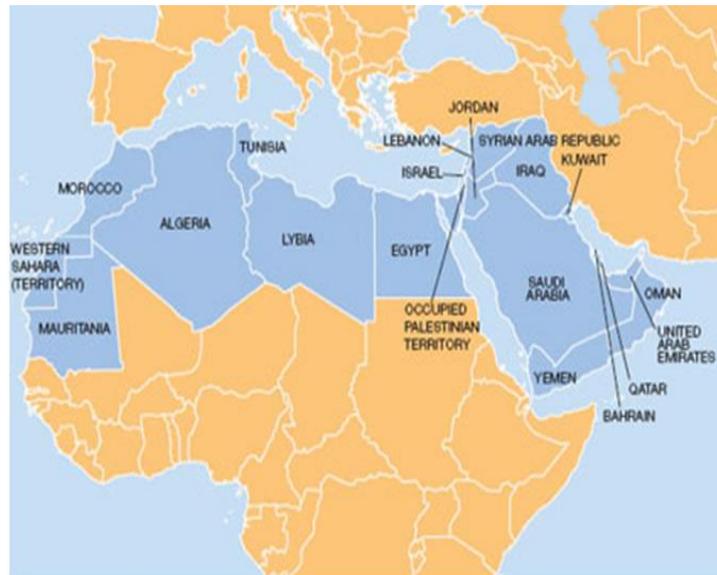




## **Developing Adequate Responses for Victims of Serious Human Rights Violations and International Crimes in the MENA Region**



**Feasibility Study**

**December 2012**

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## Introduction to the study

The last decade has witnessed an increasing focus on victims' rights and victimological approaches in response to serious human rights violations and international crimes.<sup>1</sup> The Middle East and North Africa (MENA region) until recently constituted a paradox. While the prevalence of serious violations resulting in large-scale victimisation was evidently high, there was limited focus on victims and their rights due to a combination of factors, particularly the repressive political environment as well as limited capacity and opportunities for advocacy and engagement. This situation has changed dramatically following the recent uprisings that have brought to the fore the legacy of violations and the question of how best to address these as part of broader political transitions. Victims' rights are integral to these processes. Developments over the last two years have highlighted the importance of victims' rights and their needs. While there is an apparent need and opportunity to address these issues, it is equally clear that any efforts to this end face a number of challenges. It is against this background that INTERVICT, REDRESS and The Hague Institute for Global Justice decided to carry out a feasibility study, which resulted in this Report.

The overall aim of the feasibility study is to obtain a clear picture of the context of and responses to victimisation resulting from serious human rights violations and international crimes in the MENA region. It focuses in particular on an analysis of the needs of victim populations and relevant local actors, existing and projected service delivery aimed at meeting those needs and the identification of gaps in legislation, policy and services, and demands that are not being met. The purpose is to set the stage for a longer-term initiative and to determine the nature and feasibility of such an initiative. This includes determining where the needs of victims lie, who the likely beneficiaries are or should be, who could be the partners of such initiative and/or members of a broader network, and how any project in the region could be best implemented. The feasibility study also aims to assess whether there is a demand to further develop a victimological framework in the MENA region, which may feed into global efforts in this regard and would address the most crucial issues for victims/survivors of human rights violations and crimes in and around war zones and areas of civil unrest.

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<sup>1</sup> See The Hague Institute for Global Justice, REDRESS, International Victimology Institute Tilburg, Grotius Centre for International Legal Studies, Leiden University, *Discussing New Avenues for Reparations for Victims of International Crimes*, 23 May 2012.

[www.redress.org/downloads/1205%20Victimology%20and%20Reparations%20discussion%20paper.pdf](http://www.redress.org/downloads/1205%20Victimology%20and%20Reparations%20discussion%20paper.pdf); and Rianne Letschert, Roelof Haveman, Anne-Marie de Brouwer and Antony Pemberton, (eds.) (2011), *Victimological approaches to international crimes: Africa* (Intersentia: Cambridge, Antwerp, Portland).

## **Research coverage of the feasibility study**

The feasibility study covers the MENA region as a whole, particularly focusing on Bahrain, Egypt, Lebanon, Libya, Syria, Tunisia and Yemen. The study is based on desk-top research, telephone, email and skype interviews with stakeholders, which were complemented with, and enhanced by field research in Tunisia where semi-structured interviews were held with several key Tunisian and Libyan actors. The research included analysis of local context and ongoing plans for legal and institutional reforms; mapping of relevant governmental and nongovernmental actors and institutions (including victims associations and grassroots networks; academic, medical/psychological, legal, human rights); needs and gaps (if any), identified by local actors in relation to issues relating to addressing the aftermath of mass victimisation; role of donors and international assistance work (ongoing and planned) with a particular emphasis on areas identified by local actors as needs or gaps in service delivery; and potential for partnerships.

Following the completion of this initial research phase, INTERVICT, REDRESS and The Hague Institute for Global Justice convened a meeting on victimological approaches to international crimes in the MENA region, which took place in The Hague on 25 September 2012 (see meeting report attached). The meeting brought together key actors from Bahrain, Egypt, Lebanon, Syria, Western Sahara and Yemen as well as academics and NGO representatives working in the region. It provided a unique opportunity to discuss in-depth crucial issues identified during the preceding research phase and the present Report reflects the key findings of the meeting. Notably, participants agreed on the need for closer, sustained engagement with a view to strengthening victims' rights and responses to victimisation in the region, and expressed their commitment to be part of future initiatives to this end.

The Report is divided into three main parts, focusing respectively on the context against which the uprisings have taken place, with particular reference to responses to serious human rights violations; identifying the needs of victim populations, the rights and needs of victims and gaps in meeting them; as well as the role of various actors in responding to victimisation, followed by a concluding part setting out the main findings and recommendations.

## I. Introduction to the MENA region

The MENA region is by no means homogenous. It includes secular and theocratic states; monarchies and republics; authoritarian and – to some degree – democratic systems; largely homogenous societies as well as starkly divided ones; rich and poor countries; and countries that are politically relatively stable, in transition or in the midst of conflict/occupation. While experiences differ considerably, countries in the region share a history of repression and violence dating back to colonial times if not before. Occupation, conflicts, authoritarian regimes and dictatorships have to varying degrees been characterised by practices amounting to serious human rights violations and often also to international crimes, such as torture, including sexual violence against women, enforced disappearances and extrajudicial killings. These violations have often taken place against a background of systemic discrimination and denial of other rights, including social, economic and cultural rights, of minorities, women and/or other population groups. This applies both to past regimes, such as in Iraq and Libya, and ongoing situations, such as in Bahrain, the Palestinian territories and Syria. The precise nature and scale of violations have – with some notable exceptions, particularly more recent violations – not been thoroughly documented. Equally, while these violations have evidently resulted in numerous victims, which is partly reflected in the large number of refugees from and across the region, limited attention has been paid to the nature of victimisation. The individual and collective experiences, rights and needs of victims therefore stand historically neglected. However, growing protests across the region over the last decade demonstrate an increasing awareness of, and willingness to speak out against a lack of respect for rights, injustices and a culture of impunity. Indeed, many observers consider that these factors were a major contributor to the wave of uprisings across the region, coupled with public anger at government corruption and a lack of democratisation, equality and development,<sup>2</sup> including persistently high rates of unemployment.<sup>3</sup>

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<sup>2</sup> See J-P Filiu, *The Arab Revolution: Ten Lessons from the Democratic Uprising* (C Hurst & Co Publishers Ltd, London, 2011), 147; B.E. Hassan, 'Ideas Can Also Kill: Five Assumptions That Uprisings in the Arab World Have Disproved', *Muslim World Journal of Human Rights* 8 (23 November 2011) 1, 6; M.Hoffman and A. Jamal, 'The Youth and the Arab Spring: Cohort Differences and Similarities', *Middle East Law and Governance* 4 (January 1, 2012) 1, 171; *Democratic Change in the Arab Region, State Policy and the Dynamics of Civil Society*, Discussion Seminar 2-3 April 2011, Brussels, Euro-Mediterranean Foundation for Support to Human Rights Defenders.

<sup>3</sup> Unemployment in the MENA region is the highest in the world and largely a youth phenomenon. The share of youth (ages 15 to 24) in total unemployment at least doubles the total rate. Moreover, at about 25%, the youth unemployment rate in the MENA exceeds that of any other region in the world – a rate that reaches up to about 30% in Tunisia. The recent social and political events in the region have contributed to a decline in economic activity and to increased

The unrest and uprisings across the region have brought about significant challenges and changes, many of which are still unfolding at the time of writing in late 2012. The situation is therefore characterised by a high degree of volatility and uncertainty, with some regimes resisting change, such as the Gulf States, some countries being in the midst of conflict, such as Syria, while others undergo uncertain transitions, such as Iraq, Egypt, Libya, Tunisia and Yemen. There are also several countries whose situation is either unique, such as the 'State of Palestine' (see UN General Assembly resolution 67/19, November 2012), or marked by some changes, such as in Morocco, Algeria, Jordan and Lebanon, which have, however, not resulted in fundamental change.<sup>4</sup> Nevertheless, what is common across the region is that the uprisings have opened political space and – in the process – resulted in greater demands for human rights protection and justice.<sup>5</sup>

States in the region have to varying degrees formally recognised international human rights treaty obligations.<sup>6</sup> However, there is a lack of an effective regional human rights system,<sup>7</sup> the Arab Charter of Human Rights largely remaining a dead letter.<sup>8</sup> Equally, there is limited if any

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unemployment. In 2011, unemployment has increased in the MENA countries, with the largest increase registered for Tunisia (about 7 percentage points) and Egypt (about 3.5 percentage points). See *Youth Unemployment in the MENA Region: Determinants and Challenges*, by Masood Ahmed, Director, Middle East and Central Asia Department, International Monetary Fund; Dominique Guillaume, Deputy Division Chief, International Monetary Fund; Davide Furceri, Economist, International Monetary Fund, Published in the World Economic Forum's Addressing the 100 Million Youth Challenge—Perspectives on Youth Employment in the Arab World in 2012, June 2012, at <http://www.imf.org/external/np/vc/2012/061312.htm>.

<sup>4</sup> The Dutch Advisory Council on International Affairs divided states in the region into autocratic states that repress calls for more political and civil freedom as well as social and economic justice (Bahrain, Iran, Yemen, Saudi Arabia, Syria, Libya [under Ghaddafi], states in transition [Egypt and Tunisia], 'enlightened authoritarian' monarchies that strive for a top down approach towards societal reforms where the political power of the monarch is hardly discussed (Jordan, Kuwait, Morocco and Oman), instable democracies that are characterised by political parties along sectarian or tribal lines (Iraq and Lebanon), and diverse other countries such as Palestinian territories, Iraqi Kurdistan and Sudan. Dutch Advisory Council on International Affairs, *Reform in the Arabic Region, Opportunities for Democracy and the Rule of Law*, No.75, May 2011, p. 9.

<sup>5</sup> See K. Dalacoura, 'The 2011 Uprisings in the Arab Middle East: Political Change and Geopolitical Implications', *International Affairs* 88 (January 2012) 1, 63-79, at 71 et seq. (discussing the different democratic spaces emerging in various MENA countries); R. Abou-El-Fadl, 'Beyond Conventional Transitional Justice: Egypt's 2011 Revolution and the Absence of Political Will', *International Journal of Transitional Justice* 6 (July 2012) 2, 318-330, at 323 et seq.

<sup>6</sup> All MENA states other than Saudi Arabia, Oman, Qatar and the United Arab Emirates (UAE) have become parties to the International Covenants on Civil and Political Rights (1966) and Economic, Social and Cultural Rights (1966). All states are parties to the Conventions on the Elimination of All Forms of Racial Discrimination (1979) and the Rights of the Child (1989). All states except Qatar are parties to the Convention on the Elimination of All Forms of Discrimination Against Women (1979). All states except Iraq, Oman and the UAE are parties to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). Only Algeria, Egypt, Libya, Morocco and Syria have become parties to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990). Many states have entered substantial reservations with their ratifications, often purporting to limit any obligations to those consistent with Islamic and domestic law, and often excluding the operation of communication and investigation procedures. For two overviews of ratifications, see Al-Bab, 'Arab Ratification of UN Human Rights Conventions', [www.al-bab.com/arab/human2.htm](http://www.al-bab.com/arab/human2.htm); and 'Arab Human Rights Index: Ratification of Conventions', [www.arabhumanrights.org/en/resources/ratification.aspx?cg=1](http://www.arabhumanrights.org/en/resources/ratification.aspx?cg=1).

<sup>7</sup> The African Charter on Human and Peoples' Rights applies to Algeria, Tunisia, Libya and Egypt only.

<sup>8</sup> In 1990, the Cairo Declaration on Human Rights in Islam was adopted at the UN GAOR, World Conference on Human Rights, 4<sup>th</sup> session, 5 August 1990. The Arab Charter on Human Rights was first drafted in 1994 but failed to attract any ratifications. It was redrafted in 2004 and entered into force in 2008: see 12 *International Human Rights Reports* 893

domestic implementation of international human rights obligations in the form of legislation, institutions and practices that respect and protect rights.<sup>9</sup> The lack of implementation has been accompanied by a lack of commitment to the principle of accountability. States in the region have notably not committed themselves to supporting the International Criminal Court, with the exception of Jordan and more recently - in 2011 - Tunisia.<sup>10</sup>

The lack of democratic space and repression of civil societies in several countries have been contributing factors in this general failure to engage with human rights mechanisms. The MENA region has therefore for the last decades been characterised by high levels of human rights violations coupled with a lack of debate about normative and institutional developments relating to human rights protection and victims' rights. Unsurprisingly, the uprisings have brought these issues to the fore of political and societal debates. This applies both to broader structural issues, such as constitutional review and legislative and institutional reform, and to the question of how best to respond to past, recent and ongoing violations. This question, raised by victim groups and civil society organisations, covers a range of measures including acknowledgment of the harm done, accountability, financial compensation, and broader reparative measures aimed at repairing harm. The goals of such reparative measures have been described as restoring individual dignity, expressing solidarity and fostering the rule of law.<sup>11</sup> It is clear that providing reparation, besides constituting a right of victims and an obligation of

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(2005). The Charter has been criticised for setting a lower human rights standard than the International Covenants; in any case, it has not been used in practice. See Amnesty International, 'Middle East and North Africa: Re-drafting the Arab Charter on Human Rights: Building for a Better Future', 11 March 2004; M. Rishmawi, 'The Revised Arab Charter on Human Rights: A Step Forward?', *Human Rights Law Review* 5 (2005), 361-376; and Rishmawi, 'The Arab Charter and the League of Arab States: An Update', *Human Rights Law Review* 1(2010), 169-178.

<sup>9</sup> See for example REDRESS, *Reparation for Torture: A Survey of Law and Practice in Thirty Selected Countries*, April 2003 (including Bahrain, Egypt, Israel, Lebanon and Morocco – REDRESS is planning to hold a meeting with al-Mizan in Jordan in January 2013 bringing together experts to discuss the law and practice on torture in the region; a meeting report will be published later in 2013); S.Cardenas and A.Flibbert, "National Human Rights Institutions in the Middle East," *Middle East Journal* 59, (July 1, 2005) 3, 411–436. For some recent country-specific reports by the Human Rights Council and UN special procedures, see, e.g. *Report of the Working Group on the Universal Periodic Review, Saudi Arabia*, UN Doc. A/HRC/11/23, 4 March 2009; *Report of the Working Group on the Universal Periodic Review, Yemen*, UN Doc. A/HRC/12/13, 5 June 2009; *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Mission to Egypt*, UN Doc. A/HRC/17/35/Add.2, 15 April 2011; *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Jordan*, UN Doc. A/HRC/4/33/Add.3, 5 January 2007; *Report of the Special Rapporteur on trafficking in persons, especially women and children, Sigma Huda: Mission to Bahrain, Oman and Qatar*, UN Doc. A/HRC/4/23/Add.2, 25 April 2007.

<sup>10</sup> See on Jordan, I. Aljazy, 'The Implementation of International Criminal Law in Arab States: The Jordanian Experience', in L.Oette (ed.), *Criminal Law Reform and Transitional Justice: Human Rights Perspectives for Sudan* (Ashgate, Farnham, 2011), 183-195.

<sup>11</sup> See Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, P. de Greiff, UN Doc. A/HRC/21/46, 9 August 2012, with further references. See also CAT/C/GC/3 19 November 2012: *General Comment No. 3 of the Committee against Torture, Implementation of article 14 by States parties*.

states under international law, forms a crucial component of ongoing political transitions and the successful building of democratic structures and the rule of law.<sup>12</sup>

Notwithstanding various efforts made, there is a lack of coherent focus and practice addressing these issues in the region. This is due to a number of factors, including different priorities; difficulties of defining victim groups, determining the types of violations and agreeing on the period to be considered; politicisation; and limited capacity and/or mobilisation of victims and civil society at the national level. Combined with weak regional structures and networks, these factors have posed considerable challenges for those advocating greater protection of human rights and recognition of victims' rights. Nevertheless, there are several precedents in the MENA region prior to the uprisings that hold important lessons as to how to address victims' rights. These include:

**(i) Documentation of violations and recommendations as to how to prevent further violations and provide justice to victims**

Recent years have witnessed an increasing recourse to fact finding missions and Commissions of Inquiry, which have been set up by the UN Human Rights Council, such as in relation to Gaza (and, in the wake of the uprisings, Libya and Syria),<sup>13</sup> or by governments, such as in Bahrain and Tunisia (following the uprisings, see below at II. 2 (ii)). Commissions of Inquiry should be composed of independent experts, are commonly mandated to collect evidence with a view to documenting violations, and frequently liaise with numerous official and civil society actors in the process of developing their recommendations.<sup>14</sup> These recommendations can address a wide range of measures, from steps to prevent ongoing violations, reparation and accountability mechanisms to more far-reaching reforms. More generally, commissions of inquiry establish important, well-documented records of violations and may succeed in setting out the key issues to be addressed, and the steps to be taken in respect of legacies of violence. The African Union Darfur High Level Panel, addressing events in the MENA region's neighbour, Sudan, is particularly noteworthy as it took a participatory approach engaging victims, communities, civil

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<sup>12</sup> See General Comment No 3, *ibid*; J. E. Méndez, 'Accountability for Past Abuses,' *Human Rights Quarterly* 19 (May 1997) 2: 255-282.

<sup>13</sup> On Gaza, see *Report of the United Nations Fact-Finding Mission on the Gaza Conflict*. UN Doc. A/HRC/12/48, 25 September 2009; on Syria, *Report of the independent international commission of inquiry on the Syrian Arab Republic*, UN Doc. A/HRC/21/50, 16 August 2012; and on Libya, *Report of the International Commission of Inquiry on Libya*, UN Doc. A/HRC/19/68, 8 March 2012.

<sup>14</sup> For example, the Fact-Finding Mission on the Gaza Conflict was mandated to 'to investigate all violations of international human rights law and international humanitarian law' and held public hearings, met victims, met local officials, and took submissions from interested organisations. See *The grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip*, UN Doc. A/HRC/S-9/L.1, 12 January 2009.

society and others to develop recommendations on how best to address the legacy of conflict and violations in Sudan.<sup>15</sup> Irrespective of the outcome of this process, the participatory approach used and the thorough methodology applied – combining documentation, research, consultation and analysis – hold important lessons for other countries on what steps might be taken where the political climate is conducive.

## **(ii) Truth and reparation**

Prior to the uprisings, few states had taken any measures to establish the truth of violations and/or to provide reparation to victims. An example of a concerted effort is the Equity and Reconciliation Commission in Morocco that investigated arbitrary detention and enforced disappearances committed in the period 1956-1999. An earlier Arbitration Commission on Compensation had provided some compensation, but was criticised by victims and their families for the limited level of information revealed about these abuses.<sup>16</sup> The Equity and Reconciliation Commission determined the fate of 742 individuals and recommended a series of measures, including restitution, rehabilitation and compensation (in addition to that provided by the earlier Arbitration Commission on Compensation), in its 2005 report.<sup>17</sup> Together, the Arbitration Commission on Compensation and the Equity and Reconciliation Commission provided compensation to 23,676 individuals of a total of 1.56 Billion Dirham (around €138 million) according to figures published in July 2007.<sup>18</sup> Reparation is provided as individual compensation and in form of community reparation.<sup>19</sup> Notably, reparation also included a rehabilitation component for several thousand victims.<sup>20</sup>

Efforts in other countries, such as Iraq, have been piecemeal and have not resulted in the establishment and implementation of broader reparation programmes due to ongoing conflict and political divisions.<sup>21</sup> Coupled with the lack of access to a regional human rights system that

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<sup>15</sup> See *Darfur: The Quest for Peace, Justice and Reconciliation*, Report of the African Union High-Level Panel on Darfur (AUPD), PSC/AHG/2 (CCVII) (October 29, 2009), and also L.Oette, 'The African Union High Level Panel on Darfur: A Precedent for Regional Solutions to the Challenges facing International Criminal Justice?' in V. Nhemielle (ed.), *Africa and the Future of International Criminal Justice* (Eleven International Publishing, The Hague, 2012), 353-374.

<sup>16</sup> See generally, Amnesty International, Morocco, *Broken Promises, The Equity and Reconciliation Commission and its follow-up*, Index: MDE 29/001/2010.

<sup>17</sup> See summary: Truth Commission: Morocco, United States Institute of Peace, [www.usip.org/publications/truth-commission-morocco](http://www.usip.org/publications/truth-commission-morocco), with reference to (Arabic) website of the Equity and Reconciliation Commission.

<sup>18</sup> See on the lack of clarity of the actual amount provided, Amnesty International, *Morocco, Broken Promises*, above note 16, 45.

<sup>19</sup> Kingdom of Morocco, National Human Rights Council, Community Reparation Programme, [www.ccdh.org.ma/spip.php?rubrique190&lang=LANG](http://www.ccdh.org.ma/spip.php?rubrique190&lang=LANG).

<sup>20</sup> See Amnesty International, above note 16, 48-49.

<sup>21</sup> See E. Stover, M. Sissons, P. Pham and P. Vinck, 'Justice on hold: accountability and social reconstruction in Iraq', *International Review of the Red Cross*, 90 (March 2008) 869, 5-28.

may award reparation, overall there has been a noticeable dearth of compensation and other forms of rehabilitation for the large number of victims in the region. While it is noteworthy that the Moroccan example is a top-down initiative signalling the desire within the monarchical system to address at least some of the past wrongs – though excluding a number of others – it still stands out as regional precedent, holding lessons for truth and reparation mechanisms. The Equity and Reconciliation Commission actively involved victims, identified the nature and patterns of violations (though not the identity of the perpetrators) and their impact on victims, and undertook a number of public hearings addressing the legacy of violations (though its inadequate recognition of the breadth of violations suffered by the Sahrawi was criticized).<sup>22</sup> However, the limited scope of victims covered, the type of reparation awarded, the process of implementing the scheme, the lack of acknowledgment and accountability as well as the stalling of broader reforms complementing compensation have considerably narrowed the Commission's impact.<sup>23</sup> Morocco's approach to reparation is unique in the region. However, the fact that it stands as the sole regional example of a concerted effort to provide reparation, in comparison with the many examples of such efforts worldwide and several others in Africa alone,<sup>24</sup> illustrates the gap between the nominal recognition of rights and the actual availability of reparation where these rights have been violated which was characteristic of the region when the uprisings began.

### **(iii) Accountability through domestic or international trials**

While impunity for serious human rights violations has been the default situation in the region, there have been some isolated, though controversial, initiatives, particularly the trial of Saddam Hussein and other Baath party officials as well as the Special Tribunal for Lebanon relating to the killing of Rafiq Hariri and 22 others in Lebanon in 2005. The Supreme Iraqi Criminal Tribunal, which has jurisdiction over international crimes committed in Iraq between 1968-2003, has been mired in controversy over its adherence to fair trial standards and handling of trials, particularly the Saddam Hussein trial.<sup>25</sup> Importantly, from a victims' perspective, its procedure gives limited recognition to victims' right to participation, protection and reparation.<sup>26</sup> The Special Tribunal for Lebanon, for its part, has been perceived as a selective response to a specific incident, giving rise to accusations of politicisation, rather than forming

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<sup>22</sup> See Amnesty International, above note 16, 5.

<sup>23</sup> See *ibid.*, passim, which details several shortcomings and identifies areas of concern.

<sup>24</sup> See for an overview P. de Greiff, *The Handbook of Reparations* (Oxford University Press, 2006).

<sup>25</sup> See 'Iraq: The rocky road to transitional justice', *IRIN News* (June 2006) and C. C. Bassouni, 'Post-conflict justice in Iraq: an appraisal of the Iraq Special Tribunal', *Cornell International Law Journal*, 38 (2005) 2, 327-390.

<sup>26</sup> See Stover et al, above note 21.

part of an attempt to develop a culture of accountability and a mechanism to provide justice.<sup>27</sup> While it has had limited impact to date, it has some important features, notably recognising victims' rights to participation and compensation. However, the fact that the court is based in the Netherlands and that cases had not advanced to the trial stage at the time of writing mean that visibility and practice is limited to date.<sup>28</sup> Notably, both examples highlight the risk that accountability mechanisms are primarily driven by political motivations, including by external actors - at times with scant regard for victims' rights - and the need to develop a more principled practice of combating impunity. While such initiatives run the risk of undermining the very idea of criminal justice, calls for accountability of those responsible for international crimes have been an integral part of demands during the uprisings and the current transitions.

#### **(iv) Reforms**

Prior to the recent uprisings, states undertook few reforms that were aimed at granting victims' rights and guaranteeing non-repetition of violations. Besides limited reforms, such as in Morocco and following the fall of Saddam Hussein's regime, particularly the controversial de-Baathification policy, and the establishment of national human rights institutions (which are often of limited independence and influence) in some countries such as Morocco, Jordan, Palestine and several Gulf states, there have been no concerted efforts to implement human rights standards and/or significantly strengthen victims' rights in national legal systems.

## **II. Ensuring the rights and meeting the needs of victims**

### **1. Introduction: what do we already know from existing studies into victim needs and victim rights?**

When it comes to serious human rights violations if not international crimes, every attempt to do justice is an extremely difficult task. After all, what would be a fitting punishment for the killing of thousands of human beings? Is it possible to adequately distinguish offenders, victims, and bystanders during a dictatorial regime or in the chaos of a state in collapse? What does reparation mean for victims who have lost everything – their families, their homes, their

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<sup>27</sup> A.Cassese, 'The Legitimacy of International Criminal Tribunals and the Current Prospects of International Criminal Justice', *Leiden Journal of International Law* 25 (2012) 2, 491-501; M. Wierda, H. Nassar, and L. Maalouf, 'Early Reflections on Local Perceptions, Legitimacy and Legacy of the Special Tribunal for Lebanon', *Journal of International Criminal Justice* 5 (2007), 1065-1081.

<sup>28</sup> See for further information the Tribunal's website at [www.stl-tsl.org/en/](http://www.stl-tsl.org/en/).

possessions – and who either witnessed atrocities, or were themselves victims of such cruelty? What effects do victims’ experiences have on the psyche of individuals and groups, and are they different compared to victims of conventional crime? Can a response to these crimes on the basis of international criminal law and international human rights law contribute to the reconstruction of societies undergoing fragile transitions?<sup>29</sup> All of these questions have increasingly been addressed in academic literature, and more and more empirical studies are being carried out to analyse both psychological consequences on an individual and group level, and victims’ perceptions of justice and justice related measures.<sup>30</sup>

Over the last decade in particular, the rights of victims have become increasingly recognised at the international level. These rights comprise, amongst others, protection, the right to participate in proceedings, the right to be informed about a trial’s progress, and the right to reparation. The 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power incorporates the most important victim rights (mainly in relation to conventional crimes) relating to the position of victims of crime within the criminal justice system. Four provisions deal with large-scale violations committed by governments, which are referred to as abuse of power. The 2005 UN Declaration on 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 (hereafter Reparation Principles) reflects a change in focus. This Declaration contains a range of principles which aim to ensure that victims of serious human rights violations and international crimes are granted an effective remedy and that governments take remedial action and provide reparation. The right to reparation and corresponding obligations of states is recognised in treaty law and widely considered to constitute customary international law.<sup>31</sup> Reparation to victims, in its various modalities and in individual and collective dimensions, is to be devised and materialised within various contexts, including the broader setting of ‘transitional justice’. In this connection the Reparation Principles and the Impunity Principles<sup>32</sup> provide important guidance in mapping out (i) *The Right to Know*, (ii) *The Right to Justice* and (iii) *The Right to Reparation*. *The Right to Know* as a right of victims and their families includes the right to know the truth about heinous crimes committed, including the circumstances and reasons leading thereto as well as what

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<sup>29</sup> See also R.M. Letschert, R. Haveman, A. de Brouwer & A. Pemberton (eds.), *Victimological approaches to international crimes: Africa* (Intersentia, Antwerp, 2011).

<sup>30</sup> Ibid.

<sup>31</sup> See G. Echeverria, ‘Do victims of torture and other serious human rights violations have an independent and enforceable right to reparation?’ *The International Journal of Human Rights*, 16 (2012) 5, 698-716.

<sup>32</sup> Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, UN doc. E/CN.4/2005/102/Add.1, 2005.

happened to victims, individually and collectively.<sup>33</sup> Article 24 of the Reparation Principles mentions that victims are entitled to seek and obtain information on the causes leading to their victimisation, and to learn the truth with regard to these violations. Importantly, the right to learn the truth has also been recognised in recent international treaties, particularly the International Convention for the Protection of All Persons from Enforced Disappearance.<sup>34</sup> For victims of international crimes, the right to truth is an important aspect that needs to be addressed when guaranteeing the right to information. Notably, it goes beyond existing regulations about providing information on important developments in a possible criminal procedure or the availability of services.<sup>35</sup>

*The Right to Justice* involves the duty of states to carry out prompt, impartial and effective investigations of violations of human rights and international humanitarian law and bring to justice those responsible for serious crimes under international law.<sup>36</sup> In this regard, multigenerational research findings suggest that the process of redress and the attainment of justice can be critical to the healing for individual victims, as well as their families, societies and nations.

*The Right to Reparation* completes this trilogy of victims' rights. It is a victim oriented right implying a duty on the part of the State to provide reparation and the possibility for victims to seek redress from the perpetrator.<sup>37</sup> The right to reparation relates to the duty to provide effective remedies and redress for harm suffered in the form of restitution, compensation, rehabilitation, satisfaction and – by way of institutional reforms and enhancing respect for the rule of law – guarantees of non-repetition and prevention of violations.<sup>38</sup> The Reparation Principles have furthermore incorporated some of the general rights of victims of crime, such as Article 10 relating to the treatment of victims (ensuring that victims should be treated with humanity and respect for their dignity, ensure their safety, physical and psychological well-being and privacy, and the prevention of secondary victimisation).

Notwithstanding these legal developments, history provides ample evidence that most societies have scarce interest openly and effectively to address victims' needs: often, they show great reserve in facing up to the committed atrocities, or even acknowledging that these ever took

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<sup>33</sup> See in detail Impunity Principles 2-5.

<sup>34</sup> Article 24.2 of the Convention stipulates that each victim has the right to know the truth. This Convention is strongly influenced by the Reparation Principles.

<sup>35</sup> See further on the Reparation Principles and reparation in general, D. Shelton, 'The United Nations Principles and Guidelines on Reparations: Context and Contents,' in: De Feyter, Parmentier, Bossuyt & Lemmens (eds.), *Out of the Ashes: Reparation for Victims of Gross and Systematic Human Rights Violations*, (Intersentia, Antwerp, 2005), 11-32.

<sup>36</sup> See Impunity Principles 19 ff.

<sup>37</sup> Ibid. 31 ff.

<sup>38</sup> Ibid. 19-23.

place. Additionally, there is often a predominant sense that the damage done is in any case irreparable. Even where new regimes are receptive towards victim oriented measures, they are often struggling to find ways as to how best to provide victims with some sense of reparative justice. States' options and ability to actually offer *individual* victims, through a rights-based approach, an effective remedy and adequate reparation are frequently limited when violence was the rule rather than the exception.<sup>39</sup> In the context of gross human rights violations and international crimes resulting in mass victimisation, the difficulties of fulfilling an individual right to reparation pose an undeniable challenge. Of what use is a right to a victim when actually enforcing this right will be difficult if not impossible? This may result in strengthening the feeling of injustice brought about by the violent crimes, a process referred to in victimology as secondary victimisation. Since the first major human rights treaties were drafted, human rights law has considered the right to an effective individual legal remedy for violations of human rights to be one of the core rights. Within debates on how to respond to large-scale violations in times of transition, there has been an increasing emphasis on a collective approach to reparation. While the concept of collective reparation is less well-developed compared to reparation in individual cases, recent developments suggest that it has been increasingly recognised in international law.<sup>40</sup> An important issue that requires more empirical research is the question of how individual needs (and ensuing rights) relate to collective needs. Social psychologists have pointed out that the psychological needs of individuals and society often widely diverge and are sometimes even incompatible, a factor that needs to be taken into account when considering the way in which to award reparation.<sup>41</sup> These psychologists have drawn attention to the fact that individual needs are made subordinate to the demands of national unity and reconciliation. At the same time, they acknowledge that, in some respects, the two are closely linked, as is shown by the psychological need that some victims have to speak publicly at, for instance, truth and reconciliation commission hearings.<sup>42</sup>

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<sup>39</sup> De Greiff, above note 24 and C. Tomuschat, 'Darfur - compensation for the victims' (2005), 3 *J. Int'l Crim. Just.* 579.

<sup>40</sup> F. Rosenfeld, 'Collective reparation for victims of armed conflict', *International Review of the Red Cross*, (2010) Vol 92, Nr. 79; P. Dubinsky, 'Justice for the collective: the limits of the human rights class action', (2004) 102 *Michigan Rev.*; N. Roth-Arriaza, 'Reparations decisions and dilemmas. (2003-2004)', *Hastings International & Comparative Law Review*, Vol. 157; L. J. Lapante, 'On the indivisibility of rights: truth commissions, reparations, and the right to Development' (2007) *Yale Hum. Rts & Dev. L.J.* Nr. 10; R. Hofmann, 'Reparations for victims of armed conflicts. Report to the ILA Hague Conference 2010' (2010).

<sup>41</sup> B. Hamber, & R. Wilson, (2002), 'Symbolic closure through memory, reparation and revenge in post-conflict societies' (2002) *Journal of Human Rights*, Vol 1, Nr. 1; F. Haldemann, 'Drawing the line: Amnesty, truth commissions and collective denial', In: R.M. Letschert, R.H. Haveman, A. de Brouwer & A. Pemberton (eds.), *Victimological approaches to international crimes: Africa* (Antwerp: Intersentia, 2011) 265-288.

<sup>42</sup> B. Hamber, 'Repairing the irreparable: Dealing with the double-binds of making reparation for crimes of the past', (2000), *Ethnicity and Health*; Aug/Nov 2000; 5, 3/4; Health Module; B. Hamber, 'Does the truth heal? A psychological perspective on political strategies for dealing with the legacy of political violence', in: Biggar, N. (ed.), *Burying the past. Making peace and doing justice after civil conflict*, (Washington D.C.: Georgetown University Press, 2001) 131-148.

It is also important to examine whether the consequences of serious human rights violations and international crimes have similar or different psychological effects on victims compared to conventional crime, with a view to setting up adequate psycho-social intervention programmes. Several studies (particularly with regard to terrorism)<sup>43</sup> have shown that victims have similar if not the same needs, regardless of whether they are victims of international crimes resulting in mass victimisation or of conventional crime. Generally, victims respond in similar ways and, for example, experience shock, anger, depression, guilt, fear, and the desire to see the offenders punished. However, the impact of victims' experiences can be more extensive in case of serious human rights violations and/or international crimes. Victims of such violations that target particular groups are not only concerned with their own safety, but also with the safety of family, friends, and other members of the group, and they often share the same horrible experiences. The collective dimension of victimhood also has consequences for the circumstances in which victims can rebuild their lives. In many cases, the offenders are part of that context, either because they continue to live in the same locales as victims and/or because the distinction between victims and offenders is blurred as a result of certain individuals being both the authors of criminal acts and the objects of similar acts by others. Victimisation resulting from international crimes is, almost by definition, not an isolated incident. Instead, multiple victimisation occurs, both direct and indirect. One and the same person may fall victim to multiple instances of gang rape, may be witness to the torture and/or death of one or more family members and may see all of his or her possessions be destroyed. Several studies have shown that the effect of multiple victimisation can be cumulative.<sup>44</sup> The physical and mental strength of individuals and the way in which they themselves, as well as others, experience their vulnerability are also part of their experiences relating to the crimes they have fallen victim to. This applies in particular in many post-conflict situations, given the gravity of the violence, the absence of good medical and psycho-social care, and the collapse of formal as well as informal social networks. In conclusion, while the individual psychological responses may not differ considerably compared to victimhood in the context of conventional crime, the ways in which victims have to deal with their trauma in a post-conflict situation poses important questions and challenges for the field of victimology.

It is by now well recognised that it is misleading to think that victims form a homogenous group and therefore have the same individual needs. Research has also shown that victims' needs

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<sup>43</sup> For an overview, see Letschert, Staiger, Pemberton (2010), *Assisting Victims of Terrorism*, Springer Publishers.

<sup>44</sup> M. Shaw, 'Time heals all wounds?' In: G. Farrell and K. Pease (eds.) *Repeat victimization*, *Crime Prevention Studies*, volume 12, ( 218-233); (Monsey NY, Criminal Justice Press, 2001); J.Wemmers, 'The needs of victims of international Crimes', in: Letschert, Haveman, De Brouwer, Pemberton, *Developing Victimological Approaches to International Crimes, Focus on Africa* (Intersentia, 2011).

change over time and that any findings regarding victims' needs therefore should be treated with caution. Several studies by the Human Rights Center at Berkeley School of Law (University of California) into the situations in the Democratic Republic of the Congo, Cambodia, and Northern Uganda present the following picture: The majority of respondents answered that they would prefer direct compensation, in the form of monetary compensation (52%), food (9%) or cattle (8%). Apologies, justice and reconciliation were each deemed important by 10% of respondents. Memorial sites were preferred by 59% of respondents. The Congo survey revealed that 43% of respondents said that reparations should be provided to individuals as well as to the community as a whole.

## **2. Documenting victimisation and needs assessment in the MENA region**

One of the objectives of the feasibility study is to determine whether there is a need for a larger initiative on victimological approaches in the MENA region, in which the needs of victims relating to justice measures as well as medical and psycho-social intervention programmes would be simultaneously addressed. In order to be able to address this question, this section first provides a brief overview of the various cycles of violence, activities relating to documentation, accountability and reparation and the work that has (or has not) been done in analysing victim's needs (both individual and collective). The subsequent section (3) will address observed gaps in legislation, policy and available services by means of a comparative country analysis, which draws on the diverse findings emerging of the country-specific research undertaken.

### **(i) Type of violence**

In most of the countries in the MENA region, cycles of violence can be divided into three periods: violations during (previous or ongoing) dictatorial regimes or conflicts, violence during the uprisings that took place in several of the countries, and ongoing violence in the transitional phase. During the dictatorial regimes, systematic and structural systemic police violence, torture, forced disappearances, arbitrary detention and extrajudicial killings were the most common forms of violence.<sup>45</sup> In addition, populations also experienced severe social and economic violations, caused, among others, by corruption and nepotism.<sup>46</sup> In countries such as Egypt and Tunisia, the bad socio-economic condition in the country was the main driving force behind the revolution. To illustrate, street protests that began in Tunis in December 2010 over high unemployment, corruption, widespread poverty, and high food prices escalated in January

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<sup>45</sup> See reports by UN Special Procedures; UN treaty bodies reports and jurisprudence, reports of Amnesty International and Human Rights Watch.

<sup>46</sup> Ibid.

2011 by the self-immolation of Mohamed Bouazizi, culminating in rioting that led to hundreds of deaths. The revolutionary periods in Tunisia, Egypt, Bahrain, Yemen and Libya, and the present conflict in Syria have been characterised by serious violations, committed to varying degrees by both government and non-state actors. Even following the end of conflict and/or removal of the previous regimes, violations continue to take place, both in the context of political protest and institutionalised repression, such as in Egypt and Yemen. The identity of the perpetrators and the victims, and the perception and interpretation of the seriousness of the various types of violations in the public debate are critical factors that pose considerable challenges when advocating justice, and deliberating how to respond to legacies of violations and victimisation. In countries where severe and systematic violence is still ongoing (such as in Syria and Bahrain), UN, Amnesty International and Human Rights Watch reports document grave human rights abuses, including torture and extrajudicial killings.

In several of the countries, reports examine the prevalence and nature of sexual violence against women and girls. Dalia Abd El Hameed, a researcher for the Egyptian Initiative for Personal Rights (EIPR), confirmed a noticeable increase in violence against women in Egypt: "While sexual assault was also a case in the first days of the revolution, it was less obvious and less harsh and wasn't committed by gangs... what's remarkable about these [incidents] is that they are [all] gangs," she explained.<sup>47</sup> According to Abd El Hameed, one possible cause for the rise in violence is the general increase in violence throughout the country since January 2011: "The process of militarisation that the country is undergoing now is creating a parallel culture of normalised violence," she said. "In areas where there is conflict or transition or clashes, there is always violence against women."<sup>48</sup> Most of the women do not report such violence to the authorities, which also applies to other countries in the MENA region.<sup>49</sup> Large-scale, population-based survey data on the magnitude of violence against women are available only from a few countries in the region (e.g. Jordan, Egypt, Palestine). There are even fewer studies on the social, economic and health consequence of violence against women.<sup>50</sup>

Another vulnerable group confronted with serious human rights violations are persons belonging to minority groups, including religious minorities, ethnic minorities, minority women,

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<sup>47</sup> <http://www.aljazeera.com/indepth/features/2012/07/20127414100955560.html>.

<sup>48</sup> See for prevalence numbers [http://www.unifem.org/attachments/gender\\_issues/violence\\_against\\_women/vaw-prevalence-matrix-2011.pdf](http://www.unifem.org/attachments/gender_issues/violence_against_women/vaw-prevalence-matrix-2011.pdf). These data are nonetheless of 2005. More updated prevalence data are not existent. Also, the National Council for Women (NCW) issued, in April 2009, the report 'Egypt, Violence Against Women Study: a Summary of Findings'. See also the work of UNFPA Egypt which fights community violence, in collaboration with the Government, national institutions and NGOs, prioritizing two of the main violence practices detected: street harassment and Female Genital Mutilation. See <http://egypt.unfpa.org/>.

<sup>49</sup> MM Haj-Yahia, 'Attitudes of Arab women toward different patterns of coping with wife abuse' *Journal of Interpersonal Violence*. Jul 2002 2002;17(7):721-745.

<sup>50</sup> See for more information also [http://www.unifem.org/worldwide/arab\\_states/](http://www.unifem.org/worldwide/arab_states/), <http://www.womendialogue.org/magazine/increased-information-protect-women-gender-related-violence>.

and migrants.<sup>51</sup> There are sizeable stateless populations in the MENA region, including several hundred thousand Bidoon in the Gulf region and over 200,000 stateless Kurds in Syria and Lebanon, who have also been vulnerable to violations on account of their lack of status and marginalisation.<sup>52</sup> Since the possession of a nationality is of both legal and practical relevance in accessing rights and services, statelessness can have a severely detrimental impact on the lives of the individuals concerned.<sup>53</sup>

## **(ii) Documenting violence**

Documentation of violations serves various goals, particularly truth-seeking, accountability of perpetrators and vindication of claims. Truth-seeking through documentation encompasses initiatives allowing (domestic or international) actors to investigate past (or sometimes ongoing) abuses in a country. These processes are aimed at enabling societies to examine and come to terms with past crimes and serious human rights violations in order to prevent their recurrence. They furthermore serve to help create a publicly verified account that prevents repressive regimes from rewriting history and denying the past. They can also help victims in their healing process by knowing the truth about what actually happened (such as to “disappeared” people) and understanding the atrocities they or those close to them endured. Truth-seeking measures may include freedom of information legislation, declassification of archives, investigations, and truth commissions.

In some countries in the MENA region, independent commissions were set up to document violations committed during a specific period, such as a conflict or in the course of uprisings. This includes the report of the Bahrain Independent Commission of Inquiry,<sup>54</sup> the report of the Commission of Inquiry on the Syrian Arab Republic,<sup>55</sup> and the report of the International

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<sup>51</sup> According to MRG, ‘future prospects for minorities in the region after the Arab spring became a much discussed topic, especially following the tragic outcome of the Maspero demonstrations in Cairo in October 2011, during which Coptic Christians, who were protesting against the destruction of a church in Aswan, were attacked by the Egyptian army, with up to 27 protesters killed. Maspero also symbolized the current predicament of minorities in the Middle East after the Arab Spring: will the prejudices and identities of the old order continue to dominate or will public space open to allow minorities to express their culture and enjoy full political participation?’ See: <http://www.minorityrights.org/3576/middle-east-overview/overview-of-middle-east.html>, September 2012. See also <http://www.amnestymena.org/en/Magazine/IssueView.aspx?Id=21> for Amnesty’s latest report on minorities in the MENA region (Winter 2012).

<sup>52</sup> The situation of stateless persons in the Middle East and North Africa, prepared for UNHCR by Laura van Waas, October 2010, at <http://www.unhcr.org/refworld/pdfid/4cea28072.pdf>.

<sup>53</sup> Ibid, Laura van Waas, 2010, p. 2.

<sup>54</sup> This Commission was established on 29th June 2011 in the Kingdom of Bahrain pursuant to Royal Order No. 28 by His Majesty, Hamad bin Isa Al Khalifa. The Commission was tasked with investigating and reporting on the events that took place in Bahrain from February 2011, and the consequences of those events.

<sup>55</sup> Report of the independent international commission of inquiry on the Syrian Arab Republic, A/HRC/S-17/2/Add.1.

Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya.<sup>56</sup> In Tunisia, “a National Fact Finding Commission on Abuses Committed from December 17, 2010 to the End of its Mandate” was created.<sup>57</sup> Its mandate states it should collect information and documentation on the abuses during the period through testimony of the victims or the families of those killed or injured and documents to be collected from any relevant administration or institution.<sup>58</sup> A second National Investigation Commission was established to investigate corruption and embezzlement during the Ben Ali regime.

These commissions have set important precedents in terms of the methodology employed. This applies to the means of documentation, including testimonies, forensic evidence, audio-visual evidence, official documents and others; establishing a record, particularly contextualising violations, also identifying causes, contributing factors and patterns; and findings and recommendations, which include a series of measures benefiting victims as well as tackling legislative and institutional shortcomings. Importantly, for victims, being able to give testimony of violations has resonance on its own. However, the approach taken by some of the commissions of inquiry has been criticised for its lack of a victim oriented approach.<sup>59</sup> While documentation of violations is valuable in its own right, the impact of fact-finding missions and commissions of inquiry may be limited where they do not adequately engage civil society and victims and are not followed up by actual implementation and/or fail to change prevailing mindsets and structures. This is particularly evident in countries such as in Bahrain. In other countries undergoing transition, the prospect for truth commissions and/or commissions of inquiry following best practice is hampered by institutional opposition. This applies in particular to the security services who continue to engage in extrajudicial conduct and often resist disclosure of files<sup>60</sup> that documented past violations.<sup>61</sup> In Tunis we spoke with

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independent international commission of inquiry to investigate alleged violations of human rights since March 2011. The commission documented patterns of summary execution, arbitrary arrest, enforced disappearance, torture, including sexual violence, as well as violations of children’s rights.

<sup>56</sup> A/HRC/17/44, 1 June 2011, the Commission decided to consider actions by all parties that might have constituted human rights violations throughout the Libyan Arab Jamahiriya. It also considered violations committed before, during and after the demonstrations witnessed in a number of cities in the country in February 2011. In the light of the armed conflict that developed in late February 2011 in the Libyan Arab Jamahiriya and continued during the commission’s operations, the commission looked into both violations of international human rights law and relevant provisions of international humanitarian law.

<sup>57</sup> Through the Law no. 8, dated February 18, 2011.

<sup>58</sup> The Commission issued its final report on May 4, 2012. The report contains 1,040 pages, including annexes (with a list of injured and killed).

<sup>59</sup> According to one of the experts we consulted, the government has failed to carry out further investigations or prosecutions except for lower level officials. In Bahrain, the committee worked bottom up: the Committee was overwhelmed with all the people that wanted to speak to the Committee (the Committee used twitter to get victims to come forward and placed phone numbers in newspapers). 6-8000 testimonies were collected. There was no representation of civil society in this process, and no real victim centered approach. Crimes have been documented, agencies who did it are known, and the systematic culture of torture in Bahrain was revealed, however, one could not yet speak of consistent mapping.

<sup>60</sup> Note that Egyptians can, since 2011, go online to view hundreds of documents detailing the horrifying activities of

representatives of DCAF<sup>62</sup> and human rights NGOs who explained the difficulties of changing the culture within the Tunisian security sector (called the police politique, whose members, according to several human rights NGOs, continue to engage in extrajudicial activities).

In several countries, besides governmental (international or national) institutions, NGOs seek to document violations. For instance, the Center for Documentation of Violations in Syria is trying to document developments in Syria for potential use in future prosecutions. Recently, a new initiative calling itself the Syrian Commission for Justice and Accountability (SCJA) was created.<sup>63</sup> This is a non-profit organisation registered in The Hague but based mostly in Istanbul. The SCJA recently started training Syrian activists to professionalise their amateur investigations.<sup>64</sup> In Lebanon, the NGO Restart Center has developed an advanced software system where all data and services provided to victims of torture are documented.

### **(iii) Accountability**

Serious human rights violations or international crimes are frequently committed by or with the acquiescence of state authority. The State participates in or at least condones the commission of these crimes and the direct or indirect involvement of government officials is conspicuous. These situations amount to the ultimate perversion of the rule of law, in that the same power established to protect citizens, is employed to harm or kill many of them.<sup>65</sup> Rebuilding the rule of law is therefore a key element of the reaction to international crimes, and this has backward and forward-looking aspects.<sup>66</sup> It is backward looking in that it should incorporate a response to the atrocities already committed, and forward looking in that it should contribute to the

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the State Security service. See for a thorough overview L. Owen Sirrs, *A History of the Egyptian Intelligence Service: A History of the Mukhabarat, 1910-2009* (New York: Routledge, 2010). Reform of Egypt's repressive security apparatus was an important demand of the January revolution. However, reform of the General Intelligence Service has proven very difficult and still causes tension in society. The current political forces in place are resorting to the same methods of repression and the similar violation patterns as to those resorted to before the 25th of January revolution, thus resulting in the creation of additional victims. Moreover, during the past year and half of trials, only Mubarak and his Minister of Interior were convicted along with ten low ranking police officers on charges of complicity in the murder of peaceful protestors. Six assistant ministers of interior and hundreds of police officers were acquitted on the grounds of insufficient evidence in the same case.

<sup>61</sup> See in this regard also the report of the Dutch Advisory Council on International Affairs, The Arabic Region, An insecure future, No. 79, May 2012, p. 19. See also Ferran Izquierdo Brichs (ed.), *Political Regimes in the Arab World, Society and the Exercise of Power*, Routledge, sept. 2012.

<sup>62</sup> DCAF is an international foundation established in 2000 on the initiative of the Swiss Confederation, as the 'Geneva Centre for the Democratic Control of Armed Forces'. DCAF contributes to enhancing security sector governance (SSG) through security sector reform (SSR). The Centre's work to support effective, efficient security sectors which are accountable to the state and its citizens is underpinned by the acknowledgement that security, development and the rule of law are essential preconditions for sustainable peace

<sup>63</sup> <http://syriaaccountability.org/en/about/>.

<sup>64</sup> Its seed funding came from the British government, but it is seeking more diverse and sustained sources.

<sup>65</sup> M.S. Groenhuijsen & A. Pemberton. 'Genocide, war crimes and crimes against humanity: a victimological perspective' In: R.M. Letschert, R. Haveman, A. de Brouwer & A. Pemberton (eds.). *Victimological approaches to international crimes: Africa* (Antwerp: Intersentia 2011), 9-34.

<sup>66</sup> R. Mani, 'Rebuilding an inclusive political community after war' (2005) *Security Dialogue*, 36(4), 511-526; R. G. Teitel, *Transitional justice* (Oxford University Press, 2002).

perceived legitimacy of government and legal authorities. Inhabitants of countries where the rule of law has broken down and/ or been perverted, have evidently good reason to withhold this perception of legitimacy, until experience proves otherwise. The extent to which justice is done should be measured by the actual contribution to rebuilding society rather than its adherence to a blueprint of any particular criminal justice procedures. Historical and cultural aspects may give rise to context specific solutions, while the interplay between the crimes committed and the views of victimised populations may differentiate the reactions from one instance of victimisation to another, within the same societies. The main audience in determining the perception of justice is the victimised population itself - rather than an abstract notion of the international community.

Within the MENA region, criminal accountability for past (and ongoing) violations has been relatively limited. There are few examples of domestic trials taking place to bring perpetrators to justice. For instance in Egypt, during the past year and a half of trials, only former President Mubarak and his Minister of Interior were convicted along with ten low ranking police officers on charges of complicity in the murder of peaceful protestors. Six assistant ministers of interior and hundreds of police officers were acquitted on the grounds of insufficient evidence in the same case. 'Lengthy adjournments, the presentation by the state of evidence that excluded important and obvious elements, intimidation by police of key witnesses, and the absence of a witness protection system has dramatically decreased public confidence in such trials and the process of transitional justice in general. Once more, the public prosecutor refused to open investigations into serious allegations of torture committed before, during and after the revolution.'<sup>67</sup> Victims of the last 30 years of human rights violations have been denied justice and remedies, and the same applies to those persons victimised during the protests since 2011. The laws issued in Egypt throughout 2011 and 2012 fail to seriously address the question of victimisation. In addition to the lack of accountability and the continuation of brutal police practices, no laws have been set in place in order to punish torture in prisons for example, or to adequately address victims' rights.<sup>68</sup>

In Tunisia, several trials for violations committed during the uprisings were held before military tribunals instead of civil courts.<sup>69</sup> The trial of former President Zine el Abidine Ben Ali, two of

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<sup>67</sup> Report by Farida Makar, Cairo Institute for Human Rights Studies, 25 September 2012, Hague Institute of Global Justice.

<sup>68</sup> Farida Makar noted that the Ministry of Interior has also recently proposed 6 draft laws that further re-enforce the grip of the police state over the public life in Egypt; introducing a direct threat to the right to peaceful assembly and association and to freedom of expression and of thought. If these draft laws are adopted, an effective return to authoritarianism will be guaranteed with a higher possibility for the increase of victims in the future.

<sup>69</sup> Under article 22 of Law 70 of August 1982 regulating the Basic Status of Egypt's Internal Security Forces, military tribunals have jurisdiction over all crimes alleged to have been committed by members of the security forces,

his former interior ministers, four directors general of the security forces, and 16 other high-ranking commanders and lower-ranking officers of the security forces is based on charges of murder and attempted murder of protesters during the uprising.<sup>70</sup> According to a recent Human Rights Watch report, ‘transitional government ministers promoted some of the defendants in the Le Kef Trial to higher positions in state security, despite the pending charges against them, raising concern about the willingness of the interim authorities to ensure accountability.’<sup>71</sup>

There are two other group trials in Tunisia. In the “Tunis Trial” before the Permanent Military Tribunal of Tunis, 43 people are accused of murdering protesters in the governorates of Tunis, Ariana, al-Manouba, Ben Arous, Bizerte, Nabeul, Zaghouan, Sousse, and Monastir.<sup>72</sup> In addition, there is an ongoing trial before the Permanent Military Tribunal of Tunis against four members of the security forces accused of killing six people when police opened fire on members of neighborhood defense committees on January 15, 2011 in Ouardanine, a town 120 kilometers south of Tunis. Finally, on April 30, 2012, the Permanent Military Tribunal of Sfax sentenced two policemen, Omran Abdelali and Mohamed Said Khlouda, to 20 years in prison and a 80,000 dinar fine (US\$49,230) for killing Slim Hadhri, who was shot dead while participating in a demonstration on January 14, 2011 in Sfax, a city 270 kilometers south of Tunis. What should be noted is that the Tunisian new government’s reforms of the military justice system have improved guarantees for fair trials (even though the reforms fall short of guaranteeing the independence of military courts from the executive branch) and effective access of victims to justice. They give victims the opportunity to file complaints, make claims for reparation, and be represented before the military courts.<sup>73</sup> Besides these trials, the state has not yet investigated and ensured accountability for the grave human rights abuses by the government during the 23-

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regardless of who the victims are or the capacity in which the crimes were allegedly committed.

<sup>70</sup> The trial covers events between December 17, 2010, and January 14, 2011, when Ben Ali fled to Saudi Arabia. The trial opened on November 28, 2011 before the Permanent Military Tribunal in the governorate of Le Kef and covers killings in the governorates of Le Kef, Jendouba, Béja, Siliana, Kasserine, and Kairouan. It is widely referred to as the “Le Kef Trial” The First Degree Tribunal of Tunis sentenced Ben Ali to more than 66 years in prison on charges ranging from embezzlement to drug trafficking. The First Degree Tribunal of Tunis sentenced him, together with his wife, on June 20, 2011, to 35 years in prison and \$65.6 million fines for theft and unlawful possession of money and jewelry. The Permanent Military Court of Tunis also sentenced him to five years in prison for “using violence” against 17 high ranking military officers, in the case known as “Barraket Essahel,” after the town where authorities said they had uncovered a plan orchestrated by officers to topple Ben Ali and establish an Islamist regime in 1991.

<sup>71</sup> For example, the second transitional government – between March and October 2011 – in March appointed one of the accused, Moncef Krifa, who had been regional director of Anti-Riot Police in Kasserine (Brigades de l’ordre Public, BOP), to be director of the Presidential Guard, see <http://www.hrw.org/news/2012/06/11/tunisia-qa-trial-ben-ali-others-killing-protesters>.

<sup>72</sup> As in the Le Kef Trial, defendants in the Tunis Trial include Ben Ali, his two former interior ministers, and the four former directors general of security forces. The others charged in the Tunis Trial are Mohamed el Arbi Krimi, director of the Central Operations Room at the Interior Ministry; Ali Ben Mansour, the inspector general of security forces, and Rachid Ben Abid, the director of Special Services, as well as other high commanders and lower-ranking officers.

<sup>73</sup> Under the new Decree 69, victims may now file claims and be represented before military courts. Article 7 of the law stipulates that the “constitution of civil parties and the launching of civil actions are allowed before military justice in conformity with the rules and procedures set up in the criminal procedure code.” The code of criminal procedure allows “all those who have personally suffered a harm as a direct result of the offense” to bring an action. In addition, victims now have the right to make claims for reparation under the criminal procedure code.

year-long Ben Ali presidency, similarly as in Egypt. Also, although there is an international arrest warrant pending against Ben Ali, Tunisian authorities are yet to press for his extradition.

In Lebanon, the Special Tribunal for Lebanon, established by the UN Security Council to try those accused of assassinating former Prime Minister Rafiq Hariri in 2005 and related crimes, issued its first indictments in June. It indicted four members of Hezbollah, who remain at liberty. Hezbollah denounced the indictments and vowed not to co-operate. As to other trials, one expert noted that 'the emphatic efforts of the Special Tribunal contrast sharply with the reality that no serious effort has ever been made to come to terms with the numerous crimes and killings that have plagued Lebanon. It is no surprise that Lebanon remains chronically plagued by political violence and instability, partly, it would seem, because people who do not expect to be held accountable for their crimes will commit those crimes with total impunity.'<sup>74</sup>

Following the fall of Colonel al-Gaddafi's government in Libya, the National Transitional Council (NTC) promised to take steps to investigate past gross human rights violations or bring to justice those responsible, but struggled to secure key evidence, such as archived material and government records, some of which had been burned and looted.<sup>75</sup> The eruption of local conflicts in many parts of Libya based on historical grievances shows the need for a comprehensive approach to addressing the past.<sup>76</sup> According to the UN Mission to Libya, Libya's legal institutions are still weak and rule of law remains a fundamental challenge. Since the fall of the old regime, revolutionary forces have continued to substitute for the role of the state and arrested thousands of perceived Gaddafi supporters who remain in detention today without legal process. Some have been subjected to ill-treatment or torture.<sup>77</sup> In June 2012, the International Criminal Court issued arrest warrants against Colonel al-Gaddafi, his son Saif al-Islam al-Gaddafi and security chief Abdallah al-Senussi for alleged crimes against humanity, including murder and persecution. Saif al-Islam was captured on 19 November.<sup>78</sup>

Regarding Yemen, the NGO Peace and Justice Initiative issued an expert opinion on the Yemeni Draft Law on Transitional Justice and National Reconciliation. It recommended, amongst others, that the draft law be amended to include provisions addressing accountability. Currently, the

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<sup>74</sup> Rami G. Khouri, 29 August 2012, at <http://english.alarabiya.net/views/2012/08/29/234871.html>. Note further that the NGO Restart has developed a draft law that criminalises torture which is now discussed by Parliamentary Committee of Administration and Justice and the Parliamentary Committee of Human Rights, after which it will be submitted to the Lebanese Parliament for adoption.

<sup>75</sup> Amnesty International report 2012.

<sup>76</sup> Transitional justice, foundation for a new Libya, United Nations Support Mission In Libya, <http://unsmil.unmissions.org/LinkClick.aspx?fileticket=8XrRUO-sXBs%3D&tabid=3543&language=en-US>.

<sup>77</sup> Transitional justice, foundation for a new Libya, United Nations Support Mission In Libya, <http://unsmil.unmissions.org/LinkClick.aspx?fileticket=8XrRUO-sXBs%3D&tabid=3543&language=en-US>.

<sup>78</sup> See further <http://www.redress.org/case-docket/the-prosecutor-v-saif-al-islam-gaddafi-and-abdullah-al-senussi> and [http://www.icc-cpi.int/en\\_menus/icc/situations%20and%20cases/situations/icc0111/Pages/situation%20index.aspx](http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/icc0111/Pages/situation%20index.aspx).

Draft Law gives a definition of “transitional justice” in Article 2. Transitional justice shall be understood as “restorative/conciliatory justice” and as being “non-judicial”. The definition further refers to the aspects of truth-seeking and reparation in the transitional justice process. This definition lacks an integral element of transitional justice, namely provisions for the accountability of individuals responsible for serious human rights violations. The draft Transitional Justice Law refers furthermore to the controversial Immunity Law issued in January 2012 that grants Ex-President Saleh and his aides immunity from prosecution, which is contrary to the general prohibition in international law on the granting of blanket amnesties for international crimes.<sup>79</sup>

In Bahrain, only some officials who had committed violations during the unrest events of 2011 have faced prosecutions. A special investigation unit was established in the Public Prosecution Office to consider and investigate reports and complaints of alleged torture, cruel and inhuman treatment.<sup>80</sup> According to the Public Prosecution of Bahrain, as of 12 December 2012, the Unit had received 205 complaints; 14 cases relating to torture and ill-treatment and 6 cases relating to deprivation of life have been referred to the courts, resulting in one conviction and two acquittals of police officers.<sup>81</sup>

#### **(iv) Reparation measures**

Reparative measures taken to date within the MENA region are extremely limited and often politicised. In Egypt, those who are officially considered victims of the revolution are entitled to monetary compensation, and a compensation fund was set up in this respect in June 2011. However, no official plan exists to provide rehabilitation or commemoration for surviving victims or the families of those that were killed. According to one experts, ‘in the overall context of lack of recognition and justice for violations the compensation fund appears more designed to appease and silence dissent than to ensure accountability, justice and reconciliation.’<sup>82</sup> The fund established in 2011 to compensate victims has only provided monetary compensation, leaving out psychological assistance, care, nursing and other vital needs to rehabilitate victims or assist them legally. Families of the victims reported having suffered from increased bureaucratic procedures and difficulties when applying for their compensation.<sup>83</sup>

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<sup>79</sup> Taking into consideration the cultural particularities of Yemen, the Position Paper of the Peace and Justice Initiative provides various ways to ensure accountability for serious human rights violations.

<sup>80</sup> Report of the Working Group on the Universal Periodic Review, Bahrain, para. 20, A/HRC/21/6.

<sup>81</sup> Figures on file with REDRESS.

<sup>82</sup> Farida Makar, Cairo Institute for Human Rights Studies, 25 September 2012, Expert meeting Global Justice Institute The Hague.

<sup>83</sup> Ibid.

Responses to victimisation have primarily come from civil society and nongovernmental actors. Civil society has been working to map the number of victims, their status and their numbers so as to keep record of all those victimised by the brutal practices of the state. This is why several volunteer initiatives have surfaced with the aim of gathering records and guarding the memory of the revolution's victims such as the Egyptian initiative "Lan Nansahum" (We will not forget them). Another practice aimed at memorialising victimisation is the use of various graphite pictures visualising the martyrs made at the Tahrir square. Several NGOs have presented various proposals to the consecutive Egyptian governments regarding the establishment of a comprehensive transitional justice mechanism to ensure remedies to victims of past human rights violations, including proposals for the establishment of truth and reconciliation committees and specialised courts. No action has been taken in this regard to date, with Egypt being mired in debates surrounding its new constitution.

In Yemen, the current Government of National Unity has initiated first steps to address the human rights violations of the past. A Law on Transitional Justice and National Reconciliation has been drafted but has not been adopted so far. It provides for a commission to investigate human rights violations going back to 1994. The commission is also tasked with developing a reparation programme for victims, ranging from material compensation to memorials, and to make recommendations for institutional reforms. Also, an agreement was reached recently to resolve the contentious issue of the allocation of seats for the all-inclusive national dialogue conference that is a key element of the transition.<sup>84</sup> The agreement paves the way for the holding of the national dialogue, which is scheduled to take place later this year and the outcome of which will feed into a constitution-making process that is to conclude in late 2013, enabling general elections to take place in February 2014.<sup>85</sup>

In Tunisia, during the months following the revolution, a number of civil society organisations, mainly those who have been active internationally (Arab Institute of Human Rights, Kawakibi Democracy Transition Center, Amnesty International-Tunis Branch and others) started advocating for the initiation of a dialogue on transitional justice, in order to lead to the adoption of such a process. In the following months of this debate – joined by an increasing number of local associations, political parties, the Bar Association, victims groups, media campaign, and other international NGOs – the political will materialised and high level decisions were taken

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<sup>84</sup> Note that the humanitarian situation in Yemen remains an "acute crisis," with humanitarian staff reporting that nearly half the population suffers from the lack of food security and that an alarming number of people live on the edge of starvation.

<sup>85</sup> Special Adviser for Yemen Jamal Benomar, 4 December 2012, at [http://www.un.org/apps/news/story.asp?NewsID=43679&Cr=yemen&Cr1=&utm\\_source=twitter&utm\\_medium=twitter](http://www.un.org/apps/news/story.asp?NewsID=43679&Cr=yemen&Cr1=&utm_source=twitter&utm_medium=twitter).

toward the adoption of a transitional justice process. For instance, a Ministry of Human Rights and Transitional Justice was established, a decision unique in international practice. Also, article 15 of the election law was adopted, prohibiting former members of the old regime from running for the Constituent Assembly elections of October 23rd, a decision that could be associated with the process of vetting, usually associated with transitional justice processes. In addition, a draft law on transitional justice, following the national dialogue, is currently under consideration in Parliament. The draft law calls for the creation of an independent board, known as the Council of Truth and Dignity. The council will consist of 15 members, four of whom are human rights activists. Eleven others will be chosen based on individual nominations of experts related to the field of transitional justice. The board's mission is to supervise the process of transitional justice in Tunisia.<sup>86</sup> In the meantime, requests for reparations are already being brought before the Tunisian government, but no plan or clear mechanism is yet in place to address such demands. Discussions have revolved around questions as to how and when reparations measures should be implemented, and which methods should be used to address divergent types of violations and the needs of victims.

In February 2011, the interim government decided to allocate 20,000 dinars (US\$12,624) to families of those killed and 3,000 dinars (\$1,900) to those injured during the uprising, regardless of the severity of the injury. Authorities paid compensation to 2,749 of those injured and to the families of 347 of those killed, according to official figures. In December 2011, the interim government distributed a second installment of the same amount to the injured and the families of those killed. However, these limited reparation measures have not met the needs for ongoing medical treatment and care of victims, or provided them with adequate financial compensation for lost wages.<sup>87</sup>

In Libya, the Libyan National Transitional Council enacted a transitional justice law entitled "Laying a Foundation for National Reconciliation and Transitional Justice". It is not clear whether the law as currently conceived will allow for a real truth-seeking process. According to the United Nations Support Mission in Libya, 'the law was not broadly consulted before it was passed and its goals are unclear. The Fact-Finding and Reconciliation Commission established by the law and composed purely of senior judges, appears to be a quasi-judicial process that may not provide sufficient scope for examining legacies of violations, reflecting on them through public hearings, and creating a space for victims to air their views. Victims are not mentioned in

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<sup>86</sup> UN Special Rapporteur De Greiff criticized the "lack of a comprehensive approach equally implementing all four elements [truth, justice, reparations, and guarantees of non-recurrence], in a way that avoids fragmenting the process into efforts to redress violations that affect the victims of particular events or specific periods." <http://www.tunisia-live.net/2012/11/22/transitional-justice-draft-law-a-collaborative-effort-by-government-and-civil-society/>.

<sup>87</sup> <http://www.hrw.org/news/2012/05/28/tunisia-injured-uprising-urgently-need-care>.

Libya's law except in relation to compensation.<sup>88</sup> The UN Mission in Libya furthermore notes that a victim-oriented approach is imperative: 'the plight of families of missing persons, whether they were for or against Qadhafi, demonstrates the need for a victim-centered approach. The pain of the loss of a father, brother, son or husband is the same, no matter whose side they were on. More concrete measures are needed for victims such as those of the Abu Selim massacre, including giving them the opportunity to tell their stories and to receive full reparations, as well as holding criminal trials of those responsible.'<sup>89</sup> A conference on truth-seeking and reconciliation in Libya opened in Tripoli on 12 December 2012, bringing together Libyan officials and activists as well as experts from both Libya and abroad.<sup>90</sup> Special Representative of the Secretary-General for Libya, Tarek Mitri, noted in his address the increased interest of the new authorities in national reconciliation and the civil society's eagerness for launching the process without delay.<sup>91</sup>

Following the report and recommendations made by the Bahrain Independent Commission of Inquiry (BICI), Bahrain has established a Special Compensation Fund for victims and relatives of victims affected by the recent violations in 2011. In June 2012, the Bahrain Government stated that it would pay \$2.6 million to 17 families over deaths last year during the uprising (153,000 per individual).<sup>92</sup>

Lebanon has no government reparation scheme for victims of serious human rights violations or for victims of crime in general. A Commission of Inquiry was set up by the Lebanese government in January 2000 to examine disappearances during the civil war. The Commission supported the demand by the families of the disappeared for compensation and rehabilitation to be provided by the Lebanese government, but also by Israel and Syria for those who disappeared in territories under their control. The mandate of the Commission expired in 2002 but the chairman, Minister Fuad El Saad, has to date not presented a report of its findings. No further steps are known to have been taken to date.

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<sup>88</sup> Transitional justice, foundation for a new Libya, United Nations Support Mission In Libya, <http://unsmil.unmissions.org/LinkClick.aspx?fileticket=8XrRU0-sXBs%3D&tabid=3543&language=en-US>.

<sup>89</sup> Ibid.

<sup>90</sup> The two-day conference, "Truth and Reconciliation in Libya: the Way Forward", was organized by the Fact-Finding and Reconciliation Commission and the Human Rights Committee of the General National Congress, in partnership with the United Nations Support Mission in Libya (UNSMIL) and the UN Development Programme (UNDP). The participants are discussing the relevance and challenges of truth-seeking, the role of victim groups as well as the legal and institutional framework required for truth-seeking. The conference is also looking at the role of the Fact-Finding and Reconciliation Commission and that of tribal leaders in reconciliation.

<sup>91</sup> Special rapporteur:

[http://www.un.org/apps/news/story.asp?NewsID=43445&Cr=libya&Cr1=&utm\\_source=twitter&utm\\_medium=twitter](http://www.un.org/apps/news/story.asp?NewsID=43445&Cr=libya&Cr1=&utm_source=twitter&utm_medium=twitter).

<sup>92</sup> <http://www.reuters.com/article/2012/06/26/oukwd-uk-bahrain-compensation-deaths-idAFBRE85P16C20120626>.

### **(v) Legal Reforms**

As confirmed by interlocutors and reflected in current initiatives, the victim rights agenda is becoming part of ongoing reforms, either within or outside the wider transitional justice debate, whereby discussions are being held as to who to include as a victim, what kind of rights they should subsequently have, and how to prioritise the implementation of measures. Responses taken may also be informed by the framework of reference chosen. For example, in Tunisia, the discussion is framed under the umbrella of transitional justice, trying to include the various transitional justice measures relating to truth, accountability, and reparation.

Legal reforms are highly politicised in the region and can easily be a trigger for new conflicts. Reforms vary from drafting laws relating to transitional justice including laws on compensation, reparation or other victim-oriented measures (Yemen, Tunisia), reforms in criminal law and criminal procedural law, and constitutional reforms (Egypt). Participation of victim groups and opposition parties in these reforms in order to guarantee public support is imperative. In Tunisia, the drafting of a law on transitional justice was accompanied by a national dialogue, in which a variety of stakeholders were asked for their views

There is a need to conduct comparative legal research into the existing and recently adopted laws and legal reforms, particular with respect to the inclusion of victims' rights and the degree to which legal systems recognise victims' rights, and pay attention to particular vulnerable groups. Experts during the September meeting expressed similar interests in sharing practices relating to legal reform within the region.

### **3. Needs assessment**

While several measures have been taken in response to violations, our research into the individual and collective needs of victims (relating to restitution, compensation, rehabilitation, accountability, acknowledgement, truth, memory, legislative and institutional reforms, other needs) demonstrated an almost complete lack of data assessing victims' needs. Several of the NGO representatives we have consulted, and the desk study we conducted, suggest that information available is weak and/or incomplete, and not based on systematic assessments. There are several reasons for this. First is the lack of capacity, both in terms of research skills and financial resources. Second, the politicisation of the 'victim discourse' in several countries is not only a challenge for new governments but also for civil society. In countries such as Tunisia and Egypt, heated debates are being held as to who should be recognised as a victim. One of the biggest challenges is the apparent tendency of leading political parties to prioritise certain victim groups for largely political reasons. In Tunisia, for example, victims of the repressive

regime of Ben Ali are represented by the current leading party Ennahdha (The Renaissance) which is pushing for their centrality in reparation processes.<sup>93</sup> As noted by some NGOs consulted, the current focus of debates in Tunisia largely ignores the needs of victims of socio-economic marginalisation and violations, with nepotism and corruption constituting key contributing factors. According to the NGO KADEM, sustainable political transformation must be grounded in better socio-economic development. This group of victimised people, which largely live in marginalised rural areas, requires different approaches to reparation. Also with regard to victims of the revolution, difficult issues arise; how do you determine who is a victim of the revolution: was it the person who was protesting on the streets?; or also the relatives of the one shot on the street when looting during the uprising?

The fact that comprehensive needs assessments appear lacking does not mean that several NGOs are not providing legal assistance or other psycho-social services to victimised groups. To give a few examples, not claiming to be exhaustive, the Al Nadeem Centre for the Rehabilitation of Victims of Torture has been operating in Egypt since 1993. The Egyptian based NGO provides psychological management and rehabilitation to victims of torture. Together with other NGOs it also provides social support and refers to legal aid resources. The organisation has also been active since the onset of the January 25th revolution by gathering testimonies, filing cases against perpetrators of torture and monitoring the conduct of police and army personnel. The NGO's scope is mainly restricted to the greater Cairo area. The 'No to Military Trials Group' is another civil society initiative which came to life after a number of people were sent to military prison during the first days of the revolution in 2011. This grassroots movement, which includes activists, families of victims, lawyers and media personnel, operates in a decentralised manner so as to reach as many families as possible. The group has been monitoring the records of those sent to military prisons and has shed light on the matter in the media. It provides legal assistance to the victims of military trials and defends the victims whenever possible. The group has succeeded in bringing the case of military trials to the attention of the international community through media and other NGO networks.<sup>94</sup> Psychologists and some psychiatric units in Cairo hospitals have also been involved in providing psychological assistance for the victims of the revolution. Such initiatives however remain limited in number. Often, psychological and psychiatric help is only provided for on a volunteer basis and there are doubts about whether or not such efforts can be sustained in the long run. Various doctors have announced their

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<sup>93</sup> In September 2012, Ennahda started to talk about paying reparations to victims of repression, outside the ongoing transitional justice process, which led to fierce criticism of civil society. Another problem with this group is how to demarcate the time period. Some are arguing to limit the period to the Ben Ali period, others are arguing that it should go back as far as possible.

<sup>94</sup> From the presentation of Farida Makar, Cairo Institute for Human Rights Studies, 25 September 2012, Expert meeting Global Justice Institute The Hague.

willingness to treat patients who have suffered from trauma due to the political events free of charge but these efforts remain restricted to certain geographic centers in the country. In Lebanon, the NGO Restart Center for Rehabilitation of Victims of Violence and Torture provides psychological support to victims. In Tunisia, several NGOs were set up specifically to engage in the transitional justice process, providing advocacy and supporting victims, next to the already existing human rights organisations such as the Tunisian League for the Defense of Human Rights and the Tunisian Branch of Amnesty International.

#### **4. Findings**

The Arab uprisings and revolutions under way across the MENA region have three common goals relating to the past, present and future: to remove existing regimes; to hold accountable the many people who acted in a criminal manner in the past; and to create more humane and accountable political and economic systems for the future.<sup>95</sup> In most countries governments are more concerned with the present and the future challenges, which has resulted in neglecting the legacy of past human rights violations.

The way past violations are being documented shows a diverse picture in the region. What seems imperative with regard to all countries is that the purpose of the process of documentation should be identified and proper follow up measures defined. For instance, is the investigation for the purposes of a truth commission where 'truth' is the ultimate outcome or is the investigation for the purpose of a criminal trial where 'justice' for all parties involved is the ultimate outcome (and where different standards as regard evidence gathering for a criminal trial apply)?

Some limited measures have been taken with a view to providing accountability and establishing comprehensive reparation schemes. However, the increasing politicisation of victims in public discourses, often with limited input from victims themselves, risks that any measures taken are guided by political motivations or respond to political developments, rather than being based on what victims need and are entitled to as a matter of international law and/or national law. A proper mapping and analysis of the different needs of victims, and victim-oriented means of meeting these needs, would therefore be an important first step of countering this development and ensuring respect for victims' rights. This should be done in a way that is as inclusive as possible, including particularly the various (often remote) areas in the country and consulting directly with victims, instead of focusing primarily or only on the civil society actors that are representing victims' interests in the capitals. This also means

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<sup>95</sup> Rami G. Khouri, 29 August 2012, at <http://english.alarabiya.net/views/2012/08/29/234871.html>

including particular vulnerable groups such as women, elderly, children and persons belonging to minority groups. When it comes to transitional justice mechanisms, vulnerable groups are often not adequately represented in consultations leading to the establishment of measures.

States in the region must consider how best to meet their obligation to provide reparation to victims. What will be important is that any approach taken is informed by a broad perspective that acknowledges all victims, not only those of the current uprisings. Offering some compensation to the victims of protest-related violations, such as in Egypt, is a first step but would remain selective and inadequate if not followed by broader measures. This includes identifying the causes and documenting the truth of violations, which forms an important aspect of the right to reparation and a crucial means to prevent the recurrence of human rights violations. Judging by the practice of other countries, it is vital that victims' rights and experiences are taken seriously and are not compromised or swept under the carpet altogether.

On the basis of a thorough needs analysis, governments and civil society actors will be better informed and able to develop what is often referred to as evidence based strategies for the implementation and prioritisation of different reparative measures. We furthermore believe that the findings of existing studies into assessing victims needs post conflict in other regions of the world cannot simply be transposed and applied to the situation in the MENA region. With regard to each country, it is imperative that consideration is given to the culture and the belief systems of the society. The increasing presence and politicisation of religion in the public sphere across the region makes it imperative to address religion and beliefs in the justice system itself. To this end, it is vital to ensure that the vision of justice pursued through the implementation of specific transitional justice measures accords with the vision of justice as understood by the affected society.

### **III. Assessing the role of various actors in responding to victimisation**

#### **1. Introduction**

Responses to victimisation differ considerably across the region, depending in particular on the strength and focus of civil society and the approach taken by the government(s) concerned. Some countries have resisted and/or escaped change to date; several others are undergoing profound political transitions during which responses to victimisation form part of a broad range of issues addressed in what are frequently volatile environments. The fluidity of this situation makes it

difficult to assess initial responses that are subject to change. This applies in particular to national and regional networks, which are either in their formative stages or are undergoing significant changes. In turn, these developments influence donor approaches to funding work on victimisation (which falls within the broader categories of human rights, transitional justice, rule of law and rehabilitation).

## **2. Civil society responses to victimisation**

The complexity of victimisation as well as diverging legal systems, institutional set-ups and political situations in the region poses considerable methodological challenges. Notwithstanding these difficulties, a series of interviews with interlocutors, discussions during The Hague meeting and further research highlighted both initiatives and opportunities to better respond to victimisation. In several countries, such as Tunisia, Libya and Egypt, first steps have been taken to address violations and their consequences (see above at II). Most civil society actors have expressed a strong interest in developing effective responses to victimisation, which is recognised as a critical component of re-building societies following dictatorship and/or conflict. However, many organisations and individuals are overwhelmed by and preoccupied with daily challenges, particularly in the context of conflict and intense transitions. This makes it difficult to develop and implement effective strategies based on a clear understanding of the nature and extent of victimisation. Challenges faced by civil society actors include in particular:

- (i) Difficulty of developing a coherent and effective approach to victimisation in times of transition given conflicting demands, particularly shifting priorities, such as elections, constitutional review, ongoing violations;
- (ii) Limited organisational capacity due to lack of expertise, inadequate funding as well as legal and practical constraints, particularly registration laws and targeting of human rights defenders on account of their work;
- (iii) Limited awareness and skills, particularly relating to documentation, research and advocacy;
- (iv) Difficulty of ensuring effective participation of victims and victims' organisations in developing strategies and advocacy; and
- (v) Different priorities, outlook and strategies, as well as problems of communicating effectively, both within countries and across the region, which hamper network building.

Specialised NGOs or institutions, such as rehabilitation centres, are also confronted with a lack of

adequate infrastructure and at times limited awareness and/or capacity, for example in respect of the nature, consequences, documentation and rehabilitation of psychiatric trauma.

There are marked differences in respect of the ability and effectiveness of civil society actors engaging in work on victimisation. In several countries, particularly Egypt, Jordan, Lebanon, Morocco, Palestine and Tunisia, a number of well-established human rights organisations exist, many of which have developed considerable expertise and experience in working with victims. This includes human rights organisations advocating on behalf of victims, such as the Palestinian Centre for Human Rights in Gaza, al Haq in the West Bank, al Mizan Human Rights Law Group in Jordan and the League for the Defence of Human Rights in Tunisia. Several organisations focus on torture, such as the Egyptian Initiative for Personal Rights, or enforced disappearance, such as the Collective of Families of the Disappeared in Algeria, and rehabilitation centres (see in particular list of the member organisations of the International Rehabilitation Council for Torture Victims in Egypt, Iraq, Jordan, Lebanon, Morocco, Palestine).<sup>96</sup> Several of these organisations have carried out valuable groundwork on human rights protection and rehabilitation over several decades. However, they have often worked in repressive environments, and pursued traditional approaches focusing on violations of civil and political rights and individual cases rather than mass violations and/or impact on victims. This means that many of them have not developed a specific focus on how to respond to victimisation, particularly in the context of transitions. A possible exception is Iraq where the legacy of victimisation was discussed extensively and addressed by several human rights organisations and academics following the end of the Iraq war in 2003.<sup>97</sup> However, efforts at the time became increasingly politicised and overshadowed by ongoing conflict. While some measures have been taken, the uncertain nature of transition has not proved conducive to developing adequate responses to victimisation.<sup>98</sup>

The situation has changed dramatically in the wake of the uprisings across the region. Civil society organisations have proliferated and are now playing an increasingly visible and important role in current transitions or conflicts. However, their emphasis varies considerably. In countries such as Syria, organisations, many of which are based outside the country, have focused on documenting and responding to ongoing violations, finding means to prevent further harm and providing immediate assistance. In Bahrain, organisations have made strenuous efforts to develop their capacity to document violations, assist victims and advocate victims' rights, notwithstanding the considerable repression they continue to face. The work of BICI has played an important role

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<sup>96</sup> See [www.irct.org/Default.aspx?ID=4866](http://www.irct.org/Default.aspx?ID=4866).

<sup>97</sup> See for a good overview and interesting study, International Centre for Transitional Justice and the Human Rights Centre, University of Berkeley, California, *Iraqi Voices, Attitudes towards transitional justice and social reconstruction*, 2004.

<sup>98</sup> See E. Stover, M. Sissons, P. Pham and P. Vinck, 'Justice on hold: accountability and social reconstruction in Iraq', *International Review of the Red Cross*, 90 (March 2008) 869, 5-28.

in this respect, constituting a major effort of documenting violations (though with very limited follow-up to date).<sup>99</sup> Elsewhere, such as in Libya, initiatives to build the capacity of civil society have been hampered by increasing polarisation, i.e. dividing victims into ‘deserving’ (revolutionary) and ‘undeserving’ ones (pro-Gaddafi) that risks frustrating a concerted approach. In Tunisia, there is an increasing focus on transitional justice. While this has galvanised parts of civil society, there are concerns over internal divisions and coherence of the approach taken.<sup>100</sup> In Yemen, polarisation of victimhood, diverging approaches and limited understanding of victims’ rights, which are also due to weak civil society, were identified as major problems. In other countries, particularly in the Gulf region, such as Saudi Arabia, civil society activity is very limited and constrained, which has resulted in a lack of visible engagement on victims’ rights and victimisation.

This brief overview demonstrates the country-specific challenges and complexities civil society organisations have to grapple with. However, some trends are evident across the region. A number of civil society organisations work on aspects of victimisation, taking different – though partly overlapping - approaches depending on their area of work, such as human rights, women’s rights, transitional justice, rehabilitation. While this diversity potentially enriches debates, it may also lead to contradictory strategies, duplication and divisions and thereby undermine network building. One important factor is divisions within civil society, which frequently reflect broader societal faultlines. This includes the urban/rural and class divide, with influential civil society organisations often located in capital cities. Observers expressed concern that this fact may result in skewed agendas and advocacy that do not adequately represent the experiences of victims and types of victimisation of poor and/or rural constituencies. It is noticeable that at least some victims have organised themselves in form of associations or otherwise in countries such as Tunisia. However, their opportunity to express their views directly and impact development is often limited in practice, particularly if compared to more established actors.

The degree to which civil society organisations interact with other societal forces and are able to influence public opinion and policy making differs markedly. Where political forces with an Islamic orientation are powerful, organisations with a liberal or secular outlook may find it challenging to operate and to develop common ground with faith based groups. This is an area that needs to be explored further, particularly identifying and drawing on commonalities in the

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<sup>99</sup> BICI was a commission set up by the Government of Bahrain tasked with ‘[investigating and reporting] on the events occurring in Bahrain in February/March 2011, and any subsequent consequences arising out of the aforementioned events, and [making] such recommendations as it may deem appropriate’, which presented its report in November 2011), Report of the Bahrain Commission of Independent Inquiry, Presented in Manama, Bahrain, on 23 November 2011 (Final Revision of 10 December 2011 ), available at [www.bici.org.bh/BICIreportEN.pdf](http://www.bici.org.bh/BICIreportEN.pdf).

<sup>100</sup> See on recent developments, Statement by the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, *Tunisia: UN expert calls for human rights to be at the heart of a transitional justice process owned by the entire society*, 16 November 2012.

understanding of victims' rights in different legal systems and the different victims' needs outside the legal system. Given the intense politicisation of society and debates, civil society organisations are often at risk of becoming partisan, or seen to be partisan, which can negatively impact on developing broader victims' rights agendas. This is particularly the case where only certain victims are recognised, or particular groups of victims receive preferential treatment, such as in Libya and Tunisia.

There have been efforts to build national networks addressing aspects of victimisation, such as in Tunisia, for example by the Organisation Contre la Torture en Tunisie (OCTT) and Dignity focusing on documentation and litigation of torture cases. However, existing networks are often rather ad hoc and frequently focus on broader or specific human rights issues rather than on victims' experiences, rights and needs. Organisations such as the Cairo Institute for Human Rights have regularly organised regional events on human rights. More recently, Dignity together with the al-Mizan Human Rights Law Group and the National Council for Human Rights, Jordan, has set up a regional forum on the prevention of torture (monitoring places of detention). It also engages in remedying torture and rehabilitating torture victims in Egypt, Libya, Palestine and Tunisia. The International Council for the Rehabilitation of Torture Victims (IRCT) also has a regional network of torture rehabilitation centres. IRCT recently elected Suzanne Jabbour, from Lebanon, as its new President who emphasised her sense "that my election recognises the importance of supporting my region during these difficult times."<sup>101</sup> In addition, there are organisations participating in regional networks on international criminal justice, such as the Coalition on the International Criminal Court. In the area of transitional justice, the International Centre for Transitional Justice (ICTJ) has a regional initiative on women's rights. While important, these initiatives are still of rather limited scope and often not joined up. The discussions during the Hague meeting demonstrated the inadequate regional focus on victims' needs and rights and the need to strengthen regional collaboration. While acknowledging the difficulty of creating and maintaining such networks given the pressing tasks and challenges experienced by organisations and individuals at the national level, most interlocutors agreed that strengthening regional civil society approaches constitutes a strategic priority. Learning from best practices, reflecting on common challenges, developing effective advocacy strategies based on documentation and research and supporting each other's work were identified as key components for such a regional network. Raising visibility of the issues and linking up with other networks were highlighted as important potential benefits of a stronger regional focus and interaction.

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<sup>101</sup> "Suzanne Jabbour elected new IRCT President", IRCT Press Release, 22 November 2012, available at [www.irct.org/media-and-resources/irct-news/show-news.aspx?PID=13767&Action=1&NewsId=3730](http://www.irct.org/media-and-resources/irct-news/show-news.aspx?PID=13767&Action=1&NewsId=3730).

Academic institutions across the region vary considerably in terms of their capacity, outlook and approach. A number of academics have played an influential role in debates surrounding human rights, transitional justice and victims' rights.<sup>102</sup> However, interlocutors have highlighted the rather limited focus of most universities on questions of human rights, particularly victims' rights and wider issues relating to victimisation. While there are notable exceptions in respect of some universities, such as in Egypt, Lebanon and Tunisia, the infrastructure in countries such as Libya and Syria has suffered from years of dictatorship and recent conflict. Present transitions offer an opportunity to develop new approaches though it will take considerable time and resources to build up the academic culture in which issues can be addressed in-depth. The limited research capacity in particular has been identified as one of the major challenges due to bureaucracy, lack of infrastructure and limited incentives to engage in research, that is the absence of a developed research culture. There are notable exceptions, such as Birzeit University near Ramallah, which is presently conducting a population study regarding the scope, extent and type of torture trauma and war trauma in and around Benghazi, Libya, in cooperation with Dignity. Experts have expressed the need for more studies into the level of trauma within victimised communities and proper impact assessments of the psycho-social services they provide.<sup>103</sup>

National human rights institutions (NHRIs) can play an important role as focal points for research, awareness raising, advocacy and complaints relating to serious violations of human rights and victimisation. NHRIs occupy a crucial space as independent official bodies with a human rights mandate, which enjoy international legitimacy by virtue of their adherence to the Paris Principles and form part of a network of such institutions.<sup>104</sup> While several NHRIs are in place in the region, such as in Algeria, Egypt, Jordan, Palestine, Morocco, Qatar and Tunisia, their independence, mandate and capacity varies considerably.<sup>105</sup> Some of them, i.e. in Morocco, directly engage in relevant programmes, such as on community reparation,<sup>106</sup> while others collect valuable information on aspects of victimisation, such as documenting violations.<sup>107</sup> NHRIs could

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<sup>102</sup> See for example study Professor Wahid Ferchichi, *Transitional justice in Tunisia, The absence of a clear strategy and the predominance of improvisation (14 January to 23 October 2011)*, Arab Institute of Human Rights, 2012. Academics based outside the region, such as Professor Cherif Bassiouni, have also played a prominent role in several processes.

<sup>103</sup> There are few examples of such studies done by NGOs themselves; see for instance the three studies that Restart has done together with the University of Balamand on the impact of rehabilitation of victims of torture and social reintegration, lessons learnt from capacity building programme of ISF.

<sup>104</sup> See OHCHR and NHRIs, [www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx](http://www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx), and National Human Rights Institution Forum, [www.nhri.net](http://www.nhri.net).

<sup>105</sup> See OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, United Nations, New York and Geneva, 2010, Annex II: List of national human rights institutions accredited by the International Coordinating Committee (June 2010).

<sup>106</sup> Kingdom of Morocco, National Human Rights Council, Community Reparation Programme, [www.ccdh.org.ma/spip.php?rubrique190&lang=LANG](http://www.ccdh.org.ma/spip.php?rubrique190&lang=LANG).

<sup>107</sup> See for example the Independent Commission for Human Rights in Palestine, [www.ichr.ps/en/2/2/251/About-Us-About-Us.htm#](http://www.ichr.ps/en/2/2/251/About-Us-About-Us.htm#).

and should therefore be part of regional efforts to address victimisation. However, to this end, it is important that they build their capacity and develop adequate strategies on what role they can play and how they can work with relevant actors.

Governments have initiated transitional justice measures, such as in Morocco and Tunisia, and have set up ministries dealing with human rights issues, such as in Bahrain, or transitional justice, such as in Tunisia. They are critical actors in respect of both the general framework within which to address victimisation, notably legislation and institutions, and specific initiatives undertaken, such as reparation programmes. However, the capacity of ministries and governmental actors is frequently limited and their role sometimes confined to coordinating activities, such as in Tunisia. Moreover, concerns have been raised about governmental bodies with a human rights mandate in countries gripped by ongoing violations, such as in Bahrain, particularly where they are seen to have failed to take a clear position on addressing human rights violations. Working with governments and governmental bodies therefore requires careful consideration as to their ability and willingness to collaborate, or at least to be open to engagement on relevant aspects.

### **3. Role of International Actors**

Recent developments in the region have triggered strong international interest and led to considerable engagement of multiple actors in ongoing conflicts and transitions. This ranges from involvement in discrete processes, for example, the work of international experts on producing and implementing the BICI report addressing responses to serious human rights violations in Bahrain (though with limited visible success and raising concerns about their politicisation) to broader support by the UN and others for those engaged in transitional processes, including issues relating to justice and legislative reforms, such as in Iraq and Libya. The Office of the High Commissioner for Human Rights (OHCHR), in its Human Rights Programme for the MENA region, identifies the following over-arching priority areas: (1) The protection of civilians through monitoring and reporting; (2) The development of human rights capacity of Government officials, national human rights institutions, human rights defenders and civil society organizations; (3) The mainstreaming of human rights through partnerships with United Nations and regional mechanisms; and (4) Advocacy and public communications aimed at promoting and protecting human rights.

On transitional justice, accountability, and the rule of law, the OHCHR states that:

democratic deficits are key challenges that will continue to be addressed in the next five years, especially through partnership with other UN entities and national actors.

Transitions to democracies that respect human rights and the rule of law are at risk unless new governments address past violations and embark on institutional and legal reforms. Such efforts will be informed by the inclusive and genuine national consultations. Investigations into the violations of the past will be prioritized with a view to ensuring a meaningful accountability for those responsible, truth-seeking, and reparation for those affected. Institutional reforms will prioritise the security and the justice sectors. Legal reforms will include repealing provisions of an array of laws that restrict free expression, association, and assembly, and that discriminate against or fail to protect women and vulnerable groups, including minorities. It may also include identifying and responding to the impact on human rights of corruption.<sup>108</sup>

Regional actors, such as the Arab League, may also potentially play a conducive role in respect of victims' rights though it is too early to tell whether recent statements of intent will result in fundamental changes given its weak track record to date.<sup>109</sup>

Uprisings in the region have exposed contradictions in the role of 'Western' actors and prompted a re-think of policies. Military support for authoritarian regimes and security collaboration in particular are difficult to reconcile with supporting democratisation processes and human rights.<sup>110</sup> Recent developments have resulted in a visibly stronger emphasis on engaging in transitions and supporting civil society. This is evident in initiatives, such as by the Obama administration and the European Union's (EU) review of European neighbourhood policy. It is also reflected in increased funding focusing on support for transitions. The US, for example, has provided significant financial support for Tunisia and has allocated \$800 million in response to the uprisings in the region in 2011 and 2012, and the Obama administration has requested a further \$700 million from US congress.<sup>111</sup> Several programmes focus on human rights, democracy and governance in the region, particularly the Middle East Response Fund, the Middle East and North Africa Incentive Fund and the Middle East Partnership Initiative.<sup>112</sup> The EU has several funding streams applicable to the region, including an 'earmarked €350 million over the period 2011-2012 for its new SPRING Programme (Support to Partnership, Reform and Inclusive

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<sup>108</sup> <http://www.ohchr.org/EN/Countries/MENARegion/Pages/MENAProgramme.aspx>.

<sup>109</sup> See 'Arab League wants to go through a transformation', <http://www.arableagueonline.org/arab-league-wants-to-go-through-a-transformation/>.

<sup>110</sup> See on the question of credibility discussions as reported in summary of meeting, *Transitional Justice and the Arab Spring*, Chatham House, 1 February 2012.

<sup>111</sup> S.McInerney, *The Federal Budget and Appropriations for Fiscal Year 2013: Democracy, Governance, and Human Rights in the Middle East and North Africa*, Heinrich Böll Stiftung and POMED (Project on Middle East Democracy), July 2012.

<sup>112</sup> *Ibid*, 4-15.

Growth), in response to the events of the Arab Spring,' which comprises support for democratic transition processes.<sup>113</sup> Recent calls for proposals include priority countries that had previously been excluded. Libya and Syria, for example, are among the countries falling within the European Instrument for Democracy and Human Rights (EIDHR) scheme 'Strengthening the role of civil society in promoting human rights and democratic reform, in supporting the peaceful conciliation of group interests and in consolidating political participation and representation'.<sup>114</sup> In addition, smaller grants focusing on strengthening civil society and combating human rights violations have been made available by EU country delegations, such as in Egypt, Libya and Tunisia. A number of foundations and other donors also offer funding, particularly to support civil society and human rights initiatives in the region. The National Endowment for Democracy (NED), for example, funds a series of small scale human rights projects – many of which respond to the changed political environment - across the region.<sup>115</sup> Others, such as the Sigrid Rausing Trust, put in place targeted funding for selected organisations, in addition to ongoing support for human rights projects.<sup>116</sup> The Arab Regional Office of the Open Society Foundations supports, *inter alia*, 'proactive and innovative projects, including monitoring, documentation, and advocacy efforts to further diversity, equality, non-discrimination, and access to justice alongside other basic civil and political rights' and women's rights projects.<sup>117</sup> Regional funding initiatives remain rather limited. For example, in 2011, the Arab Human Rights Fund 'awarded 32 grants totaling \$650,536 to support work in 17 Arab countries', divided into support for 'countries in transition', 'new opportunities' and 'ongoing human rights.'<sup>118</sup>

This brief overview shows that various actors have responded to developments in the region. However, while funding has increased, budgetary constraints in times of economic crisis mean that the increase has been rather limited and is widely seen as insufficient to meet the multiple needs. There is also considerable concern over the ad hoc nature of responses and the lack of coherence and coordination. Priorities are largely dictated by events. Relevant funding focuses heavily on transitional processes and actors, such as elections, political parties and civil society, as well as legislative and institutional reforms. Transitional justice initiatives, particularly in the Tunisian context have received considerable support, and some funding has been made available

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<sup>113</sup> See 'EU response to the Arab Spring: 350 million euros to face socio-economic challenge and democratic transition', 7 October 2011, [www.euborderregions.eu/about/news/eu-response-to-the-arab-spring-350-million-euros-to-face-socio-economic-challenge-and-democratic-transition](http://www.euborderregions.eu/about/news/eu-response-to-the-arab-spring-350-million-euros-to-face-socio-economic-challenge-and-democratic-transition).

<sup>114</sup> See EIDHR 2011-2013, *Multiannual Indicative Planning, Global Calls for Proposals + CBSS*, [http://ec.europa.eu/europeaid/what/human-rights/documents/mip\\_eidhr\\_2011-2013\\_for\\_publication2\\_en.pdf](http://ec.europa.eu/europeaid/what/human-rights/documents/mip_eidhr_2011-2013_for_publication2_en.pdf).

<sup>115</sup> NED, Middle East and North Africa, <http://www.ned.org/where-we-work/middle-east-and-northern-africa>

<sup>116</sup> See Sigrid Rausing Trust, Middle East & North Africa (MENA) Strategic Fund, [www.sigrid-rausing-trust.org/Grantees/Middle-East-North-Africa-MENA-Strategic-Fund](http://www.sigrid-rausing-trust.org/Grantees/Middle-East-North-Africa-MENA-Strategic-Fund).

<sup>117</sup> Open Society Foundations, Arab Regional Office, [www.opensocietyfoundations.org/about/offices-foundations/arab-regional-office/focus-areas](http://www.opensocietyfoundations.org/about/offices-foundations/arab-regional-office/focus-areas).

<sup>118</sup> Arab Human Rights Fund, Funding Programme, <http://ahrfund.org/en/pages/grantseekers/funding-program>.

for capacity building, and the documenting and monitoring of human rights violations. However, the nature of funding priorities, and the type of projects funded, suggests that there is inadequate focus on addressing structural causes and legacies of violations from a victims' perspective. Such a perspective would need to be based on research, consultation and in depth analysis aimed at developing appropriate responses reflecting victims' rights and meeting victims' needs.

There do not seem to be any projects taking a victimological approach to serious human rights violations in the region. Interlocutors were not aware of any national or regional grants, beyond funding for rehabilitation centres, that addressed the multiple needs of victims identified, including the need for a better understanding of the causes and consequences of violations. Yet there are several projects that are relevant and may provide scope for cross-fertilisation if not collaboration (see above on civil society responses). Some organisations, such as Dignity, have received funding to carry out research on trauma in Libya – in collaboration with Birzeit University – or, in the case of IRCT and OMCT, to build capacity and establish rehabilitation services to victims of torture in Libya. In addition, national organisations such as Lawyers for Justice in Libya are presently seeking funds to carry out a study documenting and analysing the legacy of violations in Libya, to be done in collaboration with REDRESS. Organisations in several countries engage in collaborative human rights projects involving regional and/or international partners, and responses during The Hague meeting strongly suggested that there is considerable potential to build on existing efforts in this respect.

#### **4. Findings**

Civil society organisations in the MENA region face competing if not conflicting demands in a highly politicised and volatile political environment, having to respond to past and present violations while engaging in processes aimed at building sustainable, democratic political structures. Developments in various countries highlight the difficulty of developing a coherent approach that addresses systemic shortcomings and structural obstacles, which weaken recognition of, and respect for victims' rights and needs. Ensuring that victims themselves are an integral part of initiatives and that their voices are heard throughout is a vital first step towards effectively addressing limited awareness of victimisation and consequently lack of respect for victims needs and their rights. Building the capacity of civil society actors and a network of national and regional networks of actors are key elements of an approach that effectively responds to legacies of victimisation and the needs of victims. This network should as much as possible include a cross-section of community based and civil society organisations from various political and socio-economic backgrounds, and also comprise, or at least closely engage with

academics, NHRIs, representatives of relevant governmental bodies and others as appropriate. Given the limited extent of regional collaboration among relevant actors, a parallel approach of building strong national networks, which includes working towards establishing a regional structure in which national actors can benefit from each other's experience. Such a regional structure could also act as forum for regional advocacy, such as developing a regional human rights system, once it has developed a sound understanding of the issues and priorities as well as agreement on approaches to be taken. While the desire to build such a regional forum is evident, interlocutors were also aware of the many challenges, including weak capacity, limited resources, security concerns, focus on one's own country, difficulties of coordinating across the region, and the absence of regional systems, which hamper regional efforts and would need to be addressed.

The role of, and funding by, international actors has been the subject of considerable debate and controversy. Conflicting priorities, i.e. security, access to resources (oil), geostrategic considerations and immigration control on the one hand and promotion of human rights on the other have raised concerns about the motives of 'Western' actors. Many actors remain deeply suspicious of external organisations, particularly those that are rightly or wrongly associated with certain political agendas. This applies not only to state authorities that have imposed conditions on the work of or funding received from international organisations, such as in Egypt or Bahrain. Civil society groups in several countries are also wary of international actors. Issues of concern, such as motives (who is to benefit), agenda (ultimate purpose), and approach taken, including conduct considered unethical, such as a major human rights NGO apparently making false promises to victims in Libya, reflect deeper lying unease about unequal power relationships. This unease is replicated where the work of local NGOs with international NGOs is seen as inappropriate, which may undermine the very foundation of any project based on participation and respect for the rights of victims. Conversely, there is an appreciation of the beneficial role that international NGOs and actors can play in sharing knowledge and expertise and in supporting capacity building, awareness raising and networks. Interlocutors stressed that any work by international actors on victims' rights must be cognisant of the political context in the region and based on equality and mutual respect.

#### **IV. Recommendations for follow up initiative**

This study has highlighted the need for a concerted effort to address victimisation in the MENA region. The current situation provides a truly unique opportunity both to tackle deep-seated structural factors that perpetuate serious human rights violations and to develop best practices to secure justice and provide services for victims. Interlocutors consulted in the course of the study generally welcomed the idea of a follow-up initiative that responds to the pressing needs of victims. Such initiative also has a potentially wider impact benefiting society at large, by contributing to reconciliation and the development of laws and institutions based on respect for human rights. Any effort to respond to victimisation in the region faces evident challenges, including a volatile political environment, politicisation, competing priorities and limited capacity. However, these challenges are not insurmountable and can be addressed through a carefully designed approach that combines research with capacity building, awareness raising, networking and advocacy. The research on victimisation in the region would be collaborative, combining the expertise of INTERVICT (victimology) and REDRESS (victims' rights, reparation) with that of national and regional actors from academia and civil society. The very process of engaging in this research will contribute to building capacity and raising awareness. Its outcome, i.e. a major report coupled with a launch, would provide a sound empirical basis, enabling a cross-section of actors to advocate for the implementation of victims' rights in the region, and giving policy makers the tools to take appropriate action. The concerted effort of responding to victimisation will be driven by national and regional networks with a view to enhancing impact and ensuring sustainability.

The initiative will benefit victims by documenting the truth of what happened to them and enhancing recognition of their rights. Victims' organisations, NGOs, academics, policy makers, judges, national human rights institutions, officials and others mandated to work on victims' rights are to benefit from enhanced capacity and cooperation. They will have greater ability to document victimisation, better awareness of relevant standards and best practices, and enhanced capacity to advocate victims' rights and undertake measures to implement these rights.

The initiative would be based on close collaboration between The Hague Institute for Global Justice, REDRESS and INTERVICT, which will bring to bear their respective strength of human rights work, their extensive networks and academic research on victimology. This will be complemented by collaboration with partners from the region, both from civil society and

academia, including experts and organisations that have taken part in the feasibility study, and organisations such as Dignity, and national/regional counterparts, such as al-Mizan in Jordan that are already working on some projects in the field (see above). These initiatives and emerging networks, such as on the prevention of torture, will form important components of any follow-up initiative that would seek to maximise synergy to enhance impact.

In light of these considerations, a follow-up initiative, consisting of the following interrelated components, is both highly desirable and feasible.

### **1. Applied research on victimisation and victims' needs (documentation and mapping)**

The feasibility study shows that the dearth of empirical knowledge about violations and their legacy in the region has resulted in limited awareness of victims' experiences, lack of recognition of victims' rights and inadequate responses to victimisation. Documenting violations and mapping the needs of victims would provide a much needed empirical basis for policies and measures taken to meet needs. It would also be invaluable as a means of raising awareness of violations and of providing an advocacy tool. Documentation will consist of systematic compilation of information concerning: the type of violation, particularly serious human rights violations; the identity of the victim(s) and the perpetrator(s); the scale of victimisation; the time frame (date or period in case of continuous violations – which will vary depending on the country concerned); the consequences for the direct and indirect victim(s) (physical, psychological, social); and responses (treatment, rehabilitation, legal remedies, reparation), or lack thereof. To this end, the research will also identify what services exist for victims, particularly in relation to treatment, rehabilitation, as well as legal and other remedies. The primary documentation will be complemented by a contextual analysis of patterns of violations and responses to victimisation. This research will consist of a detailed study of relevant legislation and implementation, or lack thereof, to identify the role of the law in ensuring (or failing to ensure) respect for victims' rights. It will also examine the role of judicial, institutions and others societal forces, both in terms being involved in violations on the one hand and responding to violations and victimisation on the other with a view to identifying changes needed to strengthen victims' rights in the region.

The research will be done by interviewing victims, witnesses, human rights defenders, members of rehabilitation centres, and others, such as (former) officials and persons in the community,

having relevant knowledge; taking or examining medical evidence where feasible; and an analysis of existing records and reports. Social research methods (surveys and questionnaires, semi-structured interviews, focus group) will be used to establish the prevalence of victimisation and identify needs and perceptions of victims and others. To be meaningful and feasible, the research should focus on a cross-section of countries from North Africa and the Middle East that have experienced serious human rights violations and large scale victimisation, such as Tunisia, Libya, Egypt, Yemen, and Lebanon, in which such research could be carried out. REDRESS and INTERVICT have established contacts with NGOs able to act as an intermediary between victim groups and the researchers, and with academics (both legal scholars as social scientists) who will be able to assist in conducting the research (both data gathering and data analysis). The extent to which this research is possible, however, largely depends on the extent to which access to a representative sample of victims can be gained. Relevant factors include (1) the extent to which cooperation of a partner within the country itself can be secured; (2) the ability to contact relevant respondents; (3) their familiarity with this type of research and willingness to participate in a meaningful way and; (4) the extent to which the authorities in the countries will allow research of this kind and will cooperate.

Following completion of the research, a meeting of collaborating partners is to be held with a view to discussing key findings and identifying measures to be taken. The outcome will be a detailed, empirically based study that provides a detailed, contextual account of the nature and prevalence of victimisation, identifies the needs of victims, and analyses gaps in legal and institutional responses to victimisation. On the basis of findings made, the final Report will set out targeted recommendations to a range of relevant national, regional and international actors. The final report will be made available in Arabic and English, and will be launched at a high-profile event in the region, to be followed by further follow-up events in appropriate fora, such as the UN Human Rights Council in Geneva, to discuss findings and advocate implementation of recommendations.

In addition to strengthening the voices of victims and those acting on their behalf in policy debates and in the course of interventions (advocacy campaigns, litigation), such a study is to have considerable academic value. It is bound to contribute significantly to closing the current gap in empirical research and literature on assessing and devising victimological approaches in the region. As widely recognised, it is critical to an understanding of the needs of victims in the aftermath of serious human rights violations to understand the context in which these needs are grounded. Much victimological research into victim's needs has focused on victims in the

domestic sphere of Western countries. This research shows that these victims have a set of outcome focused needs: medical and psychological assistance, acknowledgement, compensation, justice, safety as well as (criminal justice) process-oriented needs: respectful treatment, information and participation. In contexts such as serious human rights violations, this knowledge should be complemented by an understanding of the needs arising from the damage experienced at the social level. Neither serious violations nor the responses to them occur in a vacuum, instead they are embedded in a cultural, historical and economic context. Pre-existing cultural and religious values shape victims perspectives on justice and restoration, while the political situation and economic developments have a strong influence on the relative order of different needs. Conducting more in-depth research into the experience of actual victims in these areas would be of great value to practice, policy and academia.

## **2. Awareness raising and capacity building**

One of the key findings to emerge from the feasibility study is the limited awareness and/or capacity of local actors in the field of victimisation and the promotion and protection of victims' rights. This includes limited knowledge of relevant international standards and comparative experiences, including drafting legislation. In addition, capacity is weak in terms of knowledge and skills of documenting violations and its consequences; respect for victims during interviews, in legal proceedings and other settings; as well as the provision of treatment and rehabilitation. The limited exposure to debates and practices across most of the region has hampered capacity building, and has thereby adversely impacted on the work of legal and health professionals. It has also resulted in a lack of informed public debates on victims and their rights, which is reflected in the nature of relevant policy-making and reform proposals examined in this study (see .. above).

The need for capacity building could be best met by a series of training workshops for legal and health professionals as well as policy-makers in up to five priority countries in the region, based on needs, demand and expected impact. The workshops will focus on victims' rights and services for victims, drawing on the findings of the study set out above (1), which will form the basis for a set of materials to be developed for all trainings, together with a model agenda. The trainings will be tailor-made based on a prior assessment of existing knowledge and skills, as well as priority of needs, with initial training workshops to be followed by training for trainers

to ensure sustainability. The workshops will also be used to raise awareness in the national and regional media.

### **3. Network building**

The limited focus, and opportunity to work, on victims' rights and needs has resulted in limited national networks – though changes are underway in at least some countries - and weak regional networks. This situation limits the sharing of knowledge and experiences, and in turn hampers capacity building and advocacy efforts. Building and strengthening national and regional networks on victims' rights is therefore a crucial means to enhance the effectiveness of measures contemplated or taken, and to provide mutual support where needed.

This network building would follow on from The Hague meeting, existing national and regional initiatives, and the national workshops to be convened. It aims to bring together key actors, including victims' organisations, NGOs, academics, policy makers and others working in the field of victims' rights. The role of the network is to raise awareness of victims' rights and their needs, advocate policy, legislative and institutional reforms in countries across the region and to contribute to the development of regional instruments and institutions as appropriate. Drawing on these initiatives, as well as the collaborative efforts in carrying out the study on victimisation in the region, national meetings will be held in up to five priority countries in the course of the research (see 1 above) to strengthen national networks. The launch of the report (see above 1) in a regional meeting would serve as appropriate forum to establish a regional network that is as inclusive as possible. This inaugural meeting is to coincide with the launch of a website and a listserv to make the initiative the principal source of information and forum on victimisation and victims' rights in the region.

### **4. Advocacy**

One of the main purposes of capacity building and establishing national and regional networks is to enable a cross-section of actors effectively to advocate victims' rights. This is to be done through national and/or regional advocacy efforts informed by the needs of victims as identified in the mapping study and in meetings and exchanges of the network. Such advocacy can take multiple forms, such as calling for or commenting on legislative or institutional reforms, for example the adoption of a reparation law; 'transitional justice' policies and measures, e.g. the design of a truth and reconciliation commission; criminal justice reforms, such as the role of

victims in criminal proceedings; other reforms impacting victims' rights, e.g. on rehabilitation; as well as budgeting decisions and donor measures that have a bearing on victims and those working on their behalf. It may also include responding to individual cases, as appropriate, to highlight the importance of victims' rights and needs. Depending on the priorities identified by the network, the project partners and collaborating organisations are to advocate the strengthening of regional institutions aimed at the promotion and protection of human rights and victims' rights. Policy advocacy will focus on the role of regional and political actors, particularly on how states, regional or international institutions should respond to the challenges faced by past and present victimisation. Advocacy outputs include publishing policy papers and discussion papers to inform public debates; submissions on specific measures, such as commenting on draft legislation or institutional reforms; and making targeted interventions, including by means of alternative reports before UN human rights treaty and/or charter bodies, and litigation as appropriate.

## **5. Academic component**

Academics and universities are envisaged to collaborate in the major research study as indicated under 1, to be part of capacity building efforts, join national and/or regional networks, and contribute to advocacy efforts, as appropriate. While forming an integral part of broader efforts, it is important that academics also have the opportunity to focus on making genuine contributions of an academic nature and thereby to develop the academic infrastructure in the field. The initiative therefore aims at building academic capacity and supporting national and regional academic networks, with a particular emphasis on victimology, an area that is under-researched and underrepresented across the region. INTERVICT is to host at least four senior researchers from the region for six months each. The senior researcher is to study one major aspect of victimology with specific reference to the MENA region and publish an academic paper at the end of his or her stay. In addition, INTERVICT staff will assist junior researchers in writing a PhD proposal for the yearly faculty procedure. Together with INTERVICT, the senior researchers are to develop a university curriculum on victimology. In addition, we are to collaborate closely with universities in the region to produce the major research study (see above under 1) and engage in other initiatives.<sup>119</sup> In the course of the initiative, participating academics (senior and junior researchers, members of networks) would convene for a major conference that presents research findings made, discusses the setting up of research centres and development of courses and curricula, and sets out the research agenda in respect of

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<sup>119</sup> For instance, we envisage publishing articles in journals such as the *International Review of Victimology* or the *International Journal on Transitional Justice*.

victims' rights and victimology for the near to mid-term future. The conference would result in a report expected to serve as major reference point for future academic research in the field.