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Judicial Mechanisms for the Implementation of Transitional Justice at National and International Levels

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Abstract

Judicial mechanisms are one of the main tools in implementing transitional justice domestically, seeking to pursue accountability and reparations for victims through the prosecution of perpetrators of violations of gross human rights. Such mechanisms can be national courts specifically constituted or set up to hear these cases, or can include hybrid panels involving national and international judges for ensuring integrity and transparency. They strive to secure the rule of law, bring about the truth, and put an end to repetitions of the abuse, as appropriate to a fair trial standard and protecting the accused's rights as well as the victims. Success for such mechanisms depends on independence of the judiciary, appropriation of adequate resources therefor, and commitment on the part of the state to seriously and equitably deal with the past.

Keywords: Transitional Justice, Judicial Mechanisms, National Implementation, International Law.

Introduction

First. Introductory Overview of the Research Topic and Its Importance

Transitional justice is a key and dynamic branch of international law that is used as a model of law in the pursuit of ensuring justice and redressing to victims subsequent to conflicts and severe human rights violations. With time, transitional justice has expanded to encompass mechanisms such as the prosecution of the perpetrators, establishing truth-finding programs, the provision of reparations to victims, and institutional reform for ensuring violations not occur again in the future. The significance of this research is that it investigates the international law of transitional justice, the mechanisms of victim compensation, and whether the international and domestic legal tools are effective in achieving these purposes.

Second: Research Problem

The central research problem is formulated from the question of whether international and national legal mechanisms are sufficient and effective in realizing the objectives of transitional justice and ensuring fair and reasonable compensation for the victims. As transitional justice experiences differ so greatly from one country to the next, there are numerous challenges that arise—most notably the absence of standardization and the presence of political and legal hurdles that dissuade one from seeking justice. Furthermore, key concerns are raised on international and domestic courts to prosecute perpetrators and for the role of truth commissions and institutional reform processes in enabling reparations and overall redress and reconciliation

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Third: Research Methodology

This study pursues an analytical approach in the sense that it examines international and national legal instruments on transitional justice and assesses their efficacy in granting compensation to victims. It also pursues a comparative approach in the sense that it compares various international experiences and assesses their success in implementing transitional justice mechanisms and draws lessons from them.

Fourth: Research Structure

To achieve the wanted objectives, the research is categorized into the following sections:

Section One: Truth Commissions

Section Two: Political Reform

Section Three: Court Decisions

Section One

Truth Commissions

Truth commissions are defining instruments of transitional justice, aiming to uncover the truth regarding egregious human rights violations in the past and, in particular, to understand their causes and consequences. Truth commissions are mandated to collect evidence and hear victims' and perpetrators' testimonies, thereby aiding in making official history and abuse records. In addition to truth-finding, these commissions serve as arenas in which victims are able to tell their stories, reclaim their dignity, and participate in the creation of a common national memory. By unveiling facts that normally are hidden or veiled, truth commissions are crucial in promoting national reconciliation. Their effectiveness relies on their independence, transparency, and fidelity to actionable recommendations toward institutional reform, reparation for victims, and the creation of a more equitable and just future.

The concept of truth commissions can be understood as follows:

First: Truth Commissions

The concept of a truth commission has its genesis in the proposition of uncovering and asking about the truth which involves examining the causes and conditions for the abuse of human rights and crimes in transitional justice periods. Among the fundamental rights of the victims like abuses is the right to know the truth about the motives and conditions upon which these crimes and atrocities occurred, which made them suffer in material as well as moral aspects (1).

Knowing the truth is not merely providing social and moral reparation, but the ultimate aim of those commissions extends to discovery of important political intentions as well. Discovery and acknowledgment of the truth lift the veil of silence and secrecy that may have been enforced by earlier political regimes. It unveils the means through which institutions facilitated the practice of power in violent forms and offers an entrance to greater transparency and accountability. This aspect is crucial in bringing about general deterrence against subsequent regimes of repression and preventing such crimes from happening again. Further, truth-speaking is a primal way of learning from dictatorial or authoritarian domination (2).

At the global level, according to the United Nations, it is "fact-finding" in the Declaration on

Fact-Finding by the United Nations in the Field of the Maintenance of International Peace and Security, by the UN General Assembly in 1991. It explains fact-finding as any activity aimed at the acquisition of in-depth knowledge in relation to any conflict or situation calling for facts in order to enable the proper exercise of the functions of the specialized agencies of the UN to maintain "international peace and security" (1).

Definitions of Truth Commissions in Legal Doctrine

Legal theorists have provided varied definitions to truth commissions. They have thought of them as bodies with certain characteristics: they are temporary, operating typically for a one or two-year term; they are officially recognized and state-granted institutions whose authority is derived from the state; they are non-judicial institutions that exercise independent autonomy; and they usually get established in democratic transition periods or in periods of transition from war to peace (2).

Another definition describes them as "official, independent, and temporary bodies with a non-judicial character, established to study patterns of human rights violations or breaches of humanitarian law, normally carried out over an extended period of years. They are limited in time, derive their mandate from mandates issued by the government or some international entities, and are generally set up during periods of political change". Their objectives are establishing the truth, providing victim justice, and awarding reparations. For that purpose, they issue reports and recommendations on how to respond to violations and enable reconciliation" (3).

Others term truth commissions as "recognised, formally mandated bodies that are ad hoc and non-judicial in nature. They facilitate truth recovery by probing serious breaches of human rights and democratic governance, documenting past atrocities, and fostering reconciliation—a step towards building sustainable peace. They also ensure to strengthen the rule of law and can be seen as an important tool to foster democracy" (4).

The researcher thinks that the best definition of truth commissions is the one found in the International Center for Transitional Justice (ICTJ), defining them as ad hoc investigating bodies created to explain past periods of repression, conflict, or widespread human rights abuses and to attend to the required remedies. These commissions are not judicial in character, appointed for a definite tenure, and on the expiry of their mandate, they publish a report enunciating their findings, with suggestions and proposals for change in the future (1).

Second: Distinguishing Truth Commissions from Other Committees

Truth commissions, being amongst the core transitional justice institutions, stand apart from other types of committees in several respects, among them:

1. Historical Commissions. They are appointed to look into violations and events that have harmed a specific ethnic, racial, or other group. Important instances include the UNC on Wartime Relocation and Internment of Civilians and the Canadian Royal Commission on Aboriginal Peoples (2).

Such commissions are established by domestic governmental decisions, based on national moral and legal principles or based on international legal standards. For instance, Paragraph 21 of the 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the United Nations Human Rights Commission in April 2005

(61st session), mandates that states, under individual circumstances and based on their domestic laws and international obligations, provide human rights and humanitarian law violations with reparation: restitution, compensation, rehabilitation, and guarantees of non-repetition (3).

Thus, the main distinction between truth commissions and historical commissions lies in who establishes them. Historical commissions are formed by the government, often as part of its international obligations, while truth commissions are created by law and operate independently of the government and other institutions. Additionally, historical commissions tend to have a political nature, as they focus on injustices suffered by a particular ethnic or racial group.

2. Parliamentary Inquiry Committees. The parliament represents the people and serves as their watchdog over the executive branch by enacting appropriate legislation. However, in some cases, it encounters obstacles—especially when trying to determine government responsibility for unlawful actions or corruption allegations. To address such issues, parliament forms committees composed of members of the legislative body to uncover the truth more efficiently than other methods.

Parliaments establish various committees to facilitate their work, including specialized committees on education, health, and other sectors, as well as organizational committees such as the legal committee or the committee for members' affairs (1).

Additionally, parliaments can form investigative committees, as parliamentary investigations are recognized in various national constitutions as a legislative oversight tool over the executive branch. This device has been used by the English Parliament since the late 17th century, and France used it before its 1875 Constitution. Congressional investigations in the United States are also very significant (2).

Parliamentary investigations created a mechanism through which the legislature would obtain facts. If an issue falls within the jurisdiction of the legislature, parliament may utilize information provided by the government or conduct its own inquiry if it doubts the credibility of information provided. The ambit of such probes is broad and not confined—they can target corruption in government institutions, misuses in government departments, or corruption in state-owned enterprises. They can also be preliminary moves towards impeaching a minister on allegations of misconduct (1).

Others have defined it as a fact-finding process on a given case in the executive powers undertaken by a committee of a group of legislative councilors to determine political violations. It comes up with specific recommendations, such as initiating political accountability, compensation for a particular harm, or preventing certain errors. It subsequently presents its findings to the legislative council as a report.

Fact-finding committees are different from parliamentary committees in three key ways:

First. The legal basis for their establishment: The parliamentary committees are formed by a resolution of parliament and derive their mandates from the legislature, which also decides their mandate and oversight functions over the executive.

On the other hand, fact-finding committees vary depending on the transitional situation in each country. They are established through a national consensus following consultations that have been conducted on a wide scale. Their establishment can be through peace agreements, overall agreements with minimal details at the beginning that are detailed afterwards, or legislative actions such as parliamentary laws or presidential decrees.

Second. Their functions: Parliamentary committees focus on investigating particular abuses for which they were formed, determining whether such abuses occurred, and, if determined, imposing political accountability. This can lead to removal of the government and sending criminal offenses to the respective investigative authorities.

Fact-finding committees, however, have a broader mandate. They inquire into grave abuses of human rights like genocide, enforced disappearances, extrajudicial issues, crimes, and war crimes. In some cases, they even probe heinous economic crimes which are as damaging as human rights abuses. Their product thus goes beyond legal accountability to encompass social and economic elements.

Third. Duration of Operation: Parliamentary committees operate on legislative terms, i.e., their term may be short or long, ending either with the termination of a parliamentary session or after the case being investigated is resolved.

Fact-finding commissions, however, are not limited by a defined time period; their activity goes on until they come to final decisions. Such commissions decide when to close their inquests, as in the Truth and Reconciliation Commission in South Africa.

3. International Fact-Finding Committees: Because of the UN's mandate to keep international peace and security, it forms inquiry committees to investigate human rights abuses happening in various nations.

International investigations indicates that the process of referring to a committee composed of more than one member for investigation of the facts in reference to a dispute between two states. However, these questions do not include findings as to who is responsible in initiating the dispute. Instead, the committee's role is solely to gather facts and present them to the concerned states, which can then decide whether to engage in direct negotiations, submit the dispute to arbitration, or refer it to an international court.

International investigation committees differ from fact-finding committees in that they deal with disputes between two specific and known parties—usually states involved in a conflict. Fact-finding committees, on the other hand, typically deal with cases where the affected party is known, but the responsible party remains unidentified. Their function is to uncover and determine the unknown party and assess its level of responsibility.

Historically, international investigation committees emerged earlier than fact-finding committees. The former were established in 1907 under the Hague Convention, which laid out rules and procedures for their operation. A series of bilateral agreements, known as the "Bryan Treaties," emphasized the necessity of referring unresolved disputes to investigative committees. A classic instance of such a committee is the one established to bring an end to the border dispute between Iraq and Iran.

Key Objectives of Fact-Finding Committees

Transitional justice mechanisms work together to achieve the ends for which they are established. Fact-finding commissions are simply to study the abuses of human rights and determine the causes.

The main objectives of fact-finding committees include:

Uncovering the Truth: Where the situation is of conflict and dictatorial rule, human rights violations often go unnoticed. The perpetrators are often unknown, the circumstances vague, and timing unclear. Such violations are known only after painstaking efforts by the fact-finding committees to learn the details and identify the perpetrator and the motivating factors.

The Right to Truth under International Humanitarian Law: the right to truth is a foundation of customary international humanitarian law. In accordance with Rule 117 of the ICRC, each to the conflict shall take all measures to seek "information concerning persons reported missing during armed conflict and release to their family members any information available regarding their fate.

Making identification of the right to truth individually and collectively is also an integral element in ensuring justice for the victims. This principle is enforced by the International Convention for the Protection of All Persons from Enforced Disappearance, which the United Nations General Assembly adopted in 2006 and became enforceable in 2010. Article 24(2) states: "All victims have the right to the truth on whereabouts of the enforced disappearance, the results of the investigation, and the the disappeared individual. Each State Party follows necessary measures in this respect."

Fact-finding committees publish reports that serve as authentic and unbiased historical documents of human rights abuses occurring in the pre-transition democratic periods or internal disturbances involving riots and violence. These reports put on record the circumstances of the violations, the reasons why they did so, the conditions under which they took place, and the nature and scope of the violations. Therefore, these reports become authoritative national records which document significant political eras of a country's history.

Social Objectives: Fact-finding committees operate in newly established democracies that replace the previous regimes. They make society ready to accept and integrate into the new democratic system. They achieve this by communicating with the people via media, including radio and television. A fine example is the experience of South Africa's Truth and Reconciliation Commission that went out of its way to contact the victims and provide them with an opportunity to file complaints. The public hearings organized by the commission provided a wonderful opportunity for victims under the erstwhile regime to narrate their ordeals.

These committees also help to unite social and national interests by promoting a spirit of tolerance and reconciliation within society. In pursuit of this mandate, they recommend the return of individuals who committed offenses in the past, subject to certain procedures.

Other Objectives: Apart from their fact-finding purpose, fact-finding committees also seek to promote victims of human rights abuses and crimes by giving them a sense of security and ensuring they enjoy respectable living conditions. In investigating victims, fact-finding committees proceed in a manner that preserves their personal security. In addition, these committees do not reduce victims to mere sources of information but view them as partners and citizens, giving active consideration to their human dignity.

Such committees also support the justice system in that they make sure criminals do not go unpunished. They support national courts in that they record cases of abuses, which can aid legal proceedings.

They also offer recommendations and advice to the political system to avoid the repetition of

crimes and violations. By analyzing the causes of such problems and taking steps to solve them before they occur, they curb their spread and suggest reforms that are needed to prevent future risks.

Section Two

Political Reform

Political reform is a significant tool of transitional justice. It is a broad and wide-ranging term and one of the most tangible procedural measures in transitional justice. It is achieved through practical measures, primarily reorganizing and reorienting the repressive security machinery of previous authoritarian regimes in accordance with human rights standards. Institutional reform should be supplemented by legislative, judicial, and political reforms, which in their turn give rise to political freedom, like political pluralism, free competition among political groups, and free direct elections—indispensable conditions of democratic rule.

Political reform, in order to be successful, should involve the transformation of the authoritarian form of rule, which is characterized by excessive centralization, to a system facilitating balance and participation at all organizational levels, researchers say. The transformation reduces corruption, which seriously undermines institutional efficiency, jeopardizes social stability, and lowers the level of public confidence in the reform process.

Authoritarian regimes tend to resist radical changes, particularly those demanding equality, political participation, and social justice. These are typically the last issues such regimes address, as they recognize that their power is fundamentally dependent on maintaining control. During periods of weakness, authoritarian governments become even more unstable when faced with increasing political demands, particularly when their institutions lack the capacity to respond effectively. Consequently, such regimes often reject reform outright.

If governments move toward institutional reform, they provide and achieve stability and security, which in turn promotes the concepts of tolerance and justice. The call for reform in institutions is one of the primary justifications for transitional justice in all experiences, as change can only occur through institutional reform. This includes reviewing and restructuring international institutions for respect for human rights, the law, and especially the military, security, and judicial institutions. Reforms involve revisiting past legislations, systems, instructions, orders, and prohibitions conflicting with human rights, as well as enacting new laws and joining relevant international agreements and conventions. Institutional reform is one of the essential transitional measures promoting accountability.

It is crucial to emphasize that reform is both necessary and urgent, originating from within societies themselves. It responds to the aspirations of the people in shaping a comprehensive reform project that includes political, economic, social, and cultural aspects. This project relies on the ability and competence of individuals who excel in their work, representing a valuable contribution to society. However, at the height of the call for reform, complete change, and revolution, many reactions emerge from authoritarian and dictatorial regimes, especially during moments of collapse or defeat. These regimes, particularly when they feel that the revolution or steps toward reform expose their vulnerabilities, react strongly. An example of this is the "Camel Battle" in Egypt, where pro-regime supporters attacked the revolutionaries in the final days of the former regime, attempting to destabilize security and order. The regime knew that the absence of security could be a real or potential threat, which could be exploited for its benefit, either directly or indirectly.

The reform of the judicial institution plays a significant role in institutional reform, as demonstrated by the trials of the leaders of the former Iraqi and Egyptian regimes. These trials signal the beginning of the reform process and indicate that the judiciary has been freed from the influence of political systems, returning to its independence with no authority over it except the law. These trials are seen as the starting point for institutional reform. However, for institutional reform to continue effectively, new governments must avoid consolidating power and instead focus on enhancing the law, not seen as a threat to their authority. The purpose of applying transitional justice is not to seek revenge against the former regime, but rather to uncover the truth, identify the victims, and restore their dignity. It is essential for the state to create an environment of equality in civil, social, and political rights for all citizens, regardless of their social status.

It is important to emphasize that the reform process must be homegrown, originating within the society itself. External interventions should be avoided, as historically, foreign countries have often been motivated by their own interests rather than protecting human rights. During this period, the government must listen to the grievances of the citizens, remove any barriers to improving their living standards, and work to fulfill their basic needs and legitimate aspirations.

A swift and deep reform is not always necessary. What is most important is that reform is undertaken gradually, with clear, realistic goals. To achieve these goals, it is crucial for all sectors of society, including political and social forces, public opinion leaders, intellectuals, and academics, to participate in the process. The government must also take responsibility for any mistakes it makes and face them appropriately, as it is, to some extent, accountable to the public.

In conclusion, institutional reform is the core mechanism of transitional justice. Through the experiences of countries that have gone through this process, it becomes clear that successful reform requires comprehensive changes across all state institutions. This is essential to achieving long-term social, economic, and political goals, which are crucial for preventing future societal collapse.

Section Three

Court Decisions

Transitional justice is closely related to politics, and therefore the judiciary in transitional justice depends on several factors, the most important of which is political will, which is the primary determining factor. Moreover, the state institutions: the judiciary, in transitional justice varies according to the factors and local contexts that shape them. In the Yemen, in its current form, it will manage transitional justice and reconciliation files in the transitional phase. However, it involves the judiciary, and one way to achieve this is by including selected judges in proposed reconciliation mechanisms, in a transitional justice committee, such as the recommended in the outcomes of the National Dialogue Conference and the draft constitution.

Meanwhile, the Special Tribunal for Lebanon specializes in terrorism and criminal acts against life, personal safety, and failure to report crimes and criminal acts, which gives hope for ending the phenomenon of impunity in both internal and international conflicts. This establishment also serves as evidence that the international community has become unwilling to ignore brutal acts and violations of human rights.

In Iraq, the first transitional justice mechanisms were established through trials in the aftermath of and the American occupation of the country in 2003. A special Iraqi court was set up to try

Iraqi citizens or residents in Iraq with an accusation of committing genocide, crimes against humanity, war crimes, or violations of laws. This court discussed three cases: The Dujail case, The Anfal, and The Halabja chemical attack, and sentenced former Iraqi president Saddam Hussein to death. However, the legitimacy of this court has been questioned, as it was established under an American occupation and used force to resolve international disputes.

While transitional justice studies are part of international human rights law studies, the concept has evolved to expand its scope to include many mechanisms and scientific and research goals. Historically, international law has been significant in achieving justice through trials, by the 1932 investigations into World War I crimes. Although the committee tasked with investigating these crimes concluded its work in 1919, only a small number of perpetrators, around 12 officers, were prosecuted for crimes against humanity at the time.

In the pursuit of transitional justice, the 1945 Yalta Conference to establish the International Military Tribunal in Nuremberg, Germany, to prosecute war criminals whose crimes did not have a geographic location. This tribunal was focused on crimes against peace, war crimes, and crimes against humanity. Similarly, the International Military Tribunal for the Far East in Tokyo prosecuted war criminals in the Pacific region, specializing in the same types of cases as the Nuremberg Tribunal.

Features of transitional justice in its modern concept began to take shape with human rights trials in Greece in the mid-1970s, as well as the measures of the military regime in Argentina. The efforts of truth-seeking commissions in South America are also acknowledged, the Bolivia Commission in 1982, investigated cases of forced disappearances, and the National Commission for the Investigation of the Disappeared in Argentina in 1983. Chile also established the National Commission for Truth and Reconciliation in 1990 and the Political Prison and Torture Commission in 2003. Additionally, the Special Court for Sierra Leone focused on crimes against humanity, war crimes, and violations of international humanitarian law. All these international efforts were significant in establishing justice files for victims of human rights violations.

One study summarizes the decisions of courts by stating that international judicial efforts can be categorized into three generations:

1. First Generation: This occurred after World War II, concerning German and Japanese war criminals, the Nuremberg and Tokyo Trials, focusing on criminalization and international trials.
2. Second Generation: This generation emerged after the Cold War, marked by significant neglect of many human rights violations because of the current conflict between the Eastern and Western blocs and their respective allies.
3. Third Generation: This generation began establishing the International Criminal Tribunal for the Former Yugoslavia in 1993, marking a new phase in transitional justice linked to the resurgence of conflicts, which inevitably led to the repetition of transitional justice applications and the overcoming of the principle of immunity, making it the exception rather than the rule. This was followed by founding the International Criminal Tribunal for Rwanda in 1994 and the Rome Statute of the International Criminal Court in 1998 combining international and national mechanisms for achieving transitional justice.

Conclusion

The current study has considered the global legal framework of transitional justice, specifically focusing on the compensation mechanisms for victims. It has considered some conceptual

strategies and examined a number of global experiences. The study has yielded a number of key findings, most notably which are listed below:

First: Conclusions

1. One-size-fits-all standard for transitional justice does not exist, since its implementation depends on the particular political, social, and economic situation of each nation.
2. Transitional justice has evolved from the sole emphasis on criminal responsibility to the incorporation of other mechanisms such as truth-seeking, reparations, and protection of collective memory.
3. Criminal responsibility is one of the earliest and most widely employed transitional justice tools, though its deployment differs in intensity throughout global experiences.
4. Transitional justice, in the majority of systems, assists in leading to the revelation of facts relating to human rights violations and hence their non-recurrence.
5. Truth commissions have a key role in recording the violations, giving power to victims during the transition, and determining groups that should be compensated.
6. Transitional justice mechanisms are applied differently in states, often employing a combination of methods tailored to their own needs.
7. The Iraqi transitional justice process has faced unique challenges, the most noteworthy of which have been the failure of coordination between compensation agencies, selective reparations payments to select victims, and the absence of reliable statistical data on the total number of victims.

Second: Recommendations

1. It is necessary to strengthen the role of civil society organizations in monitoring human rights violations because they have watchdog potential and institutional independence.
2. There is a need to work towards building a state of citizenship in Iraq and promoting the values of equality and democracy by strengthening actual national interests.
3. It is necessary to pass a holistic transitional justice law in Iraq that encompasses victims from all regions of the country. This would bring together efforts and ensure the creation of more sufficient compensation mechanisms.
4. Re-examining the De-Ba'athification Law is necessary in order to prevent collective punishment and instead pursue individual accountability, thereby rendering justice without unjust exclusion.
5. The provisions of the Law on the Accountability and Justice Commission must be amended in order to enhance its efficacy, particularly in relation to the burden of proof against illicit enrichment.
6. There must be an official, symbolic act of reparation to all the past regime victims whereby there is a public official act of apology on the part of the government or nation for previous human rights atrocities.
7. The duty to submit a formal complaint to the United Nations to demand Iraq's compensation for the losses suffered as a result of the war just ended and the actions that affected the lives of

the Iraqi people.

7. It is important to draw on international experiences in transitional justice—especially those comparable to Iraq's context—without resorting to blind imitation, in order to ensure the success and sustainability of the national transitional justice process.

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