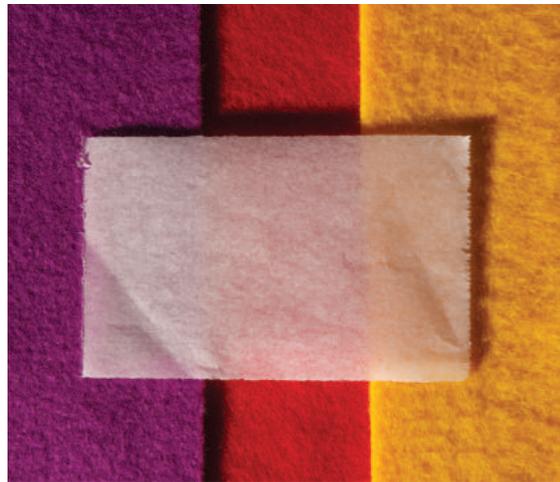




PSRP RESEARCH REPORT



State Responses to Social Unrest: Pathways out of Crisis

Juline Beaujouan, Christine Bell, Tim Epple, and Robert Wilson



This research draws on the PA-X Peace Agreement Database (www.peaceagreements.org), a database of all peace agreements at any stage of the peace process from 1990 to 2020. The database is fully searchable and supports both qualitative and quantitative examination of peace agreements.

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Key Findings

1. There is no common cause or response to social unrest across different contexts, despite its appearing to be a contemporary global phenomenon. However, many recent experiences of unrest involve some common elements, namely they: (i) involve discontent with politicians and the incapacity of politics to deliver better life chances; (ii) see younger generations at their forefront; (iii) are often sparked by a particular issue; and (iv) quickly unravel into a more fundamental set of wider discontents which begin to re-open the political settlement in ways that are difficult to resolve, even with fundamental reform.
2. In response to social unrest, the state can either confront or accommodate protestors, in an attempt to quell the unrest. In practice, governments often adopt a 'carrot and stick' approach, combining tactics of repression and concession. Rather than having a coherent strategy, states often address different dimensions or levels of escalation with different techniques and institutions simultaneously or over time as events unfold.
3. External actors also have different response options. External states and international organisations may, for example, assert diplomatic pressure on the state to moderate its response; apply forms of sanctions as a more coercive incentive; or offer 'good offices' of mediation or for dialogue between the state and civil society.
4. Some of the typical institutional responses to social unrest are: discrete reform processes, commissions of inquiry, national dialogues, amnesty, combinations of these, or more comprehensive structured transitions in government which incorporate a range of mechanisms. These 'tools' may serve different purposes and carry their own risks and opportunities. In some cases, they may open up pathways out of crisis.
5. Discrete reform processes. Discrete reform processes can target criticised institutions at the centre of protest, such as the police, sometimes after an inquiry and sometimes as an immediate response (see Black Lives Matter responses in the US).
6. Commissions of Inquiry are non-judicial bodies established by the government. They are typically charged with 'fact-finding' as to the reasons for social unrest and the potential occurrence of human rights abuses, and to make remedial recommendations. Whether its recommendations are implemented depends on the commission's powers and independence, as well as on the political will of those mandating it.

7. National Dialogues provide platforms for governments, political groups and the citizenry to deliberate reforms and measures of social reconciliation. Unlike Commissions of Inquiry, National Dialogues have a greater focus on restoring relations between the state and the citizenry and often have longer timescales. Key success factors include their degree of inclusion and participation, public buy-in and political will to act upon what was deliberated.
8. An amnesty should be understood as a legal mechanism utilised by governments to remove liability for criminal prosecutions and/or civil suits for specific offences or against specific groups of individuals. Amnesties are often applied to non-state actors in contexts where they have been disproportionately prosecuted and imprisoned during the social unrest, and often as part of a package of measures aimed at 'greater inclusion' of opposition groups within the state.
9. Multi-pronged approaches. Governments may also choose to adopt multi-pronged approaches to social unrest that involve two or more of the above measures. In Bahrain and Kenya, for example, both a Commission of Inquiry and National Dialogues have been established. Commissions and Dialogues can run in parallel (Bahrain) or consecutively (Kenya, where the National Dialogue was in essence an overarching mediation through which a set of Inquiries and reform processes were established). Elite-driven and exclusionary designs of these processes severely limited their chances of success.
10. Formalised 'transition'. Where social unrest is not accommodated through mechanisms such as those above, and cannot be repressed, the unrest may result in a form of overthrow of the government (for example by coup as in Mali, or through enforced transition as in Sudan).

I. Introduction

In recent times social unrest has erupted in very different situations, both in places with ongoing struggles with democracy such as Hong Kong, Iran, Iraq, Lebanon, and Mali; but also in places which are long established peaceful democracies, or have successfully transitioned to democracy over several decades, such as Chile, France, Netherlands, Spain (Catalonia), and the United States. As we touch on below, what appeared to be a global rise in social protest and social instability has now been complicated by the Covid-19 pandemic.

There is no common cause or response to these situations and protests, and none are suggested. However, they involve some common elements, namely they often:

- ▶ Involve long-term growing discontent with politicians in general and opposition to the ruling party or parties in particular
- ▶ See younger generations at their forefront
- ▶ Are sparked by a particular issue (draconian legislation or policy, act of corruption, or social injustice)
- ▶ Quickly unravel into a more fundamental set of wider discontents with the political settlement which are difficult to resolve without wholesale reform
- ▶ Are understood by those in power to threaten the status quo and their power

Crucially, however, they arise in places in where the state has very different relationships with democracy, freedom of expression, reform, and use of force against citizens.

At some point, however, social unrest must end – whether through fizzling out, or because of new forms of institutionalised repression, or conversely, because new processes of reform disable or accommodate the protesters.

This report provides a short introduction to inform thinking on how social crisis ends, and the types of initiatives that help to bring it to conclusion. It begins by framing general considerations in how states respond to social unrest using peaceful responses, and moves to examine some of the most typical institutional responses: commissions of inquiry, national dialogues (or similar), amnesty, and indeed multi-pronged approaches which use more than one of these mechanisms. We touch on the issue of more fully fledged 'transitions' to a new political settlement, but do not engage in this in detail.¹ Each type of response is dealt with in separate sections and is accompanied by some lessons learned from past attempts to respond to social unrest. The Appendices offer more detailed case study background on Northern Ireland, Lebanon, Mali, Bahrain, and Kenya.

Covid-19 and Mutating Social Protest: It is first worth noting that recent social unrest situations have been impacted by Covid-19 in very different ways in different places. Social unrest and demonstrations were in many cases halted by the outbreak of Covid-19 pandemic, particularly in Iraq and Lebanon, even though the issues raised by protesters had not been addressed. The COVID-19 Disorder Tracker data, for example, suggests that the number of demonstrations between 11 March 2020 (the declaration of the pandemic) and 30 June 2020 dropped by about 30 percent.² In other contexts, even though the emergency response policy of some governments gave rise to more social discontent, protests were forbidden and prevented by national and local authorities to prevent the virus spreading further.

In yet other contexts Covid-19 has led to new forms of social unrest or shifted their focus, opening up a division between the state and key social groups that was previously only latent. Questions over the effectiveness of health responses or the proportionality of 'lock-down' rules and their perceived legitimacy may be cause for re-evaluating the relationship between the state and civilians.

Often, the pandemic also reconfigured the relationship between the state and communal responses, community initiatives in a sense replacing social protest. For example, in Middle Eastern states community initiatives have been critical. Here, the state has been unable to be the primary responder to crisis, either because it lacks comprehensive control over resources, or lacks a legitimate presence or level of credibility necessary to undertake service delivery. In Hong Kong too, a collective and anticipatory community response to the pandemic drew from notions of social memory and trust. These notions were based in ideas of solidarity arising from political action that stem from how community had related to the state prior to Covid-19. This resulted in the community response in Hong Kong happening early and successfully, initially outpacing government efforts.³ However, in the face of an unprecedented 'social truce' between governments and people, some voices have raised concerns that policy-makers could use the virus to suppress protests and legally silence demands for more freedoms, accountability, and services. The Covid-19 period saw the passing of a new National Security Law, which outlaws forms of protest permanently.⁴

In a recent PSRP report on the [Impact of Covid-19 on Peace and Transition Processes](#), one of the substantive findings was the correlation, in some cases, between state Covid-19 responses or measures and the strengthening of authoritarian tendencies.⁵ In both conflict and post-conflict settings, countries found to be in the middle of an 'authoritarian turn' were viewed as using the pandemic to consolidate power and further these authoritarian tendencies. Across a number of cases highlighted in the report, responses have involved the militarisation of healthcare delivery, use of the health crisis to increase repression, and the postponement of parliamentary elections. Further, some argue that the economic shock of Covid-19, coupled with a range of pre-existing grievances makes future general public unrest inevitable.

II. Social Unrest, Repression and Reform: General Observations

In the face of large-scale unrest, governments can seek to criminalise and repress or to diffuse the situation through accommodating some of the demands of those protesting. If choosing the latter, governments can make concessions to the protestors/opposition – either by way of short-term de-escalation measures aimed at creating a break-point in an escalating conflict, and/or by promises of longer-term processes aimed at reform.

Few states contemplate social unrest to require a major political restructuring, at least in the first instance. However, the state's initial reaction to unrest often determines whether social unrest escalates or de-escalates. A range of possible institutional responses – some focused on containment, and some more reform-oriented – are often employed, including:

- ▶ Discrete reform processes aiming at key institutions (e.g. police)
- ▶ Inquiries
- ▶ National dialogues
- ▶ Criminal prosecution (or preventative detention)
- ▶ Use of force
- ▶ Selective amnesty
- ▶ Selective dismissal or recall of officials
- ▶ Coalition governments of national unity and/or more formalised transitional governments and processes

Rather than having a coherent strategy, states often address different dimensions or levels of escalation with different techniques and institutions. Techniques and institutions are often chosen in the moment as a reaction to pressure, without the state having an overall strategy. As a result, a number of the above mechanisms may be employed in different moments, each response constituting an individual decision rather than being part of an overall strategy of de-escalation. For the most part governments have an underlying objective of stabilising and retaining or even consolidating the status quo political settlement.⁶ Political calculations often involve deciding what level of reform process to implement to address grievances, if any is required to do so.

Underlying the fundamental decision of governments as to whether to tend more towards reform than repression or containment, a combination of five factors is often key:

- a. whether the government understands its power to rest in use of force, or some underlying sense of democratic legitimacy and 'social contract' between citizens and government;
- b. what the government understands to be at stake in terms of whether imposition of force, or the possible end-point of any reforms offered, offers the greatest existential threat to the government or the state;
- c. whether the society is deeply divided in terms of identity, with competing 'reformers' and 'status quo' positions aligning with these divisions in the body politic;
- d. the extent to which the security forces are an independent political force who will take their own decisions on the use of force (whether in support of demonstrators or government, or in independent actions such as coups) with or without government request, sanction or support;
- e. the past experience of government commitments to reform, and the extent to which the protestors and the population at large have trust in the government to deliver on any promised process and ensuing reform agenda for change.⁷

To illustrate, where social unrest is understood to pose an existential threat to the state or its government, even in relatively democratic settings, reform can be strongly resisted. Protest in Catalonia, Spain, is an example of a crisis that has been responded to within a framework that until recently was predominantly a criminal law approach. Other governments will involve both a criminal law and a reform-based approach simultaneously. This has often been the approach of the UK government: for example, the handling of race riots in 2011 resulted in both a strong criminal law response but also the establishment of an inquiry to look at the underlying causes of the riots.

Where unrest is understood to have exposed key fault lines in the social contract between people, or between the government and people, and the state understands its power to rely on some level of popular legitimacy, more fundamental reforms may be forthcoming and aimed at resolving the root causes of social discontent. The responses to unrest in Morocco and Jordan in 2011-12 both offered serious reform and forestalled revolution in a strong sense. As Volpi argues, a credible history of reform in Morocco largely explains why offers of reform were successful there, but not in Libya or Tunisia where (internationally supported) overthrow and more fundamental transition were the respective outcomes.⁹

As a social crisis unfolds, the situation is not static and each of the five factors outlined above change over time. The government's willingness to reform typically co-evolves with the severity and impact of social unrest, and state responses may differ across levels of institutional hierarchy (e.g. local versus national-level administrations as evident in Northern Ireland in the 1960s and Hong Kong currently). At any point in time, state organs can adopt one or multiple forms of the strategies and tactics set out below (see Table 1).

However, mismanaged responses can trigger escalation. In particular, they can create a 'security dilemma' between groups and the state, in which violence shapes responses independently of any political objective underlying the protests, making it difficult for any party to back down and lessen the use of force, as was arguably the case in Hong Kong in the pre-Covid social protests.

III. State and External Actor Response Choices

The state can either confront or accommodate protestors in an attempt to forestall further protests. In practice, governments often adopt a 'carrot and stick' approach, combining tactics of repression and concession. In rare cases, and for a limited time, governments have also chosen to ignore social unrest in the hope that it dissipates 'naturally'.

STRATEGY	TACTIC	METHOD
Repression	Overt repression	Use of force against protestors
		Political arrests
		Curtailing the right to protest by changing protest laws
		Imposing tax restrictions on non-governmental organisations
		Internet and social media shutdowns
	Covert repression	Counter-mobilisation: secretly supporting violent counter-movements, or paying private agents to intimidate protestors, e.g. through threatening messaging on social media or phone calls
		Launching disinformation campaigns, including via social media
Containment	Co-option	Committing to reform rhetorically, or making very limited concessions to buy time and to forestall more extensive protests, e.g. by including protest members in political decision-making processes without granting them any political power
		Buying-off protest members with monetary or political resources
Accommodation	Concession	Entering negotiations with protest movements or the wider public (e.g. through national dialogues) and satisfying demands (may or may not tackle the root cause of social discontent)
	Integration and formalising 'transition'	Integrating members of the protest movement into state institutions and/or a coalition government and formalising a clearer 'transition', often including different reform components

Table 1. Possible responses to large-scale social unrest, partly adapted from Earl's, Kriesi's and Tarrow's work. ⁹

External Actors. International actors also have choices regarding their response. Often the state will strongly assert that social unrest is a purely domestic matter. However, short of bringing it within Chapter VI and VII of the UN Charter (which have legal conditions and require considerable international consensus and political will), external states and international organisations may:

- ▶ Assert diplomatic pressure on the state to moderate its response or enter a more formal transition
- ▶ Assert forms of sanction as a more coercive incentive to state behaviour
- ▶ Offer 'good offices' of mediation or for dialogue between state and civil society

The situation in Malawi in 2012 offers a good example of how quiet preventative diplomacy by the UN was useful in de-escalating protest. The UN helped establish a National Dialogue process, although this process was ultimately unsuccessful in embedding the type of reform outcomes that would have addressed the root causes of the crisis.¹⁰ A review of the UN diplomacy emphasised that the success of their efforts related almost entirely to the way that they responded to the internal positions of both opposition and the constellations of government positions on the unrest.¹¹ UN diplomacy bolstered the position of moderates in both civil society and government sectors. The proposals also 'offered actual or potential benefits to all the conflict parties and provided them with a way out of the crisis without any of them losing face', and more specifically persuaded civil society actors to de-escalate at a critical moment. In short, the preventative diplomacy provided the government and civil society actors 'with a ladder to climb down without losing face'. In doing this, it helped break the 'security dilemma' discussed above.¹² Also critical was the perceived neutrality of the mediation, a good relationship between the mediator and the government, and a lack of public criticism. Yet, on the negative side, the outcome did not result in the wholesale reform that would have been necessary to deal with the grievances and negate social protest in the future. In this sense its apparent 'success' can in hindsight be challenged (see further Cammack 2017).

IV. Mechanisms of 'containment' and 'accommodation': Overview

As noted, five common processes often emerge in response to social crisis: discrete reform of 'problematic' institutions; Commissions of Inquiry; National Dialogues; amnesty or reduced sentences; and formalised transition. The first four of these are often offered by governments as an alternative to a more fundamental change to government, to move from social crisis to stability. The last – formalised transition – focuses more on representation, often offering immediate representation to opposition politicians or movements in an interim government. Each of the first three are mechanisms which are also used in contexts other than social crisis but are commonly adapted during or immediately after social crisis to provide a 'rapid response' to social crisis situations. As we will see in Parts VI and VII below, the processes are not 'either / or' choices, but can be used together or iteratively through individual decisions based on trial and error, or can start to form a more holistic strategy to deal with the crisis and even begin a more formal transitional process.

Where crises escalate, governments sometimes have to resign and/or create new governments of national unity to engage in a new 'transition' process towards a new social contract, or substantially revised one. This was, for example, the case in Gambia and Maldives. We do not set out here fully how transitions unfold, which is dealt with in other PSRP publications, but touch on this in this section for the sake of completeness (see further Forster 2020; Salmon 2020).

Discrete reform processes. Discrete reform processes can be offered in response to the functions of key institutions which are understood to be at the heart of the grievances. For example, in response to social crisis relating to policing and use of force with relation to George Floyd and the African American community in general, a number of Democrats have proposed federal police reform Acts, the US President has signed an Executive Order on Safe Policing for Safe Communities, and individual states have instigated state-level legal and policy responses.¹³

Commissions of Inquiry. Where protests reflect multiple grievances, this model offers an immediate 'fact-finding and recommendation' model to address the immediate reasons for social instability. It makes recommendations as to how to address the aftermath of the protest across multiple arenas of reform, in order to avoid similar unrest in the future. Unlike unilateral reform offers, Commissions of Inquiry often focus on both state and opposition actions and attempts to institutionalise a form of 'moderated' narrative of the protests. Commissions of Inquiry focus on 'what has gone wrong', with a 'backwards-looking' focus, which is aimed at immediate stabilisation of the situation and 'return to normal'. They can also offer a measure of accountability both for the responsibility for triggering the crisis, and for the illegitimate actions which took place as part of the crisis (state or protestor). Often some sort of objective clarification and acknowledgement of what did and did not trigger the unrest, and what wrongs were perpetrated and by which groups, can itself serve to address the situation. However, some Commissions of Inquiry offer forward-looking recommendations both for addressing the immediate aftermath of social crisis, and longer-term approaches to addressing the root causes of the crisis.

National Dialogues. National Dialogue focuses more fundamentally on 'how to rebuild a fractured social contract', in a situation where the fundamental nature or survival of a government is in question. While they also aim to resolve political crises, they are often established in acknowledgement that the issues being addressed are much broader and deeper than the immediate social crisis which has prompted their establishment, and they aim to improve the legitimacy of institutions, and lead countries into forms of political transition or democratic renewal.¹⁴ National Dialogues offer a model of social deliberation through which to address reform of the state and rebuild a damaged or non-existent social contract in ways that may be able to address deeper and wider root causes of the violence. However, there are many examples where either few changes were implemented, or the political system was reframed but not substantively changed to truly address ongoing grievances (see e.g. Kenya, Yemen).

Amnesty or sentence reduction or suspension. If the protestors are considered to have had legitimate grievances or political goals, and social disorder to have been at least in part determined by an excessive security response, then a number of different measures can be used to avoid criminalising all protestors and perpetuating a crisis that might otherwise be ended. These include formal amnesty to staying of prosecution, pardon, or suspension of sentences. These measures can create space for other forms of dialogue and serve to de-escalate a situation in which mass arrests, prosecution and punishment will both burden the state and undermine any political efforts to de-escalate an emergent conflict, while creating a new set of grievances to mount on those that triggered the crisis. Amnesties and similar suspension of prosecution and punishment may also stand as a symbolic state acknowledgement that the unrest was something other than a 'crime wave' – that is, that not all state use of force was legitimate, and therefore not all violence carried out in response, was illegitimate. As such, amnesties can rebuild good will. However, this symbolic element can also lead states to strongly resist giving amnesty. It is also possible that entities such as security forces are also granted amnesty, in what amounts to 'self-amnesty' of the state or its allies (see further below).

However, depending on how amnesties or similar are applied, they can also risk forms of impunity, perceptions of bias that further divide different social groups, or lead to a perception of permissible lawlessness.

Formalised Transition. Processes of fundamental re-negotiation of the political settlement and political institutions, where other attempts at stabilisation have failed, are often managed by putting in place interim transitional arrangements and processes. These may incorporate mechanisms such as those described above, but will use them as part of a more holistic re-working of the state's power-map and quality of democracy, as part of a longer-term reform project. These transitions are often propelled by social crisis, for example catalysed by electoral violence, succession crisis, coup d'état and political deadlock between the parliament and executive or within the cabinet, all of which may respond to and facilitate levels of political violence. They can involve several different modalities of government formation. First, a care-taker government consisting of elites from the preceding regime that manage an incumbent-led transition process, as occurred in Egypt following mass demonstrations against President Hosni Mubarak in 2011. Second, an opposition-led provisional revolutionary government, such as emerged in Libya when the former government was ousted. Third, a government-opposition power-sharing government, which emerges between agreement between erstwhile government and military actors and opposition actors, as in Sudan, and was used in Yemen after the signing of the GCC Implementation Mechanism in November 2011, or in Zimbabwe 2008. The facilitation of these governments may include international facilitation through channels such as the 'good offices' of the United Nations or regional organisations (for example, the African Union, the Gulf Cooperation Council).

As noted, setting out how transitional governments are managed is beyond the scope of this report and is addressed further in a series of inter-connected PSRP publications dedicated to interim governance arrangements and transition design and management. However, in general terms, a transitional government will play the dual role of managing the transition, which often involves simultaneous reform processes in different arenas: constitutional, electoral, security sector; and will often use mechanisms such as those just outlined to set an agenda for change, which responds to social protest, but as part of a holistic attempt to re-institutionalise a new more inclusive political settlement, and deal with the grievances raised by the process. This form of structured transition will not be addressed more in this report, except to note that it involves a more radical reconstruction of the state, in which the opposition actors are often brought into government structures in a revision to the political settlement.

We now turn to consider the key issues in using the tools of Commissions of Inquiry, National Dialogues and Amnesty as a response to social unrest in situations falling short of a full formalised transition.

V. Commissions of Inquiry

Commissions of Inquiry are non-judicial bodies established by the government, often under domestic legislation providing for this type of mechanism, with terms of reference relating to the social unrest. They have been common in the United Kingdom and countries operating under legislation with its roots in UK legal tradition¹⁵; although the United Nations increasingly uses 'International Commissions of Inquiry' as an immediate response to wholesale violations of humanitarian and human rights law.¹⁶

Commissions of Inquiry are typically charged with (a) 'fact-finding' as to the reasons for the unrest, how it unfolded, and who was responsible for human rights and humanitarian law violations, or commission of crimes such as killing, assault, and destruction of property; and (b) making recommendations as to how to address some of the root causes of the crisis, opening up a reform agenda.

It has been argued that the main function of an inquiry is to address three key questions:¹⁷

1. What happened?
2. Why did it happen and who is to blame?
3. What can be done to prevent this happening again?

Inquiries examine what happened and collect evidence, analyse documents and examine witness testimony. They often draw on experts and policy professionals to help them form recommendations which are intended to guide the government and others to make the changes which will prevent recurrence in the future.

The tool is potentially a wide-ranging one, and the experience of Commissions of Inquiry can both address the very specific reasons for the immediate social crisis, and the deeper possible 'root cause' discontents that animated it.

A series of Commissions of Inquiry headed by judges were used at the start of the Northern Irish conflict, in the social unrest that arose around civil rights grievances (see Appendix 3). These commissions issued findings of fact in response to general terms of reference, and relating to specifically named 'events'. They also made recommendations as to reform – or observations as to where reform instituted since the events was already addressing issues identified and how it could best be developed. However, these initiatives were ultimately unsuccessful for complicated reasons. These reasons included: that they were coupled with selective amnesty of 'one side' which inflamed inter-group tensions; reforms were viewed as 'too little, too late' by those who were moving to non-state armed activities; and state military strategies aimed at 'terrorism' undermined reforms aimed at equality of Catholic/Nationalists with Protestant/Unionists, by impacting negatively on the wider human rights of that community. As is now well known, the social unrest was replaced with armed conflict (which itself was then addressed in its onset through Inquiries into Terrorism and Bloody Sunday).

Lebanon has also seen a series of Commissions of Inquiry through successive periods of social unrest and conflict (see Appendix 4). However, even more than in Northern Ireland, these Commissions of Inquiry were to become a part of the problem, rather than the solution, and this can then affect the perception of the effectiveness of this mechanism over time – perhaps explaining the resignation of the government completely post the Beirut explosion in 2020. In 1992, conflict parties in Mali tried to establish a Commission of Inquiry to investigate crimes committed during the civil war in the north of the country, but with little success (see Appendix 5). Protests have, at time of writing, been followed by a coup which has replaced the politicians with military leaders. The military leaders have, at the time of writing, stated a commitment to institutionalise a transition to new elections, in part claiming legitimacy for the coup with reference to past social protests and discontent with the government.¹⁸

Lessons:

Often the following issues are critical to establishing a Commission of Inquiry, some of which may be provided for in the relevant domestic legislation:¹⁹

- (i) **The Terms of Reference (ToR) for the Commission's mandate.** This can involve specifying the precise period of 'social crisis' that the Commission is to examine, and setting out the mandate for what facts it is to establish and what type of recommendations, if any, it is to produce (please refer to Appendices 3-5). The ToR may also say something about the wider goals of the Commission, for example, whether it is to address wider processes of reform, or has a goal of achieving a form of 'reconciliation'. Finally, the ToR may set a timescale in which the Commission is to report – for example to encourage a fairly 'immediate' response to the crisis.

- (ii) **Establishing a Commission: Independence, selection, and recruitment.** To have sufficient credibility to assuage social unrest, the Commission needs to be perceived to be independent of government and to bring considerable gravitas to the Commission's operation. The individuals involved will have to be perceived to be of moral integrity, but also to have training and skills in fact-finding. Often judges are given a key role, even though typically Commissions are 'non-judicial' in terms of their capacity to issue binding decisions. A critical decision for the government is how far the Commission will be made up of domestic members or international members. While the Government will typically appoint and remunerate Commissioners, forms of informal consultation and discussion will often take place to produce a Commission composition capable of having the confidence of all the sides in the crisis.

- (iii) **Determining whether Commissions adjudicate on the role of individuals directly and 'name names'.** Whether the Commission of Inquiry is to consider generally 'what matters gave rise to' the social unrest, or consider the position and fault of individuals or perpetrators, is often a matter of contention. The Commission itself will have no power to prosecute or punish, but its recommendations will carry weight, and its findings, particularly when focused on individuals, may create pressure to prosecute and punish once it has produced its report (see current prosecutions of soldiers arising out of the second Tribunal of Inquiry into Bloody Sunday, Northern Ireland).
- (iv) **Determining how the Commission functions, and its powers and methods.** How the Commission operates, whether it takes evidence in public, whether it takes oral and/or written evidence, whether it has powers to compel witness, or conduct search and seizure (for example of documents or evidence), and how well it is resourced and staffed, and whether staff are understood to constitute a secretariat that is independent of government, are all critical to the Commission's capacity to function effectively and be perceived to have independence and legitimacy. The Commission may also have to have in place protection measures for victims; rules of procedure (including provision for whether people are allowed legal representation and who bears the cost); and how it will store and manage information (including whether and when it can share information with prosecution authorities or other relevant agencies).
- (v) **Forms of immunity may need to be given to those testifying.** For example, the Cameron Commission in Northern Ireland, 1969, involved the Northern Ireland Attorney general providing immunity for those giving evidence, by undertaking that: "No statement made to the Commission of Inquiry, whether orally or in writing, will be used as the basis of a prosecution against the maker of the statement or for the purpose of prosecution of any person or body of persons. (2) No such statement will be used in evidence in any criminal trials."²⁰

- (vi) **Determining Commission powers in relation to any amnesty recommendations or provisions.** Often a critical issue will be the question of amnesty. If social unrest is approached as a massive crime wave, and a criminalisation approach adopted towards protestors, this can appear to negate legitimate grievances underlying the protest, and undermine attempts to provide for stability. Moreover, police, prosecution and courts services may have difficulty in coping. There are therefore serious political and practical questions for a government regarding whether it should move forward with criminalising large sections of the population, or whether some form of limited amnesty can be granted, at least for certain categories of offence. However, often the Commission of Inquiry will also fact-find on incidents regarding state human rights abuses, such as disproportionate use of force by security forces, detention without trial, violation of freedom of assembly and speech, and the government will typically be reluctant to see any of these violations result in prosecution or punishment of security forces who it understood to be protecting 'rule of law' and its own position. This also brings the question of amnesty into the frame.
- (vii) **Determining what happens after an inquiry.** Ideally, a Commission of Inquiry should be set up with some commitment to respond to the fact-finding and any recommendations in terms of reform. This is often where Commissions of Inquiry fall down. Even when implemented, given the length of time necessary to hold and complete an inquiry, political events may have moved on and require any response to re-connect with how discontent has played out. If social protest has dissipated, a government may be minimalist in implementation. If social protest has accelerated, even fulsome implementation may seem like 'too little too late', or political events may have overtaken the Commission of Inquiry process.

VI. National Dialogues

National Dialogues can be defined as: "nationally owned political processes aimed at generating consensus among a broad range of national stakeholders in times of deep political crisis, in post-war situations or during far-reaching political transitions."²¹

Unlike Commissions of Inquiry that are focused on fact-finding relating to the crisis, the National Dialogue has a greater focus on creating or renewing a broken or non-existent social contract, by engaging the citizenry and the key political and military groupings in a common deliberative dialogue concerning reform of the state. National Dialogues may be convened as part of a formalised transition to a new, more inclusive or democratic form of government, but they can also be offered by an existing government.

National Dialogues have a more future-oriented focus than Commissions of Inquiry, even though they may comment on the past in order to do so, and indeed although Commissions of Inquiry may make recommendations relating to the future. Their establishment itself operates as an acknowledgment that some major democratic reform or renewal is needed, which may operate to diffuse social crisis (and many have been criticised for lack of implementation). The focus is often on both reform and a measure of social reconciliation. Generally, the timescale is often longer than a Commission of Inquiry, and the modes of operation are different. In addition to the length of time that the official dialogue or series of discussions or consultations with civil society leaders lasts, time is also needed for any tangible impact on the fabric of the social contract to materialise. However, this is not always the case: in the case of Bahrain (see Appendix 6), the National Dialogue discussions with 300 societal representatives only lasted for 23 days, substantially shorter than the duration of the Commission of Inquiry, which is generally considered to be the shorter process.

Lessons:

There is an extensive literature on what makes National Dialogues effective, not all of which is relevant to the particular context of social unrest, which is usefully synthesised in Haider's work.²² Haider identifies the following factors as key to success in general, which we tailor somewhat to the social crisis situation:

- (i) **Degree of inclusion and participation.** While Commissions of Inquiry are often led by one person, National Dialogues usually include a broad range of individuals, who ideally will be drawn from a cross-section of society, even beyond those immediately involved in pro-state or opposition activities. The National Dialogue may aim for forms of reconciliation, but it is usually also understood to benefit from broad mechanisms of deliberation.
- (ii) **Representation and selection criteria and role of 'mediator' or 'chair'.** The mode of selection and capacity of the chair or mediator to build trust in all parties will be crucial to success. Often a figure of national credibility and standing with a measure of confidence across the main divisions in the society is required.
- (iii) **Mandate, institutional framework and support structures.** As with Commissions of Inquiry, the National Dialogue should have a clear and achievable mandate, and appropriate staff, resourcing and independence to do its job.
- (iv) **Confidence-building measures.** However, National Dialogues may also need to be accompanied by confidence-building measures.
- (v) **Provision for implementation.** As with Commissions of Inquiry the National Dialogue should have some clear mechanism of implementation, which will often require reform in multiple arenas over a period of time: political, security, economic.

- (vi) **Political will.** The greater the level of political will and elite agreement on the way forward, the greater the likelihood of successful outcomes and implementation. However, elite consent needs to be understood as needing to involve both pro-government and pro-opposition elites and a level of consensus and agreement as to the importance and scope of the National Dialogue mechanism.
- (vii) **Links to other social change processes.** National Dialogues embedded in broader change processes are more likely to promote real structural change. In the social unrest context, they can often be seen as strategic moves which can operate to de-escalate the crisis, and take the pressure off government incumbents to deliver any real reform agenda (as happened in Malawi in 2011-12).
- (viii) **Public buy-in.** Public support is important beyond the main groupings, and will be influenced by communications and media use.

VII. Amnesty

An amnesty should be understood as a legal mechanism utilised by governments to remove liability for criminal prosecutions and/or civil suits for specific offences or against specific groups of individuals. As amnesty generally applies pre-conviction, it can be distinguished from pardons or sentence reductions that remit all or part of a sentence post-conviction.²³ However, avoidance of prosecution or punishment can be achieved in other legal ways, such as by suspending prosecutions, or early release of those detained (and of course people administratively detained without trial can be administratively released without further legal process or amnesty being required).

There are many cases in which amnesty has been an important part of moving forward.²⁴ Amnesties are often applied to civil society and opposition actors in contexts where they will have been disproportionately prosecuted and imprisoned, and often as a part of a package of measures aimed at 'greater inclusion' of opposition groups within the state. While human rights actors have concerns about 'blanket amnesties', recent review of conflict-related amnesties shows that they often do not fall foul of human rights norms because they are selective in who they cover, in what period they apply to, and on what crimes can be amnestied, and can also apply conditions (such as non-reoffending). The Belfast Guidelines on amnesty offer useful guidance as to the principles that make amnesties 'legitimate' rather than illegitimate with respect to human rights.²⁵

Northern Ireland and Lebanon – the difficulties of selective amnesty

Northern Ireland: In the late 1960s beyond the onset of conflict proper in Northern Ireland, amnesty was among a number of responses – institutionalised as singular decisions. In May 1969, then Northern Irish Prime Minister James Chichester-Clark instituted an amnesty by executive action, for 'events associated with, or arising out of, political protests, utterances, marches, meetings, demonstrations occurring between 5 October 1968 and 6 May 1969'.²⁶ It was to apply to criminal proceedings that were pending, any future proceedings, and the collection of fines already imposed, in relation to all criminal offences associated with the demonstrations, including attacks on civilian homes, but excluding 'acts of sabotage', and to cover both civilians and the Royal Ulster Constabulary (RUC). While the stated purpose of the amnesty was to de-escalate the conflict, or 'wipe the slate clean and look to the future', it was perceived as one-sided and applying mainly to Protestant protestors and security forces (two prominent figures, Reverend Ian Paisley and Major Ronnie Bunting were the first beneficiaries to be released from detention), and it was protested by the Civil Rights Association. The amnesty therefore largely failed to restore confidence in the political and legal institutions and end the social crisis (and as later Commissions of Inquiry pointed out, may have in fact exacerbated tensions to some degree).

Lebanon: Past use of selective amnesty, and use of amnesty to deal with issues of corruption, have also set the context for amnesty use in Lebanon in ways that affect any future attempts to use it.

While the Lebanese civil war (1975-1990) was brought to an end by the 1989 Ta'if Agreement, the conflict was legally settled by a general amnesty law passed by the parliament on August 26, 1991. The amnesty law granted amnesty to all political crimes perpetrated before March 28, 1991. As a direct consequence, all militias were dissolved – with the important exception of Hezbollah – and the Lebanese Armed Forces (LAF) slowly reestablished themselves as Lebanon's only major non-sectarian institution. Yet, the law was subject to a series of criticisms. Notably, that the general amnesty prohibited people from finding justice and undermined accountability for grave violations, including justice for over 100,000 civilians killed and 17,000 more who (were sometimes forcibly) disappeared during the conflict.

The law included two particularly controversial provisions. First, article 3.3 exempted acts against political and spiritual leaders, foreign diplomats, or those referred to the Justice Council. The law was thus criticized for establishing discriminatory and unequal legal protections based on status, forbidding prosecuting violations against 'ordinary' citizens.²⁷ In the words of Skaff, the Amnesty law is "a safe strategy established by and for political leaders"²⁸; and it secured the rights and privileges of those in power.²⁹ Second, article 2.3 of the amnesty law stipulated that continuing crimes and crimes repeated by perpetrators after the date of the promulgation of the law rendered the amnesty null. Yet, at least three instances showed that this provision was subject to narrow interpretation. On the one hand, civil society groups have tried to invoke article 2.3 to urge Lebanese authorities to investigate and disclose the fate of victims of enforced disappearance. Yet, a mix of judicial and political factors hindered the inclusion of forced disappearance into the law of general amnesty. This law also prohibited lawyers and civil organizations from bringing a number of matters related to Israel's invasion in front of domestic courts, in spite of the fact that an Israeli commission of inquiry found that Israel, as the occupying power, shared responsibility with the Lebanese militia over the Sabra and Shatila massacres.³⁰ Finally, when violence broke out in Lebanon after Hezbollah refused to accept government decisions that affected its security apparatus, executions and massacres saw many people killed in just a few days. While this violence could have been interpreted as "continuing crimes and crimes repeated by perpetrators",³¹ the crimes were not prosecuted.

The International Centre for Transitional Justice (ICTJ) argues that the general amnesty law prioritized 'peace' over 'justice' and in so doing had a twofold impact.³² The absence of accountability hindered the credibility and legitimacy of the Lebanese state institutions and fostered segregation of the Lebanese society. The failure to prosecute certain individuals reinforced and normalized a culture of impunity.

In 2005, after the Syrian army withdrew from Lebanon and restored the country's full sovereignty over its domestic affairs, a series of nominative amnesty laws was passed. Leader of the (Maronite) Lebanese Forces (LF) Samir Geagea, previously convicted of several assassinations including that of former PM Rachid Karamé, was granted special amnesty under Law 677.³³ A few days after, to maintain 'sectarian equality of impunity', at least 25 Islamist militants were released. They had been detained following violent clashes with Lebanese army troops in Dinnieh and Majdal Anjar in 1999 and 2000.³⁴ Again, the special amnesties highlighted the unfair nature of amnesty laws in Lebanon. Between 1978 and 2000, the South Lebanon Army (SLA) worked in tandem with the Israeli occupying forces, running the 'security zone' south of the Litani River as well as Khiyam Detention Centre. When Israel withdrew in 2000, a number of SLA members and their families fled to Israel due to fear of retaliation. Indeed, those who were captured by the Lebanese forces were sentenced to prison or the death penalty in just a few minutes.³⁵ These expeditious trials resulted in a campaign led by Member of Parliament (MP) Sami Gemayel to denounce the selective nature of amnesty laws in Lebanon.³⁶

On November 19, 2019, Lebanese MPs were meant to discuss a second general amnesty law and the plan to set up a special court to deal with fiscal crimes. The proposed law planned to include environmental crimes, crimes committed by the "accounting office that supervises the application of the annual budget"; military crimes; crimes committed against internal security forces; and "crimes in which people are threatened by those in power to gain shares in business projects while not contributing to its capital."³⁷ Yet, the parliamentary session was postponed after protestors prevented several MPs from accessing the building. Demonstrators and opponents of the law criticized the law on the basis that the special court would be subjected to the imposition of quotas – with the Parliament to appoint seven of its members – and that the law would thereby sustain rather than challenge the culture of impunity for public officials who are responsible for the political, economic and environmental crisis in Lebanon. The Lebanese Transparency Association (LTA) also condemned the proposed law, contending that it would contradict the Lebanese state's commitment to make reforms against corruption and would contribute to the protracted erosion of trust between citizens and the political authorities.³⁸

United Kingdom and 'carrot and stick' approach: 'Cameron Era' Race Riots 2011 - avoidance of amnesty

United Kingdom: The UK response to the 'race riots' in contrast to the early years in Northern Ireland, was one which coupled robust prosecution for rioters, with an inquiry mechanism to consider the broader issues which had triggered the unrest. As of August 2012, 2,138 people had been found guilty and sentenced, with 1,405 people receiving immediate custody with average sentence lengths of over four times longer than the average sentence for similar crimes in 2010 (an average custodial sentence of 17.1 months, when compared with 3.7 months for those convicted in 2010).³⁹

However, in tandem with the criminal law approach, an Independent Riots Communities and Victims Panel was set up to examine and understand why the August 2011 riots took place, and issued its final report on 28 March 2012 setting out findings and recommendations for action to help prevent future riots.⁴⁰ While the riots had been triggered by police use of force, there were few documented cases of police repression, and broader disaffection, rather than a repressive police response, seemed responsible for the spread of rioting despite its original trigger moment.

Lessons:

General overview

- (i) **There is a need to recognise at an early stage the relationship between any amnesty granted and the remit of a Commission of Inquiry.** The nature of a Commission is to be truth seeking, and to address the responsibility for crimes and the violation of human rights, including those perpetrated by the state. Yet, a prior amnesty may have already limited the accountability that can result. There is a challenge for the state to ward off accusations of 'peace over justice' and find a balance between creating a sustainable path out of crisis, and enacting the findings of the commission, whereby this may involve prosecuting police or security services that were acting out its own interests during points of social unrest. Maintaining accountability is often important for the credibility of state institutions, and create longer term momentum of the wider process and transition to peace.

- (ii) **Wide and illegitimate amnesties tend to be enacted after the moment of a peace agreement and outwith the framework of that particular process.** Therefore, vigilance and balanced technical decision making should be practiced in this period. PSRP research by Louise Mallinder finds that broadly, amnesties enacted in this phase tend to offer the broadest level of impunity.⁴¹
- (iii) **Amnesty design shapes the capacity it has to contribute to sustainable peace and influence inclusion and exclusion.** Amnesties should be evaluated based on their scope, legality, democratic legitimacy and feasibility. The categories of which people and crimes are to be covered by an amnesty are critical to weigh up. Applying amnesties in the wrong way or to the wrong people can act to undermine confidence in the wider process and legal and political institutions.
- (iv) **Amnesties are also more likely to be granted by hybrid or authoritarian regimes than by democratic states.** The findings of PSRP research suggest that where amnesties are connected to a negotiated peace settlement, they are likely to have a positive impact on the sustainability of peace.⁴² What is less clear is whether this applies to amnesties more generally, only to amnesties carried out in authoritarian systems, or to those amnesties that exclude serious violations.

Points also to note

- (v) **In the latter stages of processes, the legal effects of amnesties are likely to become increasingly lenient to their beneficiaries.** Temporary amnesties which address prisoner releases and sentence reductions are more likely after the pre-negotiation phase.
- (vi) **Where amnesties are likely to be most effective enacted alongside other measures for accountability, rather than in opposition to them, there is a need to present ways that they can be designed to complement accountability.**
- (vii) **Approaches allowing for public participation in amnesties, and a level of independent review of decisions to enact and grant amnesty, should both be advocated for.**⁴³

VIII. Using Mechanisms Together: Bahrain and Kenya

In Appendices 6 and 7 we provide further detail of how Commissions of Inquiry and National Dialogues have been used contemporaneously in Bahrain and Kenya. These cases illustrate many of the points outlined above, but also show how the Commission of Inquiry and National Dialogue can be used by the state simultaneously, as we discuss further here.

Commissions of Inquiry and National Dialogues can be understood as mechanisms that can perform different and even complementary functions in response to a social crisis, often in conjunction with other additional mechanisms. As noted in the introductory sections, the nature of the social crisis will determine whether they are designed as part of an emergent strategy, or more eclectically as in-the-moment crisis responses. The two extended case studies also illustrate how different models can be used to undertake different functions to respond to a social crisis, and also illustrate how models and sequencing are adapted to context (Appendices 6 and 7).

When social protests associated with what is often termed 'The Arab Spring' put the government of Bahrain under pressure, both a Commission of Inquiry and a National Dialogue process were established. The Commission of Inquiry was preceded by forms of National Dialogue process, and then offered a focused investigation on a set of incidents, which ran in parallel to a more formal National Dialogue process.

In Kenya a 'Kenya National Dialogue and Reconciliation' (KNDR) was established as a holistic framework for mediating the fall-out of election violence and dispute. The mediation produced an inter-party government-opposition framework of agreements, whereby the parties agreed to establish a number of institutional frameworks to deal with different aspects of the crisis.

The parties agreed to:

- a. Establish an Independent Review Commission on the General Elections held in Kenya on 27th December 2007
- b. Establish a Commission of Inquiry into Post-Election Violence
- c. Establish a Truth, Justice and Reconciliation Commission
- d. Review long-term issues and pursue a constitutional review process

In addition to these institutions, in February 2008, reform of the Kenyan Electoral Commission was enacted in an attempt at resolving the political crisis. In March 2008, the Truth, Justice and Reconciliation commission was formed in order to investigate historical cases of human rights violations and economic injustices. In May of the same year, in order to address a fundamental part of Kenyan politics in the form of ethnically fractured society, one of the dialogue's long term provisions around consolidation of national cohesion and unity was to introduce a National Ethnic and Race Relations Commission. This was seen as a way of addressing the challenge of consolidating national cohesion, imbued in any notion of success emanating from the National Dialogue process.

The Commission of Inquiry was therefore only one part of a wider set of institutions which attempted to deal with different aspects of the crisis in a connected way (and the matter was also later complicated by the involvement of the International Criminal Court).⁴⁴

In both Bahrain and Kenya the National Dialogue membership was elite-driven. In Bahrain, the selections of dialogue participants were made on a state-led basis which generated a lack of trust in the process from political opposition leaders. Out of 300 positions within the dialogue, only five of these seats were allocated to opposition. This design led to the eventual breakdown of the National Dialogue, with the opposition Shia groups boycotting it, and the Sunni government eventually suspending the process in 2014. Reforms emanating from the dialogue were not accepted by many of these opposition groups who had been central in the original pro-democratic movement.

In Kenya, the KNDR involved an international mediation by the African Union's (AU) Panel of Eminent African Personalities, comprising Mr Kofi Annan (Chair), Mr Benjamin Mkapa and Mrs Graca Machel, focused on bringing the two main parties – the Government/ Party of National Unity (PNU) and the Orange Democratic Movement (ODM) – together for dialogue and mediation. Despite the focus on political elites, women's and civil society activists mobilised in ways that generated forms of informal and semi-formal consultation between them and the political parties, and broad-based consultations, and eventually a national referendum, was used to approve the new constitution.⁴⁵ While the process did lead to incremental change and the production of a new constitution over time, key issues remain unaddressed. For example, the continued control of the process by political elites has been criticised for negatively impacting on addressing issues like transitional justice.⁴⁶

While the Commissions of Inquiry in Bahrain and Kenya both produced reports with findings involving police or government negligence and responsibility for civilian deaths, their recommendations often went unaddressed, although both tracked important change.

In Bahrain, the main outcome of the National Dialogue was the publication of a broad set of recommendations which included:

1. Reform of the political system
2. Measures to fight corruption
3. Balancing out policies on privatisation whilst increasing the economic competitiveness of Bahrain
4. Strengthening civil society organisations
5. Improving social services
6. Ensuring the ratification and implementation of human rights norms and conventions⁴⁷

However, results were less than satisfactory. By 2014, it was found that dialogue processes had failed to achieve results in the country whilst also becoming divisive. Generally, there appears to have been a resistance by opposition to be involved in any further discussions regarding reforms. The dialogue provision recognising the importance of youth involvement in decision-making processes proved to be apt in this sense. Tensions have continued to play out, largely driven by Bahrain's disaffected youth. Dialogue processes and the wider political process appear to have excluded most of the country's civil society and youth by means of restricting political speech and activity.⁴⁸

In Kenya, while the KNDR reform processes all moved forward, and eventually a new constitution was produced, progress in addressing underlying root causes of the violence remained slow and incremental. However, the mediation and the institutions did set in place a trajectory that has continued to shape the political environment, albeit that many of the underlying issues it aimed to address around the controls provided to political elites remains.⁴⁹

Lessons:

- (i) **Sequencing of the institutions differs across cases.** Commissions of Inquiry and National Dialogues can run in parallel (Bahrain) or consecutively (Kenya). One type of response can pave the way for the other, as was the case in Kenya when parties to the National Dialogue and Reconciliation process agreed to establish a Commission.
- (ii) **Regardless of sequencing, the success of consecutive or parallel initiatives is often interdependent.** In Kenya, key recommendations of the Commission of Inquiry were not implemented due to a lack of agreement between the parties to the National Dialogue and Reconciliation process.
- (iii) **Top-down design of multi-pronged approaches need to build in broader processes of civic engagement and trust building.** Designing Dialogues and Commissions that exclude (representatives of) conflict parties and minorities may lead to substantial trust problems and severely limit the initiatives' chances of success. The exclusionary design of the Bahraini Dialogue eventually caused its breakdown.

IX. Conclusions

At time of writing, what appeared a pre-Covid 'moment' of social protest globally, has been re-shaped by the pandemic to curb some forms of social protest and exacerbate others. However, it seems likely that wide-scale social protests will continue to be part of the political landscape in conflict-affected states and indeed in stable democratic ones.

Comparative lessons illustrate that there are mechanisms which can be used, with considerable leeway in design, but that they can probably only be established if they hold out to each side a palatable compromise of a middle space between wholesale modification or removal of its government, and increased repression and maintenance of the status quo. This middle ground involves significant compromise for all sides. How prepared governments and opponents are to move to it depends on the factors relating to how democratic the state is which shapes the context, as outlined in our introduction, and what the parties believe the balance of power with relation to the outcome of the protests to favour.

Preventative diplomacy requires trusted interlocutors and strategies which address the immediate security stand-offs, and create processes that have some credibility in terms of incremental change. However, ultimately strategies of political accommodation are likely to offer the states in question more sustainable and stable solutions than repression or containment, if they can see off the risk of state or government collapse. Yet, seeing off state collapse will require offering some real reform process, which will involve reconfiguring the political settlement and state institutions to be more inclusive. For states which have suffered long-term issues with democracy and violence, a more formalised structural transition involving some clear transfer of an element of power may be the only outcome capable of stabilising the situation. However, even these solutions take time to form revised institutions, and must move incrementally through processes such as those set out above.

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Appendix 2: Peace Agreements Referred to in Text

For full text of peace agreements cited in this report and searchable provisions, see: PA-X Peace Agreements Database, University of Edinburgh (<https://www.peaceagreements.org/>). This database is a repository of peace agreements from 1990 to date, current until June 2020. It contains over 1800 agreements from over 150 peace processes with coding provisions for 225 substantive categories.

Bahrain, Bahrain's National Dialogue Executive Summary of outcomes, 28 July 2011, <https://www.peaceagreements.org/view/1415>

Bahrain, Royal Order No.28 of 2011, Establishing an Independent Commission to Investigate and Report on the Events Which Occurred in Bahrain in February/March 2011, 29 June 2011, <https://www.peaceagreements.org/view/1414>

Kenya, Kenya National Dialogue and Reconciliation, Statement of Principles on Long-term Issues and Solutions, 23 May 2008, <https://www.peaceagreements.org/view/688>

Kenya, Kenya National Dialogue and Reconciliation - Truth, Justice and Reconciliation Commission, 4 March 2008, <https://www.peaceagreements.org/view/691>

Kenya, National Accord and Reconciliation Act 2008, 28 February 2008, <https://www.peaceagreements.org/view/832>

Kenya, Kenya National Dialogue and Reconciliation: Public Statement, 4 February 2008, <https://www.peaceagreements.org/view/696>

Mali, Pacte National conclu entre le Gouvernement de la République du Mali et les mouvements et fronts unifiés de l'Azawad consacrant le statut particulier du Nord au Mali, 11 April 1992, <https://www.peaceagreements.org/view/637>

Appendix 3: Social Unrest and Commissions of Inquiry at start of ‘Troubles’ in Northern Ireland

Northern Ireland
Date of Mechanism 09/1969

Disturbances in Northern Ireland [Cameron Report], (Cmd. 532), (September 1969). Belfast: HMSO, available at <https://cain.ulster.ac.uk/hmsocameron.htm#warrant>.

Purpose and terms of reference (TOR)

What was the commission to do and what were the issues it was to address?

To hold an enquiry into and to report upon the course of events leading to, and the immediate causes and nature of the violence and civil disturbance in Northern Ireland on and since 5th October 1968; and to assess the composition, conduct and aims of those bodies involved in the current agitation and in any incidents arising out of it.

What did the composition of the commission look like?

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What was the commission asked to produce?

A report as outlined above.

What powers did it have?

"[F]ull power to call witnesses, to call for information in writing, and to call for, have access to and examine all such books, documents, registers and records as may afford you the fullest information on the subject, and to enquire of and concerning the premises by all other lawful ways and means whatsoever". This last element was to include power to personally inspect places.

Outcomes

Did the commission produce a report or recommendations?

Outcome: The Tribunal made a series of 'fact finding' observations which were general in nature and clarified the grievances at stake, in particular of the Catholic community. It did not make categorical recommendations, but pointed to put reforms in place which addressed these grievances, and effectively made further suggestions for reform in terms of effective complaint mechanisms with respect to local government and police complaints.

What happened next

The political situation continued to escalate, and a series of further Commissions were established.

Northern Ireland
Date of Mechanism 04/1972

Northern Ireland. Parliament. (1972) *Violence and Civil Disturbances in Northern Ireland in 1969*, [Scarman Report], (Cmd. 566), (April 1972). Belfast: HMSO. Available at: <https://cain.ulster.ac.uk/hmsoscarman.htm>

Purpose and terms of reference (TOR)

What was the commission to do and what were the issues it was to address?

To inquire into the acts of violence and the civil disturbance which occurred in 1969 during the months of July and August in the Cities of Londonderry and Belfast, and during the month of August in the City of Armagh. And to inquire into all the other acts of violence and civil disturbance listed in the Resolutions of the two Houses of Parliament, that is to say, the acts of violence and civil disturbance which occurred.

And also to investigate the following incidents:

- (1) during the month of March 1969 at the electricity substation, Castlereagh;
- (2) during the month of April 1969 at Kilmore, Co Armagh; Silent Valley, and Annalong, Co Down, and Clady, Co Antrim;
- (3) during the month of April 1969 at or near ten Post Offices in the City of Belfast;
- (4) during the months of July and August 1969 in the cities of Londonderry and Belfast;
- (5) during the months of July and August 1969 in the town of Dungiven;
- (6) during the month of August 1969 in the City of Armagh and in the towns of Coalisland, Dungannon and Newry; and
- (7) during the 17, 18 August 1969 at Crossmaglen, Co Armagh;

What did the composition of the commission look like?

It was established as a Commission of Inquiry with three members:
Leslie Scarman
George G. Lavery
William Marshall

What was the commission asked to produce?

A report as outlined above.

<p>What powers did it have?</p>	<p>The Tribunal was established as a judicial inquiry under the Tribunals and Inquiries Act 1921, and under that legislation had the powers, rights and privileges vested in the High Court in respect of the enforcing of the attendance of witnesses, examining them on oath and the compelling of the production of documents. The Tribunal noted that it 'came under an obligation not to refuse to allow the public to be present at our proceedings, unless in our opinion it was in the public interest expedient to sit in private for reasons connected with the subject-matter of the inquiry or the nature of the evidence.' They were also given power to authorise representation by counsel, solicitor, or otherwise of persons appearing to be interested in the proceedings. Witnesses called before the Inquiry were entitled to the immunities and privileges of a witness before the High Court.</p>
<p><i>Outcomes</i></p> <p>Did the commission produce a report or recommendations?</p>	<p>The Tribunal produced a long report largely including findings of fact which went further than questions of 'what happened' to evaluate things like 'social cost'.</p>
<p>What happened next</p>	<p>The political situation continued to escalate, and a series of further Commissions were established.</p>

However, during the early stage of the Troubles the Commission of Inquiry mechanism was used frequently, perhaps cumulatively pointing to its lack of success.

Commission of Inquiry	Terms of Reference/Purpose	Link to full report
<p>Review Body on Local Government in Northern Ireland, 1970, Cmnd. 5446</p>	<p>The Review Body are asked:</p> <ol style="list-style-type: none"> 1. To review existing published Government proposals for reshaping local government in Northern Ireland. 2. To examine any further proposals which may be made to the Review Body. 3. To examine the consequences of the decision on housing. 4. To consider any implications of that decision for the health, welfare, child care, education and public library services at present discharged by local government. 5. To advise on the most efficient distribution under the Parliament and Government of Northern Ireland - whether under local government or otherwise - of the functions dealt with in proposals under 1 or 2 above. 6. To bear in mind the implications for elected local government of any courses of action which the Review Body may deem advisable. 7. To recommend how local opinion can best be brought to bear on administration. 8. To advise on the number of local government areas; and to submit interim reports if they think fit. 	<p>https://cain.ulster.ac.uk/hms0/macroy.htm</p>
<p>Report of the Enquiry into Allegations Against the Security Forces of Physical Brutality in Northern Ireland Arising out of Events on the 9th August 1971, Cmnd. 4832</p>	<p>"To investigate allegations by those arrested on 9th August under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 of physical brutality while in the custody of the security forces prior to either their subsequent release, the preferring of a criminal charge or their being lodged in a place specified in a detention order"</p>	<p>https://cain.ulster.ac.uk/hms0/compton.htm</p>

Commission of Inquiry	Terms of Reference/Purpose	Link to full report
<p>Report of the Committee of Privy Counsellors Appointed to Consider Authorised Procedures for the Interrogation of Persons Suspected of Terrorism, 1972, Cmnd. 4901</p>	<p>"Whether, and if so in what respects, the procedures currently authorised for the interrogation of persons suspected of terrorism and for their custody while subject to interrogation require amendment"</p>	<p>https://cain.ulster.ac.uk/hmsso/parker.htm</p>
<p>Report of the Tribunal Appointed to Inquire into the Events on Sunday, 30 January 1972 (The Widgery Report) H.L 1010, H.C 220, April 1972</p>	<p>Inquiring into a definite matter of urgent public importance, namely the events on Sunday 30 January which led to loss of life in connection with the procession in Londonderry on that day.</p> <p>Inquiry was essentially a fact-finding exercise. The Tribunal was not concerned with making moral judgments; its task was to try and form an objective view of the events and the sequence in which they occurred, so that those who were concerned to form judgments would have a firm basis on which to reach their conclusions.</p>	<p>https://cain.ulster.ac.uk/hmsso/widgery.htm</p>
<p>Report of the Commission to Consider Legal Procedures to Deal with Terrorist Activities in Northern Ireland, 1972, Cmnd. 5185</p>	<p>Appointed to consider "what arrangements for the administration of justice in Northern Ireland could be made in order to deal more effectively with terrorist organisations by bringing to book, otherwise than by internment by the Executive, individuals involved in terrorist activities, particularly those who plan and direct, but do not necessarily take part in, terrorist acts; and to make recommendations."</p>	<p>https://cain.ulster.ac.uk/hmsso/compton.htm</p>

Commission of Inquiry	Terms of Reference/Purpose	Link to full report
<p>Report of a Committee to Consider, in the Context of Civil Liberties and Human Rights, Measures to Deal with Terrorism in Northern Ireland, 1975, Cmnd. 5847</p>	<p>"To consider what provisions and powers, consistent to the maximum extent practicable in the circumstances with the preservation of civil liberties and human rights, are required to deal with terrorism and subversion in Northern Ireland, including provisions for the administration of justice, and to examine the working of the Northern Ireland (Emergency Provisions) Act 1973; and to make recommendations."</p>	<p>https://cain.ulster.ac.uk/hmsogardiner.htm</p>
<p>Report of the Committee of Inquiry into Police Interrogation Procedures in Northern Ireland, 1979, Cmnd. 7497</p>	<p>"To examine police procedures and practice in Northern Ireland relating to the interrogation of persons suspected of scheduled offences; to examine the operation of the present procedures for dealing with complaints relating to the conduct of police in the course of the process of interrogation; and to report and make recommendations."</p>	<p>https://cain.ulster.ac.uk/hmsobennett.htm</p>
<p>Bloody Sunday Inquiry, (2010). [Saville Report], (HC 29-I - HC 29-X, Volumes 1-10), (released 15 June 2010). London: The Stationery Office</p>	<p>On 29th January 1998 the House of Commons resolved that it was expedient that a tribunal be established for inquiring into a definite matter of urgent public importance, namely "the events on Sunday, 30 January 1972 which led to loss of life in connection with the procession in Londonderry on that day, taking account of any new information relevant to events on that day". On 2nd February 1998 the House of Lords also passed this resolution.</p>	<p>https://cain.ulster.ac.uk/events/bsunday/inquiryreport.htm</p>

Appendix 4: Lebanon Commissions of Inquiry

Commissions of inquiry in Lebanon have been used to deal with the consequences of violent conflicts, namely the Lebanese Civil War (1975-1990), and related protests. This is the case of the protests led by Support of Lebanese in Detention and Exile (SOLIDE), a Lebanese NGO founded in the early 1990s to bring light to the cases of an estimated 17,000 Lebanese and Palestinian victims of enforced disappearance, arbitrary detention and exile during the civil war. The pressures sustained by a series of protests and campaigns organized by families of the disappeared and supported by organisations – such as SOLIDE, the Committee of the Families of the Kidnapped and Missing in Lebanon and the ICTJ – led to the establishment of three commissions of inquiry in 2000, 2001 and 2005.

<p><i>Lebanon</i> <i>Date of Agreement: 01/2000</i></p>	<p><i>Executive decree</i></p>
<p><u>Purpose and terms of reference (TOR)</u></p> <p>What was the commission to do and what were the issues it was to address in the terms of the peace agreement?</p>	<p>The commission was tasked with investigating 2,046 cases of missing and disappeared.</p>
<p>What did the composition of the commission look like?</p>	<p>The commission was composed of five security and army officials closely aligned with the Syrian government.</p>
<p><u>Outcomes</u></p> <p>Did the commission produce a report or recommendations?</p>	<p>After six months of investigations of all cases, the commission issued an unpublished two-page report where it concluded that any person who had been missing for more than four years should be considered dead. The commission also recognized the existence of mass graves in Beirut, yet it stated the impossibility of identifying the remains. Finally, the report referred to Law 434 which allows families to declare their loved ones deceased without evidence of their deaths.</p>
<p>What happened next?</p>	<p>The release of 54 persons who had been declared dead by the commission from Syrian prisons only five months after the release of the report prompted protests and the creation of a second commission of inquiry in January 2001.</p>

Lebanon

Date of Agreement: 01/2001

Executive decree

Purpose and terms of reference (TOR)

What was the commission to do and what were the issues it was to address in the terms of the peace agreement?

The mandate of the commission was limited to 18 months and the investigation of 750 cases of disappeared who may still be alive in Israel or Syria.

What did the composition of the commission look like?

In addition to military officials, the commission was also composed of politicians, judges and a lawyer from the Beirut Bar Association.

Outcomes

Did the commission produce a report or recommendations?

The commission did not issue any report, allegedly under the pressure of President Émile Lahoud to avoid implicating Syrian authorities who were still occupying Lebanon at the time.

What happened next?

Continuous protests and pressure, in addition to the withdrawal of last Syrian troops from Lebanon in April 2005, led to the establishment of the first joint Lebanese-Syrian commission of inquiry in June 2005. The commission was tasked with investigating the fate of missing persons likely detained in Syrian prisons. The absence of public reports, lack of terms of references and power of investigation, and limited time frame were singled out as serious impediments to the mission and impact of the "token" commission of inquiry.

Appendix 5: Mali Commission of Inquiry

Mali

Date of Agreement: 11/04/1992

Pacte National conclu entre le Gouvernement de la République du Mali et les mouvements et fronts unifiés de l'Azawad consacrant le statut particulier du Nord au Mali. Available at: <https://www.peaceagreements.org/viewmasterdocument/637>

Purpose and terms of reference (TOR)

What was the commission to do and what were the issues it was to address in the terms of the peace agreement?

This is an example of a commission which attempts to not only locate responsibility for crimes carried out against the civilian population, but also other instances of societal crimes. These crimes are connected to a wider set of ongoing issues in the north of the country stemming from sustained violent conflict.

In attempting to investigate events relating to ongoing problems in the North of the country, the commission addressed the broader aims of the peace agreement, which attempted to enact a restorative, just and durable peace in the north of Mali across regions, local populations and displaced populations.

The broader sets of social issues the commission was assisting in examining, relate to reconciliation within civil society and coordinating and encouraging the rebalancing of territorial power sharing; both between locales and regions in north Mali and with similar types of bodies in other countries. This involved a cross border focus with neighbouring regions and therefore the assistance of NGOs for implementation.

The specific provisions concerning the function of the commission are as follows:

13. "The Independent commission of inquiry shall work according to the provisions agreed between the two parties and which read as follows:

The Independent commission of inquiry shall be tasked with investigating all events which have taken place in Mali relating to the problems of the North, including: crimes perpetrated against the civilian population as physical or moral persons as well as their property, damage to the environment and destruction of livestock, thefts, pillage and acts of vandalism and destruction. The Commission shall work to establish responsibility for these acts, and their consequences, and to assess the damage and compensation due to victims."

<p>What did the composition of the commission look like?</p>	<p>The provision concerning the composition of the commission has important implications for its outcomes. The provision reads as follows:</p> <p>12. "If the two parties have not been able to agree, within the period specified in the paragraph above, on the issue of the composition of the Independent commission of inquiry, the Monitoring Committee of the Pact – foreseen in the present document – meeting under the chairmanship of the Mediator at the end of the first month following signature of this pact, shall consider the question and shall take the necessary measures to resolve this difficulty, in order for the Independent commission of inquiry to function as per the terms agreed by the two parties and recalled in the paragraph below."</p> <p>(See further – powers section and outcomes section).</p>
<p>What was the commission asked to produce?</p>	<p>The provisions simply state it should present its conclusions in the following provision:</p> <p>66. "The Independent commission of inquiry shall be set up 15 days after signing the Agreement. It shall present its conclusions as agreed no more than 4 months after its installation. The appropriate judicial authorities shall be appraised of its conclusions 45 days after submission of the report to the Head of State."</p>
<p>What powers did it have?</p>	<p>Successful completion of the commissions mandate is implicitly tied to payment of compensation. Due to the issue regarding composition, it seems unclear if this provision was implemented (see further - outcomes section).</p> <p>In more detailed regard to the agreement provisions regarding the compensation connected to the conclusion of the commission, the terms are as follows:</p> <p>11. ...(c) ["An Assistance and Compensation Fund for civilian and military victims of the consequences of the armed conflict, from the two parties, and their dependants. This Funds shall primarily be destined to compensate victims following the work of the Independent Commission of Inquiry."]</p> <p>Other powers not explicitly described.</p> <p>*All of the provisions set out across the sections above are directly cited from the peace agreement in the PA-X Database.</p>

<p><u>Outcomes</u></p> <p>Did the commission produce a report or recommendations?</p> <p>What happened next?</p>	<p>Unlikely and unclear.</p> <p>According to the Mali report within the book of Country Reports on Human Rights Practices for 1992 published by the US Department of State, it appears that by the end of 1992, the commission was yet to be established. It was reported that there was a 'lack of consensus on the selection of foreign members.'</p> <p>While there are provisions for what should happen in the instance of disagreement over composition of the commission whereby the monitoring committee for the peace agreement would carry the commission's mandate forward, it seems unclear whether this happened and thus unclear whether reparations were paid.</p> <p>This was in the context that violence had continued throughout 1992 between the two parties in the peace agreement/ 'pact'; with an estimated 100 civilians killed by the Tuareg movement, which originates in the Azawad region, and consequently over 100 Tuareg civilians killed as a result of military reprisals for these rebel attacks.</p> <p>The conditions described for the rest of the year also describe a number of dynamics which undermine the values set out in the provisions of the agreement. Nomadic groups lost livestock, local commercial enterprises were destroyed and food distribution in the region had broken down as rebel activities disrupted the operations of international organisations such as the ICRC.</p>
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Appendix 6: Bahrain's approach using multiple mechanisms

Since 1999, the ruling monarchy had promised constitutional reform and revision of the political system. A combination of stalled political reforms and a feeling of economic and political marginalisation among Bahrain's Shia population created a situation that was building towards unrest. This had led to the Sunni monarchy being challenged in the form of peaceful protest early in 2011, and on the 14th of February following a violent state response to protests and public gatherings, social unrest began. Protestors initially focused on political reform and ending discrimination towards the Shia demographic, this however quickly expanded to calls for more comprehensive change.

Prior to this point, a level of dialogue already existed between the crown prince and Al Wefaq (the main Shia Islamist political group in Bahrain) in the form of an early general dialogue which had explored the concept of a national dialogue. This had halted however and begun to stall when Al Wefaq stated that its demands regarding a new constitution were non-negotiable. Shortly after this on the 14th of February, with other opposition groups also intensifying their protests, Saudi Arabia and other Gulf Cooperation Council (GCC) countries sent forces into the country to disperse key areas of social protest. This included protests at the Pearl Roundabout, a central location of anti-government protest throughout the social unrest. Declaration of a three month state of emergency saw the end of any further progress of the existing dialogue (Chatham House Research Paper, Bahrain: Civil Society and Political Imagination, October 2014, pg. 10).

The Commission of Inquiry was conceived on the 29th of June, prior to the official national dialogue being announced in July. The commission was designed as an exclusive process, purely focused on investigating protest events and violence. The report was submitted in November 2011, creating an overlap between the function of the commission and the dialogue. The national dialogue can be viewed as an attempt by the state to recognise the protests and broadly address political inclusion in the country. It aimed to reach a level of societal consensus over key issues within areas of social, political, economic and human rights reforms. There remained question marks over the sincerity of these commitments by the state, while human rights violations were still ongoing when the dialogue was launched on the 2nd of July. The implementation of the commission and the dialogue by the state have in part been described as a democratic façade, with the national dialogue eventually collapsing in 2014 and the recommendations made by the Bahrain Independent Commission of Inquiry (BICI) being reversed.

Bahrain

Date of Agreement: 29/06/2011

Royal Order No.28 of 2011, Establishing an Independent Commission to Investigate and Report on the Events Which Occurred in Bahrain in February/March 2011 (BICI)

Purpose and terms of reference (TOR)

What was the commission to do and what were the issues it was to address in the terms of the peace agreement?

Article One - "An independent Commission of Inquiry is hereby 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."

The details around the issues the commission was to address, are then set out in the provisions regarding the commission's report.

Article Nine - "The Commission's report shall contain, inter alia, the following:

- 1) A complete narrative of the events that occurred during February and March, 2011.
- 2) The context for these events.
- 3) Whether during these events there have been violations of international human rights norms by any participants during the events or in the interaction between the public and the government.
- 4) A description of any acts of violence that have occurred including the nature of the acts, how they occurred, who the actors were and what consequences derived therefrom, in particular at the Salmaniya Hospital and the GCC Roundabout.
- 5) Instances of alleged police brutality and alleged violence by protestors and/or demonstrators against police and others, including foreigners.
- 6) The circumstances and appropriateness of arrests and detentions.
- 7) Examination of allegations of disappearances or torture.
- 8) Ascertain whether there was any media harassment, whether audiovisual or written, against participants in demonstrations and public protests.
- 9) Examination of alleged unlawful demolition of religious structures.
- 10) Ascertain any involvement of foreign forces and foreign actors in the events. Article Ten."

*The provisions set out above are directly cited from the peace agreement text in the PA-X Database.

What did the composition of the commission look like?

The issues addressed by the commission of inquiry were ultimately a precursor to the themes extensively drawn up and built on in the provisions of the National Dialogue. The dialogue also focused on national and international human rights commitments, expressing a need for a national human rights programme to 'promote human rights awareness' among authorities.

Composed of five distinguished and internationally recognised members, who according to Article Three were,

"acting in their personal capacity and do not represent any government, international organization, public official or any economic or political interest."

The names of the commissioners are as follows:

1. Professor Mahmoud Cherif Bassiouni
(Commission Chair, USA/Egypt)
2. Judge Phillipe Kirsch (member, Belgium/Canada)
3. Sir Nigel Rodley (member, UK)
4. Dr. Mahnoush Arsanjani (member, Iran)
5. Dr. Badria Al-Awadhi (member, Kuwait)

The composition of the commission's staff is also outlined in the outcome report. The staff were selected by commissioners and comprised 51 internationals, with no Bahrain citizens being selected. The selection was based on investigatory and judicial experience and there was also a requirement to have bilingual staff, predominantly Arabic/English speaking; this also meant that the investigatory team included dual national individuals. The commission staff included the following personnel:

- ▶ 1 Chief Investigator
- ▶ 12 investigators
- ▶ 12 assistants to investigators
- ▶ 5 administrators
- ▶ 4 administrative assistants
- ▶ 18 technical and scientific consultants

<p>What was the commission asked to produce?</p>	<p>The finalised fact finding report that the commission was asked to independently produce was to contain all of the information set out in Article Nine (see above). The same article also states,</p> <p>“The Commission's final report, to be submitted to His Majesty no later than 30 October 2011, shall be made public in its entirety.”</p>
<p>What powers did it have?</p>	<p>Beside the general expectancies of commissions - which tend to call for freedom from interference and cooperation or accommodation from all concerned authorities, institutions and parties in allowing the commission to meet its mandate - any request by the commission for information, security, assistance or access must be met.</p> <p>The more specific powers of the commission are extensively outlined throughout the provisions of the peace agreement, and included access to government agencies, files and records (art 4); non-interference by government (art 5 and 6); operational independence and authority and non-harassment (art 7); independence from judicial and administrative processes (art 8); freedom to make recommendations (art 10), and provision for control over staffing; facilities and budget proposals (art 11).</p>
<p><u>Outcomes</u></p> <p>Did the commission produce a report or recommendations?</p>	<p>The commission's report was presented in November 2011. The report shed light on a number of key points of dispute which had added to narratives supporting both sides; a suggestion that protesters had used fake blood to gain further media coverage was found to be true by the report.</p> <p>There were also substantive findings around contested issues, such as official death toll and the extent of torture carried out by Bahraini security forces on protesters. The report also included an extensive list of general recommendations, followed by sets of recommendations which centre around wider summaries of the key issues addressed by the commission:</p> <ul style="list-style-type: none"> ▶ Use of force, arrest, treatment of persons in custody, detention and prosecution in connection with the freedom of expression, assembly and association. ▶ Demolition of religious structures, termination of employees of public and private sectors, dismissal of students and termination of their scholarships.

<p>What happened next?</p>	<ul style="list-style-type: none"> ▶ Increased understanding and appreciation of human rights including respect for religious and ethnic diversities. <p>These stem from sub-sets of recommendations arising from the focused areas of investigation:</p> <ul style="list-style-type: none"> ▶ Deaths Arising out of the Events ▶ Treatment of Persons in Custody ▶ Detention and Prosecution in Connection with Expression, Association and Assembly ▶ Demolition of Religious Structures ▶ Termination of Public and Private Sector Employment ▶ Dismissals of Students and Suspensions of Scholarships ▶ Attacks on Expatriates ▶ Attacks on the Sunni Community ▶ Allegations of Media Harassment <p>The Chair of the commission gave a televised speech at the time of release of the report, accusing King Hamad bin Isa al-Khalifa's security forces of using torture, excessive force and generally operating with impunity.</p> <p>Following the report, the Government admitted that excessive force was used by security forces in Bahrain against pro-democracy protesters.</p> <p>By August 2012, however, it was reported that the government had not managed to use the findings of the commission to 'draw a line under the events of 2011.' (Foreign Policy, 2012). The underlying sources of discontent that had caused the protests had still not been addressed, and further it seemed that, as a result of the failure by government to attempt to act on the findings of the commission, the public remained politically polarised. In short, this failure meant the following key findings and observations of the commission went unaddressed:</p>
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- ▶ A majority of deaths during unrest caused by security forces
- ▶ Deaths as a result of the torture practices used by security forces on detainees; with the majority of complaints received by the commission coming from Shia Muslims
- ▶ Violations of necessity and proportionality principles by the security forces in regard to public unrest and the use of force by law enforcement bodies
- ▶ Deaths of and attacks on foreign nationals during the events of February/March
- ▶ Unjust processes of arrest and holding of individuals involved in protest, violating fundamental principles of fair trial

In the 2019 Human Rights Watch World Reports, it was found that Bahrain's authorities continued to detain and harass sectors of civil society taking part in protest, including human rights activists and journalists.

The findings of the report also cited a failure of the oversight bodies set up in 2012 by the government in response to the commission's recommendations. The bodies had not investigated legitimate allegations of prison abuses or held to account the officials who had taken part in and ordered widespread torture since 2011 (Human Rights Watch, World Report 2019: Bahrain, 2019, pg. 59).

The commission's report also cites instances of police and security force brutality having clear connections to Shia areas.

Sectarian tensions also tied into the Civil security and peace focuses of the national dialogue, as it became clear there was consensus around the issue.

Treatment of the Shia demographic had grown as an issue since the original unrest, and was by extension continually addressed throughout the national dialogue process.

Bahrain

Date of Agreement: 28/07/2011

Bahrain National Dialogue Proposals, Executive Summary

Purpose and terms of reference (TOR)

What was the dialogue to do and what were the issues it was to address in the terms of the peace agreement?

Article II. Introduction - ... (c) ["the National Dialogue's aim was to build consensus on the most salient political, economic, social and human rights issues, without preconditions, and based on proposals by participants. Its success was dependent on the active participation of close to 300 delegates from across Bahraini society, and on their willingness to bridge divides, enhance the reform process and define a shared vision for Bahrain's future."]

The recommendations to be produced by the dialogue were broadly led by the focus on a call for:

... (c) ["existing laws to be better applied to decisions to strengthen the role of the Parliament and consolidate Bahrain's human rights record"]
Article II Introduction -

This would be central to the dialogue's areas of focus; Powers of the executive and Legislative; Combating sectarianism; Political societies; Improving government services: health, education, housing, CSR, environment; Fighting corruption, improving transparency; Redistribution of wealth: taxation, subsidies, welfare; Youth; Civil society organisations; Civil security and peace; Independence of the judiciary; National and international human rights commitments; Women, children and persons with special needs; Freedom of expression and assembly; Foreign Residents.

What was the composition of the dialogue to look like?

The Dialogue was chaired by the speaker of parliament Khalifa bin Ahmed Al Dhahrani and launched by King Hamad bin Isa Al Khalifa, who invited all of the participants. There were no high-level policy makers or ministers invited, and regardless of its size or power, each organisation was asked to put forward five members to represent it in the sessions.

The details around the composition of the 300 dialogue participants reflects an attempt at full societal inclusion. The dialogue was to be composed of the following:

- ▶ 37% from political societies

	<ul style="list-style-type: none"> ▶ 36% from civil and non-governmental organisations; with representation percentages proposed as 12% for professional societies, 9% for social societies, 5% for women's societies, 5% for youth societies, 3% for the various labour unions and 2% from the Bahrain Chamber of Commerce and Industry. ▶ 21% from opinion leaders and prominent figures within the Kingdom of Bahrain ▶ 6% from the media
<p>What was the dialogue supposed to produce?</p>	<p>The National Dialogue was to produce and present a set of dialogue outcomes and lists of recommendations around each of the focus areas (see Outcomes section), to the King of Bahrain.</p>
<p>What powers did it have?</p>	<p>The Dialogue was to make recommendations on the basis that,</p> <p>Article II. Introduction - ... (c) ["National Dialogue based its consensus-building mechanisms on internationally agreed criteria. Whilst a full consensus is the most desirable outcome, it may not always be possible to reach, so the National Dialogue has foreseen different "levels" of agreement to enable all views to be recorded in the recommendations and outcomes"]</p>
<p><u>Outcomes</u></p> <p>Did the dialogue produce a report or recommendations?</p>	<p>The National Dialogue delivered a set of institutional mechanisms and recommendations to address the causes of the violence, focused on reform. The process itself acted to mediate the ongoing dispute. Key agreements included legislative or constitutional reforms, service reform and the securing of human rights in relation to the following areas of focus:</p> <p>Political</p> <ul style="list-style-type: none"> ▶ Reforming the powers of the executive and legislative ▶ Revision of electoral constituencies ▶ Combat sectarianism ▶ Increase transparency among political societies

Economic

- ▶ Address strength of commercial laws and boost Bahrain's economic competitiveness
- ▶ Improve government services in health, education, housing, Corporate Social Responsibility (CSR) and environment
- ▶ Fight corruption and encourage transparency around the use of public funds
- ▶ Revise imposition of taxes and application of welfare and subsidies, addressing overall social justice and the redistribution of wealth

Youth

- ▶ Reinforce the youth strategy of Bahrain and ensure its comprehensive implementation
- ▶ Highlight the importance of civil society organisations
- ▶ Focus on ways to improve civil peace and security

Rights

- ▶ Find ways to strengthen the independence of the judiciary
- ▶ Take steps to reaffirm the commitment of Bahrain to national and international human rights
- ▶ Draw particular focus to the need to protect the rights of women, children and people with special needs
- ▶ Review legislation around media and to increase the liberalisation of legal conditions for journalists
- ▶ Gain consensus around contested cases of Bahraini citizenship
- ▶ Improve the rights and working conditions of foreign residents and workers

The final right mentions recommendations around the rights of foreign residents draws an explicit distinction between this area of focus and the outcomes or recommendations from the other focus areas.

Article E. Foreign Residents - ... (c) ["Recommendations from this session will be submitted to the King for his consideration along with the Dialogue outcomes."]

There is also provision within the agreement that, once the recommendations are submitted to the King, there will be implementation in the following ways:

<p>What happened next?</p>	<p>Article IV. Next steps: follow-up on the National Dialogue's recommendations - "Recommendations from the National Dialogue will be handed over to the King who will in turn refer the proposals to the respective authorities for implementation. Some measures can be expected to be implemented by royal decree, while others will be handed over to parliament and ministries for further development and implementation. Each institution will report on its implementation progress."</p> <p>Important to the outcomes of the dialogue, main opposition Shia groups were effectively unable to engage in the dialogue from its inception, with its mandate being drafted by the King of Bahrain.</p> <p>The National Dialogue had been an initiative by the King made in good faith to accommodate open discussion. However, this meant that the mandate had been drafted by one side only, creating questions around the process in relation to ownership or legitimacy.</p> <p>Main opposition groups, most notably Shia groups, were not in a position to engage meaningfully with the initiative. Further, the recommendations of the dialogue were to be submitted to the King. The agenda around areas of focus which directed the dialogue had also been designated by the King, limiting the topics set for discussion. This has since been highlighted as an area of criticism.</p> <p>Following the dialogue, the government announced progress in the key focus areas and subsequently formed a commission of nine government officials responsible for implementing the dialogue's recommendations. In May 2012 however, the King announced constitutional changes, and this implicated the meaningful implementation of the demands of the main opposition groups.</p> <p>The first round of dialogue was viewed as having failed in achieving the reforms called for by Bahrain's political opposition. Further rounds of dialogue in 2013 were proposed by the King, however these rounds ultimately failed after main opposition groups announced that the findings of the Commission of Inquiry report had never been addressed.</p> <p>The final dialogue session also recalled the period of violence; citing the impact of violence, retributions and arrests on a specific group within society.</p>
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The focus on 'foreign residents' appeared to be an important issue for the population. Part of this was the dialogue attempting to address the initial causes of the social unrest, by bringing in all demographics from within Bahraini society that had traditionally been excluded from political deliberations between the state and the population. The dialogue invited 'sixty foreign residents' to offer their views on reform and represent expatriate communities, affiliated businesses, religious organisations and cultural groups.

Addressing this societal group seems linked to tensions around sectarianism that could be considered a key driver in the original break down of early dialogue prior to protest and ensuing social unrest in February 2011 and therefore, by extension, the use of a commission.

Allegations of ongoing human rights violations continue to make comprehensive political dialogue unattainable in the eyes of opposition groups and commentating internationally allied states.

Appendix 7: Kenya's Approach using Multiple Mechanisms

In an agreement early in the Kenya National Dialogue and Reconciliation (KNDR) process in May 2008, the Statement of Principles on Long-term Issues and Solutions (available on [PA-X](#)) describes the country conditions that were driving the set-up of the KNDR as the initial set of national dialogue agreements. Poverty, unbalanced distribution of resources, and public notions about historical injustices and the exclusion of parts of Kenyan society had created the underlying causes for an ongoing cycle of violence, social tension and instability.

In the lead up to the founding of the KNDR, a disputed election process at the end of 2007 had triggered violence and brought longstanding and deep ethnic tensions to the surface. Social unrest following the elections caused a large number of deaths and destruction of land and property. The exclusion of groups from the political system had remained unaddressed by the state, and tied to ongoing grievances over land, these issues were viewed as driving conflict prior to post-election violence. The political crisis and subsequent violence triggered by the 2007 election had ultimately brought 'deep-seated and long-standing divisions within Kenyan society' to the surface.

The national dialogue that followed was not so much a public deliberative event, as a mediated inter-party series of agreements between government and opposition political parties. The process was a holistic approach to conflict, and between February and May 2008 the KNDR established a basic framework that was to be mediated. Other reforms and wider sets of more specifically focused institutional reform processes would gradually emanate from this process. Initially however, the basic KNDR framework included; four key agenda areas guiding overall reform and national dialogue; a constitutional review agreement; and three major commissions which were:

- ▶ The Truth, Justice and Reconciliation Commission ([available on PA-X](#))
- ▶ The Commission of Inquiry on Post-Election Violence ([available on PA-X](#))
- ▶ The Independent Review Commission (focused on Electoral reform, cited within [PA-X](#) agreement)

All three commissions were being used as types of focused sub-processes to investigate historical cases of 'gross and systematic violations of human rights' and to investigate the 2007 presidential elections, recommending ways of improving the electoral process.

All other agreements within the KNDR process were largely directed towards ending political crisis and moving towards laying the foundations for the implementation of a power sharing settlement. The national dialogue was conceived to manage a period of crisis following post-election violence in December 2007. It was immediately aimed at ending violence and resolving deep political divides between the main parties in the country, while also restoring fundamental human rights. The scope of the dialogue's focus then gradually expanded as it became a negotiated ongoing process.

<p>Kenya National Dialogue and Reconciliation: Annotated Agenda and Timetable – 01/02/2008</p>	<p>To resolve the political crisis the four key areas of focus ongoing were described as:</p> <ol style="list-style-type: none"> 1. Immediate cessation of violence and restoration of human rights and freedoms in the country 2. Immediate steps to address the humanitarian situation, promoting societal reconciliation 3. Overcoming the political crisis, in part by agreement between parties over changes to constitutional, legal and institutional frameworks <p>Dealing with longer-term issues causing social tension and violence (see full national dialogue table for more detail); importantly, within this area of reform, electoral reform was set out in relation to comprehensive constitutional reforms. The Independent Review Commission (IREC) was therefore set up within the dialogue, functioning similarly to a commission of inquiry, by investigating the way in which the 2007 presidential elections were carried out (see below).</p>
<p>The Truth, Justice and Reconciliation commission – 04/03/2008</p>	<p>Key aims:</p> <ul style="list-style-type: none"> ▶ Inquire into historical human rights violations between 1963 and 2008 ▶ Investigate the facts around circumstances leading to post-election violence in 2007
<p>The Commission of Inquiry on Post-Election Violence (CIPEV) – 04/03/2008</p>	<p>Key aims:</p> <ul style="list-style-type: none"> ▶ Establish ways to implement the measures agreed upon by the commission's report ▶ Act as the guarantor of a just and timely investigation into human rights violations during the post-election violence ▶ Identify and prosecute the perpetrators of the post-election violence and raise issues of accountability and transparency

<p>The Kenyan National Dialogue and Reconciliation: How to Resolve the Political Crisis - The Independent Review Commission/Committee (IREC) - 14/02/2008</p>	<p>Key aims:</p> <ul style="list-style-type: none">▶ Set up to investigate all parts of the 2007 presidential election process▶ Produce findings and recommendations in order to improve the electoral process▶ Substantively the aim was to establish whether just electoral process had been followed in regard to basic principles such as ballot processing and whether the process was carried out in line with Kenyan law▶ By extension the commission would establish whether the results for the presidential and parliamentary elections of 2007 were true or fair <p>Findings report available here.</p>
<p>The Kenya National Dialogue and Reconciliation: Longer-Term Issues and Solutions - Constitutional Review agreement – 04/03/2008</p>	<p>This agreement should be viewed as initiating a process of constitutional review, setting out the broad parameters and principles of the process.</p> <p>Key aims:</p> <ul style="list-style-type: none">▶ Establish a statutory constitutional review including a timetable▶ Parliament is to enact a specific 'constitutional referendum law', setting out powers and enforcement processes, which are to be approved in a referendum▶ A comprehensive draft is to be written by all main stakeholders and supported by expert advisers. This is to be provided for by the statutory review and timetable▶ Parliament will consider and approve the new constitutional proposals▶ The new constitution is finally to be enacted following a referendum

Kenya

Date of Agreement: 28/01/2008

Kenyan National Dialogue and Reconciliation process

Purpose and terms of reference (TOR)

What was the dialogue to do and what were the issues it was to address in the terms of the peace agreement?

The broad terms of the national dialogue can be understood in the shared provisions of the initial KNDR public statement agreements concerning dialogue goals ([available on PA-X](#)):

...(c) ["To ensure that the National Dialogue and Reconciliation is carried out in a continuous and sustained manner towards resolving the political crisis arising from the disputed presidential electoral results as well as the ensuing violence in Kenya"]

The summarised agenda areas can be understood in order of being addressed as:

1. Immediate action being undertaken to end violence and restore human rights and basic freedoms
2. Immediate measures to address humanitarian crises, promoting reconciliation among the public
3. Navigating ways out of political crisis
4. Longer term issues around societal conditions and grievances and the solutions to these

In the short term the emphasis was on ending violence including reform of police, restoring human rights and overcoming political crisis with the implementation of measures to address humanitarian crisis and promotion of public and community reconciliation.

The longer term aims of the dialogue were framed in a more iterative way and by design would need addressed during the process, at a point in the process whereby progress around the short term aims could be assessed and priorities reconsidered. They were drafted as:

Article 4. -

- ▶ ...(c) [" - Undertaking constitutional, legal and institutional reform
- ▶ Tackling poverty and inequity, as well as combating regional development imbalances;
- ▶ Tackling unemployment, particularly among the youth;
- ▶ Consolidating national cohesion and unity;
- ▶ Undertaking a Land Reform;
- ▶ Addressing transparency, accountability and impunity"]

What was the composition of the dialogue to look like?

The set-up of the dialogue was based on negotiation teams who had been selected by the party leaderships – the Party of National Unity (PNU) and the Orange Democratic Movement (ODM).

There was also ongoing involvement in the sessions addressing the four main agenda areas, by supporting bodies connected to the dialogue. The Independent Review Committee set up to examine electoral process had an ongoing input, as well as the members of the Panel of Eminent African Personalities, who were also present throughout to support the main political parties during dialogue.

There were also proposals throughout all agreements within the KNDR framework to have members from throughout sectors of society, from judicial members to ethnic minority members.

As they have been considered as mechanisms which are part of the national dialogue, the commission bodies for both commissions of inquiry should also be considered. This would involve investigatory bodies under both the Truth, Justice and Reconciliation Commission (TJRC) and the Commission of Inquiry on Post-Election Violence (CIPEV).

For TJRC there were:

- ▶ Three international members selected by the Panel of Eminent African Personalities
- ▶ Four Kenyan members
- ▶ With at least two and no more than five lawyers

For CIPEV there were:

- ▶ Three internationally respected and experienced jurists or communal/ethnic conflict experts consisting of two internationals and one Kenyan
- ▶ Selected by the Panel of Eminent African Personalities
- ▶ With a support office in Nairobi to provide support to commission members

<p>What was the dialogue supposed to produce?</p>	<p>The process was considered as limited in aims and scope. Electoral violence in 2007 and political divisions between main parties were immediate focuses. This started the process off with an approach towards managing the political crisis, as time went on the process expanded to address other societal issues.</p> <p>In one of the early KNDR public statement agreements (available on PA-X), monitoring mechanisms are described in relation to implementation:</p> <p>Article 5. Implementation of Recommendations - ... (c) ["Weekly progress reports on implementation of these and other recommendations to be made to the Committee by the relevant parties/institutions."]</p>
<p>What powers did it have?</p>	<p>The implementation of the reform agenda was led by the Coalition Government, coordinating the work with Parliament whenever appropriate.</p> <p>Throughout the wider dialogue process, besides ongoing dialogues with societal groups, the KNDR agreements which addressed the nuances of the challenges the dialogue faced and its potential limits, such as the Truth, Justice and Reconciliation Commission, were given the most extensive powers of mechanisms to the process.</p> <p>This investigative body was founded to engage in a historic investigation of human rights violations with a mandate to inquire into events between 1963 and 2008. The commission was to be created by an act of parliament and adopted by the legislature within the following month.</p> <p>The process was also set up based on ongoing constitutional review, with the underpinning principle being that the constitution should be viewed as belonging to the Kenyan people and therefore they must be considered as stakeholders.</p> <p>This process set up gave the civic body the power to review the process and the right to always be consulted on the progress of the review. It was set out that the resulting constitutional proposal would be put to the people for review and a referendum vote.</p>

What happened next?

A KNDR monitoring report in January 2009 produced the following findings on the national dialogue:

- ▶ Socio-political conditions may have created conditions which precipitated the rise of illegal armed / non-state actor groups
This made immediate reduction of violence difficult
 - ▶ Witness protection relating to the tribunals examining 2007 election violence was much needed and absent
 - ▶ The IDP humanitarian crisis is still ongoing
 - ▶ Political leaders from the main parties did not engage in healing and reconciliation initiatives and so public reconciliation was slow to move
 - ▶ Lack of consensus among the main parties over the definition of power sharing in relation to the national accord
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Kenya
Date of Agreement: 04/03/2008

Kenyan National Dialogue and Reconciliation:
Commission of Inquiry on Post-Election Violence (CIPEV)

Purpose and terms of reference (TOR)

What was the commission to do and what were the issues it was to address in the terms of the peace agreement?

The commission in Kenya was an example of a commission helping to form the expression of the national dialogue. It was extensively a reflection of the wider aims and values of the dialogue, and was also selected as one of the more efficacious systems for ensuring a methodical investigation into systematic violations of human rights. The fundamental values agreed upon within the dialogue are recalled in the provisions of this agreement, prior to the outlining of the commission's mandate.

The specific functions of the commission were outlined as follows:

Paragraph 4...(c) ["(i) to investigate the facts and surrounding circumstances related to acts of violence that followed the 2007 Presidential Election, (ii) investigate the actions or omissions of State security agencies during the course of the violence, and make recommendation as necessary, and (iii) to recommend measures of a legal, political or administrative nature, as appropriate, including measures with regard to bringing to justice those persons responsible for criminal acts. The Commission of Inquiry aims to prevent any repetition of similar deeds and, in general, to eradicate impunity and promote national reconciliation in Kenya."]

Paragraph 5... (c) ["To investigate the facts and circumstances related to the violence following the 2007 Presidential election, between December 28, 2007 and February 28, 2008.

- To prepare and submit a final report containing its findings and recommendations for redress, any legal action that should be taken, and measures for future prevention.
- To make recommendations, as it deems appropriate, to the Truth, Justice, and Reconciliation Commission."]

* The provisions set out above are directly cited from the PA-X peace agreement (available on the [PA-X Database](#)).

What did the composition of the commission look like?

Composed of three neutral, experienced and internationally esteemed members, the Composition section states that members were to be, 'jurists, or experts in addressing communal conflict or ethnic violence.'

The conditions were that one member must be Kenyan and two should be international. They were selected by the Panel of Eminent African Personalities, with the condition that the panel consult with both parties to the agreement; both the Government/Party of National Unity and the Orange Democratic Movement. The appointment of the commission was to be by the President.

The commission was set up and lasted for four months with a thirty day extension. The details regarding the composition of the commission are as follows:

1. Judge Philip Waki (Chair, Kenya)
2. Mr. Gavin McFadyen (member, New Zealand)
3. Mr. Pascal Kambale (member, Democratic Republic of Congo).

Two other Kenyans were appointed as counsel assisting the commission and as commission secretary.

The composition of the commission's staff is also outlined in the outcome report. The commission faced the challenge of ensuring that its investigators could be fully independent, for this reason the head of the team of investigators was an international, with the rest of the composition made up of both international and local investigators.

The commission staff included the following personnel:

- ▶ 1 Head of the investigatory team
- ▶ 1 political scientist operating in the capacity of international consultant
- ▶ 2 female investigators recruited specifically to investigate sexual violence; with one being local and one international. (Note of importance – it was felt by the commission that in keeping with its mandate, there was the need to have staff with expertise in investigating cases of sexual violence, as this had been identified as a central issue in the post-election violence)
- ▶ 1 Psychologist Counsellor to provide assistance to the commission when necessary
- ▶ Additional assistance provided by various UN bodies, government agencies and NGOs specialising in all relevant areas

<p>What was the commission asked to produce?</p>	<p>The Commission was to advise on reparations the necessary administrative, political or legal action to be taken and any necessary measures for future prevention, which the provisions regarding the commission's mandate also reflect. Recommendations that the commission deemed necessary, were also to be made to the Truth, Justice and Reconciliation commission.</p> <p>In particular it was to,</p> <p>'submit a final report of its findings and recommendations to the President of Kenya, with a copy to the Panel. Main findings of the report will be made public within 14 days of submission, although certain aspects of the report or annexes may be kept confidential in order to protect the identity of witnesses or persons accused.'</p>
<p>What powers did it have?</p>	<p>Beside the general expectancies of commissions - which tend to call for freedom from interference and cooperation or accommodation from all concerned authorities, institutions and parties in allowing the commission to meet its mandate - any request by the commission for information, security, assistance or access must be met.</p> <p>The provisions are also couched in terms and language of state and institution cooperation, under the section heading National Cooperation. Beside the explicitly stated freedoms of the commission, the provisions made by the Kenyan government are framed around meeting the requests of the commission.</p> <p>The specific powers of the commission outlined in the National Cooperation section are as follows:</p> <p>"Kenyan authorities, institutions, parties, and others shall fully cooperate with the Commission of Inquiry in the accomplishment of its mandate, in response to requests for information, security, assistance or access in pursuing investigations, including:</p> <ul style="list-style-type: none"> ▶ Adoption by the Government of Kenya of any measures needed for the Commission and its personnel to carry out their functions throughout the national territory with full freedom, independence and security;

<p><i>Outcomes</i></p> <p>Did the commission produce a report or recommendations?</p>	<ul style="list-style-type: none"> ▶ Provision by the Government of Kenya and all Kenyan State institutions of all information in its possession which the commission requests or is otherwise needed to carry out its mandate, with free access provided for the Commission and its staff to any archives related to its mandate; ▶ Freedom for the Commission to obtain any information it considers relevant and to use all sources of information which it considers useful and reliable; ▶ Freedom for the Commission to interview, in private, any persons it judges necessary; ▶ Freedom for the Commission to visit any establishment or place at any time; and ▶ Guarantee by the Government of Kenya of full respect for the integrity, security and freedom of witnesses, experts and any other persons who help in its work; <p>The Parties call upon States, relevant UN and AU bodies and, as appropriate, national and international humanitarian or other nongovernmental organizations to provide information to the Commission of Inquiry related to post-election violence, to make such information available as soon as possible and to provide appropriate assistance to the Commission."</p> <p>The commission's report was published in October 2008. The outcomes from the commission's report cited the event to have caused '1,133 deaths as a result of the post-election violence.' The Report found evidence of widespread failure by state security agencies, particularly the police, and concluded that 'the police were responsible for all of these deaths.'</p> <p>There was further suggestion that '405' deaths were caused as a result of 'gunshot wounds'. As many of the protesters were not found to have been in the possession of firearms, the conclusion was that a majority of these wounds were caused by the police and security agents.</p> <p>The report also found the root causes of the violence to have stemmed from two key issues being 'land grievances' and the increased 'centralization of power in the presidency'.</p>
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<p>What happened next?</p>	<p>The central recommendation proposed the establishment of a special tribunal known as 'the Special Tribunal for Kenya', which would seek accountability amongst people holding the greatest responsibility for crimes against humanity and violent acts during the 2007 elections. This was to be underpinned and established with the support of Kenyan law and the International Crimes Bill 2008.</p> <p>Further recommendations involved:</p> <ul style="list-style-type: none"> ▶ Sets of recommendations made specifically around two areas of the focused investigation areas; with Chapter Six on Sexual Violence having its own set of recommendations and Chapter Seven on Internally Displaced Persons producing a set of conclusions and recommendations. ▶ The fast tracking of the International Crimes Bill 2008 and the upholding, full utilisation and enactment of the Witness Protection Act 2008 and the Freedom of Information Bill. ▶ Suspending anyone in public office or carrying out public duties charged in relation to the election violence and if convicted, barring them from holding similar positions or contesting electoral positions. <p>Additionally, 'Comprehensive police reform' was a key area of focus in the recommendations, to be carried out in 'several steps'.</p> <p>In late 2009, it was found that Kenyan authorities had not enacted the recommendations of the commission. The ICC prosecutor intervened in order to investigate the crimes committed during the post-election violence, as Kenya had failed to uphold its 2005 ratification of the ICC statute and by extension its responsibility to investigate and prosecute crimes against humanity carried out within its borders (Amnesty International, September 2013).</p> <p>While there may be an argument that holding the trial proceedings close to the areas affected by the crimes can be beneficial for those communities, the international opinion appeared to be that the security situation was unsuitable for this type of local trial.</p>
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It was decided in July 2009 by the Kenyan Cabinet that the recommendations of the commission to set up a local tribunal designed to refer suspects to the ICC would not be implemented. The official position taken by the government was that the courts and police reforms in Kenya would enable them to carry out the investigations.

By February 2013, it was reported that the underlying sources of historic cases of election-related violence remained. Ongoing conditions of inaction by the authorities, failure to implement the promised reforms of courts and police and a residing level of impunity among authorities in carrying out abusive practices had positioned Kenya in pre-election conditions which risked violence and human rights violations. In 2012 and early 2013, inter-communal clashes in regions of Kenya had caused 477 deaths and displaced a further 118,000 people (Human Rights Watch, February 2013).

The refusal of the authorities to tackle the root causes of violence, reform the police, address official corruption, break up criminal organisations, resettle displaced persons and generally seek to hold accountable the people responsible for violence, has appeared to be the underlying issue since the commission made its final recommendations. This almost comprehensive 'impunity for the murders, rapes, and forced displacement in 2007-2008 has left the people who committed those crimes free to commit them again.' (Human Rights Watch Report, February 2013, pg. 1).

Considering the commission had sought to ensure that there were staff who had experience in investigating sexual violence, it is also worth noting that a September 2019 report by Physicians for Human Rights, found that survivors of the 2007-2008 post-election sexual violence were still waiting for the Kenyan justice system to deliver them justice, accountability and reparations (Physicians for Human Rights report, September 2019).

Endnotes

¹ See further forthcoming PSRP publications on Interim Governance Arrangements and transitions.

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