Global Transitional Justice Norms and the Framing of Truth Commissions in the Absence of Transition

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Abstract

As global transitional justice norms strengthen, governments face increasingly pressure to enact formal transitional justice mechanisms to resolve domestic conflict. This article examines how Bahrain, Morocco, and Sri Lanka attempted to exploit these norms to appease demands and stave off international transitional justice intervention by employing truth commissions. Governments framed truth commissions and their responses to their investigations as sufficient to address the past. To varying degrees, though, domestic audiences and the international community refused to accept this framing. As such, truth commission investigations and their reports failed to resolve the respective conflicts. Rather, they prolonged attention on governments' past and present misdeeds. For governments, the risk this strategy backfires is higher when human rights violations have been more extensive and extreme, when governments construct a more obviously biased truth-seeking process and display little interest in enacting recommendations, and when governments have failed to cultivate strong ties with Western powers.

Transitional justice commonly refers to measures that societies enact to address histories of violence and repression. Governments face increasing pressure from domestic activists and the international community to establish formal transitional justice mechanisms to address past human rights violations. Truth commissions, nonjudicial bodies established to investigate a pattern of human rights abuses, are a common form of transitional justice. As a truth commission norm has emerged in global politics (Hirsch, 2007, 2014), it has become widely accepted among policymakers and activists that truth commissions are an important conflict resolution tool (Amnesty International, 2007; Office of the United Nations High Commissioner for Human Rights, 2006). To be sure, as nonjudicial investigative bodies, some fear truth commissions will exacerbate tensions by threatening perpetrators and failing to provide accountability (Mamdani, 2002; Snyder & Vinjamuri, 2003). Many, though, argue that truth commissions are critical for resolving deep-rooted conflicts (Hayner, 2000; Minow, 1998). Truth commissions attempt to construct authoritative histories of past violence. They provide a platform from which victims can tell their stories and have their suffering officially acknowledged. In doing so, the conventional wisdom holds that truth commissions can ultimately promote reconciliation and conflict resolution.

This article explores how stable regimes employ truth commissions to appease demands and stave off international transitional justice intervention. Rather than reject the relevance of transitional justice to address abuses, governments in Morocco, Bahrain, and Sri Lanka each attempted to use the truth

commission model to their advantage. Instead of prosecuting state agents as many demanded, governments sought to pursue transitional justice with what they perceived to be the relatively costless measure of a truth commission. This is consistent with a growing body of scholarship that examines governments' strategic exploitation of transitional justice (Cronin-Furman, 2020; Grodsky, 2010; Loyle & Davenport, 2016; Subotić, 2009). However, I argue that, to varying degrees, employing truth commissions has proven more costly than anticipated.

As I show, in each of these cases, few stakeholders questioned the legitimacy of the truth commission model to promote conflict resolution. Rather, actors sought to frame the truth commission in terms of its sufficiency for the task. Debates centered around the adequacy of truth commissions' mandates, truth commissions' findings and the governments' responses to them, and the sufficiency of the truth commission to address past violations and promote nonrepetition. Governments framed truth commissions as closing discussion of the past. By and large, though, truth commissions prolonged the attention on governments' past and present misdeeds. Domestic audiences and the international community refused to accept governments' framing. Thus, governments became entangled in the norm, giving critics standards against which to assess their human rights and transitional justice practices. Although we lack data on individual perceptions, and reconciliation is a long-term process, at the macro level, there is little evidence truth commissions have promoted reconciliation. At best, truth commissions made the respective conflicts slightly less destructive (Deutsch, 1973).

Organizationally, the article first examines the literature on framing and truth commissions as conflict resolution tools. Next, I examine the truth commission experiences in Morocco, Bahrain, and Sri Lanka. Specifically, I explore the contention over the governments' framing of the truth commission's sufficiency to deal with the past and the adequacy of the government response to the truth commission. Ultimately, few stakeholders, domestic or foreign, accepted governments' claims that the truth commissions significantly advanced conflict resolution. I conclude by outlining several factors that seem to influence the extent to which relatively stable regimes can exploit truth commission norms to effectively make the past "go away." I argue that the risks for abusive regimes in engaging the truth commission norm is higher when human rights violations have been more extensive and extreme, when governments construct a more obviously biased truth-seeking process and display little interest in enacting recommendations, and when governments have failed to cultivate strong ties with major Western powers.

Transitional Justice Choices and Conflict Resolution

There is an extensive literature on whether and how countries pursue transitional justice. One of the most common approaches to understanding the transitional justice choices societies make is to focus on structural conditions domestically, in particular, the balance of forces (Barahona de Brito et al., 2001; Huyse, 1995). The conventional wisdom is that prosecution will be more likely when one side emerges victorious. In such situations, punitive measures are likely to target the losers, who are not in a position to block trials or to cause unrest (Landsman, 1996; Snyder & Vinjamuri, 2003). Negotiated transitions appear more likely to result in transitional justice policies that are less threatening to perpetrators, such as truth commissions (Huyse, 1995). In the absence of transition, all three governments in the present study were firmly in control when they established their respective commissions. A strict focus on the domestic environment offers no obvious need to offer a truth commission as a concession.

If one considers the global context, however, the behavior makes more sense. Some scholars argue that states feel pressure to comply with global norms due to a desire to be accepted as legitimate members of the international community (Finnemore, 1996). In fact, when governments are uncertain as to how to respond to a situation, adopting policies that possess international legitimacy and are perceived as best practices provide a ready solution (Dimaggio & Powell, 1983; Meyer et al., 1997). Past research has chronicled how a transnational network of scholars and technical experts propagated a truth commission norm (Hirsch, 2007). According to Priscilla Hayner (2011, p. 11), a truth commission "(1) is focused on

past, rather than ongoing, events; (2) investigates a pattern of events that took place over a period of time; (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; and (5) is officially authorized or empowered by the state under review." Popularized by South Africa, dozens of countries have established truth commissions in recent decades (Bakiner, 2016).

Academics and practitioners have outlined several ways in which truth commissions might contribute to conflict resolution (Hayner, 2000; Minow, 1998; Office of the United Nations High Commissioner for Human Rights, 2006). As official bodies, truth commissions challenge communal or government denial of past violations. Their investigations provide the foundation for a definitive history of the period. Through these revelations, truth commissions may prompt the development of a human rights culture and prompt reforms that promote nonrecurrence (Crocker, 2000; Dimitrijevic, 2006). As Ruti Teitel (2000, p. 69) notes, "establishing the 'truth' about the state's past wrongs...can serve to lay the foundation of the new political order." Furthermore, their victim-centered nature may promote restorative justice (Llewellyn, 2013). They may restore victims' dignity, promote healing, and advance reconciliation (Tutu, 2003). Finally, they may prompt action to hold perpetrators accountable. Since these are long-term processes, truth commissions cannot end conflicts alone (Hayner, 2000).

Many of these claims are based upon anecdotes (Brahm, 2007; Mendeloff, 2004), and assume transitional contexts in which there is greater opportunity for substantial change. Morocco, Bahrain, and Sri Lanka all had long faced international criticism for their human rights practices, including demands that officials be held accountable for violations. While calls for justice had been largely rebuffed in the past, governments saw an opportunity to frame the truth commissions as consistent with global norms and sufficient to deal with the past. Scholars have long recognized the importance of framing for shaping the prospects for conflict resolution.

Frames are cognitive constructs that, among other things, help people understand the causes of conflict, the appropriate actions to take, and how to interpret the behavior of other parties (Gray, 2003). Actors strategically frame issues to advance their own interests (Kaufman & Smith, 1999). A growing body of research argues that governments exploit global transitional justice norms to advance their own interests (Grodsky, 2010; Loyle & Davenport, 2016; Subotić, 2009). Domestic factors are often critical in shaping whether the goals of transitional justice are perverted. Loyle and Davenport (2016) argue that the risk of transitional *injustice* is higher when participation in the design and implementation of transitional justice processes is constrained, when violence remains prevalent in society, and when governments lack democratic constraints, whether on paper or in practice. All three cases examined here are at heightened risk based upon these criteria. Furthermore, in countries with at least the semblance of democracy, governments need to be attuned to public opinion (Subotić, 2009). It may not be pro-justice though. In Sri Lanka, the Sinhalese majority largely accepts the official rhetoric that blames the Tamil Tigers for atrocities and characterizes state violations as unfortunate byproducts of war.

Framing and reframing can make conflicts more or less intractable (Elliott et al., 2003; Putnam & Holmer, 1992). Domestic activists rejected governments' framing of the truth commissions as adequate responses, but lacked the power to mount a serious challenge. More threatening for the regimes was external criticism. When countries face international pressure to address human rights violations, they may seek to embrace the appearance of compliance with global transitional justice norms by adopting the less threatening truth commission model. Through these tactics, Subotić (2009, p. 29) argues, "they are able to make use of international norms and institutional models while at the same time rejecting or ignoring their substance. They violate the norm by complying with its institutional demands." While a global truth commission norm may have been propagated by a growing consensus that they are not a poor substitute for trials (Hirsch, 2014), leaders concerned with accountability recognize commissions still offer a strategy to avoid punishment for themselves or key domestic allies. Moreover, governments may enact such "half-measures" to give sympathetic states the cover to block multilateral action

(Cronin-Furman, 2020). Being firmly in control, the governments examined here were able to shape the mandate of the commission, thereby minimizing the threat to themselves.

However, the obvious subversion of the norm may also serve to perpetuate transitional justice demands. In the wake of the final reports of each of the three truth commissions examined here, national governments, foreign governments, the UN, as well as local and transnational activists engaged in competitive framing of the respective truth commissions along three dimensions: the adequacy of the truth commission's mandate to address past violations; the adequacy of the government's response to the truth commission; and whether the truth commission was sufficient to resolve the conflict. The three governments argued truth commissions provided a just, comprehensive way for the respective countries to put the past to rest. Further, they touted their compliance with truth commission recommendations. Rather than putting an end to debate about the past as governments intended, however, each investigation served to perpetuate domestic and international discussion about the importance of accountability and additional measures to address past human rights violations. Thus, in limited ways, governments that sought to exploit transitional justice rhetoric became entrapped by it. Although the legacies of these truth commissions will become clearer with time, in the short-term, they do not appear to have promoted conflict resolution.

Truth Commissions and Stable Regimes

This section examines three examples of attempted norm cooptation. Whereas existing transitional justice cooptation research focuses on relatively vulnerable postconflict governments in the Balkans and Rwanda (Grodsky, 2010; Loyle & Davenport, 2016; Subotić, 2009), this section provides an overview of three cases in which stable governments established truth commissions to assuage transitional justice pressure. Morocco, Bahrain, and Sri Lanka were selected from the growing list of nontransitional contexts in which truth commissions have been created (Wiebelhaus-Brahm, 2019). The three have not been randomly selected, nor are they intended to be representative of the broader category of nontransitional contexts. Rather, they are examples of what Gerring (2006) calls influential cases. Each government was quite secure, thus presenting a tougher test of whether exploiting the truth commission norm sustains or curtails transitional justice demands. For each case, I use process tracing to examine regimes' relative success in framing truth commissions as sufficient to their human rights record (George & Bennett, 2005). Given the significant time that has passed since the commissions operated, one can explore the extent to which each helped sustain transitional justice processes in their respective societies.

Morocco

Following King Mohammed VI's 2004 succession to the throne, he accepted his Advisory Council of Human Rights' (CCDH) recommendation to establish the Equity and Reconciliation Commission (Instance Équité et Réconciliation—IER). The commission focused on the reign of his father, King Hassan II, whose four decade-rule was known as the "Years of Lead" for the government's frequent use of arbitrary detention, torture, and disappearances. In focusing on his father, the IER seems meant to build Mohammed's reputation as a modern, progressive monarch. To his credit, Mohammed granted the IER significant resources and appointed a set of credible and capable commissioners to run it. Nonetheless, the IER avoided more recent human rights abuses, particularly violations committed under King Mohammed's rule, and Western Sahara, which is Morocco's thorniest human rights issue (Faramarzi, 2005a). The silence on Western Sahara and the government's lack of interest in holding perpetrators accountable for past human rights violations is suggestive of a regime employing the truth commission model to legitimize itself. In the end, the IER generated significant public discussion about human rights and Morocco's past, facilitating limited sustained engagement with the past, though it arguably contributed little to conflict resolution.

In its mandate, the IER was asked to investigate human rights violations by government forces that occurred between Morocco's independence and Hasan's 1999 creation of the Independent Commission of Arbitration. The IER's mandate charged it with establishing the facts about past human rights abuses. In addition, it was to serve an educational function by helping the country learn from its past. Through its investigation, it also was to facilitate victim healing and reconciliation. Finally, the IER was intended to enable the provision of compensation for victims. The statute establishing the commission defined victims narrowly, limiting its investigation only to forced disappearances and arbitrary detention. The IER's 17 commissioners came from a variety of backgrounds, including several lawyers and journalists, a physician, and a historian. The commissioners were widely respected and included victims and human rights activists among their ranks; most had a history of human rights activism (Loudiy, 2014). The government asked the commissioners to accomplish the ambitious mandate in approximately two years.

As its final report chronicles, to fulfill its mandate, the IER established three separate units: Investigations, Reparations, and Research and Study. The Investigations Unit interviewed witnesses and collected evidence around the country in order to document past human rights violations. During the roughly 45-year period subject to its investigation, the IER concluded in its final report that government forces killed over 300 people during anti-government protests, arbitrarily detained 174 individuals who died in government custody, and disappeared nearly 600 others. The commission's final report states that government officials were less than full cooperative with their investigation.

The IER was a high-profile institution in Morocco. According to the final report, the commission held seven public hearings in different locations around the country, which were broadcast on television and radio. Among other things, the government forbids those testifying at the hearings to name alleged perpetrators. Individuals who spoke at the public hearings received psychological support both before and after their appearance. Aside from the hearings, the IER organized several televised discussions of Morocco's future political, legal, economic, and cultural development. Overall, observers credited the IER's public programing with generating significant public discussion regarding human rights and Morocco's past (Khalleej Times, 2005).

The Research and Study Unit conducted several studies that enhanced and provided context to the stories victims relayed to the Investigations Unit. It worked closely with civil society organizations, which boosted the commission's credibility and gave it access to their databases of human rights abuses (Arabic News, 2004). In addition, the Research and Study Unit consulted with global transitional justice experts, including the International Center for Transitional Justice and veterans of South Africa's Truth and Reconciliation Commission (TRC), to learn from other countries' experiences.

The Reparations Unit was responsible for developing measures to repair the harm suffered by victims. According to the IER's report, the Reparations Unit heard approximately 17,000 claims; the IER recommended monetary compensation for almost 10,000 individuals. It established a unit to provide medical and psychological care for victims while the IER was in operation and recommended the government set up a long-term medical program. Moreover, the Reparations Unit identified nearly 2,000 victims who had lost their jobs for political reasons. The IER called upon the government to restore them to their positions with compensation.

On November 30, 2005, the IER submitted its final report to the government. In a speech two weeks later, the King ordered the report's public release. He further pledged to implement the recommendations. Two months prior to the IER's conclusion, the commission held a three day public National Forum to discuss its draft reparations program with hundreds of government officials and civil society representatives (Khalleej Times, 2005). Ultimately, the government gave IER reparations a budget of between USD 50–70 million to be split among the victims (Hazan, 2006). In early 2007, the government began making payments to victims through the CCDH.

The IER's final report put forward several other recommendations. For instance, it urged significant economic development assistance for regions most affected by past abuses. Second, the IER called for decommissioning former detention centers, which began shortly afterward. Third, the commission

recommended constitutional reforms to delineate Moroccans' fundamental rights and freedoms. Fourth, it suggested institutional reforms to help prevent future human rights abuses. In particular, the IER recommended a stronger, more independent judiciary and greater oversight of the military. Fifth, it called on the government to investigate unresolved cases. Finally, it pointed to the need to ensure that the commission's records remain accessible to encourage ongoing public discussion.

Overall, the IER is viewed in different ways by observers, either as a positive initiative, whether intentional or not, or as a public relations exercise for the new king (Hazan, 2005). Some criticisms focused on the mandate. For instance, the government gave victims only one month in which to apply for reparations, and this happened early in the commission's work when it may have been less well known. At the same time, the government funded over 100 temporary staff for the Reparations Unit to manage the flood of cases (Khalleej Times, 2005). Human rights groups were critical of the prohibition on identifying perpetrators. One group actually published its own list of alleged torturers to fill the void. Civil society groups also disliked the fact that the IER was empowered to investigate only a narrow range of human rights abuses, which resulted in an overly rosy picture of the history of human rights violations in Morocco (BBC, 2005; Faramarzi, 2005b). Other criticisms focused on the government's reaction to the IER's work. For example, the government was accused of acting slowly on recommendations (Thorne, 2006). Although the reparations program was up and running quickly, following a June 2009 visit, the UN Working Group on Enforced or Involuntary Disappearances concluded that, while some IER recommendations had been implemented, many remained unaddressed (UN Office of the High Commissioner for Human Rights, 2009). Progress in implementing IER recommendations continued slowly. In early 2010, CCDH president Ahmed Herzenni stated that all IER recommendations were either implemented or in the process of being implemented (Libération, 2010). Yet, at roughly the same time, Amnesty International issued a report that was much more pessimistic about the future of IER recommendations and the ability of the Moroccan government to improve its human rights practices (Amnesty International, 2010).

In the end, the Moroccan government seems to have been successful in framing the IER to stave off demands for accountability. Although the IER has faded from public view, its work sustained attention on Morocco's past. As one observer put it, by "revealing a narrative of past abuses, distributing reparations, and outlining structural recommendations for change, the IER succeeded in fulfilling the terms of its mandate, and acting as a catalyst for reforms..." (Fakhro, 2017, p. 170). The government was drawn into taking additional measures to deal with past abuses. Moreover, domestic activists and the international community brought sustained pressure on the government in part because of the IER. The government's attempt to frame the truth commission as closing a stage of Morocco's history has been unsuccessful.

While Morocco has made strides domestically in human rights since the IER was established, including the expansion of women's rights, the regime also remains committed to old traditions and the assertion of authority over the political and religious aspects of daily life (Associated Press, 2012). Security forces maintain the authority to violently suppress protests and curtail freedom of speech. In fact, government failure to address the root causes of the conflict causes continued tension (Rhani et al., 2020). As such, from the vantage point of 2020, the IER has not substantially advanced the resolution of the conflict.

Bahrain

The protests that began in February 2011 were inspired by pro-democracy activism around the region, but grew out of longstanding grievances of Bahrain's Shia majority. Although they make up 65–75% of Bahrain's population (Pew Forum on Religion & Public Life, 2009), Shia view themselves as ruled by a foreign occupier after the Sunni Al-Khalifa family invaded the island in the eighteenth century (Fuller & Francke, 1999). Particularly since the 1979 Iranian revolution, Bahrain's Shia population has periodically

risen up to demand greater political participation. The government has typically responded by imprisoning opposition leaders and violently suppressing protests (Nasr, 2007). Thus, the 2011 demonstrations were part of a decades-long fight for greater economic and political power.

Following protestors in Cairo's Tahrir Square, Bahrainis began camping out in Manama's Pearl Roundabout to demand genuine democracy on February 14, 2011. The date was significant as it was the tenth anniversary of a referendum on the National Action Charter, which implemented limited political reforms. At its peak, an estimated 200,000 people, approximately 25% of Bahrain's adult population, were at Pearl Roundabout (Humphreys, 2011). Security forces unsuccessfully attempted to put down the demonstrations. Then, the government offered some modest concessions. Circumstances changed dramatically when, on March 2, the government staged a counter-demonstration that sparked sectarian violence. As tensions escalated, on March 14, the Gulf Cooperation Council agreed to send 1,500 security personnel from Saudi Arabia and the United Arab Emirates to quell the unrest. The invasion succeeded in suppressing protests, but assistance from other Sunni monarchies exacerbated underlying tensions.

The government succeeded in curtailing the protests through violence and repression. According to the Bahrain Independent Commission of Inquiry (BICI; 2011), security forces used excessive force to end the protests. Thirty-five people were killed in the protests, including five security personnel. Five others died as a result of torture in government custody. After declaring a three-month state of emergency, the government created special National Security Courts to convict scores of demonstrators. The government even targeted hospital personnel, prosecuting several doctors who provided medical treatment to protesters. In total, BICI found that 2,075 state employees and 2,464 private sector employees lost their jobs for participating in the protests. More than 500 students were expelled, suspended, or subjected to disciplinary action for joining the demonstrations.

The international outcry over the Bahraini government's crackdown was muted. Sunni Arab autocrats are loathed to criticize one of their own. For its part, the United States was relatively silent on the behavior of a close ally that hosts the US Navy's Fifth Fleet. Nonetheless, global interest in the so-called Arab Spring put the government in an unflattering light and it felt compelled to address the human rights violations that occurred during the protests. It sought to do so with BICI. The commission was established by royal decree on June 29, 2011. Nonetheless, the timing of BICI's creation, when a government-sponsored national dialogue had barely gotten off the ground, was odd. Shehabi (2011) suggests it was part of the King's strategy to sideline conservatives in the royal family.

The Bahraini government staffed BICI with prominent international legal experts to boost its credibility. It was chaired by Cherif Bassiouni, an internationally renowned international criminal justice lawyer and scholar who was nominated for the Nobel Peace Prize in 1999. The four other commissioners were selected in consultation among the Bahraini government, international organizations, and Professor Bassiouni: former UN Special Rapporteur on Torture Sir Nigel Rodley; the International Criminal Court's first president, Philippe Kirsch; Kuwaiti international and Sharia law expert Badria Alawadhi; and Mahnoush H. Arsanjani, an Iranian international lawyer and veteran of the UN's legal office. The commissioners formally began their work on July 24, 2011.

The royal decree establishing BICI gave it broad powers. It had access to government files, agencies, and officials as well as any site it wanted to visit. Individuals could contact the commission via telephone or email, and BICI could meet witnesses in secret. Bassiouni reports having complete freedom to travel to sites and to talk with witnesses and detainees at any time (Personal communication). Nonetheless, Bassiouni had to request an extension to complete the commission's final report due to a lack of cooperation from government agencies. In approximately four months, BICI collected about 9,000 testimonies related to abuses. The commission hired its own staff and directed the use of its budget, which was provided entirely by the Bahraini government.

BICI worked to cultivate a reputation of even-handedness, but, in the tense environment, was not always successful. For example, opposition groups interpreted several of Bassiouni's statements as pro-government. The most dramatic incident occurred in July, when, in a media interview, Bassiouni

described the government's response to the protests as "manageable" compared to the violence in the early 1990s former Yugoslavia (Shehabi, 2011). In response, protestors stormed BICI's offices. Afterward, the commission issued a statement denying its investigation had a predetermined outcome. For government critics, the statement appeared to set a high standard through which government actions could be vindicated. Furthermore, Alawadhi's publication of an op-ed justifying the Gulf monarchies' military intervention led the opposition to question her neutrality.

Given that, many were surprised by how critical the BICI report was of government handling of the demonstrations. It documented the mass arrest of peaceful demonstrators, frequent use of torture on detainees, and a reliance on National Security Courts to punish protestors. It found that 2,929 people were detained under the state of emergency, 2,178 of whom were eventually released without charge. Frequently, the whereabouts of detainees were concealed for days or weeks. BICI received 559 complaints of mistreatment while in government custody. The commission's conclusion that human rights abuses were not official policy did not sit well with many. Nonetheless, it did find evidence of a plan to terrorize protesters that could not have been implemented without high-level authorization. The Shia opposition's reaction to the BICI report was relatively dismissive, with "some saying it did not go far enough while others complained that those responsible for the abuses remained in office" (Hammond, 2011).

To its credit, the government broadcast Bassiouni's summary of the report nationwide and the report itself was publicly released. The report outlined several recommendations to further address past abuses and prevent future violations. First, it urged the government to establish an independent body to further investigate allegations of abuse and punish those responsible for human rights abuses. Second, it recommended that the government have ordinary courts review the sentences handed down by National Security Courts. Third, it called upon the Bahraini government to align its laws with international human rights standards. Fourth, it recommended that the Inspector General of the Ministry of the Interior be transformed into an independent ombudsman. Fifth, with respect to security forces, BICI called for the creation of a training program based upon UN best practices and for its ranks to better reflect the country's sectarian make-up. Sixth, it recommended a training program for judicial and prosecutorial officials to combat torture and ill-treatment. Seventh, it suggested the government use the National Fund for the Reparation of Victims, which was established by royal decree in September 2011, to provide remedies for victims. Eighth, the commission recommended the development of a national reconciliation and education program to promote tolerance, human rights, and the rule of law. Finally, it urged the government to create an independent body made up of representatives of government, opposition, and civil society to monitor the implementation of BICI recommendations.

In the ceremony in which BICI's report was unveiled, the King pledged to enact the commission's recommendations. Bahrain's cabinet admitted that security forces committed abuses. The government quickly announced that alleged abuse by government forces would be prosecuted and that victims would be compensated. It announced that it would criminalize torture and set up an independent human rights ombudsman's office. It also established a 19-person commission to oversee implementation of BICI recommendations (the Follow-Up Body). In a further bid for transparency, it also set up a website (http://www.govactions.bh/) to catalog implementation.

The government was anxious to show results prior to its February 29, 2012, self-appointed deadline to implement the recommendations. Nonetheless, over the years, there has been disagreement as to what has been implemented. The government-run Bahrain News Agency reported on February 4, 2012, that Bassiouni confirmed that the government had fully complied with BICI recommendations. Yet, contradicting its earlier press release, two years later, Bahrain's Human Rights Affairs Minister asserted that 19 recommendations had been *fully* implemented, with work continuing on the rest (Grewal, 2014). However, the US State Department concluded at roughly the same time that only five BICI recommendations have been fully implemented (Lynch, 2014).

The investigation and prosecution of human rights abuses have not progressed much. In early 2012, the government announced that 48 members of the security forces had been investigated for their role in

the repression, but only eight have been charged in what was a secretive investigation (Sahraoui, 2012). Bassiouni cited the lack of perpetrator accountability as a major failing of the government's response (Issa, 2014). The record of providing remedies is mixed. Protestors who were charged before National Security Courts saw their cases transferred to civilian courts. Although many had been reinstated, approximately 400 people dismissed from their public sector jobs remained out of work after the BICI report's publication. Many who returned to their jobs were reportedly asked to pledge not to protest again (Amnesty International, 2012). According to the Follow-Up Body's November 2013 report, 99% of dismissed workers and all but twelve students were reinstated (Grewal, 2013). In early February 2012, the commission charged with implementing BICI recommendations announced that a special chamber would soon be established in the civil courts to expedite compensation cases. In the end, the government failed to reach its self-appointed deadline for implementation. The Follow-Up Body eventually stopped releasing periodic reports on implementation progress.

BICI's legacy is mixed. To its credit, Bahrain's government made efforts to ensure fairness by appointing foreign commissioners and keeping the process relatively transparent. The commission's report provided standards against which government action could be assessed years afterward. Nonetheless, the impact on the state's behavior has been limited and the conflict is no closer to resolution (O'Loughlin, 2016). Opposition figures criticize the fact that the broader history of government repression beyond 2011 remains unaddressed, and that perpetrators have not been held accountable (Fakhro, 2017). Moreover, the positive steps achieved in implementing some recommendations are hard to reconcile with continued government repression of opposition groups. Hundreds of political prisoners remain in custody and torture continues to be practiced. Until there is real democratic reform in Bahrain, demands for transitional justice are unlikely to be satisfied. The monarchy's position is secure, and there is little prospect of a broader transitional justice process beginning. Thus, the government's framing of the truth commission largely succeeded.

Sri Lanka

After twenty-six years of conflict, the civil war between the Sri Lankan government and Liberation Tigers of Tamil Eelam (LTTE) ended in 2009. The LTTE sought an independent state for the Tamil minority, who account for approximately 15% of Sri Lanka's population, after having been subject to widespread repression and discrimination for decades. Unlike Morocco and Bahrain, from its origins in the late 1970s, the Sri Lankan conflict escalated to a full-scale civil war. While varying in intensity over time, the war was characterized by massive casualties and widespread violations of humanitarian law on both sides (Bhattacharji, 2009). Most significantly, after the government officially withdrew from a ceasefire agreement in 2008, it launched a massive assault on the LTTE. Reports of the final stages of the war indicate an increased level of brutality amid allegations government forces targeted civilians (Ganguly, 2009). The UN estimates that approximately 100,000 people were killed during the civil war, nearly 40,000 of whom died in the final five months of the conflict (Dominguez, 2014).

Although militarily victorious, Sri Lanka's government faced strong domestic and international pressure for an investigation into human rights violations, the final months of the war in particular. As a result, President Mahinda Rajapaksa established the Lessons Learnt and Reconciliation Commission (LLRC) in May 2010. Critics accused the government of establishing the commission for a variety of self-interested reasons (Anonymous, 2011). First, it was timed to undermine international efforts to investigate human rights abuses, the UN Panel of Experts in particular, which was being established in Colombo. In the end, though, creating the LLRC would prove costly for Sri Lanka, Rajapaksa in particular.

The LLRC was created without input from stakeholders. The commission was charged with investigating the circumstances that led to the collapse of the 2002 ceasefire agreement and human rights violations up to the war's end in 2009. As such, the mandate was framed to avoid the conflict's origins. The

LLRC also was charged with prescribing methods of compensation for victims and prevention measures. The eight commissioners, who were appointed by Rajapaksa, were former government officials and prominent lawyers. None were opposition figures.

Nonetheless, significant effort was put into the commission's work. From its beginning in August 2010, the LLRC held 57 public sessions and undertook 12 field visits to over 40 locations to collect evidence and testimony (LLRC, 2011). It visited battle zones in Sri Lanka's north and east to clarify details of the civil war's final months. To encourage participation, the commission gave witnesses a variety of options for submitting their testimonies (Wickramasinghe, n.d.). As the final report documents, it received over 1,000 oral submissions and over 5,000 written submissions. Nonetheless, critics argue that state coverage of LLRC proceedings was often selective, journalists forced to self-sensor, and thousands of witnesses failed to participate due to security concerns (Anonymous, 2011). Global civil society organizations including Amnesty International, Human Rights Watch, and the International Crisis Group rejected the LLRC and refused to appear before it (Keenan, 2012).

The LLRC submitted its final report to the government in November 2011. Its characterization of the conflict was largely sympathetic to the government. For example, it concluded that the government's military strategy had been designed to avoid civilian casualties. Moreover, it asserted that humanitarian aid provided during the conflict had been sufficient. The report essentially cleared the state's security apparatus of allegations that it deliberately targeted civilians and justified government actions under the logic that it had no other choice. It is also worth noting that the report failed to mention that doctors detained under anti-terrorism laws at the war's conclusion were forced to publicly recant statements that many civilians died from government shelling (International Crisis Group, 2011). By contrast, the report focused on the LTTE's grave violations of international humanitarian law and recommended appropriate legal action be taken against perpetrators. In short, its conclusions shifted principal blame for civilian casualties to the LTTE, which, given damning reports on government actions by the UN, the International Committee of the Red Cross, and other independent sources widely noted in the media, undermined the LLRC's credibility.

The LLRC promoted its recommendations as steps to advance peace and to ensure that terrorism and violence would not resume. The report encouraged the Sri Lankan government to implement its recommendations in a way that promoted tolerance and compromise. Some recommendations did ask more of the state than many observers had expected. For example, the LLRC recommended that the state take responsibility for cases of missing persons and child soldiers, issuing death certificates where necessary, and treating detainees on a case-by-case basis. In addition, it made a series of recommendations regarding the relocation of displaced citizens and the provision of monetary compensation for those who suffered as a result of the conflict.

In order to promote reconciliation and peace-building, the LLRC recommended increased power sharing for minorities and political decentralization. It also encouraged the government to accommodate cultural, religious, and linguistic differences by ensuring equal opportunities for minorities, especially in education. It further urged revising the national anthem to allow that it be sung in both Sinhalese and Tamil in order to promote unity. Finally, it advised modifying school curriculum to promote peace and reconciliation. However, well-meaning the recommendations, restricting the investigation to the period of 2002–2009 and clearly laying the blame on the LTTE limited the potential for future reconciliation, given that it excluded a thorough investigation of the conflict and its root causes.

The government's response to these recommendations suggested that it was more concerned about maintaining a façade than genuinely pursuing transitional justice (Keenan, 2012). While the report did mention unresolved Tamils grievances, the government response indicated that significant political reform, including power sharing, was unlikely. Overall, the government was slow to respond to LLRC recommendations. The military, in consultation with the Presidential Task Force for Resettlement, Development and Security, continued to maintain control over virtually all aspects of life in the Tamil-majority north and east. The military imposed restrictions on humanitarian, social, and recovery work,

but denied allegations of mistreatment, asserting they were "helping them (the Tamils) renovate and reconstruct their homes so the people are very happy" (Manikavasagam, 2012, p. 13). Yet, as the same report indicates, of the nearly 300,000 civilians (primarily ethnic Tamils) displaced during the final months of the conflict, thousands were denied permission to return to their homes and were not provided with adequate shelter long after the war's end. Tamils did not see a decline in disappearances and arrests, as vocal critics of Rajapaksa continued to be targeted. Prosecutions of civil war-era crimes have been largely directed against LTTE members; only a few low-ranking members of state agencies have been convicted (Dancy & Wiebelhaus-Brahm, 2019).

International pressure on Sri Lanka to enact LLR recommendations and to pursue accountability and reparations has been persistent, however. The UN released a March 2011 report that documented approximately 40,000 casualties in the war's final months, for which it argued both the government and LTTE should be held accountable under international humanitarian law. It concluded that both the LTTE and government forces had conducted operations "with flagrant disregard for the protection, rights, welfare, and lives of civilians and failed to respect the norms of international law" (Office of the UN Secretary General, 2011, p. 115). Sri Lanka vociferously rejected the panel's characterization of the government's conduct. Nonetheless, the government responded by creating a national action plan that consisted of pledges to implement LLRC recommendations and to have the police and military further examine war crimes and other serious violations (Keenan, 2012).

In fact, compared to Morocco and Bahrain, the international pressure on Sri Lanka has not abated with time to the same extent. The government failed to formally respond to the UN's 2011 report, especially with regard to establishing an independent mechanism to monitor and assess how the government was carrying out an effective accountability process. States and global civil society continue to closely scrutinize the government's behavior. International human rights groups have cataloged new violations of international humanitarian law since 2009, especially disappearances and political assassinations. In its annual human rights reports since 2010, the United States Department of State kept pressure on the regime by cataloging unlawful killings by the state's security apparatus, a lack of accountability for disappearances, torture of detainees, poor prison conditions, arbitrary arrest and detention of citizens, and the denial of fair trials.

For its part, the UN Human Rights Council (UNHRC) repeatedly urged Sri Lanka to implement an independent inquiry into alleged war crimes, with condemnation rising with each year that the government failed to act. In 2013, the Sri Lankan government argued that the LLRC sufficed and that a UNHRC resolution would jeopardize reconciliation. Yet, frustrated by inaction, the UNHRC approved the resolution. Following another year of inaction, the pressure ramped up further. The late 2013 Commonwealth Heads of Government Meeting in Colombo became an opportunity for states to diplomatically isolate Sri Lanka, as India, Canada, and Mauritius boycotted the meeting. At the meeting, British Prime Minister David Cameron gave the Sri Lankan government a four-month ultimatum, at which time the UNHRC would next meet to discuss next steps in investigating civil war-era war crimes (Quinn, 2014).

As the meeting approached, in early 2014, US Assistant Secretary of State for South Asia Nisha Biswaland and UN High Commissioner for Human Rights Navi Pillay separately accused the Sri Lankan government of ignoring the LLRC's conclusions (Dominguez, 2014; Nebehay, 2014). Citing a lack of political will to launch "independent or credible investigations," Pillay called upon the international community to conduct its own inquiry into war crimes (Nelson, 2014). Anticipating further criticism, shortly before the release of the High Commissioner's report, the Sri Lankan government announced it was considering a South African-style TRC to address human rights violations during the civil war (Dominguez, 2014). However, global human rights organizations rejected the TRC proposal as a cynical attempt to avoid genuine accountability. Ultimately, in March 2014, the UNHRC voted to launch an international investigation of war crimes allegedly committed during the latter stages of the war.

Ultimately, Rajapaksa's defiance of international pressure proved personally costly, at least in the short-term. International isolation led to the factionalization of Sri Lanka's ruling party. Maithripala

Sirisena unseated Rajapaksa in 2015 presidential elections, in part based upon pledges to mend fences with the international community and to address transitional justice in Sri Lanka. Sirisena's softer rhetoric on transitional justice won him a temporary reprieve from international pressure. The military slowly began scaling back its presence in the north and east. In most other respects, though, there was more talk than action on transitional justice under Sirisena. Early on, his administration pledged to establish an Office of Missing Persons, a reparations office, a new truth commission, and a special court. Sirisena stalled setting up the Office, which ultimately was approved by parliament in August 2016; action on the other measures was repeatedly delayed. The prime minister's office established a civil society-led Consultations Task Force on Reconciliation Mechanisms in early 2016, which is highly regarded, but then ignored its findings (Keenan, 2017). It was not until May 2017 that the government produced a policy document on reconciliation (Imtiaz, 2017).

In the face of a politically resurgent Rajapaksa, Sirisena failed to follow through on his transitional justice promises and critics lost patience (Keenan, 2017). While the 2018 Sirisena-Rajapaksa alliance and the 2019 election of Gotabaya Rajapaksa, the defense minister during the war's end, as Sri Lanka's president has observers worried about the future of transitional justice in Sri Lanka, successive governments' truth commission dalliance has helped ensure continued domestic and international transitional justice pressure. The government's framing of the LLRC has been too baldly self-serving. It ignored many of the LLRC's recommendations and continues to resist calls to hold government forces accountable for gross human rights violations. Although a return to war is unlikely in the near term, the underlying conflict is unresolved and opposition figures remain targets of oppression.

Conclusion

The three cases suggest several factors that appear to influence the extent to which global norms can be (re)framed to effectively evade accountability. First, increasing the credibility of truth commissions can paradoxically reduce pressure for accountability. The Moroccan and Bahraini governments took a risk in appointing neutral, independent commissioners and in granting them significant power. This lent their recommendations greater legitimacy. This legitimacy may at least partially transfer to the government. The international community seems more likely to give governments the benefit of the doubt on implementation in such circumstances. By contrast, the obvious bias in the LLRC's construction left outside observers cynical from the start. That the LLRC's findings exonerated the government surprised no one. Even the mild rebukes in the final report were rejected by Rajapaksa's administration.

Thus, a second factor shaping the success of using truth commissions as an avoidance strategy is a willingness to engage in some reform. The greater legitimacy of IER and BICI allowed the respective governments to enact the least threatening recommendations. By providing reparations and enacting modest reforms, the monarchies partially overshadowed the lack of action on accountability. In Sri Lanka, Rajapaksa's government was reticent to deal seriously with the LLRC's mildest recommendations. Rather, it rejected any suggestion of wrongdoing on its part. For governments, appearing magnanimous and conciliatory seems to be a better strategy for avoiding accountability. Note, however, that this may require some mild concessions on human rights.

Third, major power support helps significantly. As important allies of the West, Morocco and Bahrain faced more mild criticism. The international community has commended King Mohammad VI for his efforts to improve domestic policy, while violent suppression continued (Schemm & El Yaakoubi, 2012). Similarly, Bahrain's strategic location in the Persian Gulf gained it the goodwill of the US. Meanwhile, three years after the protests began, Bahrain's national dialogue had gone nowhere, and the government faced limited pressure to prolong it (Law, 2014). Amid the tumult of the post-2011 Middle East, stability is preferred over human rights. By contrast, Sri Lanka has faced far greater diplomatic criticism, much of it very public. It managed to alienate one-time defender India, and Sri Lanka lacks the relative geostrategic importance to entice major powers to expend much political capital to defend it. Perhaps

unsurprisingly, when embarking on a policy of transitional justice norm cooptation, it is useful to have major power support.

Finally, particular characteristics of the country and conflict seem relevant. For instance, the scope of human rights violations must be taken into account. The scale and severity of human rights abuses in Sri Lanka far exceeds that of the other two countries. Therefore, it is not surprising that demands for accountability have been louder in that case. Pressure may rise in proportion to the death toll, in part because the international community's inaction appears increasingly egregious. The scope of violence also matters in the sense that the effects of more widespread human rights abuses are more likely to be felt beyond the country's borders. The Tamil diaspora, which has grown over decades of violence, is much larger and a vocal political force in some Western countries.

Time also is a factor. Morocco's IER occurred furthest in the past. As such, Morocco faces the least pressure to follow-up on the commission. One lesson governments can take from this is that they just need to weather the storm and pressure will eventually subside. Where other factors work in favor of avoiding accountability, as in Bahrain, time will undoubtedly work in governments' favor. Likely, this will be true for Sri Lanka as well. However, at least in the short-term, belligerence and intransigence isolated it diplomatically, whereas a more conciliatory posture placated external demands for accountability at relatively low cost.

In many ways, though, the truth commission as deflection strategy has backfired. Governments in Morocco, Bahrain, and Sri Lanka attempted to exploit transitional justice norms to alleviate pressure for political liberalization and accountability for human rights violations by employing truth commissions. To date, those with command responsibility have evaded accountability in each case. In this sense, government transitional justice strategies have been successful. Nonetheless, the investigations forced governments to reframe their depictions of the past and of the commissions themselves. Officials rarely deny past atrocities. However, they often justify violence or write it off as the actions of rogue agents. The three truth commissions produced a wealth of information, but many critics charge the record is incomplete and acontextual.

Clearly, though, truth commissions have not satisfied demands for justice and accountability. Domestic and international NGOs, as well as the UN, have issued numerous reports contradicting government claims of compliance with commission recommendations. The investigations raised expectations and served to rally further domestic and international pressure. Commission reports have created benchmarks, to which the international community and domestic activists attempt to hold the governments accountable. While the prospect of widespread prosecution is remote, that was never a realistic possibility with or without the commissions. We lack individual-level data as to whether these bodies promoted healing or restored dignity to victims. Nonetheless, there is little evidence that reconciliation advanced because of the investigation. While keeping demands for justice alive, the truth commissions failed to achieve many of the things that proponents see as their conflict resolution potential.

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