Fighting fire with fire: Resisting transition with the tools of transitional justice

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Introduction

Recent decades have seen an explosion of interest in transitional justice amongst academics and international policymakers alike. Although much attention has been directed towards measuring the effects of transitional justice mechanisms, discussion of resistance to transitional justice has been limited. There is a scarcity of literature regarding how resistance is manifested in the design and implementation of the very bodies and procedures that proclaim to serve the interests of transitional justice. Furthermore, there is very little analysis as to why relevant actors may engage with transitional justice as opposed to open dissent and contestation. This article examines the role and implications of transitional justice in Bahrain following the February 2011 uprisings. The first section outlines existing theoretical explanations for actors’ engagement with, or resistance towards, transitional justice processes. The second section considers the applicability of such approaches to the Government of Bahrain’s voluntary design and implementation of transitional justice measures, such as the Bahrain Independent Commission of Inquiry (BICI). It suggests that the ideas and structures of transitional justice have been manipulated in order to sway both domestic and international opinion in favour of the existing regime and, in doing so, have successfully served to bolster its political legitimacy. On the basis of this analysis it is argued that adopting the transitional justice paradigm may thus paradoxically be understood as a strategy for resisting popular demands for accountability and political transformation – the very notions at the core of any transition.

I. Understanding resistance to transitional justice

1. Practice and theory in transitional justice

There has been a rapid development of interest in transitional justice mechanisms in recent decades. This has resulted in the proliferation of a wide array of transitional justice mechanisms into post-conflict and post-authoritarian states across the globe. Such mechanisms have become a near automatic response to conflict and human rights violations and a ‘distinguishable transitional justice template has emerged’.¹ A ‘toolbox’ approach has developed whereby the implementation of mechanisms such as trials, truth commissions, and institutional reform are deemed not only as desirable, but also as the necessary and expected response by states to periods of transition.² Sikkink considers this growth of transitional justice as evidence of a wider ‘justice cascade’, a trend towards holding individuals,

particularly heads of state, accountable for past human rights violations.\(^3\) McAuliffe critiques this empirical proposition and suggests that what is perceived as a ‘justice cascade’ may better be described as an ‘advocacy cascade’ of idealistic support for justice policies – regardless of proof of their effectiveness.\(^4\) Irrespective of its conceptualisation, the increasing penetration of transitional justice processes into states undergoing periods of political change is difficult to dispute. The growing reach of the field is best described by Rubli as the ‘crystallization’ of the transitional justice norm and the subsequent ‘institutionalization’, ‘professionalization’ and ‘bureaucratization’ of the field.\(^5\)

Despite such growing institutionalism, it has been suggested that the expansion and acceptance of transitional justice have not seen a concomitant surge of empirical research substantiating the direction the international community has taken.\(^6\) Much academic writing is concerned with analysing the effects of transitional justice mechanisms upon dependent variables such as democracy, protection of human rights, or the notoriously nebulous notion of reconciliation. Until recently, such scholarship had primarily entailed case studies and small-N comparative qualitative analyses. However, there is increasing recognition that many assumptions that surround transitional justice processes lack any convincing empirical foundation. Thoms’ extensive overview of existing empirical studies concludes that there is, as yet, insufficient empirical evidence to support any strong claims about the general tendencies of transitional justice mechanisms to affect transitional countries.\(^7\) The methodological weaknesses in many existing studies and the general lack of empirical evidence has been attributed to, amongst other factors, the significant overlap between academics and practitioners in the field and the ‘emotional commitment to transitional justice’\(^8\) that it fosters. Snyder and Vinjamuri have stridently asserted that the ‘normative positions of scholars have heavily influenced the development of literature in this field, in which scholarship, practice and advocacy are deeply intertwined.’\(^9\) Although the empirical weaknesses of much early scholarship is clear, recognition of this ‘research gap’\(^10\) and acknowledgment of the ‘conceptual pitfalls’ plaguing dominant transitional justice discourse suggest a growing cognisance of such shortcomings. Such criticisms have spurred researchers to address such deficiencies, test previously held assumptions and respond to critics in the form of large-N empirical studies, such as the Transitional Justice Database Project.\(^11\)

Although many assumptions surrounding transitional justice are now receiving the empirical scrutiny they deserve, developments in the realm of theory have not been moving at the

\(^8\) McAuliffe, p.106.
\(^9\) Ibid., p.346.
\(^10\) Fletcher, p.164.
same pace. It is only in very recent times that this question has come to the fore. The Special Rapporteur on the promotion of truth, justice, reparation and guarantee of non-recurrence, Pablo de Greiff, has recognised the ‘tremendously undertheorised’\textsuperscript{12} nature of the area. He argues that ‘there is no fully-worked out conception of transitional justice even in the most influential works in the field.’\textsuperscript{13} It is unclear whether this dearth of theory is the result of a preoccupation with measuring the effects of transitional justice mechanisms, the rapidly evolving nature of this nascent field, a lack of imagination, or otherwise. Nevertheless, given the absence of a holistic theory of transitional justice, it is hardly surprising that scant attention has been accorded to theorising resistance to transitional justice.

2. Engagement or resistance?

The preoccupation with measuring the effects of transitional justice mechanisms has perhaps come at the expense of analysis into why states choose to engage such processes at all. Speaking with reference to truth commissions in particular, Roper and Barria note that there has been little attention paid to the causes leading to the creation of such bodies.\textsuperscript{14} An understanding of why states engage with transitional justice is important in developing a conception of why states may also resist such measures.

Understanding engagement

Although a detailed analysis of why states may choose to engage with various transitional justice mechanisms is beyond the scope of this paper, a brief outline of the factors that lead or motivate states to adopt such a position is useful in garnering an understanding of what may lead them to resist such an outcome. Four general ideas arise in the literature’s attempts to explain the emergence of certain transitional justice measures.

First, perhaps the most accepted explanation for the establishment of transitional justice mechanisms in the literature is the ‘balance of forces’ hypothesis.\textsuperscript{15} This hypothesis suggests that the ability of the public or outgoing regime to impose sanctions on the government for not complying with its demands is linked to the relative strength of each actor.\textsuperscript{16} For example, truth commissions are considered a more likely outcome when ‘the relative strength of the demands [between outgoing and current regime] is roughly equal’\textsuperscript{17} or where ‘there are no clear victors or vanquished’.\textsuperscript{18} A second explanation is that the level of human rights violations influences the type of accountability mechanism that a state adopts.\textsuperscript{19} This theory suggests that where abuses have been systematic and widespread, the existence of a weak judiciary (that enabled such abuses to be committed with impunity) is

\begin{itemize}
\item \textsuperscript{13} Ibid., p.32.
\item \textsuperscript{15} Ibid., p.373.
\item \textsuperscript{17} Ibid., p.1110.
\item \textsuperscript{19} Roper & Barria, p.374.
\end{itemize}
likely to result in a truth commission. A third factor, often cited in regards to truth commissions, is the role of the international community. Brahm argues that the ‘United Nations has also come to support the idea of a truth commission and has worked to incorporate one into virtually every subsequent peace agreement it has been involved in since the early 1990s. Although the UN has shown a strong willingness to adopt and implement the transitional justice norm, measuring UN or international influence in the establishment of a truth commission is difficult. Most research to date cannot provide a link between domestic politics and the role of the international community in the establishment of a commission. Another factor that may contribute to the establishment of truth commissions is the ‘neighbourhood effect’, through which critical states influence the adoption of norms in surrounding states through a socialisation process. Argentina and South Africa are obvious examples of ‘critical states’ that served as a catalyst for the wider proliferation of truth commissions into their respective regions. The ‘crystallization of the transitional justice norm’ may be considered an overarching factor that permeates a number of these more specific explanations. Although such propositions undoubtedly require further testing, the existence of such clearly defined hypotheses lies in stark contrast to the utter lack of theorising surrounding the idea of resistance to transitional justice.

Understanding resistance

Although proposals for transitional justice have sometimes been met with hostility, scepticism or indifference, there has been little analysis of the nature of resistance more generally. In this context, resistance may be understood as a refusal to accept or comply with transitional justice or an attempt to prevent its proper functioning. Such resistance to transitional justice appears to fall into three broad categories.

First, and at the most basic level of analysis, resistance to transitional justice is commonly conceptualised as ‘spoilers’ territory’: the threat of accountability for past human rights abuses or transformed power structures can motivate a range of actors to seek to destroy or manipulate the given process in order to limit the impact of any proposed measures. Minimalist approaches towards transitional justice – those that warn against accountability and contend that amnesty is most likely to lead to stability – recognise the potentially determinative role of spoilers, critique a fixation with accountability, and advocate for policies that seek to neutralise them. An example of spoilers’ resistance is the Sierra Leonean Revolutionary United Front’s threats to return to brutal conflict if amnesty were not included in the 1999 Lomé Accord. The resistance offered by spoilers towards transitional justice measures (with amnesty being the obvious exception) is by far the simplest: threatening the peace or transition (be it by a return to hostilities or refusal to step down from government) is a means of self-preservation.

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20 Ibid.
23 Roper & Barria, p.373.
24 Ibid., p.381.
26 Rubli, pp.4-5.
27 Olsen, Payne & Reiter, p.982.
A second, more ideological strand of resistance is based on the assertion that transitional justice amounts to little more than repackaged neo-colonial western imperialism. Hellsten notes such criticism in remarking that ‘the western push for transitional justice and good governance is not only seen as paternalistic and violating state sovereignty, but it is seen as proof of continuing imperialistic interests.’\(^{28}\) The ways in which high-level policy makers in international organisations and governments have adopted the discourse of transitional justice in interventions relating to goals such as addressing issues of statehood and security has an ‘imperial dimension’ that is difficult to ignore.\(^{29}\) Beyond suspicion of the true agenda underlying internationally influenced transitional justice measures, there are further reservations regarding even the most honestly implemented of programs. In such cases, transitional justice has been resisted on the basis that it conflicts with localised understandings of social harmony and for being based on western ‘false’ universalism.\(^{30}\)

Resistance to transitional justice may also fall into a third category – that of political manipulation. Although at first glance this may seem highly similar to the resistance proffered by spoilers, it is apparent that the nature and manifestation of the resistance differs significantly. Whereas spoilers may threaten the peace as a means of avoiding the creation of transitional justice mechanisms such as trials and truth commissions, resistance in the form of political manipulation of such mechanisms necessarily follows the decision to establish them – be that in the design or implementation phase. In their analysis of the causal factors leading to the creation of transitional justice mechanisms, Roper and Barria argue that although the establishment of truth commissions may represent a ‘genuine desire’ on the part of government for justice and reconciliation, it may also be due to the need by a repressive government to establish a truth commission as a ‘political cover’.\(^{31}\) Their survey of 44 sub-Saharan African states between 1974 and 2003 lead them to the conclusion that, contrary to the literature’s focus on truth commissions as a transitional measure, the majority of commissions established prior to 1995 (the year of the establishment of the South African Truth and Reconciliation Commission) were established by entrenched authoritarian regimes.\(^{32}\) Snyder and Vinjamuri have also noted that truth commissions can provide ‘a veneer of legitimacy for governments that actually shun democratisation and the rule of law.’\(^{33}\) In such scenarios, ironically, resistance to transitional justice is embedded in the very institutions proclaiming to serve the ends of accountability and political transformation.

3. Engagement as resistance

The three categories identified above provide a snapshot of current understandings of resistance to transitional justice. Whilst spoilers and those that seek to politically manipulate transitional justice processes may both be motivated by self-preservation and/or a vested interest in the status quo, the nature of their resistance is diverse. Whilst spoilers and those

\(^{28}\) Hellsten, p.13.
\(^{30}\) Hellsten, p.10.
\(^{31}\) Roper & Barria, p.377.
\(^{32}\) Ibid., p.387.
concerned by the western imperialism that transitional justice represents contest the establishment of mechanisms to begin with, actors seeking to politically manipulate the process require its existence and may in fact support the creation of such bodies. Resistance by spoilers and those suspicious of imperialistic intent represent *resistance to* the transitional justice norm and its institutional manifestations; the third category – actors that manipulate the process to serve a political end – represents *resistance through* transitional justice measures. While the former type of resistance is clearly defined and its proponents easily identified, the latter is often more opaque. It is this phenomenon with which this paper is most concerned.

That resistance to transitional justice becomes manifest in the very institutions that have been developed to facilitate the goals of transition is a seemingly paradoxical idea. It is argued that a growing expectation of transitional justice combined with the inherently vague and political nature of its mechanisms may, in some instances, render manipulation of such processes more beneficial than outright contestation. Two conditions appear to encourage resistance through engagement. First, Rubli’s ‘crystallization’ of the transitional justice norm and the ‘institutionalisation’ of its mechanisms have together created an expectation for transitional states to act in the wake of widespread human rights abuses.  

The growing penetration of the transitional justice norm has created a situation in which it ‘is no longer an option whether to deal with the past or not, but rather how, when and which mechanism to deploy.’ Given the pressure to act, the subsidiary questions of which mechanisms to employ and how to employ them gain primary importance. It is here that the ‘ambiguous, evolving and expanding nature of the concept of transitional justice’ render actors free to shape the institutions as they see fit. Transitional justice mechanisms can delegitimise the conflict-era discourse and create an opening for new discourse negotiated by equal competitors in the political arena. Conversely, given the inherently and necessarily political nature of transitional justice processes, they may also be manipulated to portray a façade of transition while maintaining and even strengthening the status quo. The idea of engagement as a form of resistance will now be further explored through the case study of Bahrain.

**II. Engagement as resistance – transitional justice in Bahrain**

1. *The situation in Bahrain*

Since gaining independence in 1971, the small Gulf state of Bahrain has witnessed a cycle of liberal reform and subsequent brutal crackdowns by the ruling Al Khalifa family. Following the emir of Bahrain’s death in 1999 and the accession of Crown Prince Hamad to the throne, Bahrain saw the introduction of a National Action Charter which called for the creation of a constitutional monarchy, a bicameral legislative structure comprised of an elected lower house, an independent judiciary and women’s political participation. On 14 February 2001 the National Action Charter was approved by 98% of Bahrainis and paved the way for the

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36 Hellsten, p.3.
The return of an elected assembly for the first time since its suspension in 1975. Although elections were held in 2002, 2006 and 2010, they were subject to extensive criticisms, in particular due to widespread charges of gerrymandering, the use of ‘floating’ election sites and the controversial voting of recently naturalised Sunnis. A burgeoning civil society began to demand greater rights and stronger restrictions on the unelected upper chamber of the National Assembly (the Shura Council). From 2005 the government began a crackdown through which political parties, trade unions and NGOs were systematically repressed or eliminated. Instances of civil unrest continued and several political parties boycotted the October 2010 elections. Inspired by the toppling of Ben Ali in Tunisia and Mubarak in Egypt, a group to become known as the ‘Coalition of February 14 Youth’ – ‘a confederation of loosely organised networks… faceless, secretive, and anonymous’ - planned protests for 14 February to mark the tenth anniversary of the referendum on the National Action Charter. The regime brutally quashed the demonstration, killing a protester in the process. Protests continued for days until 17 February when, without warning, riot police attacked the protesters’ encampment with tear gas, batons and bullets, killing four people and wounding hundreds. By 25 February, approximately 200,000 people had joined the protests, representing around a third of the country’s population and 40% of the indigenous Bahraini population. In response to the sustained protests, on 14 March the Gulf Cooperation Council (GCC) sent 1500 military and police personnel from Saudi Arabia and the UAE to quash the protests.

2. Transitional justice in Bahrain

Despite joining the ‘Arab Spring club’ on 14 February 2011, Bahrain is rarely included in considerations of transitional justice in the Middle East. Transitional justice encompasses ‘the broad arena of issues, challenges, and policies for addressing a brutal past.’ It is defined as ‘the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.’ Although Bahrain’s protests were not successful in gaining democratic concessions (as was initially demanded) or overthrowing the Al Khalifa ruling family (as was later called for), an examination of the measures adopted in the wake of the uprisings clearly fall within the above definition. Although there is a tendency to only analyse a state’s transitional justice approach ex post facto the end of conflict or overthrow of an authoritarian regime, this ignores the fact that certain mechanisms, such as truth commissions, may be adopted as a political façade rather than a real attempt to address human rights violations. Analysis of such measures is crucial in garnering an understanding.

40 Wehrey, p.119.
44 Zumes, p.155.
45 Aziz & Musalem, p.19.
46 Zumes, p.155.
49 de Greiff, p.31.
of resistance to transitional justice. To remove such cases from the pool of analysis because they do not conform to the ideal and may not produce the ‘right’ results (of accountability, strengthened democracy, reconciliation etc) – to ignore them as not being real transitional justice mechanisms – is to embody the methodological weaknesses for which the transitional justice literature is so often criticised. Further, Bahrain’s adoption of transitional justice measures has been recognised by the International Centre for Transitional Justice (ICTJ)\(^\text{50}\), participants in a Chatham House on transitional justice in the Middle East\(^\text{51}\) and opposition political parties within Bahrain, such as Al Wefaq.\(^\text{52}\) Despite this, academic commentary on transitional justice in Bahrain is extremely limited.\(^\text{53}\)

Transitional justice in Bahrain arguably consists of three elements: a truth commission; institutional reform; and a national dialogue. Given the ongoing and seemingly stagnant process of national dialogue, this paper will focus on Bahrain’s truth commission and the associated question of institutional reform.

Hayner defines truth commissions as bodies that: i) focus on the past; ii) investigate a pattern of abuse over a period of time (rather than a specific event); iii) are temporary; and iv) are officially sanctioned, authorised or empowered by the state.\(^\text{54}\) The Bahrain Independent Commission of Inquiry (BICI) was established by His Majesty King Hamad bin Isa Al Khalifa (King Hamad) by Royal Order No.28 of 2011, which was issued on 1 July 2011 with immediate force of law.\(^\text{55}\) The BICI was established to ‘investigate and report on the events occurring in Bahrain in February/March 2011, and any subsequent consequences arising out of the aforementioned events, and to make such recommendations as it may deem appropriate.’\(^\text{56}\) The BICI received a broad mandate requiring it to provide a ‘complete narrative’ and description of events and to investigate: claims there were violations of international human rights norms; acts of violence; allegations of police brutality and alleged violence by demonstrators against police; the circumstances and appropriateness of arrests and detentions; allegations of disappearances and torture; whether there was any media harassment; and whether there was any unlawful demolition of religious structures.\(^\text{57}\) The BICI was a professional, high profile and well-funded body. King Hamad selected and appointed the five Commissioners, namely: Professor M Cherif Bassiouni as Chair; Judge Philippe Kirsch QC; Professor Sir Nigel Rodley; Dr Mahnoush H. Arsanjani; and Dr A. Al Awadhi.\(^\text{58}\) The internationally renowned Commissioners were granted the same privileges and immunities as ‘United Nations Experts on mission’.\(^\text{59}\) The Commission was granted access to government files, agencies, officials and sites upon request and its budget was


\(^{54}\) Hayner, p.14.


\(^{56}\) Royal Order No. 28 of 2011 (Bahrain), art.1; BICI, p.1.

\(^{57}\) BICI, pp.1-2.

\(^{58}\) Ibid., p.2. For biographies of the Commissioners see p.497.

\(^{59}\) In accordance with the Convention on the Privileges and Immunities of the United Nations 1946.
provided entirely by the Bahraini authorities. The BICI is clearly focussed on the past, temporary and officially sanctioned. Although the Commission’s mandate did confine inquiry to the February/March period, it went beyond the specific 14 February event and examined the ‘pattern of abuses’ over the two months as a whole. While the Commission’s mandate could have covered a broader historical period, the BICI fulfils Hayner’s four criteria and may accurately be considered a truth commission.

The Commission presented the 500-page BICI Report (‘the Report’) to the King on 23 November 2011. The Report confirmed the systematic abuse of protesters and documented 35 deaths linked to unrest in the period, 559 allegations of torture and wide-scale unfair dismissals of public and private sector employees on the basis of ‘absenteeism’ during the protests. It held that the Government of Bahrain had resorted to ‘the use of unnecessary and excessive force, terror-inspiring behaviour and unnecessary damage to property.’ Further, it noted that the documented practice of torture and detention resembled those seen in Bahrain in the 1990s and that this suggested ‘a systemic problem, which can only be addressed on a systemic level.’ The Report drew on such findings to formulate an extensive list of recommendations. The recommendations called for a range of institutional reforms – the second element of Bahrain’s transitional justice measures. For example, it recommended the establishment of an independent ‘ombudsman’s office’ within the Ministry of the Interior and that the Government adopt legislative measures requiring the Attorney-General to investigate claims of torture and other forms of cruel, inhuman or degrading punishment. Other recommendations regarded reforms to: the use of force against demonstrators; treatment of persons in detention; and the use of prosecutions in connection with freedom of expression, assembly and association.

3. Reactions to BICI

Reactions to the announcement and creation of the BICI reflected both a sense of bewilderment and suspicion. Certain responses reflected a degree of surprise at the risk the Government of Bahrain was taking in creating the Commission. In establishing the relatively powerful and autonomous body to investigate human rights abuses, ‘the government risked opening itself up to criticism when its survival was not seriously threatened by the demonstrations.’ Writing the day before the release of the report, Shehabi reflects a strong degree of suspicion in questioning the underlying purpose of the inquiry: ‘Why would an accused regime initiate a truth commission that would actually air its dirty laundry that the regime has long claimed was squeaky clean?’ Shehabi questioned whether the Report would offer justice for victims or ‘whitewash’ the findings to avoid high-level accountability and offer a ‘political shield’ for the regime against its critics. Given
such assumptions, many observers were shocked by the ‘surprisingly candid’\(^{71}\) report. It was ‘perhaps the most self-critical analysis of repression against an ongoing struggle ever published by an Arab Government.’\(^{72}\) Bassiouni publicly reported his findings to the King at a formal function in Manama: ‘For the first time – perhaps ever – an independent jurist standing before a Gulf monarch publicly accused that monarch’s government of systematic abuse.’\(^{73}\) Given the BICI was a voluntarily established, self-funded truth commission that – despite some criticisms of its mandate and reporting\(^{74}\) – appears to have honestly and openly reported on human rights violations within the Kingdom, the question of resistance is not one that necessarily comes to the fore.

4. Engagement as resistance?

The Bahraini Government’s apparent engagement with transitional justice requires further examination. None of the common explanations for the adoption of a truth commission, explored in section one of this paper, appear applicable to Bahrain. Despite the serious violations of human rights, the level of international pressure on Bahrain was negligible. The United Kingdom’s Foreign Secretary William Hague stated he was ‘deeply concerned’ by the violence used against protesters\(^{75}\) while US Secretary of State Hillary Clinton ‘urged restraint.’\(^{76}\) Such diplomatic rhetoric and the absence of a wide-scale UN intervention render the idea that BICI was created due to international pressure unpersuasive. The ‘neighbourhood effect’ is also of little assistance in explaining the BICI. Notwithstanding the fact that both Ben Ali and Mubarak had fallen by the time the BICI was announced, transitional justice measures in both Tunisia and Egypt were in their most nascent phases. Although Tunisia’s National Fact-Finding Commission on Abuses had been established,\(^ {77}\) and Tunisia may yet prove itself to be a ‘critical state’ in the socialisation of transitional justice norms in the Middle East North Africa region, it is doubtful that by July 2011 the norm was potent enough to drive Bahrain to create a truth commission. Finally, the ‘balance of forces’ hypothesis is also unconvincing. The relative strengths of the protesters and the Bahraini authorities were not roughly equal; the regime’s experience in successfully weathering through periods of protest with brutal crackdowns and its ability to call on GCC troops rendered it far more powerful than the decentralised 14 February Movement and associated demonstrators. The inapplicability of many of the common explanations for the establishment of a truth commission would suggest that the creation of the BICI was a genuine attempt at pursuing transitional justice within the Kingdom.

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\(^{72}\) Zumes, p.156.


\(^{74}\) Bahrain Watch, ‘Government inaction in implementing the Bahrain Independent Commission of Inquiry: BICI Limitations’, https://bahrainwatch.org/bici/limitations.php, 2013, (accessed 7 May 2013). See also Wehrey’s contentions that the BICI Report fails to address ‘the deeper structural deficiencies’ that fuelled the initial uprisings; Wehrey, p.17.


If this were in fact the case, and the Government of Bahrain did possess a genuine commitment to transitional justice goals, one would expect to see implementation of the BICI’s recommendations. Whether the recommendations contained in paragraphs 1716 through to 1725 of the Report have been implemented has been a serious point of contention.

In accordance with recommendation 1715, a National Commission was established to follow up and implement the recommendation by its self-appointed deadline of 29 February 2012. The Commission reported compliance and documented the list of actions taken in respect of each recommendation.

In contrast to the official reports, human rights organisations and international observers have found that implementation of the recommendations is far from complete and have expressed serious doubts about the ongoing nature of human rights violations. In November 2012, the Bahrain Center for Human Rights found that of the 26 recommendations, fifteen had not been complied with and eleven had only been partially complied with. The Project on Middle East Democracy found that the Government of Bahrain had fully implemented three recommendations, partially implemented fifteen, and failed to implement six.

The government has made no meaningful progress toward six of the recommendations, which are precisely the most important steps that need to be taken – accountability for officials responsible for torture and severe human rights violations, the release of political prisoners, prevention of sectarian incitement, and the relaxation of censorship and controls on free expression.

A June 2012 Chatham House report by Kinnimont arrived at similar conclusions. It criticised the lack of implementation of the recommendations, in particular the lack of accountability. It noted that just ten junior police officers, some of them only able to speak Urdu, had been put on trial in connection with the deaths and torture documented by the BICI.

It concluded that ‘no senior officials have been held to account’ for the systematic pattern of human rights abuses documented in the report. Some recommendations found to have been implemented were rendered meaningless by changed practices. For example, although the report found compliance with Recommendation 1722(g) – that there should be audiovisual recording of all interviews with detained persons – it was noted that following the installation of CCTV in regular police stations, police had set up unofficial new police stations without CCTV in areas close to Shia villages. Such moves blatantly undermine the installation of the recommendation. Finally, a December 2012 report by the European Union’s Directorate-General for External Police found that the reform roadmap remained ‘dead letter’ and that the BICI recommendations had not been implemented.

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78 National Commission of Bahrain, ‘Implementing the Bahrain Independent Commission of Inquiry’, http://www.govactions.bh/wps/portal/EgovBICI/?p/c5/04_SB8K8xLLM9MSSzPy8xBz9CP0os3gLAXxNHQ093A3J3AECjA88AQ09DFwtDYwMzY_1wkA4kFf4GRk4GnqZG5sGweYGzbGeOVNPf0g8gY4gKO8v9Hfn6qkF2dpCF6o6iAMJPOOWl/dl3/d3/L2dJQSEvUUt3QS9ZQnZ3LzZT0FISudHRzBHT0Q5OTBjUazrozRLNDlwVTU!/?WCM_GLOBAL_CONTEXT=/wps/wcm/connect/egov+english+library/egovbici/progress+and+actions+taken/actionslist, 2012, (accessed 20 February 2012).
80 Project on Middle East Democracy (POMED), One year Later: Assessing Bahrain’s Implementation of the BICI Report, 2012. POMED lacked information to assess the implementation of a further two recommendations.
81 Ibid., p.2.
83 Ibid., p.11.
84 Ibid.
85 Ibid., p.12.
Unlike in many transitioning states, the failure of the Bahraini Government to properly implement its truth commission’s recommendations does not appear to be a question of resources. The funding of the BICI, the National Commission and the array of formal actions undertaken in the name of implementation suggest the issue of resistance goes far deeper than dollars. The discussion of resistance in section one of this paper distinguished spoilers’ and postcolonial critics’ resistance to the creation of transitional justice mechanisms from the more opaque phenomenon of resistance through such mechanisms by way of their use as ‘political cover’. Given the Government of Bahrain’s voluntary creation of the BICI – a body fitting Hayner’s definition of a truth commission – it cannot be said to have been resistant to the institutions of transitional justice. The question is therefore whether Bahrain is a clear-cut case of political manipulation of transitional justice processes or whether it signifies the emergence of a new, more sophisticated form of resistance.

A defining feature of Bahrain’s experience has been the authorities’ strident support and marketing of the BICI. However, given the lack of genuine implementation of the BICI recommendations, there is an apparent divergence between the Government’s institutional and normative commitments to transitional justice. The authorities appear to have been influenced by what Rubli refers to as the ‘crystallization’ and ‘institutionalization’ of the transitional justice norm87. Despite the absence of factors that often pressure states into the adoption of truth commissions, the Government of Bahrain appears to have realised the growing transitional justice norm; the international expectation that action be taken in the wake of periods of human rights abuses and political turmoil. Establishing institutions that ostensibly meet this expectation whilst simultaneously acting in clear contravention of the transitional justice norm (through failure to meet the BICI’s recommendations and continued human rights abuses) extends the ‘political manipulation’ category of resistance to the contemporary reality of a growing and powerful transitional justice norm. The institutional support/normative resistance approach has fended off international reprobation and arguably bolstered the Government’s legitimacy.

Conclusion

This paper argued that adopting the transitional justice paradigm may, paradoxically, be understood as a strategy for resisting popular demands for accountability and political transformation – the very notions at the core of any transition. It suggested that the growing expectation of transitional justice combined with the inherently vague and political nature of its mechanisms might, in some instances, render manipulation of such processes more beneficial than outright contestation. The first section outlined a number of hypotheses in the literature regarding the factors that commonly lead states to adopt or reject transitional justice mechanisms. It noted a particular scarcity of discussion regarding resistance to transitional justice. The second section utilised the case study of Bahrain to suggest that the Government has willingly engaged with the ideas, structures and institutional manifestations of transitional justice to foster a semblance of commitment to the idea, whilst its actions demonstrate a strong normative resistance to reform and accountability. Whether Bahrain’s approach towards resisting transitional justice will herald a new form of contesting transition remains to be seen.

87 Rubli.
References


