



SEEKING TRUTH

TRANSITIONAL JUSTICE PRINCIPLES & GUIDELINES

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THE HAGUE

**Presented by:
Homayoun Alizadeh**





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Preamble

- Seeking truth, ending the cycle of impunity, restoring the dignity of victims and providing reparations to them, as well as guarantees of non-repetition are the elementary desire of thousands of individuals and family members of victims of gross violations of human rights over the past decades in Iran.
- Revealing or researching the "truth" about the past violations of human rights should be a central concern of any future democratic government of Iran.
- Seeking truth could represent a crucial role in establishing the rule of law, changing the culture of impunity and respect for human rights in a future social and political order of Iran.



Preamble

- “The most important pre-condition for establishing a new society in Iran is the complete break with the current and prevailing laws, ideology and attitudes, which have systematically reacted towards political opposition and legitimate demands of the people with prison, torture and executions. An Iranian society can only be free when the institutionalisation of democracy, the rule of law, respect for human rights and social justice will be realised. It is not enough to bring those individuals, who were responsible for gross violations of human rights, to justice alone, it is also necessary to hold the entire system accountable, which is not only based on discrimination and injustice, but it also for its survival suppresses and eliminates the entire political opposition. This is the only way to prevent future absolutist governments from regaining power again”.
- *Quotation of a human rights activist whose family members were killed after the revolution in Iran.*



Current & Forward-Looking Perspectives

Current situation:

- Increased propensity for violence;
- Wide-spread human rights violations, including gender-based violence;
- Large number of victims and perpetrators;
- Prevailing culture of impunity;
- Persistent climate of mistrust;
- There is no judicial system in Iran to address human rights violations committed by state agents.

A forward-looking perspective:

- Victims recognised;
- Perpetrators prosecuted, tried and duly punished;
- Recurrence prevented;
- Basic norms and values reaffirmed;
- Horizontal and vertical trust enhanced; and
- Rule of law, respect for human rights, and reconciliation realised.



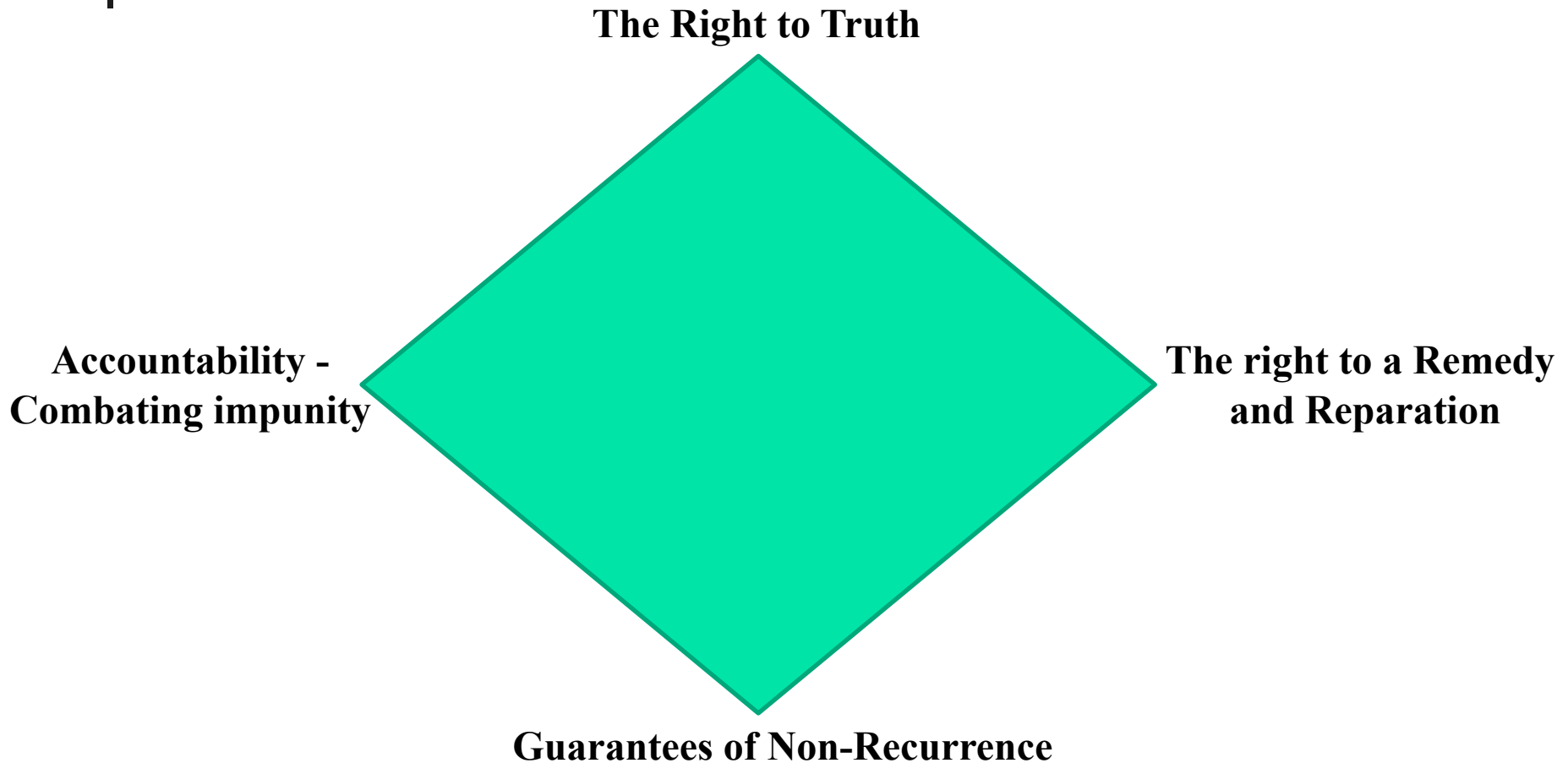
Pillars of Transitional Justice

Definition:

- “Transitional justice comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.” *(UN Secretary General 2004 / EU Policy Framework 2015).*
- Transitional justice: dealing with the past for a better future.



Pillars of Transitional Justice





The right to truth

- An imprescriptible right of victims and their families to know the truth about what happened to them or to members of their families (*Principle 4, the victims' right to know*) [E/CN.4/2005/102/Add.1, 8 Feb. 2005].
- An inalienable and autonomous right, recognised in several international treaties and instruments as well as by national, regional and international jurisprudence (E/CN.4/2006/91, 8 Feb. 2006, OHCHR Report, para. 55).
- A vital safeguard against the recurrence of violations (*Principle 2, the inalienable right to the truth*).



The right to truth

- State's duty to give effect to the right to know:
 - To provide truth;
 - To preserve the memory of what happened;
 - To take measures to prevent recurrence;
 - To ensure the independent and effective operation of the judiciary;
 - To benefit from a truth commission to establish facts on violations of human rights that occurred in the past (*Principle 5, Guarantees to give effect to the right to know*) [E/CN.4/2005/102/Add.1, 8 Feb. 2005].
 - To conduct effective investigations into human rights violations; and
 - To guarantee effective remedies and reparation (E/CN.4/2006/91, 8 Feb. 2006, para. 56).
- The right to truth in the context of contributions to end impunity.
(A/HRC/RES/12/12, 12 Oct. 2009, para. 1).



The right to truth

- Resolution of the UN Human Rights Council on the right to the truth (*„recognis[ing] the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights”*) - [A/HRC/12/L.27, 25 September 2009].
- Declaration of the UN Secretary-General in 2011 to annually commemorate 24 March Right to Truth Day, *“the indispensable role of the truth in upholding human rights”*.
- Resolution of the UN General Assembly 68/165 adopted in December 2013 on the right to the truth (A/RES/68/165, 21 January 2014).



Accountability and combating impunity

- The right to justice obliges the State to investigate grave human rights violations, to prosecute the perpetrators and, if their guilt is established, to punish them duly (*Principle 19, Duties of States with regard to the Administration of Justice*) [E/CN.4/2005/102/Add.1, 8 Feb. 2005].
- Judicial accountability:
 - Not only punitive, also preventive, norm-affirming;
 - Recognition of victims;
 - Fair trial principles;
 - No blanket amnesties (*for war crimes, crimes against humanity and genocide*);
 - National, hybrid (*Cambodia, Kosovo, Sierra Leone, East-Timor*), international courts (*ICTY, ICTR, ICC*).



Accountability and combating impunity

B) Accountability and combating impunity

New accountability mechanisms:

- Establishing the International, Independent and Impartial Mechanism for Syria by the UN General Assembly in 2016.
- Establishing the UNITAD by the UN Security Council in 2017 (*United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL*).
- Creating the Independent Investigative Mechanism for Myanmar by the Human Rights Council in 2018.



The right to a Remedy and Reparation

- State's obligation to make reparation to victims of human rights violations and the possibility for the victim to seek redress from the perpetrator (*Principles 31, Rights and Duties arising out of the Obligation to make Reparation & 34, Scope of the Right to Reparation*) [E/CN.4/2005/102/Add.1, 8 Feb. 2005].
- Type of Reparation:
 - Restitution;
 - Compensation;
 - Rehabilitation;
 - Satisfaction; and
 - Guarantees of non-repetition.



Guarantees of non-recurrence

- The obligation of any future democratic Iran is:
 1. To undertake **institutional reforms** to ensure respect for the rule of law and human rights;
 2. To restore or establish public trust and confidence in governmental institutions (*Principle 35, General Principles*) [E/CN.4/2005/102/Add.1, 8 Feb. 2005];
 3. To ensure that public officials and employees who are personally responsible for gross violations of human rights, in particular those involved in military, security, police, intelligence and judicial sectors, shall not continue to serve in State institutions;
 4. To assure the independent, impartial and effective operation of the judiciary in accordance with international standards;



Guarantees of non-recurrence

- The obligation of any future democratic Iran is:
 5. To establish effective institutions of civilian oversight over military and security forces and intelligence agencies, including legislative oversight bodies;
 6. To establish civilian complaint procedures ensuring their effective operation (*e.g. Ombudsman, Public Advocate, National Human Rights Commission*);
 7. To ensure comprehensive and permanent human rights training programmes for public officials and employees, in particular those involved in military, security, police, intelligence and judicial sectors.



Seeking Truth in Other Countries

Commissions	Country	Duration of Operation	Legal Basis	Dates Covered	Budget in Mill. S
Commissions on the Disappeared	Uganda 1	1974	Presidential decree	25 Jan. 1971 - 1974	-
	Bolivia	1982 - 1984	"	1967 - 1982	-
	Argentina	1983 - 1984	"	1976 - 1983	-
	Uruguay 1	1985	Parliament	1973 - 1982	-
	Sri Lanka	1994 - 1997	Presidential decree	1 Jan. 1988 - 13 Nov. 1994	-
Truth and Justice Commissions	Ecuador 1	1996 - 1997	"	1979 - 1996	-
	Haiti	1995 - 1996	"	29 Sep. 1991 - 15 Oct. 1994	2,5
	Mauritius	2009 - 2011	Parliament	1638 - 2011	-
	Paraguay	2004 - 2008	"	1954 - 2003	1
Truth, Justice and Reconciliation Commission	Togo	2009 - 2012	Presidential decree	1958 - 2005	4
	Kenya	2009 - 2013	Peace agreement followed by national legislation	12 Dec. 1963 - 28 Feb. 2008	28
Historical Clarification Commission	Guatemala	1997 - 1999	Peace agreement	1962 - 1996	9,5
Truth and Reconciliation Commission	South Africa	1995 - 2002	Parliament	1960 - 1994	55
	Chile 1 & 2	1990 2003 - 2005	Presidential decree	11 Sept. 1973 - 11 March 1990 11 Sept. 1973 - 10 March 1990	1 3
	Peru	2001 - 2003	"	May 1980 - Nov. 2000	13,5



Seeking Truth in Other Countries

Country	Name	Duration of Operation	Legal Basis	Dates Covered	Objective
Canada	Truth and Reconciliation Canada	2009 - 2015	Parliament	1874 - 1996	The Commission investigated Canada's residential school system for Aboriginal children, which was created for the purpose of separating Aboriginal children from their families, and to indoctrinate children into a new culture - the culture of the legally dominant Euro-Christian Canadian society.
Germany	Commission of Inquiry for the Assessment of History and Consequences of the SED Dictatorship in Germany	1992 - 1994	"	1945 - 1995	The Commission looked at the history and the consequences of the former East German communist government. It released its report in 1994, but the decision was taken to investigate more thoroughly. Therefore, the second Commission of Inquiry was established to do so.
	Commission of Inquiry on Overcoming the Consequences of the SED Dictatorship in the Process of German Unity	1995- 1998	"	"	
South Korea	Presidential Truth Commission on Suspicious Deaths of the Republic of Korea	2000 - 20004	Presidential decree	1975 - 1987	While the first Commission investigated the death of citizens in South Korea between 1975 and 1987, the second Commission dealt with incidents in Korean history which occurred from Japan's rule of Korea in 1910 through the end of the military regime in South Korea in 1993. The Commission investigated numerous atrocities committed by various government agencies during Japan's occupation of Korea, the Korean War, and the authoritarian governments that ruled afterwards.
	Truth and Reconciliation Commission, Republic of Korea	2005 - 2009	Parliament	1905 - 2005	

**Source: Priscilla B. Hayner, "unspeakable truths", Transitional Justice and the Challenge of Truth Commissions, Second Edition, Foreword by Kofi Annan, Routledge, New York, 2011, Kindle Version, pages 67-165 & 578-579.*



The Iran Tribunal Campaign

- Hearings of eighty survivors and family members of victims before the Iran Tribunal Campaign on gross violations of human rights, including crimes against humanity, committed by the Islamic Republic of Iran.
- Investigation of the mass executions and massacre of Iran's political prisoners during the 1980s and to hold the Islamic Republic of Iran accountable for its crimes against humanity. (*Iran Tribunal, On the Abuse and Mass Killings of Political Prisoners in Iran, 1981-1988, Findings of the Truth Commission, Held on 18th-22nd June, 2012*).



A Step Forward

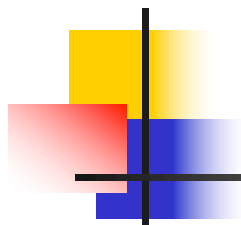
Recommendations as a follow-up to the 2nd International Conference on Contemporary Iranian Studies - ICCI, Iran Academia are made as follows:

- To create expert working groups to collect, process and evaluate systematically data on violations of human rights during the different periods of its 43-year ruling of the IRI in different regions of Iran (*Khuzestan, Sistan & Baluchestan, Kurdisatn, etc.*). In addition, the history and root causes that have led to gross violations of human rights in Iran should be determined in order to prevent such crimes in future. Forgetting and denying the past abuses will lead to the repetition of human rights violations in future.
- To lobby for the establishment of a **Commission of Inquiry** by the UN Human Rights Council on gross violations of human rights committed in the Islamic Republic of Iran.



Epilog

- *In a democratic future of Iran there should be provisions relating to accountability and combating impunity in bringing the perpetrators of violations to account - whether in criminal, civil, administrative or disciplinary proceedings - that have to be incorporated into the Constitution emphasising the important role that should be played by an independent judiciary.*



Thank You !

Website:

<https://alizadeh.eu>

E-Mail:

office@alizadeh.eu