2011 until the end of December of the same year and its work shall extend for a period of six months.

Despite the issuance of this decree in September 2012, it was not formed up until now and the specialized administrative court on April 30th, 2013 accepted a case against the Yemeni President "Abed Rabbo Mansour Hadi" for his slowness in forming this committee for six months after his decree.

Criminal proceedings

Despite the huge number of martyrs and wounded who fell by the security forces and the army as they used the utmost violence to face the demonstrations and the sit-ins opposing former president "Ali Abdullah Saleh" or during armed clashes between forces loyal to Saleh and dissents forces or tribal gunmen, the Yemeni judiciary -until today-reviewed only one case for one of the incidents that saw the fall of these martyrs and injured, the “Friday of Dignity”. Below we review first the most important incident that resulted in the death and injury of protesters or civilians, and then we stop to review the path of the criminal investigation and trial of the “Friday of Dignity” incident:

1 - The Most Important Events of the Yemeni Revolution

A – Friday of Dignity

It is what demonstrators named their March, that was organized on Friday, March 18th, 2011. About tens of thousands of demonstrators participated in the march that was the largest to take place in Tagheer Square in the Yemeni capital, Sanaa.

As the demonstrators, gathered at south of the square, finished the Friday prayers, dozens of armed and masked men in plainclothes began to shoot. Some gunmen were in the street while others climbed trees and some others took the rooftops surrounding the square and nearby. One of these houses was the home of one of the officials, "Ahmad Ali Mohsen al-Ahwal" Mahawet governor (a governorate in northern Yemen).

The shooting lasted for three hours where at least 45 fell dead and injured; the number then rises with the calculation of those who died later because of their wounds to be at least 52 martyrs. Some of those were killed by the Central Security Forces, which did not move a still to stop the attacks on the demonstrators. It faced those who fled by hot water cannons and live bullets.

That indicates that the attack was deliberate and meticulously planned a while before the incident. On the previous days, president Saleh loyal supporters began to build a stone wall, 2.5 meters high, so that it impedes the protesters escape from the arena and prevents them from tracking the insurgents. As the attack started, the wall, which was drowned by gasoline previously, was set on fire to cause a large cloud of smoke that formed a curtain

between the attackers and their victims in order to conceal the attackers' identity and to impede attempts to stop them. Furthermore, the medical reports issued after examining the victims corpses confirmed that the vast majority of their injuries was caused by shots of automatic and semi-automatic weapons and all of these injuries were at the top half of the body and the head. That confirms that the shooters are professional and trained to shoot to kill; not to just cause injuries randomly.

On one hand, the Central Security Forces involvement appeared clearly on the site of the attack, as the leaders used their soldiers' lack of arms except with batons and water cannons as an excuse for not intervening with the attack. On the other hand, similar testimonies for eyewitnesses confirmed that a number of the attackers had left the place of the event by passing through the Central Security Forces that did not encounter or hinder their escape in any form.

B - March of the Revolution Stadium

Hundreds of thousands went in a mass march on April 27th, 2011 expressing their rejection of the (GCC) initiative, which states a

complete immunity to president “Saleh” that would prevent his prosecution. The march was stopped on its way back by security forces and pro-Saleh crowds who were stationed in Athawra Sports Hall and opened fire on the march, killing at least 13 people and injuring about 270 others.

C - The Battle of Taiz

Occurred the night of May 29th, 2011, when security forces and non-state armed men surrounded the sit-in of the anti-Saleh protesters in Al Horreya Square in Taiz. The troops opened fire on demonstrators, burned the sit-in tents and removed them using bulldozers that ran over some of the protesters; the massacre left about 13 people dead and dozens injured.

D - Massacre of Kentucky

It occurred in Tagheer Square in the capital Sanaa and lasted for three days (18 to 20 September 2011). It included an attack on the protesters and an intervention by pro-Saleh forces to face the attackers, leading to clashes with heavy weapons and resulting in

the fall of many civilians from the protesters and pedestrians in addition to the deaths from both sides. The estimated number of victims of the first attack is about 30 people in addition to 21 dead the following day. Eyewitnesses accused the security forces snipers of killing them, while five fell dead on the third day by snipers or stray bullets.

2 - Investigations and Criminal Prosecution for Those Involved in the Friday of Dignity Massacre

- The public prosecution investigation began under the supervision of Prosecutor General at the time "Abdullah al-Elfy", who, despite his loyalty to President Ali Abdullah Saleh, he tried to conduct impartial and independent investigations as possible. But Saleh had sacked him from his office weeks after the incident and later issued orders of arrest to suspects, some of whom are senior officials.
- After sacking al-Elfy the investigations avoided, due to orders from Saleh, exposing the suspected officials, who have been accused either of masterminding the massacre, or giving orders that facilitated the arrival of the attackers to the scene and providing them with weapons,. The investigations avoided holding the Central Security Forces leaders accountable for not dealing with the attackers.
- Public prosecution issued charges in the case, including the names of 78 defendants, 34 were considered fugitives, despite many

witnesses and sources assurances that they know their places and that the authorities are not deliberately arresting them. In addition, the defendants list was free of a large number of security services and army leaders as well as the General Congress Party (Saleh's party), who have been charged with participating in the massacre with different roles as reported by multiple sources that provided evidence to support and prove many of these charges.

– The case was reviewed before the Primary Court of west of the capital and because the investigations included significant loopholes that resulted in incomplete charges, the victims' families boycotted the proceedings for 18 months, until September 2012 when civil justice/plaintiffs lawyers began preparing claim to modify the charges list and add new defendants. This lawsuit was filed to the court already on October 13th, 2012, seeking to add 11 new defendants in shooting incidents, including president "Saleh" himself in defiance of the immunity law that was issued early 2012.

–On November 28th, 2012, as a result of the victims' lawyers' lawsuit, the court decided to send the case to the constitutional section in Supreme Court because it was conflicting with the immunity law, which would represents a challenge on its constitutionality. Hence, the case was suspended and the hearings stopped waiting for the Supreme Court response.

–On April 27th, 2013, the court of the west of the capital decided to summon "Saleh" and 11 of his top assistants, including General

Yahya Saleh, Central Security Forces Head at the time of the events and Tariq Mohammed Abdullah Saleh, a president's nephew and the commander of the private presidential guard in addition to Mutaher Rashad al-Masri, Minister of Interior at the time of the events.

Libya

The preliminary demonstrations of the Libyan revolution erupted on February 15th, 2011, 2 days prior to the date Libyan activists called for demonstrations on, which was Thursday, February 17th, 2011, the Libyan Day of Anger. The call for demonstrations, inspired by the Tunisian and Egyptian revolutions, aimed primarily to topple the regime of Libyan leader Muammar Gaddafi, who ruled Libya for more than 42 years since he led a coup early September in 1969 to overthrow the monarchy at the time. The security forces reaction was extremely violent as they used live bullets and heavy weapons, escalating the violence and clashes between protesters in several Libyan cities and the security forces backed by non-state gunmen, loyal to President Muammar Gaddafi. Soon enough, clashes slipped into armed confrontations that turned into a civil war as Libyan army units split from Gaddafi to join in the revolution, revolutionaries became armed and the tribes joined the conflict, to either sides.

The Security Council resolution no. 1973 imposing a no-fly zone on Libyan airspace and allowing UN Member States to intervene to implement this decision and take necessary measures to protect civilians on the ground was a major turning point to the path of the Libyan civil war. The resolution was made on Thursday, March

17th, 2011, and came in response to the demand made by the Libyan National Transitional Council, which had been established less than two weeks before the resolution, on March 5th, 2011 exactly, to be the Libyan revolution representative. Consequently, the resolution led the NATO countries start implementing air bombardments against Colonel Muammar Gaddafi forces and against military and sometimes civilian targets in the areas that remained under these forces control. France and USA mainly participated in the bombardment besides Britain.

Despite international intervention, the fights and the exchange of taking over cities and military sites between the revolutionaries and pro-Gaddafi forces continued for months until the fall of the Libyan capital Tripoli in the hands of the revolutionaries on August 20th, 2011, and the subsequent fall of Gaddafi's last bastions and his death in the city of Sirte on October 20th, 2011.

Libyan Exception

In comparison to the rest of the Arab spring revolutions covered in this report, Libya is an exception due to the transformation of the revolutionary struggle to oust Muammar Gaddafi and his regime

into a civil war that witness external military intervention, by the NATO, motivated by the UN Security Council resolutions. This extraordinary reality of the Libyan revolution complicates the efforts to create a post-revolution transitional justice system in Libya. This reality resulted in:

1. The serious human rights violations were not exclusive to the 42-year term of the former regime, but many violations that took place during the civil war with the involvement of all parties and mostly mount to the level of war crimes and crimes against humanity were added. What widens the violations time extension is their continuation after the war and until writing this report.

2. The multiplicity of parties involved in these violations and their relations changing patterns parties in coalition to parties in conflict, in addition to the interference of these relations sometimes with the development of the political scene in post-Gaddafi Libya. Add to that, some of these parties are foreign countries with influence on the course of the internal political process.

3. The continuing problem of militias and armed groups that even exacerbate in a way that complicates the disarmament efforts on one hand and the efforts to achieve justice and accountability on the other and creates a conditional relationship between them that tend

to the victims' rights encroachment.

4. The failure of post-Gaddafi successive governments to control the security situation beside the involvement of subordinate institutions in many of the violations, including the continued arrests and illegal detention, torture and extrajudicial killings which justifiably questions trusting any of the current executive authority's procedures.

War Crimes and Crimes against Humanity during and Post Revolution

The military operations carried out by conflict parties during the civil war and after included mutual ground and aerial bombing conducted in cities and residential areas, resulting in civilian casualties. They also included acts of vandalism, detention of civilians, torturing and killing them in addition to forced displacement of some cities population and tracking of the displaced in the areas of their displacement. It should be noted that due to the complex circumstances on the ground, only a small part of these violations may be possible to be monitored and documented, as the remaining vast majority are awaiting methodological and organized actions to be disclosed and

investigations to identify those who are responsible and take necessary action to hold them accountable.

Civilian victims of NATO bombing

According to human rights reports, the NATO air raids on sites in eight Libyan cities in 2011 have resulted in killing at least 72 civilians, third of who are children under the age of 18. Efforts made by human rights organizations revealed that in seven out of the eight locations, there was no existence of any Gaddafi forces, which makes the raids illegal according to international law. Additionally, doubts surround the measures taken to ensure the presence of hostile forces at the eighth site. The eight locations covered by the investigation are:

1. Alghrari family house in Tripoli. The bombing happened on June 19th, 2011, and resulted in killing five civilians. The NATO admitted an armament system defect that led to the bombing.
2. Hamidi Besrman family's farm. The family's head is a former member of al-Fateh Revolution Command Council (RCC). The farm was targeted several times on June 20th, 2011 and resulted in the deaths of eight members of the family and five of the farm

workers.

3. Mustafa al-Merabat house in Zliten was bombed on August 4th, 2011, leading to the deaths of his wife and two sons.

4. Houses of two families in Palmajer were repeatedly bombarded on August 8th, 2011, leading to the killing of 34 people.

5. Two houses for the Jafrah family in Beni Walid, suffered an aerial bombardment in the evening of August 29th or the morning of August 30th, 2011, killing five family members, including a nine-year old girl.

6. Insurance residential building in Sirte. The seven-floor building suffered air strikes, several times, on September 16th, 2011. Although the majority of the residents had left earlier, the bombing killed a man and a woman.

7. Jduar family house in Gordabyah was bombed on September 23rd, 2011 to kill a man and two girls in addition to injuring at least four people.

8. Diab family house in Sirte, was bombed on September 25th, 2011. The bombing resulted in the killing of three women and four children, and perhaps also for the killing of Mousbah Diab, a senior officer.

Although international law obliges armed conflict parties to carry out public investigations in the event of civilian casualties because

of their military operations, and to disclose details the results of these investigations, the NATO leadership merely stated that its troops had what justifies the bombing of areas where civilian victims fell dead. And up until writing this report, the NATO did not reveal the details of any investigations conducted despite human rights organizations and others demands, including those enclosed in the Independent International Commission, formed by the UN's Human Rights Council, to investigate the human rights violations, stipulating the need to conduct detailed investigations of civilian casualties resulted from the NATO sites bombing when there was no indication they had any regime or collaborating militias forces, weapons and equipment.

The Residents of Tawergha Human Rights Violations

The city of Tawergha, south of Misrata, was a stronghold for Gaddafi loyalists. During the civil war, fighters from the city shared Gaddafi loyalists the attacks that targeted Misrata. Hence, Misrata revolutionaries believed that Tawergha people are responsible for the crimes of murder and rape committed by regime forces in Misrata. This resulted in a campaign of revenge and collective punishment that is not over until the time of writing this report, as Misrata revolutionaries tracked the city residents who

were displaced into parts of Libya and targeted them with murder and forced disappearance, and torture in addition to targeting the city and its facilities with systemized vandalism that destroyed almost the possibility of its people relocating and living there again.

Tawergha fell in the hands of the revolutionaries before the fall of Tripoli, which resulted in the displacement of its people to settle in large numbers in a camp in the capital. As soon as Tripoli fell, Misrata revolutionaries attacked the camp and detained and beat about 85 camp residents. The following September, they arrested 40 to 50 people from the residents of the same camp. On February 6th, 2012, Misrata revolutionaries killed five residents of the camp, an old man, a woman and three children!

Tripoli, Sirte, Zliten, Al Jufra, Shawarif and Benghazi were among the cities that tracked the residents of Tawergha for torture and murder. In all cases, it was not possible to know the detainees' location and eyewitness' reports confirm the torture. Additionally, the aerial tracking and satellite images show that Tawergha city suffered continuous looting and destruction that lead to burning and destructing the majority of its public and private establishments.

Up until today, the Libyan Central Government did not show clear intentions to stop the tracking operations and the human rights violations against the people of Tawergha. It is noteworthy that the same situation happened to tribes and residents of the cities that were loyal to Gaddafi during the war. Similar tracking operations, also, included dark-skinned Libyans that some believe are from the African mercenaries who Gaddafi hired to support regime.

The legal frame

Even though the National Transitional Council issued two laws on transitional justice, namely law no. 4 for 2011 and law no. 17 for 2012 to establish rules of national reconciliation and transitional justice. These laws were not enforced and the "Truth and Reconciliation Commission" set forth in the second law was not established. At the present time, the General Conference of the National Assembly (the parliament) reviews the new draft law on transitional justice that in fact copies a lot from the articles of law no. 17 for 2012, but adds a lot as well.

Transitional justice Bill

The bill consists of 39 articles divided into six chapters: General Provisions; the Truth and Reconciliation Commission; Institutions Examination; Reparations; Investigation and Trial; and Final Provisions. The most important points of the law can be summarized in the following points:

1. The law provisions are valid on the period from September 1st, 1969 to the end of the transitional period (the law did not provide a definition for the transitional period or set a date for its end).
2. The bill defines the objectives in points, the most important of which are: preserving the civil peace; deterring human rights violations; defining the responsibilities of the human rights violations state agencies; documenting the transitional justice incidents; compensating the victims and those affected; and examining the institutions.
3. The bill establishes the Truth and Reconciliation Commission, a subsidiary of the parliament, and specializes in finding facts on human rights violations in the period set by the law, investigating them and providing recommendation on what needs to be taken,

including the referral to the judiciary for reviewing.

4. The law requires the Commission to submit a comprehensive report with details of what it faced of incidents, including identifying the accountability for those incidents, as well as details of its efforts to achieve reconciliation between the conflict parties and the final recommendations on the actions needed for the incidents it confronted.

5. The law decided that the Commission shall hold public hearings to conduct investigations, unless it decided to make some secret for security or public morals reasons. The law granted the priority of fact investigation to the Commission over the judiciary. Therefore, it is not permissible for the judiciary to review disputes until the Commission had finished investigations. In the event of the Commission's investigation of disputes at court, the judiciary must stop its reviewing.

6. On the institutions examination, the law provides establishing a specialized body for that, and the examination shall include security, judicial, military and financial institutions (and all state organs and entities that issue a Ministers Council decision!).

7. The law grants the institutions examination body the right to refer the incidents it reviews to disciplinary committees, the Public Prosecution or the Ministers Council for necessary actions.

8. On compensation, the bill sets forth developing a reparations fund, with the National Conference determining its funding ways while an executive board, issued by the Ministers Council, determines and the amount of compensation and the its method of paying.

9. On investigation and trial, the bill limits reviewing related cases to civil criminal courts. Hence, it revokes the military courts from looking into crimes in which military personnel are defendants or crimes committed for political or military purposes.

Truth commissions

Until the time of writing this report, no local committee was formed by the Libyan government or by the General Conference of the National Assembly (the parliament) to investigate the human rights violations committed during Gaddafi rule or during the civil war that ousted him. In the meantime, the UN Human Rights Council formed a committee to investigate the facts on the human rights violations committed by the civil war parties in 2011. Following we present the steps of the committee's formation, its work performance in addition to its most significant results.

International Committee for Fact-Finding

On February 25th, 2011, the UN Human Rights Council issued a resolution to form an independent international committee to investigate the facts on the human rights situation in Libya, and on March 15th, 2011, the Committee was formed with three member: Asmaa Khader (Jordan), Philippe Kirsch (Canada) and Cherif Bassiouni (Egypt), who headed the committee until October 2011, to be succeeded by Kirsch.

The Council's resolution no. S-15/1 assigned the committee to investigate all allegations of breaching international law for human rights in Libya; document the facts of such violations and crimes and their circumstances and if possible identify the perpetrators; and make proposals particularly for accountability procedures. As the Human Rights Council has referred the Libya violations file to the International Criminal Court, the committee's assignment was extended to reviewing the events that will be investigated in the light of international criminal law.

The committee submitted its first report on June 15th, 2011 to the Human Rights Council, which decided to extend the assignment because of the density and continuation of human rights violations in Libya. It was decided that the Committee shall submit its final report to the nineteenth session of the Council in March 2012.

The committee final report was issued on March 2nd, 2012 in about 214 pages presenting the results of its investigation in various human rights violations witnessed during the armed conflict throughout 2011 and that has been going on in the wake of the overthrow of Muammar Gaddafi and until the date of publishing the report. The report mentions the role of three parties of the conflict in the violations: the regime's forces and its loyalists; the revolutionaries (rebels); and the NATO forces. The report categorized these violations into: excessive use of force; extrajudicial killings (with a special investigation on the killing of Muammar Gaddafi after his arrest); arbitrary detention and forced disappearances; torture and ill-treatment; targeting civil societies (with a special focus on Tawergha); sexual violence; attacking civilians and civilian institutions and protected persons; use of internationally prohibited weapons; the use of mercenaries; recruitment of children; and looting and vandalism operations.

Criminal trials

Libya has witnessed the formation of a special tribunal to try figures of the former regime on charges ranging from the involvement in the killings of demonstrators at the beginning of the Libyan revolution and the transfer of funds from abroad in support of the former regime and the charges of corruption and profiteering through their offices. The first trials began on June 5th, 2012 with the first hearing of "Bouazid Dorda" who has served as the External Security Head in Colonel Muammar Gaddafi reign. Trials generally witnessed a large amount of global turmoil amid skepticism in the Libyan judicial system ability to conduct trials that guarantee justice. That is because of several problems regarding the Libyan justice system itself as well as the turbulent security conditions and the increasing internal pressure by more than one party.

Most notably, none of the perpetrators responsible for human rights violations, war crimes and crimes against humanity committed by anti-Gaddafi revolutionaries forces was handed in, which indicates the politicization of the trials and questions its ability to achieve justice as required by comprehensive accountability and equality

before the law goals.

The Trial of Saif al-Islam Gaddafi

Saif al-Islam Muammar Gaddafi was born in 1972, and he is the second son for Colonel Muammar Gaddafi. It was highly suspected that his father was preparing him for succession to govern Libya. Although he did not have any official post in the Libyan regime when the revolution broke out, he has had a major role in his father's regime efforts to suppress it, which led to including his name next to Gaddafi and Military Intelligence Chief, Abdullah Senoussi in the bill of indictment issued by the International Criminal Court.

Saif al-Islam was on the run inside Libya after his father's death and there rumors that he had been arrested several times until he was arrested for real near the city of Ubari on November 19th, 2011. He languished ever since then in one of Zintan city's prisons, awaiting trial in charges including the involvement in killing protesters. It was the trial that was postponed following the arrest of Abdullah Senoussi, believing that investigating the latter may disclose new facts.

Saif al-Islam Gaddafi appeared before the Libyan court in Zintan for the first time on May 2nd, 2013 for a trial in charges on leaking sensitive information about the Libyan security to an Australian lawyer, appointed by the International Criminal Court to defend him, during her visits to him in prison. The court decided to postpone reviewing the case to September 19th, 2013, and no other court started to try him in the charges related to murder or human rights abuses or financial corruption.

Abdullah Sanusi Trial

Abdullah Sanusi, 62 years old, is the brother in-law of former President Muammar Gaddafi and one of the close pillars of his regime to him. For a long time, he has been the Head of the Military Intelligence Service, described by the International Criminal Court as "one of the most effectively suppressive bodies in Gaddafi's regime". In addition to being wanted by the Libyan current government, he is also wanted by the International Criminal Court which accuses him of crimes against humanity in the Libyan city of Benghazi, as well as being haunted by the French government over an in absentia Paris court ruling convicting him of

involvement in the attack on an Air France flight over Niger in September 1989. But the most important crimes associated by his name is the physical liquidation process of about 1,200 prisoners at Abu Salim prison after their protests against continuous ill-treatment in 1996.

He fled from Libya during the civil war, and appeared later in Mauritania, where he was arrested by the authorities in March 2012 and charged on May 21st, 2012 with illegal entry into its territory, using forged travel documents. And, in the following June, Libyan interim government Prime Minister went to Nouakchott to discuss with the Mauritanian authorities the request of handing Sanusi over to the Libyan authorities. Despite continuing Libyan pressure, it took Mauritania months before handing Sanusi to Libya on September 5th, 2012 after the Libyan government promised to ensure him good treatment and a fair trial.

Until April 15th, 2013, Sanusi, detained in al-Hadabah prison in Tripoli, was not informed of his official charges and he was not allowed to appoint a lawyer to defend him.

Conclusion

Peoples do not revolt every day so if they did, nothing could stand

in their way to achieve their goals. Only if they knew their goals clearly. A condition where the dilemma and tragedy lie sometimes as millions could be gathered for a simple and clear goal such as ousting a too-long-in-power tyrant but building the alternative and restructuring the reality to achieve a better life for them cannot be summarized in as simple and clear goals as the demonstrators chants.

In the reality of international politics at the end of the twentieth century and the beginning of the millennium, there is no longer a country that is isolated from the world, and the boundaries between internal and external affairs are no longer clear or of effect. This often explains why the peoples' revolutions in the past three decades could not fully cut off their ties with their past, a feature that distinguished past decades revolutions and since the 19th century. It is also what gave the revolution its classic definition, which perceives it as a radical change to the society and its system of governance. Simply, the people of any country do no longer purely own their internal affairs that can be reshaped as the people wish upon revolting against injustice. In fact, it is not allowed for a people's revolution to entirely sweep the present to build a future of their choice; for in the present that there are long-term investments to parties whose roots are not in the home-land for a people's revolution to uproot. Subsequently, those parties' hands remain free, working powerfully to preserve their investments in money,

power and future that can't be formed without them being an active part in, one way or another.

The transitional justice definition is indeed a theoretical and practical response to the reality of broken revolutions that did not reach its end by fully destroying the reality it revolted against. It is also a response to the need to reconcile with the past instead of uprooting it off completely. Because it is a definition of balances justice, it always reflects those balances on the ground more than it is a response to the vulnerable longing for compensation to end the injustice. Because the state of social peace and reconciliation which restores the society's ability to move into the future depend mainly on the satisfaction achieved for the majority, so the applications of the transitional justice system outcomes often range between degrees of acceptable failure or abject failure caused by the difficulty to the theoretical model in a troubled reality governed by conflicting interests.

Between the People Solution and the Institutional Solution

Any transitional justice system depends on organized and disciplined procedures; therefore it requires institutional work that results in a number of dilemmas, including:

– Since the transitional justice system should work within framework of reality produced by a revolution or a popular uprising or a state of huge social mobility, its need for institutionalization always collides with the fact that one of the basic features of this reality is the full or partial destruction, for many institutions, as well as the state of mutual hostility between the forces representing the popular movement and the majority state institutions that belong, by definition, to regimes revolted against by these forces.

– Authoritarian regimes that its people turn against are usually autocratic or characterized by tribal politics, which entails weaker state institutions with apparent absence of efficiency and widespread corruption among its pillars, making these institutions invalid tool for performing their functions under the transitional justice system.

– With the presumption of goodwill and the availability of the required institutional capacity to push for the required transitional justice procedures, the institutions inherently remain separated from the people's sense. And since that the transitional justice goals are achieved mainly by reaching a reasonable degree of popular satisfaction. Hence, if the organizations cannot create mechanisms for real popular participation, it becomes impossible to achieve its objectives.

When we apply this theoretical frame to the reality of the experiences of countries of the Arab spring revolutions until the moment, we will find clear manifestation of these institutions role in the failure of these countries to build effective systems for transitional justice:

The majority of institutions have taken a hostile or negative attitude towards the Arab Spring revolutions. This position has been explicitly translated sometimes and implicitly some other times:

- Security institutions always come at the front in their clear hostility to revolutions, in their interim success was a failure to the security institutions. These institutions necessarily fear that they could be targeted for reprisals, in the name of restructuring or purging.

- Military institutions rank second. Due to their compulsory conscription, they opt for the revolution's side even if not virtually or face divisions and getting involved in a civil war; yet, they generally remain conservative with a past in involving in the practices of authoritarian regimes and linked to its figures interests. They also restructure projects.

- Judicial institutions may not have an obvious reason to directly be hostile to the revolutions, but they are necessarily placed in a

difficult position, when having to be tool for achieving justice in light of its traditional tools instability, non-cooperation of essential state bodies in addition to the pressure of the masses expectations that do not always match with what can be achieved by these institutions. In the end, they are prone to demands of purging and restructuring. And at some point, they have to defend the interests of its members so they become a party in the political conflict and their in-theory independence and neutrality face a great deal of justified skepticism.

In the context of post-revolution in the Arab Spring countries, the transitional phase pressures represented a major challenge for most organizations that proved to lack efficiency and the ability to work in ways that are different from those that were acceptable under an authoritarian regime:

– For security institutions, their failure to restore an ordinary citizen's security in the light of the turmoil that usually follows popular uprisings could be justified by, firstly, having their capabilities destroyed during the uprising and, secondly, by the low morale of its members who feel defeat. However, given the time gap after the uprising itself, as well as the transitional governments

inclination to provide the required funding to compensate for these institutions losses and overlooking the return of these institutions to old practices under the pretext of maintaining its members morale have all left no room for doubt that the continued failure of these institutions in restoring security is mainly due to lack of efficiency. It is also due to the absence of qualifications required to perform the real security role, for it has long been limited to being the regime's baton and tool to follow its opposition and oppress them.

– Judicial institutions lack the failure justification except for the weight pressures and burdens thrown on them in the transition period. But failing to achieve justice in cases of utmost clarity in their legal sense and without the need to respond to the pressures of the masses can't be justified by pressures and burdens; it can only be interpreted by lacking efficiency and the ability to perform properly.

Factions of the Revolution and the Political Forces

Uprisings and revolutions produce the objective counterpart for state institutions represented in their factions and political forces that fall under the slogans either naturally or to achieve their own political gains. These factions and forces relationship get complicated along the path towards achieving transitional justice,

particularly when the revolution slips into armed conflict or a full-fledged civil war or when sectarian, racial or regional strife erupt. In the scene of the Arab Spring revolutions, we can see clear models for these different manifestations:

- Traditional authoritarian regimes opposition forces are not necessarily revolutionary. In the cases of the Arab Spring countries and more clearly in Egypt and Tunisia, and less pronounced in Yemen and Libya, the traditional alternative to the regime the political Islamic groups, particularly the Muslim Brotherhood (MB), which has achieved its first success in reaching office through the revolution in Egypt and Tunisia. Due to the contrast between the traditional goals of this by nature rightist and conservative group and the revolution's stated goals, a clear contradiction between the pursuit of the group to achieve its goals with transitional justice tools and the natural goals for which these tools were created grew apparent. In addition, the resistance of other revolutionary factions and other civil political currents magnified the contradiction and made the creation of a true transitional system of justice under the rule of the group (MB) a matter full of obstacles in Tunisia and almost non-existent in Egypt.
- The revolution turning to a civil war in Libya resulted in the involvement of the factions that took up arms against or in support

of Gaddafi in severe human rights violations, war crimes and crimes against humanity. On one side, it has made the direct interests of victorious revolutionary factions contradict with the goal of building a true transitional justice system for it is a party that will have to pay for what it did in terms of violations and crimes. On the other side, some of these factions preferred to directly settle and revenge from the forces that supported the former regime with their tribal and civil support without the use of any tools of the system of justice, leading to continuing to commit further violations and crimes after the war. Hence, it became a negative factor in the equation of achieving security and stability, which makes it more difficult than building the institutions needed to implement transitional justice measures.

Impunity as a Policy

All previously-mentioned aspects intersect and pour into developing the phenomenon of impunity to a deliberate policy and not just a presentation of unbalanced situations. The institutions' hostility to the revolution and their attempts to avoid purging and restructuring meet in this policy along with so many factors including: their lack of efficiency and corruption, the slacking traditional emerging powers and their conservatism and their desire to entrench their foot in power by allying with the forces of an old

long-standing relationship with authoritarian regimes, leading to its figures involvement in these regimes crimes. And with the involvement of revolutionary forces in violence, especially in the context of civil war and armed conflict and their conflicting interests with fair punishment on whoever committed a crime, regardless of bias at the stage of the revolution.

Impunity turning into a systematic policy is the main headline that includes all the above-mentioned headings. It reveals itself clearly in the turbulence of the criminal trials in particular, and as an example in the case of Egypt, we touch upon the following aspects:

- The hostility of Egyptian security institutions in appears in the fierce resistance to punish any of its members and leaders involved in the killings of protesters. Destroying and hiding, and fabricating evidence, pressuring the witnesses and the victims' families ... etc. were all security institution's tools to obstruct the investigations and trials.
- The lack of efficiency of the investigative bodies (the Public Prosecution) and their implicit complicity sometimes were complementary to the role of security institutions in concealing the evidence and facts. For example, they were not any genuine efforts to press for physical evidence (weapons of the defendants were not confiscated); many of the defendants were released although their

job positions makes their manipulation of the evidence and pressuring witnesses almost confirmed. In the end, the Public Prosecution referred to courts gaunt papers and cases full of loopholes to the extent that an acquittal was almost known in advance.

- The MB reaching power through parliamentary assemblies first then through the presidency and the executive branch, second did not alter the course of criminal trials, despite previous promises to achieve prompt justice in these cases. The new authority interests dictated the necessity to build friendly relations with the security services; consequently, any talk of real restructuring is no longer in place. Building friendly relations with figures of local capitalism forces was, in turn, a reason to go around not holding businessmen involved in for former regime crimes accountable through the reconciliation laws that tolerated claims of profiteering and financial corruption. Meanwhile, the MB used slogan of "retribution for the martyrs" and "protection of the revolution" as a cover to pass laws for the interests of consolidating their presence in power. On one side, the judiciary following the new authority has become the real target behind the purging allegations, which were justified by the judicial institutions failure in achieving justice through trials. On the other side, the "protection of the revolution" law was used to prosecute MB opponents and became a tool for

punishment through the exceptional powers granted to the “protection of the revolution” body, established by the law.

In the case of Yemen, foreign intervention was the key factor in instilling an institutional basis of the policy of impunity represented in “Saleh” and his assistants’ immunity law against prosecution, which was explicitly dictated by the transfer of power agreement. Therefore, the mere initiation of criminal trials for the demonstrators’ killers has been impeded. And in the only case to virtually start one of these trials, the immunity law has long stood as a barrier, impeding any progress.

In the Libyan case, the trials are only exclusive to a number of former regime icons, and most of which have not taken real steps for investigation agencies did not prepare the cases file despite their proceeding at the courts, On the other hand, what hinders reviewing the criminal claims on many of Gaddafi’s regime crimes is that fact that many of the regime elements and his dissidents are of power in the current authority. In the end, moving forward any criminal claim to track the violations and the civil war crimes’ perpetrators who belong to revolutionary forces is obstructed by the presence of representatives of these forces in power and the use of some of weapons to pressure against any prosecution

Ways Out

What alive and hopeful revolutionaries in Tunisia, Egypt, Yemen and Libya as well as in Bahrain and Syria, which were excluded from this study, realize is that continuing the revolution itself is the way out of the current phase. No transitional justice procedures would be the alternative. Indeed, these procedures, themselves, are impossible if not merged with the revolution's path and the pressure to achieve those procedure aims is of the resistance means to post-tyrant regimes arrangements that reproduce them.

The transitional justice system and its procedures provides a viable framework to define clear objectives for the efforts to continue the revolution as the post-revolution regimes failure in building this system will remain a clear evidence for being an extension of what the people revolted against. Moreover, the pressure to adjust the transitional justice procedures to reach their right theoretical objectives provides a more conflict welcoming and more in touch with the masses' aspirations arena than what traditional political conflict arena does. In the meantime, transitional justice becomes a target that instills in the masses system aside it usually lacks and that is to be directly expressive of their aspirations and not balance of power and the conservative nature of traditional institutions.

What we propose in the following lines is not necessarily government-directed recommendations as much as they are goals for those who believe in continuing their revolution to find tools to develop their resistance, some of which they already used in their pursuit to achieve the justice they revolted for basically.

Recommendations

- It should be re-emphasized that the transitional justice is an integrated system; hence, the first step should be setting the integrated legislative basis for the system through which its components-specific controls could be placed in a way that does not contradict the systems as a whole or with any other element.
- While bills have been already proposed for transitional justice in Yemen, Libya and Tunisia, in most cases they lacked the community participation required for drafting, or it was not real with its findings were left un-transferred in the final draft of the bills. In addition, these bills were incomplete and full of loopholes in the details.

–Truth

Commissions:

- Should have their full independence, which could be achieved by taking into account the civil society participation in its formation in good representation;
- Organizations of civil society themselves should select their representatives in these commissions and the law should provide a minimum quorum for decision-making mechanism that prevents marginalizing the role of the civil society representatives;
- Providing sources of funding that are guaranteed by the law and not dependent on administrative bodies approvals;
- Should have the right to organize its internal work regulation and the law must oblige full transparency and publicity in all of the procedures with the exception of needed and necessary protection of those involved;
- The law shall oblige it to publish the results directly, and not just report to an executive, representative, judicial body; and
- The law shall provide clear ways to develop the results concluded by the commissions into practical procedures, whether by referring to the judiciary or signing compensations ... etc. This ensures the obligation of concerned state bodies to execute these procedures and organizes deterrent punishment in case of refrain from execution.

Criminal Cases

- The Truth Commissions shall have the priority to investigate the complaints, claims and demands related to the transitional justice system and its violations and crimes;
- Civil courts only shall have the sole jurisdiction in reviewing all the claims the transitional justice system violations and crimes, regardless of the perpetrators position or circumstances.
- Providing a mechanism to monitor the path of the complementary investigations, conducted by the Public Prosecution or trial procedures and investigation judges through the truth commissions and the civil society representatives in addition to providing a mechanism to review what they submit of notes or complaints by a higher judicial entity that could intervene to correct the path of investigations or trial whenever deemed necessary.

Reparations

- The victims reparations estimate shall be the responsibility of the truth commissions or an independent body; established for this purpose;
- The decisions of the truth commissions or the independent body in relation with the reparations and their related procedures shall be executed without the need to approval of any legislative, judicial or executive body. The executive authority shall find the financial requirements for this purposes and including in the country's general budget.

Institutions Reforming and Restructuring

- An independent body that includes people and civil society organizations' representation to develop reform plans and institutions re-structuring with a timetable to execute for execution, The body should also investigate the allegations of administrative and financial corruption and define the necessary procedures, including referral to the Public Prosecution or the administrative disciplinary;

The body shall propose the bills required to achieve its purposes and shall directly pass them to the legislative authority;

- The body's decisions, beside the bills, shall be binding to the administrative bodies without the need to obtain the executive or the legislative authorities' approval, and whoever refrains from execution shall be punished by law.

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