**Distinguished Ladies and Gentlemen**

**Let me thank the organizers for the invitation and give me the opportunity to be among you and a number of old friends in Morocco who respect and long for ; and the assertion that the offer represents only opinion and does not reflect or represent the opinion of the regulators.**

The popular uprisings that started in Tunisia December, 2010 and spread around the Middle East and North Africa (MENA) were in many ways fuelled by demands for justice and accountability for human rights abuses. Transitional justice (TJ) has thus emerged as a priority for those societies undergoing political transition, with the international community joining in very early on. But the Arab spring was not the first instance of efforts to deal with past human rights atrocities in the region and lay the groundwork for reconciliation. Indeed, while the repressive regimes that were in place in most MENA countries left very little space for justice and accountability, this did not prevent victims’ groups and civil society organizations from campaigning for transitional justice and lobbying the authorities for measures to address victims’ rights. Taking advantage of the window of opportunity offered by political liberalization in a context such as Morocco in the late 1990s and early 2000s, they even succeeded in obtaining again such as the establishment of a truth commission and a reparations program. In post Saddam Hussein Iraq, the fall of his regime and the rise to power of political parties representing groups brutally victimized by the former regime opened the door to the adoption of a series of measures aimed at addressing past atrocities. By contrast, in the Algerian and Lebanese post – conflict contexts, victim’s groups, despite their relentless mobilization, have not succeeded to achieve much progress through their advocacy efforts for truth and justice and under the pretext of achieving reconciliation, and their voices unheard.

In the post-Arab spring contexts of countries such as Egypt, Tunisia , Libya, Yemen and Syria,( and Iraq with renewed justice efforts this time to deal with the crimes committed by Daesh), governments, parliaments, civil society and / or victim’s group have engaged in efforts to address serious human rights violations and initiate TJ processes. Also, in most of these contexts the international community (including UN agencies, INGOs, governments, and other international actors) have heavily intervened to promote or support nascent TJ initiatives. However, as a result of conflict and /or the return of authoritarian forms of government in the majority of these contexts, very little was achieved in most contexts with the remarkable exception of Tunisia whose Truth and Dignity Commission have just wrapped up its mandate and submitted its final report to the Tunisian president.

Given the little time that I have for my presentation, but more importantly in the presence of eminent colleagues who were directly involved in leading transitional justice and reconciliation processes in their counties and will present on these experiences later on (I’m looking forward to that) , I will limit myself to a comparative overview but won’t go into details on each national process. Also, I won’t cover processes that haven’t really taken off the ground as a result of spiraling violence, this, despite genuine and repeated efforts to launch a process (Yemen, Libya). I’ll use in my overview some elements of comparison that include the place of victims and survivors in the process which I will oppose to the focus put in the process on the fate of perpetrators 2 the increasing role international actors play in national TJ and reconciliation processes at the expense of local actors and local ownership.

But let me very quickly go back to the genesis and historic evolution of the field of TJ to clarify why these criteria are relent and how TJ in the Arab region fits within this evolution and have impacted the development of the field. Roughly speaking it all started in the Latin American context in the early 1980s with improvised efforts to uphold victims’ rights and provide justice despite the existence of amnesties or other obstacles to judicial accountability. At that time there were no international policies, guidelines or standards in the field of TJ. There was barely a vague normative framework. Also, at that time there were no international actors or experts involved in the promotion or design of the TJ policies and measures. Louis Joint drew very much from the Latin America experience when drafting his principles( officially known as the UN principle to Combat impunity) that constitute today the basis of TJ which are the right to truth , the right to justice , the right to reparations and guarantees of non-recurrence.

Then came what would correspond roughly to a post –ICC or post-Rome Statue( adopted in 1998 and entered into force in 2002) moment which was marked by the inflation of policies, standards, guidelines , ready-to – use TJ packages’ as well as an uncontrollable booming of what have become to be known as the TJ industry with the proliferation of a range of international actors providing funding and support to national TJ processes which include INGOs , think-tanks, donors, intergovernmental organizations and even for profit entities such as law firms and consulting groups. This plethora of policies has given rise to some dogmas.

And finally, we have the Arab Spring moment that has challenged many of the international standards that have been developed since the early 2000 and may require that we reconsider some of our TJ dogmas in light of developments in most Arab spring counties such as Yemen, Tunisia, Libya, Egypt and Syria. Indeed, it appeared pretty soon that standards and guidelines developed in the past 15 years are most of the time note adapted to deal with the complexities of the Arab transitions and the multi- layered legacies they have to deal with. In fact, the Arab spring offered an experimental ground for the politics that very soon proved to be inadequate to deal with the region’s complexities:

* Ambiguous transitions: each of the “transitions” has given rise to a specific balance of power and particular political constraints that no serious transitional justice plan could ignore. Indeed, the conditions resulting from the ambiguous transitions in each country shaped the justice. Thus , choices made and policies implemented in Tunisia, Yemen, Libya and Egypt have been limited by such factors as deep political divisions the survival and growing influence of elements of the former regime, and the omnipotence of armed militias that do not hesitate to challenge the authority of central governments.
* The legacy of Crony and Corruption: over the years, the extraordinary economic influence and wealth garnered by rulers and their families helped them to assert control over the country’s economy and wealth and thus to consolidate their political power. In countries like Egypt, Tunisia and Syria, corruption networks and systems of repression overlapped with each other and were tightly intertwined.
* Legacies of division and exclusion: many of the countries in the region have been marred for years by sectarian strife and deep political divisions as well violation of cultural and exclusion of wide segments of society from political and economic participation.
* A multilayered and decades-long legacy of widespread human rights violation: while a country like Tunisia is confronted with legacies of serious human rights abuses committed by state agents that include widespread torture, arbitrary detention and the killing of peaceful demonstrators, other countries that have witnessed armed conflict such as Libya, Yemen and Syria have to address large-scale abuses and crimes that in, most cases constitute crimes against humanity. Moreover, patterns of violations committed in these conflict contexts are not only characterized by their magnitude and gravity but are also distinguished by the type of perpetrators implicated in the crimes since both state and non-state actors are involved as well as foreign troops. Also, we are talking of legacies of abuse that go back decades. The violations of the Gaddafi regime for example started with the coup d'état that brought him to power in 1969. In Tunisia, determining what period should be investigated by the truth commission envisaged by the transitional justice bill was one of the most contentious issues addressed during the National debate on Transitional Justice (1995). Assad since the 1970s.

Social cleavages, growing inequality and violations of economic and social rights: In equal distribution of wealth, growing levels of unemployment among university graduates[[1]](#footnote-1) and increased restriction on workers’ rights, all of which have fueled anger and frustration among the low income populations.

So, we have here different elements that the ready to use recipes and standardizes solutions promoted internationally cannot capture. The templates often pushed forward by the international community fail to capture these intricacies and to provide adapted solutions.

But let me go back to my two criteria and look at TJ in Morocco, Iraq, and Tunisia. As I said I won’t describe the various experiences but will draw some lessons as others will talk about them.

Let’s look at Morocco and Tunisia first. Morocco which can be considered as the foundational and an authoritative model for TJ in the region was distinctive for several reasons:

1. The process was entirely homemade and shaped by Moroccans themselves .It reminds us of the early TJ experience in LA. It was the result of a negotiated political process that combined advocacy the civil society and victims (here the national symposium on serious human violations convened by the Forum for Truth and Justice, OMDH and AMDH was key) and the political will of the king to address past violation and lay the groundwork for the reform of institutions. In that way, the TJ process has become an element of a renewed social contract. This is probably what is lacking in the Tunisian experience in which the involvement of too many international actors especially at the design phase of the process left little space to build political consensus around the process. The Tunisia TJ law is remarkable as it made sure to include all the different elements of TJ, but the process did lack the necessary political will and support it needed to deliver on all its promises (Khaled Krichi).
2. And the Moroccan process was innovative, and here the fact that the Moroccans were left alone to design their own TJ measures was key. They did seek support and received support from some international actors but they knew how to channel such support and get the best out of it. But times were different back then. The over-standardized approaches promoted by internationals today kill the creativity of local actors. I can name at least two areas where the Moroccan experience was particularly innovative and this is its gender approach and the community reparation programs which I’m sure other will talk about later. I should say here that the Tunisian experience also brought a number of innovations that are worth noting. These include the investigation of links between repression and corruption. And integrating corruption in the TJ and during which addressing corruption came up a priority for the consulted communities and groups.
3. And the Moroccan process was transformational, while the process of implementation of the IER release of its final report, it is not a coincidence that many of these recommendations were incorporated in Morocco’s new constitution approved via referendum in July 2011 in the wake of the Arab uprisings. In a way, the IER had paved the way for the constitutional reform and was better prepared to face demands for change. New constitution, many significant amendments especially in the area of human rights protection were particularly welcome.
4. Finally, Morocco had a victim-centered process that favored dealing with victims’ rights to truth and reparation and not the question of accountability of perpetrators. Here it differs drastically from the Tunisian experience which combine both. But what to say about the current efforts to pass amnesty law? Was too early to talk about judicial accountability?

Let‘s turn now to Iraq. Following the 2003 US-led invasion of Iraq and the fall of Saddam Hussein’s regime(same period as Morocco) , several measures were put in place by the occupying forces and the interim Iraqi authorities to address the human rights atrocities of the former regime.

Furthermore, de-beatification has seriously impaired the functioning of many government institutions and the security services by often depriving them of experienced personnel under the simple pretext that they were former Baath party members, this despite the fact that under Saddam Hussein, it was a quasi-requirement to be a party member to obtain a government job.

In considering transitional justice in post-Saddam Hussein Iraq, it seems clear that the move by the Iraqi interim authorities (often under pressured by the US- led CPA officials) to put in place measures aimed at dealing with past human rights atrocities and the legacy of Hussein’s regime without undertaking significant public consultations and without the meaningful participation of Iraq’s civil society and political forces was fatal to the process. Indeed, no measure could stand the legitimacy test in Iraq’s deeply divided society without an inclusive process that ensured that all segments of Iraq’s political, sectarian and ethnic mosaic participate in the design of transitional justice plans. In the final analysis, the perception of political revenge fueled by the lack of consultation and the appearance that justice measures were being unilaterally imposed and instrumentalized by one side only contributed to delegitimizing the process, fueling division between Iraq’s sectarian groups and undermining political efforts to stabilize the country.

The same mistakes are again being committed today in measure being adopted to deal with ISIS.

1. A phenomenon generated by the freeze in government hiring. It led in Morocco and Tunisia to the emergence of the Diplomas Chomeurs movement that was very present in the “ Arab Spring” protests [↑](#footnote-ref-1)