Looking for Justice: an Explorative Study of the Impact of Transitional Justice Mechanisms in the MENA-region

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Introduction

Nowadays, one of the major concerns for policymakers is to prevent human rights abuses. In the field of transitional justice, scholars have lively debated how transitional justice mechanisms would affect human rights and democratic development. Three main mechanisms - trials, truth commissions and amnesties have been at the center of this debate (Dancey, et al., 2013). New research suggest that these mechanisms correlate with reduced repression and creates conditions for democratic consolidation (Dancy, et al., 2019, p. 99). Nevertheless, this evidence is amendable to contradictory interpretations. Moreover, the field of transitional justice remains under-theorized, failing to address when why and how these mechanisms exert their effect (Olsen, Payne & Reitner, 2010, p. 1). In recent years, scholars aimed to address these concerns by testing several explanatory frameworks. So far, these scholars found evidence that prosecutions provide a deterrent effect, which confirms the deterrence explanation (Dancy et al., 2019, 106). Nevertheless, the transitional justice scholars have all been using certain selection criteria's for their research that they unwittingly, but systematically have been excluding a certain region in their analysis. Up to now, the effects of the transitional justice mechanism have not been tested for the entire MENA-region. Sikkink and Kim (2013) wrongfully argue that in the MENA-region no domestic prosecutions occurred (p. 274). In fact, the new developed transitional justice database shows that even in the 1970's domestic criminal trials occurred in this region. This explorative study aims to close this major regional gap and wants to contribute to the current debate in the literature on transitional justice. Additionally, possible new insights that arise from this research could inform future choices that policymakers have to make about the use of transitional justice mechanism.

Firstly, this research aims to provide an overview of the existing transitional justice mechanisms in the MENA-region. Moreover, by employing systematic, comparative cross-national research, it indicates whether an increase of transitional justice mechanisms in these

countries coincide with an increase in the human rights scores of these countries. Finally, the countries are examined in more detail. The countries in the MENA-region differ from countries included in previous research because not all these countries experienced a democratic transition. This allows to examine whether the transition to democracy is essential in determining the human rights outcomes of a country. This paper concludes that no positive relation can be found between the transitional justice mechanisms and the human rights score in the MENA-region. It even argues that a democratic transition must be seen as a precondition and that therefore previous transitional justice scholars may have overestimated the effect that transitional justice mechanisms on their own have on the human rights scores in a country.

This paper proceeds in four parts. First, I outline the main theoretical approaches to transitional justice and discus how these assume that transitional justice improves human rights. Secondly, in the method section I elaborate on the issues regarding the data collection for the establishment of the new data set. Third, I present the quantitative analysis and summarize its main findings. Finally, the conclusion reflects on the importance of these findings and provide suggestions for further research.

Theoretical framework

With the end of the Cold War, an era of regime change followed. Global politics were characterized by an acceleration of conflict resolution, resulting in new political human rights dilemmas that activists faced in these "transitional" contexts (Arthur, 2009, p. 326). As a reaction to these dilemmas and in an attempt to do justice, legal responses evolved to confront the wrongdoings of the repressive regimes (Teitel, 2003, p. 70). These judicial and nonjudicial processes, specifically designed to reckon with past human rights violations, are often referred to as transitional justice (Dancy, et al., 2019, p. 99). Important to note here is that since the 1980s, states have increasingly been using multiple legal mechanisms. Despite the wide

variation in context, design, and implementation of these mechanisms, scholars and practitioners recognize three main mechanisms, namely: criminal trials, truth commissions and amnesties (Olsen, et al., 2010, p. 982). These mechanisms have been widely applied in transitional countries. They have been at the centre of transitional justice policy debates and received the most attention and analysis in the relevant social science literature (Thoms, et al., 2010, p. 330).

As scholars and policy makers became aware of the increased practice of transitional justice, debates about its desirability and impact arose (Sikkink, 2011, p. 24). Kritz (1995) was one of the first scholars to define transitional justice as the first test for the establishment of real democracy and the rule of law (p. 31). Proponents have furthermore argued that transitional justice promotes reconciliation and psychological healing, fosters respect for human rights and establishes conditions for a peaceful and democratically governed country (Thoms, Ron & Paris, 2010, p. 329). The global popularity of transitional justice mechanisms emanates from the idea that they enhance a set of common goals to avoid reliving past horrors and improve human rights conditions (Dancy, et al., 2019, p. 100). Other scholars have been more pessimistic, arguing that fragile democracies may not be able to survive the destabilizing effects of political charged trials. If the military retained substantial in power in these countries, prosecutions of military officers for past human rights violations might result in rebellions against the government, thereby causing more atrocities than it would prevent (Snyder & Vinjamuri, 2003; Orentlicher, 1991). Others have argued that amnesties erode the rule of law, because it indicates impunity and furthers repression. A combination of trials and amnesties mechanisms was certainly considered incompatible by these scholars. Trials in particular show the willingness and effectiveness of courts to challenge impunity, whilst amnesties represent impunity and would undermine the effect of trials (Olsen, et al., 2010, p. 982).

However, these claims made by transitional justice scholars remained largely untested.

The existing studies lacked systematic evidence and failed to clarify whether or how transitional justice mechanisms would prevent future human rights violations and stabilize democratic rule. Scholars have argued that this is mainly so, because most transitional justice studies have been solely focused on single-cases or small-N studies (Olsen, et al., 2010; Thoms, et al., 2010).

In order to close this research gap Tricia Olsen (2010) set up a Transitional Justice Data Base (TJDB). This new database enabled her to conduct an empirical analysis of the effect that transitional justice mechanisms have on democracy and human rights. Her findings supported that transitional justice mechanisms indeed correlate with positive outcomes on democracy and human rights scores. However, she argued that individual mechanisms alone do not have a significant positive effect on democracy and human rights. Specifically, according to Olsen, et al., (2010): "Only two combinations of mechanisms – trails and amnesties; and trials, amnesties and truth commissions – achieve these goals" (p. 982). They therefore reject the dominant view that trials and amnesties counteract, alternatively arguing that amnesties provide parallel and complementary functions to trials thereby enhancing democracy and human rights (p. 997).

Less than a year later Kathryn Sikkink also composed a database on transitional justice mechanisms, specifically focused on human rights prosecutions. Her far-reaching empirical analysis of the impact of increased human rights prosecutions on human rights violations proves to be an important contribution to the field of transitional justice literature (Mendeloff, 2012, p. 298). Her research showed that states with transitional human rights prosecutions have lower levels of repression than those without them (Sikkink, 2011). She explains this statistical relationship by arguing that both coercive and normative mechanisms are at play. These two assumptions have been highly criticized. Sikkink's first argument is in line with the general deterrence literature. She argues that trials increase the probability of punishment thereby increasing the formal and informal cost of future violations. Would-be offenders would therefore avoid committing acts for fear of facing the same punishment, meaning that trials

would lead to a decline in repression. Nevertheless, this argument rests on assumptions about individual calculations, which are particularly difficult to measure without fine-grained data (Mendeloff, 2012, p. 291). Secondly, Sikkink argues that prosecutions also reduce repression through a process of norm socialization. She assumes that criminal trials constitute a new norm of accountability, which will spread and become internalized ensuring that human rights become socially anathema resulting in a decline of abuses. Mendeloff (2012) notes correctly that: "Sikkink's data provides no insight into that process. It merely assumes it" (p. 293). He notes that it is difficult to claim that these coercive and normative mechanisms truly explain state behaviour since deterrence and norm diffusion both are complex political, social and psychological processes that demand a more fine-grained research (p. 294).

Even though both studies are promising large systematic analyses, indicating a positive effect of transitional justice mechanisms on human rights, they both fail to determine the mechanisms through which they exert their effects. In order to overcome these shortcomings, the authors collaborated and merged their databases into a comprehensive new database. The aim of their new research was to address the questions of when, why and how these apparently contradictory mechanisms work together to advance human rights and democracy (Dancy, et al., 2013, p. 6). Their findings reassert that transitional justices indeed succeeds in improving human rights scores (p.26). This research however differentiated from their earlier work because their statistical analysis enabled them to test different hypotheses that they derived from four different explanatory frameworks. Each explanatory framework identified a possible set of factors that could explain the role of transitional justice in improving democracy and human rights (p.6).

One of these explanatory frameworks is the *enforcement and deterrence explanation* as previously cited by Sikkink. The enforcement approach assumes that prosecutions will lead to improvement in human rights because enforcement imposes costs on state violence (p.6). This

would thus explain the authors' previous findings of the positive impact that trials have on human rights. Dancy et al., (2013) looked more closely at the effect that guilty verdicts have over trials that end without a conviction. They did this because, deterrence is based on the beliefs that individuals have about the likelihood or probability of arrest and punishment. Since in a post-authoritarian state one may doubt if the judiciary is able to hand down verdicts, enforcement and deterrence depends more on reaching a guilty verdict (p. 7). Their research confirmed this hypothesis as they found that "guilty verdicts in human rights trials are more likely than those without such outcomes to have a positive impact on human rights" (p. 26). This would suggest that the *enforcement and deterrence* explanation offers a sufficient explanation for the positive effect that transitional justice mechanisms have on human rights. However, the other two hypotheses derived from the deterrence approach were only partially confirmed. The scholars combined effort failed to fully confirm any of the four explanatory frameworks and let them to conclude that each explanatory framework offered merely some clues for a possible explanation (p. 26).

Still not finished with their study on transitional justice, the scholars joined forces once again. In their most recent research Dancey et al., (2019) address the question of the effects of transitional justice mechanisms repeatedly through hypothesis testing (p. 106). Their new findings on transitional justice show that both amnesties and prosecutions correlate with positive rights-based outcomes; however both mechanisms have divergent effects. They find that "Prosecutions are indicated with declines in physical integrity violations – political imprisonment, torture, unlawful killing, and disappearance" (p. 100). The authors confirm that prosecutions carry out a deterrent effect. This effect is larger when those prosecutions produce guilty verdicts (p. 106). Amnesties on the other hand are associated with improvements in civil and political rights (p. 100). Nevertheless, they have an important remark, noting that: "Amnesties are not significantly correlated with improved physical integrity protections.

Instead, they enhance the prospects for civil and political rights protections, which supports open democratic competition". This effect is small, and little is known about the determinants of civil and political rights protections (p. 108). These new findings on transitional justice show once more that the deterrence effect possibly explains the positive findings of trials on human rights scores.

As shown above, research into the effects of transitional justice mechanisms has made a huge step forward. Nevertheless, one region remains remarkably underexposed in this new research field. In one of their earlier research Sikkink and Kim (2013) note that there is a significant variation in the regional distribution of prosecutions of human rights violations. They however wrongfully argue that in the MENA-region no domestic prosecutions occurred (p. 274). In fact, the new developed transitional justice database shows that even in the 1970's domestic criminal trials occurred in this region. Moreover, in other research, scholars fully excluded authoritarian countries in their case selection. They assume that these countries do not have an independent judiciary and therefore no genuine trials for human rights violations can be held in these countries (Kim & Sikkink, 2010, p. 946). So far, based on this selection criterion, most countries of the MENA-region have not been included in previous research on transitional justice mechanisms. However, these assumptions have never received adequate testing (Kim & Sikink, 2010, p. 946). Vinjamuri and Snyder (2015) therefore critically argue that: "empirical research on transitional justice has been lax in dealing with problems of selection bias and endogeniety in causal interference about the effects of different justice mechanisms" (p. 306). The positive effect that previous researchers have found may well have been caused by the democratic transition itself. "Any impact attributed to transitional justice mechanisms might in fact trace back to openings in the judiciary that are also created during the process of democratic transitions" (Dancey, et al., 2019, p. 102). The fact that previous researches used the same selection criteria could cloud causal inference, because any statistical correlation might be caused by other processes at work.

Hence, it is of scientific interest to examine the transitional justice mechanisms in the MENA-region more closely. The goal of this paper is to contribute to the existing literature of transitional justice mechanisms by including the MENA-region into this research field. Compared to other research in the field of transitional justice, it might seem that this study is taking a step backwards. This step is, however, important to take in order to carefully map the phenomenon of transitional justice mechanisms in this region and in order to successfully conduct this exploratory research. It starts by examining the prevalence of the transitional justice mechanisms in the MENA-region more carefully. Subsequently, this study will provide insights in the impact of the presence of transitional justice mechanisms on the human rights scores in the MENA-region. Finally, a distinction will be made between countries that have, and those who have not, undergone a democratic transition to see whether this plays an important role in determining the human rights scores in these countries. With this approach, this study draws special attention to an area that was previously excluded from the transitional justice literature and is the first to conduct research on the transitional mechanisms in this region.

Method

The following section describes the data and methods used in this study. Is should be stressed that the aim of this study was to provide insights about the potential impact of the presence of transitional justice mechanisms in the MENA-region on the human rights scores in these countries. Because no research has been conducted on the transitional justice mechanisms in this region, this study remains exploratory in nature. So far, no clear overview of the transitional justice mechanisms in the MENA-region has been given. It is for this reason that this research is mainly limited to descriptive statistics in order to provide this general overview and to find out whether any trends exists in the data from this region. In order to carry out this research, a

new data set was established combining all available data from the MENA-region.

The newly established data set only includes data from the countries belonging to the MENA-region and excluded all others, meaning that the data was not randomly collected. The sample was collected with a specific purpose in mind, also known as judgmental sampling, which means that the conclusion is not generalizable to the population at large. Nonetheless, this was not the purpose of this research, which primary goal is to provide new insights on the manifestation of transitional justice mechanisms in the region. The newly constructed database includes information on 19 countries inside the MENA-region from 1981 to 2011. This group of countries corresponds to those countries that have been defined by the World Bank as countries belonging to the MENA-region (The World Bank, 2019). The list of countries is included and can be found in the appendix 1 below (see table 1). The database however, did not include data from the West Bank and Gaza. This because, the transitional justice database did not provide any information from these areas.

Moreover, to see whether the transition to democracy plays an important role in the determining the human rights scores in these countries, this research distinguishes between countries that have experienced a democratic transition and those that have not (also see table 1 in appendix 1). The Polity IV database provides a per country authority trend overview, which records the POLITY score per year. This score ranges from +10 (full democracy) to - 10 (full autocracy). Our database included five countries that experienced a major democratic transition. This means that:

"There was a six points or greater increase in the POLITY score over a period of three years or less, including a shift form an autocratic POLITY value (-10 to 0) to a partial democratic POLITY value (+1 to +6) or full democratic POLITY value (+7 to +10)" (Marshall, Gurr & Jaggers, 2016, p. 35).

Additionally, three countries in the data set only experienced a positive regime change, meaning that these countries did experience an increase of three points or more in the POLITY score, but without a shift in the regime type. The other eleven countries did not experience a regime transition. The data set thus consisted of 19 countries, which means that the analyses conducted for this research are based on a relatively small N, which also reduces the generalizability of the conclusion. However, as aforementioned, the aim of this study is not to make assumptions for the rest of the population. This explorative study aims to contribute to the existing literature on transitional justice and human rights by closing the regional gap. The newly established dataset included the following variables:

Independent Variables

Data for the new data set was retrieved from the transitional justice database, also known as the Transitional Justice Research Collaborative (TJRC, 2012). This database encloses the three main independent variables and is seen as the most comprehensive single collection of information on the transitional justice mechanisms for countries around the world. The founders of this database paid particular attention to make sure that they distinguished "transitional" justice mechanisms from "normal" justice mechanisms. They gathered their data using a coding manual, ensuring that this data conforms to their predefined definition of trials, truth commissions and amnesties.

Accordingly, human rights criminal prosecutions are defined as "the use of domestic, foreign, or international courts of law with the aim to hold perpetrators criminally accountable for human rights violations" (Sikkink, Payne, Dancy & Marchesi , 2014, p. 4). Following this definition, the scholars differentiated between domestic and international prosecutions. Most prosecutions were coded as domestic trials, which encloses all prosecutorial activity conducted within a domestic court within a single country, for crimes committed in that country. They differ from international trials, which are initiated by the international criminal court or other

international tribunals. Important to note here is that international trials are the exception rather than the rule, because these are the backup institutions or last resort when the main model of domestic enforcement fails (Sikkink & Kim, 2013, p. 272). This is also apparent from the data from the MENA-region, which reveals that only one international prosecution has been conducted in one of the MENA-countries in a period of over thirty years. Hence, the data on international prosecutions is not included in the newly established data set. Even with the omission of the international prosecutions, it is still possible to make statements about the possible relationship between the transitional justice mechanisms and the human rights score in these countries. Certainly because, international prosecutions proceed completely outside of the control of legislative or executive actors and therefore have less far-reaching consequences for the domestic order (Dancey, et al., 2019, p. 104).

The selection criteria for amnesties to be included in the TJRC involved determining whether an amnesty explicitly covers human rights violations. Only those legislative, constitutional or executive provisions granting impunity for human rights violations were included in their sample of cases (Sikkink, Payne, Lessa & Pareira, 2014, p. 3). Lastly, truth commissions are defined as "a formal, state-sanctioned, temporary body that investigates a pattern of past human rights abuses and aims to include a final report of its findings" (Sikkink, Payne, Lynch & Marchesi, 2013, p. 3).

The data from this database is thus extremely suitable for this research and can be used directly for this analysis. Nevertheless, this database also has its limitations because no new data was collected after 2010. Additionally, while the founders of the TJRC have done their utmost to cover all truth commissions and amnesties, they do not claim to provide a complete record of transitional justice event. The scholars acknowledge that is impossible to know how many cases they have overlooked, or to know if retrievable information is missing from their records. They however also note that this is not necessarily a problem specific to their data

collection, but a general problem concerning all event history data (TJRC, 2012). Hence, their database is widely accepted as the best dataset on transitional justice available.

Dependent variables

In order to be able to say something about the possible relationship between transitional justice mechanisms and human rights outcomes, this study uses the same two measures of human rights as previous transitional justice scholars. It uses two measures for the simple fact that using a variety of human rights measures is seen as essential, because it improves the internal validity of the research (Olsen et al., 2010, p. 994).

Firstly, the Physical Integrity Rights Index (PHYSINT), generated by Cingranelli and Richards, provides a scale that quantifies government protection against specific human rights violations, including torture, extrajudicial killing, political imprisonment and disappearance. The PHYSINT score ranges from zero, meaning no government respect for physical integrity rights to eight, meaning full government respect for these rights. Secondly, the Political Terror Scale (PTS) indicates whether terror has expanded to the entire population or whether citizens are relatively safe and protected from wrongful imprisonment and torture. For this research, the Political Terror Scale was recoded, so that the data from the PTS-scale now coincides with the PHYSINT-score. This means that a higher score on the PTS-scale is now also equivalent to an improvement in the human rights situation of a country. The political terror score ranges from one to five, whereas one indicates that murders, disappearances and torture are a common part of life and that leaders place no limits on the means with which they pursue their personal or ideological goals. A country that acquires a score of five is seen as a country that is secure under the rule of law and where people are not imprisoned for their views.

Nevertheless, these databases also have their limitations. An improvement on one of the two human rights scales does not mean that the overall quality of life for the people living in the MENA-region has actually improved. Critics note that using a quantitative analysis fails to

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assess to which extent the mechanisms actually affect the lives of people (Baker, 2009, p. 66). This is mainly because the information available necessarily will be incomplete, because of difficulties regarding reporting human rights. These difficulties include among others, fear within the victims, lack of comprehensive evidence, power of the offender and its dependence on the quality of the communications technology. In addition, it is important to realize that these human rights measures have been designed to establish comparability. By using a simple scale, some countries may obtain the same human rights score, while they actually show great difference in their protection of human rights (Landman, 2004). Nevertheless, conducting a cross-country comparison was essential for this research and these human rights measures provide the most useful data for this purpose.

Analytical method

This paper starts by providing a general overview of the transitional justice mechanisms in the MENA-region, using several descriptive statistics. Because earlier research suggested that no domestic prosecutions occurred in the MENA-region, the first step was to compose a pie chart to present the distribution of the different transitional justice mechanisms in the region. Even more importantly for this research was to determine whether there is a trend in the prevalence of transitional justice mechanisms in the MENA-region. Other researchers have noted an increase in transitional justice mechanisms following the end of the Cold War and the fall of the Soviet Union in 1989 – 1991 (Sikkink & Kim, 2013, p. 273). By visually displaying the number of transitional justice mechanisms over the years, it becomes clear whether this argument also holds for the MENA-region.

The next step was to determine whether changes in the number of transitional justice mechanisms could be associated with a change in the human rights scores in the MENA-region. The transitional justice literature raises the expectation that an increase in the number of transitional justice mechanism correlates with positive human rights scores in a country. By generating a graph that combines the average human rights scores per year of all countries within the MENA-region, together with the number of transitional justice mechanisms per year, a first indication of coherence is visualized. In order to smooth out the fluctuations over the years and to reveal the underlying trend, the moving average has been calculated for both the PTS-Score and the number of Transitional Justice Mechanisms. This method calculates a series of successive averages over predetermined periods, and is therefore extremely useful for forecasting long-term trends. Additionally, the same method was applied to the PSHYSINT-score.

Important to note is that the graphs only include data of all the transitional justice mechanisms added together. It should be recalled that within the transitional justice literature it has been lively debated that not all mechanisms exert the same effect on the human rights scores. However, research has proven that all three mechanisms correlate with positive human rights outcome, for truth commissions this is even solely the case when combined with trails and amnesties (Olsen, et al., 2010, p. 996). Nevertheless, the computed graphs did not indicate a positive relationship between transitional justice mechanisms and the human rights measures. It is for this reason that this research does not specifically elaborate on the differences in effectiveness of the three transitional justice mechanisms separately. Moreover, because these first findings suggested that a positive relationship is highly unlikely to be found with the data from the MENA-region, this research will also not elaborate on possible explanations for the positive effect of transitional justice mechanisms on the human rights scores

Instead, the direction and the strength of the relationship between the transitional justice mechanisms and human rights scores was measured using the Pearson's r test. This statistical analysis assesses to what extent two variables co-vary and indicates the strength of a relationship between two variables. One of the assumptions for this analysis is that pairs of observations are independent. This assumption is violated in repeated measures, in which each

participant provides more than one data point (Bakdash & Marusich, 2017, p. 1). Admittedly, both the human rights scores and the number of transitional justice mechanisms have been reported per country per year, resulting in a violation of the Pearson's r assumption. Seeing that, the subjects means were calculated in order to control for the repeated observations. This in turn resulted in a relatively small sample (N = 31), which influences the test reliability. If sample sizes are large, the bias is relatively small. Conversely, when the number of observations are small, they can vary greatly. Nevertheless, by bearing this in mind and by comparing the results from the Pearson's r test with the previously found trend lines from the graphs, it is possible to make a statement about the relationship between the transitional justice mechanisms and the human rights scores in the MENA-region.

Additionally, critics have argued that: "this aggregation may resolve the issue of nonindependence but can produce misleading results if there are meaningful individual differences" (Bakdash & Marusich, 2017, p. 2). A univariate analysis of variance in which the variable country was included as a random factor, showed that the outcome of the PTS-score varies significantly per country (see table 2 in appendix 1). To make the differences per country more transparent graphs per country were computed, including the number of transitional justice mechanisms and the human rights scores over time. In previous research, only the countries that successfully made a transition to democracy were included in the data set. However, within the transitional justice literature there is an ongoing debate about the desirability of this selection criterion. Some critics argue that this selection criteria could cloud causal inference and that the improvement in human rights might be attributed to the process of democratic transitions. The MENA-region includes three different types of countries; namely those who have experienced a democratic transition; those who have experienced a positive regime change and those who have not experienced a transition. By comparing previous graphs with the graphs of the authority characteristics of the states (drawn on the basis of the POLITY IV score) it becomes possible to see if the differences between countries depend on whether or not they experienced a democratic transition.

Results

As previously mentioned this study starts with visually displaying the prevalence the transitional justice mechanisms in the MENA-region. Figure 1 presents the distribution of the transitional justice mechanisms in the sample of 19 regimes, and indicates that transitional justice mechanisms certainly occur in this region. Additionally, the pie chart clearly shows an uneven distribution, in which domestic prosecutions are most common. Domestic Prosecutions occur almost four times more often than Amnesties.

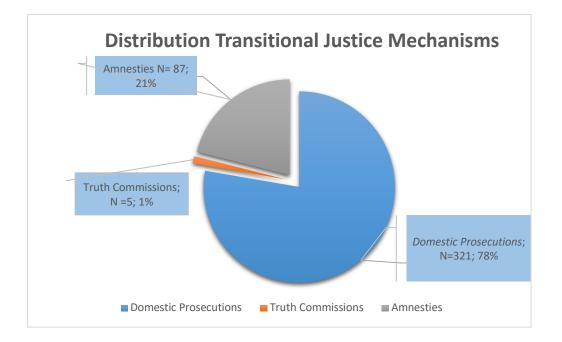


Figure 1. Distribution transitional justice mechanisms in sample of 19 regimes over a 30-year period. *Note:* Number and percentage of domestic transitional prosecutions, truth commissions and amnesties, 1981 - 2011.

This simple pie chart, however does not visualize the trend in Transitional Justice Mechanisms for the period 1981 to 2011. Figure 2, therefore visually depicts an overview of annual data on trends in the transitional justice mechanism and separately displays each mechanisms.

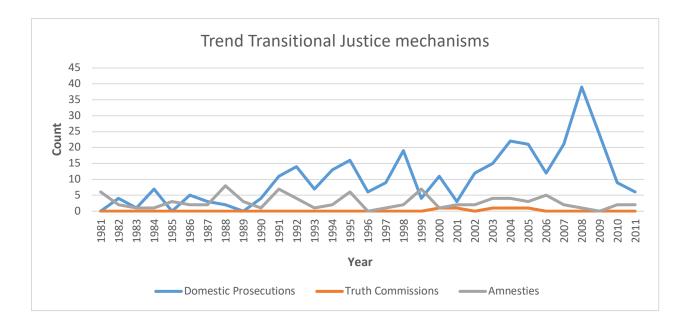


Figure 2. Trends for each mechanisms separately displayed. Note: Numbers based on yearly counts of transitional justice mechanisms from the TJRC Database

This graph corresponds with previous findings in the global trends of transitional justice. Researchers have noted an increase in transitional justice mechanisms following the end of the Cold War and the fall of the Soviet Union in 1989 – 1991. Similarly, this trend is also evident in the data from the MENA-region.

However, the clear increase in the prevalence of transitional justice mechanisms does not say anything about a possible effect of these mechanisms on the human rights scores in the MENA-region. To determine whether changes in the number of transitional justice mechanisms could be associated with a change in the human rights scores in the region, graph 3 and 4 also include data from the human rights measures. The trend line of both variables is also included in the graphs, so that the overall trend is shown more clearly. Figure 3, suggest that there is no relationship between both variables. By looking at the graph, it becomes clear that the PTSscore has hardly changed within the MENA-region over a 30-year period. Thus, the graph visually depicts that an increase in the number of transitional justice mechanisms in the MENAregion does not seem to coincide with an increase in the PTS score in this region. By looking solely at the trend line, this line even seems to indicate a weak negative relationship between the variables.

Using a single variable to measure the human rights scores for the entire region could result in a biased outcome. For this reason, a similar graph was compiled to control for the human rights score based on the data retrieved from The Physical integrity Rights Index (PHYSINT). Figure 4 shows a slightly lager decrease in the human rights score. Any difference between the two human rights measures can be explained because the PHYSINT score coverage is somewhat sporadic during political transitions (Olsen, et al., 2010, p. 994). Regardless of these small differences, both graphs show that the human rights scores in this region remain relatively stable over time and does not appear to be changing accordingly to the increase in transitional justice mechanisms.

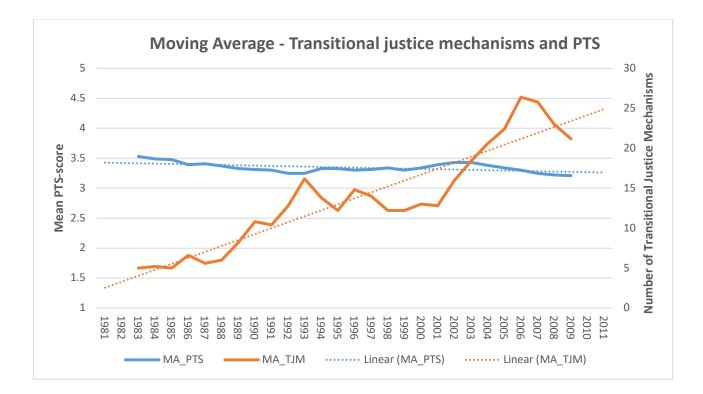


Figure 3. Moving Average of the transitional justice mechanisms and the PTS-score (mean) in the MENAregion measured over 30 years. *Note:* Graph includes the trend line for both the PTS-score and the transitional justice mechanisms

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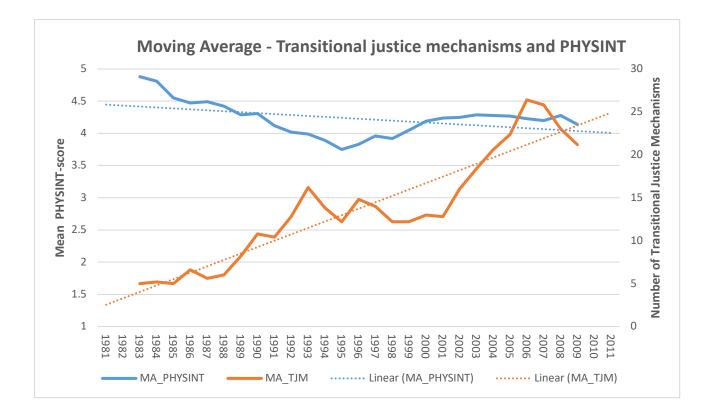


Figure 4. Moving Average of the transitional justice mechanisms and the PHYSINT-score (mean) in the MENA-region measured over 30 years. *Note:* Graph includes the trend line for both the PHYSINT-score and the number of transitional justice mechanisms

To examine the association between the two variables more closely a Pearson's r test was performed. This statistical analysis assesses the direction and the strength of the relationship between the transitional justice mechanisms and human rights scores and the results of this statistical analysis can be found in table 1. Important to note is that an alpha level of 0,05 was used for all statistical test.

First, a moderate significant negative correlation was found between the transitional justice mechanisms and the PTS-score, r (31) = -0,468, p = 0,008. This means that increases in the number of transitional justice mechanisms correlated with small decreases in the human rights scores. This corresponds to the impression already outlined in the graphs. By way of contrast, while performing the same statistical analysis using Pearson's r, the PHYSINT score revealed a non-significant trend in the predicted direction r (31) = -0,168, p = 0,367. It is quite

possible that the aforementioned deviation in the PHYSINT score, because of reporting difficulties during democratic transitions, can explain these findings.

		Total	PTS-score	PHYSINT	
		Transitional			
		Justice			
		Mechanisms			
Total	Pearson Correlation	1	-,468**	-,168	
Transitional	Sig. (2-tailed)		,008	,367	
Justice	Ν	31	31	31	
Mechanisms					
PTS-score	Pearson Correlation	-,468**	1	,447*	
	Sig. (2-tailed)	,008		,012	
	N	31	31	31	
PHYSINT	Pearson Correlation	-,168	.447*	1	
	Sig. (2-tailed)	,367	,012		
	Ν	31	31	31	

Note: **. Correlation is significant at the 0.01 level (2-tailed).

*. Correlation is significant at the 0.05 level (2-tailed)

A more detailed analysis of each transitional justice mechanism individually while using the same statistical analysis (Pearson's r) could offer a more refined picture and. Tabel 2 shows that the previous found correlation is mainly based on the correlation between domestic prosecutions and the PTS-Score, r(31) = -0,457, p = 0,010. This indicates a moderate, negative correlation between the number of domestic prosecutions and the PTS-score in the region. Again, no significant correlation between the domestic prosecutions and the PHYSINT score was found r(31) = -0,227, p = 0,219. Remarkably, for all other transitional justice mechanisms, the results indicate that there is no significant correlation with the human rights scores. However, this does not lead to the conclusion that only domestic prosecutions will have an impact on the human rights scores in general. Because these analyzes are based on a small N, the outcome only applies to the MENA-region.

		PTS-score	PHYSINT	Domestic Prosecutions	Amnesties	Truth Commissions
DTC	Decementation	1	447*	157*	095	200
PTS-score	Pearson Correlation	1	,447*	-,457*	-,085	,208
	Sig. (2-tailed)	21	,012	,010	,648	,262
	N	31	31	31	31	31
PHYSINT	Pearson Correlation	,447**	1	-,227	,260	-,086
	Sig. (2-tailed)	,010		,219	,158	,645
	N	31	31	31	31	31
Domestic	Pearson Correlation	-,457**	-,227	1	-,153	,206
Prosecution	Sig. (2-tailed)	,010	,219		,413	,265
S	N	31	31	31	31	31
Amnesties	Pearson Correlation	-,085	-,260	-,153	1	-,001
	Sig. (2-tailed)	,648	,158	,413		,994
	N	31	31	31	31	31
Truth	Pearson Correlation	,208	-,086	,206	-,001	1
Commissio	Sig. (2-tailed)	,262	,645	,265	,994	
ns	N	31	31	31	31	31

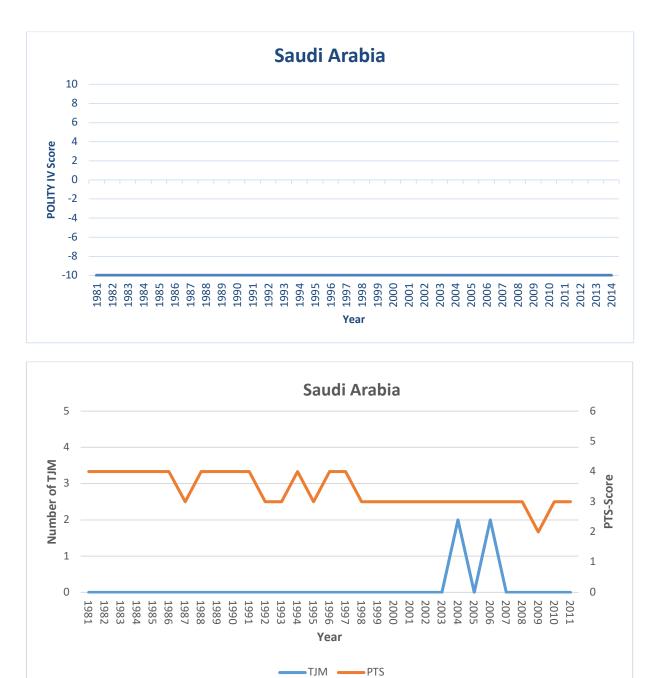
Note: **. Correlation is significant at the 0.01 level (2-tailed).

Table 2

*. Correlation is significant at the 0.05 level (2-tailed).

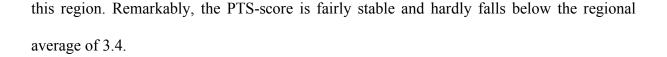
Moreover, the data from the MENA-region differs from existing research because the countries in the data set differ on the extent to which they have experienced a democratic transition. To date, researches have not taken into account the possible impact that the transition to democracy might have on the human rights scores in a country and how this relates to their results found with regard to transitional justice mechanisms. A univariate analysis of variance, in which the variable country was included as a random factor, indicates that the outcome of the PTS-score varies significantly per country (see table 2 in appendix 1). In order to provide insights into these differences per country, graphs have been computed per country that show information about their democratic transition (POLITY IV score), as well as the number of transitional justice mechanisms in the country over the years and the human rights score over time (PTSscore). Beforehand a classification was made, dividing the countries that experienced no transition, those who had a positive regime change and those who experienced a transition.

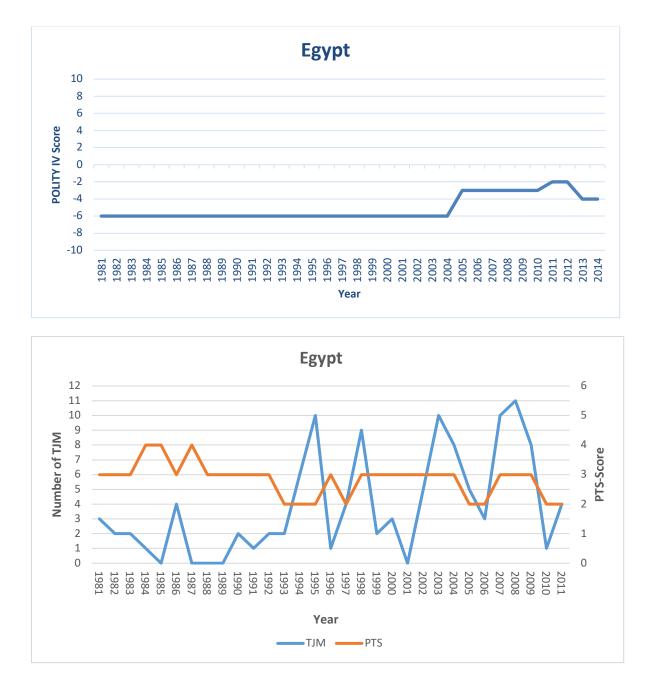
From each subdivision, two cases were selected based on their surprising results. Thus, the six most appealing are displayed below, but all cases are included in appendix 2.



No transition countries:

Saudi Arabia clearly did not experience any shift on the POLITY IV score. Moreover, the number of transitional justice mechanisms is relatively low compared to other countries from





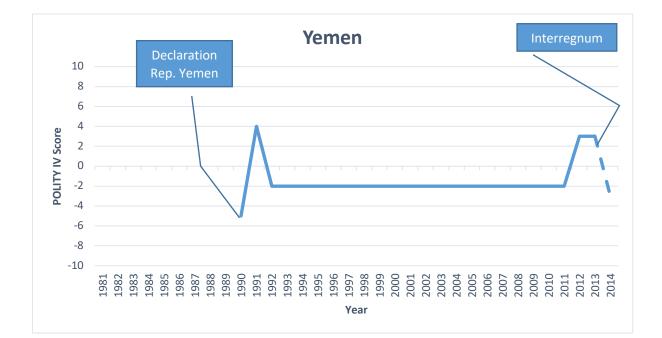
Egypt is an example of a country where the number of transitional justice mechanisms is quite high. However, the POLITY IV score indicates that there has been no democratic transition in Egypt. This could indicate at least that the prevalence of transitional justice mechanisms is not related to the transition to democracy. Moreover, the country has to deal with fluctuations in the PTS-score, indicating a negative decline of the human rights in this country. This is also

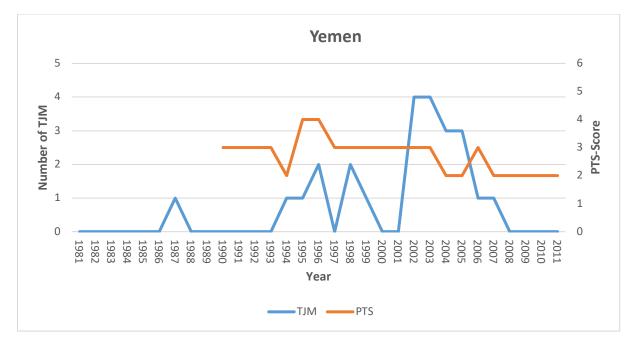
interesting because there is no indication in this country that an increase in the number of transitional justice mechanisms corresponds to an increase in the human rights score of this country.



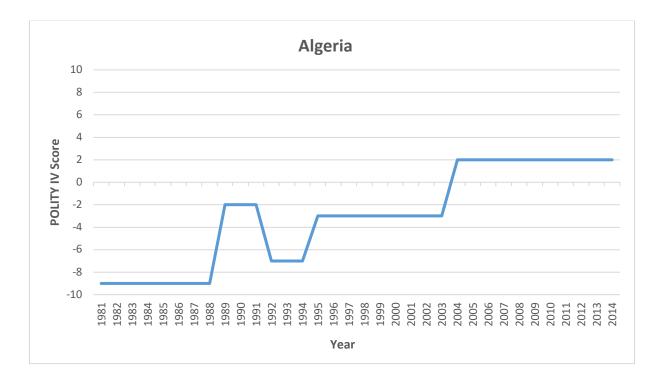
Positive Regime Change Countries

Jordan is one of the three countries that experienced a positive regime change, which took place from 1988 to 1992. In this country, it seems to be the case that the state response to past repression is halted to when the country had reformed its institutions. As a result the increase in the number of transitional justice mechanisms only starts later in time. Nevertheless, the PTSscore decreases over time and does not appear to be influenced either by an increase in the number of transitional justice mechanism or a shift on the POLITY IV score.

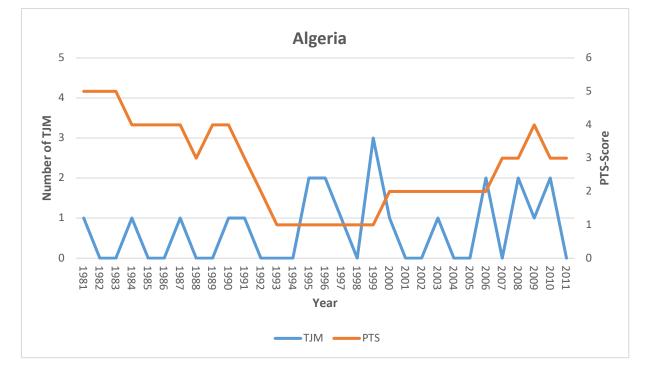




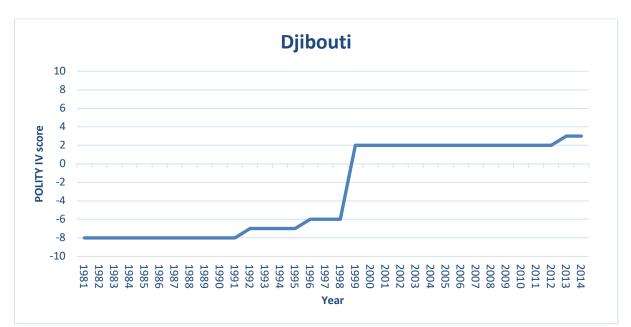
With Yemen, it also seems to be the case that after the Positive Regime change the number of transitional justice mechanisms is increasing. Nevertheless, and similar to the above graph of Jordan, the PTS-score only decreases over time.

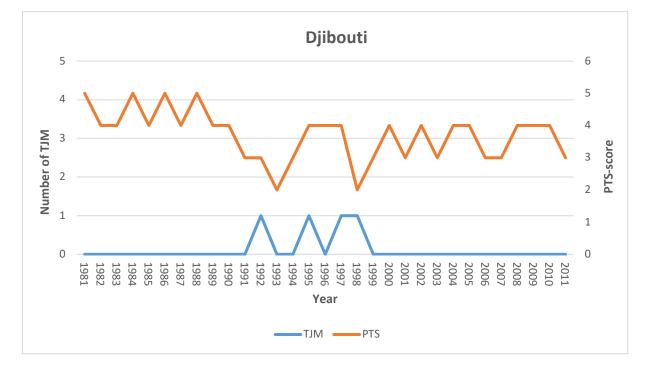


Democratic Transition Countries



Algeria is an interesting case because the graphs seem to display what previous transitional justice scholars have found in their research. At first, the PTS-score decreases this is due to the potential conflicts that occur during a transition. Gradually Algeria obtains a positive POLITY IV score. At the same time the number of transitional justice mechanism increases and from 2000 onwards the PTS score of Algeria increases.





Djibouti, on the other hands, displays a very different picture. The graphs indicate that a transition to democracy does not necessarily corresponds with increases in the number of transitional justice mechanisms and not even with an improvement in the human rights score of the country.

These graphs show that the results per country can differ greatly, even for countries that have been assigned to the same group. These results are further discussed in the discussion below.

Discussion

Because no research has been conducted on the transitional justice mechanisms in this region, the results section starts with presenting the descriptive statistics that describe the scope and trends of the transitional justice mechanisms in the MENA-region. As shown by figure 2, the overall trend in the emergence of transitional justice mechanisms in the MENA-region does not seem to deviate from previous findings in global trends of transitional justice, who have noted an increase in the number of transitional justice mechanisms from 1989 onwards. Other scholars have noted a clear shift away from amnesties already starting in 1992 (Sikkink & Kim, 2013, p. 273). Here, the data from the MENA-region differentiates. The number of amnesties remains practically the same over the years, so that the trend line runs almost horizontally. It is possible that, because there are no huge increases or decreases in the number of amnesties in this region, that this has consequences for the results found in the Pearson's r test. This will be discussed later on in the discussion.

Moreover, graph 3 and 4 present an overview of the general trend in both the PTS-score and the number of transitional justice mechanisms. The graphs clearly visualize the increase in the number of transitional justice mechanism, but also show that both the human rights score hardly change over time. In fact, the PTS-score does not even move one point on the PTS-scale over a 30-year period. The PSHYSINT variable seems to show slightly more variance here, which can be explained because the PHYSINT score coverage is somewhat sporadic during political transitions. Nevertheless, this score was measured on an 8-point scale and the differences therefore remain minimal. However, when looking at the trend line, it appear that even though these changes might seem small at first sight, the line indicates a decreasing trend, which would even suggests a weak negative relationship between the variables. These findings contradict with the earlier findings of transitional justice scholars. Because the general graphs did not indicate a possible positive effect of the transitional justice mechanisms on the human rights scores, it was decided not to compute graphs for each mechanism separately. This is also the reason why this research has not further contributed to the existing debate on how transitional justice mechanisms exert their positive effect on human rights.

Instead, the direction and the strength of the relationship between the transitional justice mechanisms and human rights scores was measured using the Pearson's r test. Table 1 showed a moderate significant negative correlation between the transitional justice mechanisms and the PTS-score. This corresponds to the image shown in graph 3. Remarkably, when performing the same statistical analysis, the PHYSINT score shows no statistical correlation with the prevalence of transitional justice mechanisms. In previous studies, there was no mention of a difference in significance between the two human rights measures (Dancey, et al., 2013, p. 11; Dancey et al., 2019, p. 107). As mentioned before, it is possible that this human rights measure is not adequately measured in times of political transition. It is therefore quite possible that in a region with a lot of tension, such as the MENA-region, more data was coded as missing.

Additionally, table 2 elaborates on the correlation between the human rights score and each mechanism separately. As expected, no statistically significant correlation was found between one of the transitional justice mechanisms and the PHYSINT score. More importantly are the findings of the Pearson's r correlation of the PTS-score and the three transitional justice mechanisms. These indicate that the previously found negative correlation mainly depends on the domestic prosecutions, because amnesties and truth commission are no longer statistically significant. However, it is not possible to conclude from these findings that amnesties and truth commissions generally have no effect on the human rights score in a country. It is important to stress that Pearon's r was performed using a relatively small N, making biased outcomes more likely. Moreover, as figure 1 and 2 indicate both mechanisms were less common and there is no significant increase in the prevalence of amnesties and trials in this region. Because they occur less frequently, the possible effects of these mechanisms will be less visible.

Finally, there were various reasons for looking further into the differences between countries. Firstly, all analyzes in this research so far, have been carried out on the basis of the average of all countries combined. A quick univariate analysis of variance, in which the variable country was included as a random factor, already showed that the outcome of the PTS-score varies significantly per country. Additionally, within the transitional justice literature there is uncertainty as to whether a transition to democracy is a pre-condition for the effects found on transitional justice mechanisms. The data per country provided some interesting insights.

Most interestingly were the findings of the countries who had experienced a democratic transition, as the outcomes differed greatly per country. For example, Algeria was one of the few cases that showed some correspondence with findings from the previous transitional justice literature, as the human rights score improved over time after the political transition while at the same time the number of transitional justice mechanisms increased. Remarkably, the Djibouti graphs display a completely different picture, there seems to be no improvement of the human rights score and no increase in the number of transitional justice mechanisms, while the country shifted to a positive POLITY IV score. Fletcher, Weinstein and Rowen (2009) provide a possible explanation for this finding in their article. They argue that it takes time before a country is able to address previous human rights violations and that it takes approximately six to eight years after the onset of the transition before a country is able to undertake judicial reforms (p. 206). However, the political transition in Djibouti ended as early as 1999, and now

more than ten years later this change does not seem to have happened.

Not only the findings from the democratic transition countries proves to be interesting, also the data from countries that did not experience any transition provide interesting insights. For instance, the number of transitional justice mechanisms in Egypt is relatively high compared to the other countries in this region. However, this fact does not seem to impact the human rights scores in this country. This could indicate that a democratic transition is indeed a pre-condition and that transitional justice mechanism only exert an influence on the human rights scores in a country after democracy has been established. Most authoritarian regimes do not have an independent judiciary and therefore, it can be questioned whether fair trials exists in these countries (Kim & Sikkink, 2010, p. 946). Furthermore, most countries that did not experience a democratic transition showed a graph similar to that of Saudi Arabia. What is striking about this graph are the fairly high and constant human rights scores in this fully authoritarian regime. This could be explained by the aforementioned difficulties regarding the reporting of human rights. Either way, there is no reason to believe that the human rights score in Saudi Arabia is currently being influenced by the prevalence of the transitional justice mechanisms in this country.

Lastly, the graphs of the positive regime change countries also do not indicate that an increase in the number of transitional justice mechanisms corresponds with positive human rights outcomes. The graph of Jordan shows that their positive regime change already took place in 1988. As expected the transitional justice mechanisms arise sometime after the transition, but again there is a decrease in the human rights score. It is important to note that Jordan cannot yet be seen as a fully-fledged democracy and that this may provide the underlying explanation for the lack of improvement of the human rights scores in this country. Additionally, in Yemen the positive regime change also took place several years earlier than when the eventual increase in transitional justice mechanism. Here too, both have had no impact

on the human rights score in the country, but also Yemen cannot be considered a democracy.

What becomes clear from this analysis is that no one country is really the same. The situation in the MENA-region remains complex and the differences between the countries may explain the unexpected findings of this study. On the whole, it seems to be the case that when countries have not experienced a transition of democracy there is no improvement of the human rights scores and in that case it does not seem to matter whether or not there is a presence of transitional justice mechanisms in these countries. From this, it can be cautiously concluded that a transition to democracy is an important precondition and that it is quite possible that earlier research overestimated the effect that transitional justice mechanisms have on the human rights scores. Nevertheless, these assumptions are drawn solely on descriptive statistics. To improve further research into transitional justice mechanisms it is important to conduct more research into the preconditions by making use of a larger dataset and more extensive statistical analyzes.

Conclusion

This research came about after discovering a regional gap in the transitional literature and was set up to explore the possible impact that transitional justice mechanisms have on the human rights scores in the MENA-region. With the negative correlation found between transitional justice mechanisms and human rights scores, this research calls into question the assumptions made by transitional justice scholars. Nevertheless, it argues that these contradictory findings might be explained because these countries differ in their regime type. In countries who did not experience a democratic transition the human rights score does not seem to improve, regardless of the number of transitional justice mechanisms. With these findings, this research contribute in an interestingly new way to the literature on transitional justice mechanisms, because it is the first study to look at the possible preconditions of transitional justice mechanisms. The findings from this study seem to indicate that transitional justice scholars may have overestimated the effect that transitional justice mechanisms have and that improvement of the human rights conditions in fact trace back to openings in the judiciary caused by the democratic transition. As previously stated, this study remains an explorative study and further research on these assumptions should be carried out to strengthen the research concerning transitional justice mechanism.

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Country	Transition					
Algeria	Transition starting in 2004					
Bahrain	No transition					
Djibouti	Transition starting in 2000					
Egypt	No transition					
Iran	Transition starting in 1997 reversal in 2005					
Iraq	Transition starting in 2003					
Israel	No transition					
Jordan	Positive regime change starting in 1989					
Kuwait	Positive regime change starting in 1990					
Lebanon	No transition	-				
Libya	No transition					
Morocco	No transition					
Oman	No transition					
Qatar	No transition					
Saudi Arabia	No transition					
Syria	No transition					
Tunisia	Transition starting in 2011					
United Arab Emirates	No transition					
Yemen	Positive regime change starting in 1990					

Appendix 1

Univariate Analysis of Variance - Parameter Estimates

Table 2 Parameter Estimates. Dependent Variable: PTS. Random Factors: Year							
Parameter	В	Std. Error	Т	Sig.	95% Confidence Interval		
					Lower Bound	Upper Bound	
Intercept	3,054	,256	11,930	,000	2,551	3,556	
Transitional Justice	-,127	,026	-4,813	,000	-,179	-,075	
Mechanism							
[YEAR=1981]	,580	,372	1,558	,120	-,151	1,311	
[YEAR=1982]	,403	,372	1,083	,279	-,328	1,134	
[YEAR=1983]	,373	,372	1,003	,316	-,358	1,104	
[YEAR=1984]	,385	,378	1,018	,309	-,358	1,128	
[YEAR=1985]	,439	,372	1,181	,238	-,292	1,171	
[YEAR=1986]	,411	,372	1,103	,270	-,320	1,142	

[YEAR=1987]	,337	,372	,905	,366	-,394	1,068
[YEAR=1988]	,374	,372	1,006	,315	-,357	1,105
[YEAR=1989]	,381	,372	1,023	,307	-,350	1,112
[YEAR=1990]	,085	,362	,236	,814	-,625	,796
[YEAR=1991]	,120	,362	,330	,741	-,591	,830
[YEAR=1992]	,103	,372	,275	,783	-,629	,834
[YEAR=1993]	-,053	,362	-,146	,884	-,763	,658
[YEAR=1994]	,047	,362	,129	,897	-,664	,757
[YEAR=1995]	,252	,362	,695	,488	-,460	,963
[YEAR=1996]	,460	,362	1,273	,204	-,250	1,171
[YEAR=1997]	,119	,362	,328	,743	-,592	,829
[YEAR=1998]	,087	,362	,240	,810	-,624	,798
[YEAR=1999]	,125	,362	,347	,729	-,585	,836
[YEAR=2000]	,244	,362	,675	,500	-,467	,954
[YEAR=2001]	,250	,362	,691	,490	-,461	,960
[YEAR=2002]	,303	,362	,839	,402	-,407	1,014
[YEAR=2003]	,343	,362	,949	,343	-,368	1,055
[YEAR=2004]	,390	,363	1,076	,282	-,322	1,103
[YEAR=2005]	,324	,362	,895	,371	-,388	1,036
[YEAR=2006]	,165	,362	,457	,648	-,545	,876
[YEAR=2007]	,153	,362	,422	,673	-,559	,865
[YEAR=2008]	,267	,364	,732	,464	-,449	,982
[YEAR=2009]	,318	,362	,877	,381	-,394	1,029
[YEAR=2010]	,073	,362	,201	,841	-,638	,783
[YEAR=2011]	0^{a}					

Note: This parameter is set to zero because it is redundant.

Univariate Analysis of Variance - Parameter Estimates

<i>Table 3</i> Parameter Estimates. Dependent Variable: PTS. Random Factors: Country							
Parameter	В	Std. Error	Т	Sig.	95% Confidence Interval		
					Lower Bound	Upper Bound	
Intercept	2,724	,124	21,911	,000	2,480	2,968	
Transitional Justice	-,020	,018	-1,083	,279	-,056	,016	
Mechanism							
[COUNTRY=1]	,989	,175	5,644	,000,	,644	1,333	
[COUNTRY=2]	1,021	,175	5,832	,000	,677	1,365	
[COUNTRY=3]	,191	,184	1,038	,300	-,170	,552	
[COUNTRY=4]	-,846	,175	-4,834	,000	-1,189	-,502	
[COUNTRY=5]	-1,363	,176	-7,739	,000	-1,710	-1,017	
[COUNTRY=6]	-,204	,176	-1,160	,247	-,550	,142	
[COUNTRY=7]	1,092	,175	6,242	,000	,748	1,435	

[COUNTRY=8]	1,251	,178	7,031	,000	,901	1,600
[COUNTRY=9]	,105	,192	,548	,584	-,272	,482
[COUNTRY=10]	,019	,175	,111	,911	-,325	,364
[COUNTRY=11]	,483	,175	2,764	,006	,140	,827
[COUNTRY=12]	1,744	,177	9,866	,000	1,396	2,091
[COUNTRY=13]	2,019	,175	11,525	,000	1,675	2,364
[COUNTRY=14]	,666	,175	3,802	,000	,322	1,010
[COUNTRY=15]	-,293	,175	-1,675	,095	-,636	,051
[COUNTRY=16]	,641	,175	3,667	,000	,298	,985
[COUNTRY=17]	1,828	,175	10,438	,000	1,484	2,172
[COUNTRY=18]	,024	,192	,126	,900	-,353	,401
[COUNTRY=19]	0^{a}					

Note: This parameter is set to zero because it is redundant.

Appendix 2

