COMPARATIVE STUDY OF TRANSITIONAL JUSTICE IN AFRICA

TUNISIA

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Overview

This paper details the ongoing experience of transitional justice (TJ) in Tunisia. Tunisia’s TJ process is unique: its timeframe of investigation spans a fifty-eight year period, covering the last year of the French protectorate period to the passing of the Transitional Justice law in 2013, two years following the popular uprising that forced the ouster of Zine Abedine Ben Ali. It is also unique in its broad definition of victimhood, which includes collective victims as groups or entire regions purposefully marginalized by the state. Post-independence Tunisia has not witnessed a clearly demarcated conflict, such as civil war or genocide, yet the continuity of state-building exercise and continuity of violent state strategies were based on policies of targeted repression of regime opponents, economic and social marginalization, and widespread corruption. TJ thus seeks to investigate a range of state-led violations including human rights abuses to structural violation against individual and collective victims throughout the modern history of Tunisia. For the reader to contextualize Tunisia’s early state-building process – on which the modern post-independence Bourguiba and later Ben Ali regimes were founded – the paper first details the pre- and colonial systems as well as a leadership struggle within the pro-independence, nationalist movement that informed subsequent practices of repression and exclusion based on political identity and affinity.

Then, the transitional justice process is evaluated from its inception in the immediate post-Revolutionary period, including a number of ad-hoc mechanisms before the establishment of a Ministry of Transitional Justice and later the drafting and ratification by Parliament of a TJ Law within the new Constitution. The law stipulates a series of TJ mechanisms, including the creation of a Truth Commission, special chambers within the existing court structure to address human rights abuses, and the establishment of a “Fund for the Dignity and Rehabilitation of Victims of Tyranny.” Publically, the discussions about the scope and time-line of the process, have opened important debates about rethinking Tunisian modern history, from decolonization, to modernization, gender equity, security, political identity and the economy. Because the TJ process is an ongoing process in Tunisia (the mandate of the Truth Commission was extended to December 2018. In May of that same year), the paper focuses disproportionately (yet temporally accurate) on the work of the Truth Commissions. Other TJ mechanisms remain in their inception or have not yet been implemented. By analyzing the TJ process within the context of Tunisia’s political transition towards democracy, this paper links TJ to broader political and transitional trends, highlighting the challenges of shifting political support, as well as the centrality of political elites involved in the process and the supportive role of civil society. Through the lens of transitional justice, the paper likewise highlights the limitations of Tunisia’s transition to democracy with a critical lens at the sustainability of the TJ process at the end of the Truth Commission’s mandate.

I. Colonial & Conflict Factors

Colonial Factors
Occupation under the French Protectorate significantly modified the Tunisian economic, political, and social landscape. As discussed below, socio-economically, it hardened existing socio-economic and regional cleavages by promoting modern French industrialization on the coasts and settler colonialism to the interior. Infrastructure projects disproportionately benefited the coastal regions, which too absorbed a significant portion of the peasantry made landless by settler land grabs. Politically, France grafted its institutions onto the existing Beylical political system, still in place today: a unicameral system with a powerful executive. As equally important to the re-wiring of the pre-colonial socio-economic and political systems, colonial repression shaped the national movements’ choice set of mobilization strategies, and played a significant role in imposing its choice in a violent political struggle between nationalist leaders in the year immediately preceding decolonization. The bitter legacies of regional inequality stemming from the protectorate period and continuing into the post-independence Bourguiba and Ben Ali regimes, combined with the memories of the violent strife within the nationalist movement immediately before independence, continue to haunt Tunisian politics to this day. These historical processes have been central to the evolution of the formal Transitional Justice process, its mechanisms and policies. Transitional justice in Tunisia dates to the late protectorate period, because the process seeks to uncover the half century-long genealogy of state formation and how definitive strives among key actors during this period influenced state building and its underpinning structural violations. The following section historicizes the internal and external factors from the pre-protectorate era to early independence, which were key to the establishment of the modern Tunisian state.

Pre-Protectorate Society and Governance

Prior to the Protectorate, Tunisian society was socially stratified and regionally divided between the northeast and central coastal regions and the western central and Saharan hinterlands. Two features distinguish those geographical blocks: the level of centralized versus indirect control from Tunis and the degree to which the local population was sedentary.

The northeast and central coastal regions were largely sedentary, controlled directly via the Hussaynid court in Tunis, and structured around fortified interior (e.g. Beja, Qayrawan, and Testour) and coastal (e.g. Hammamet, Sousse, Mahdia, and Sfax) cities. Here, urban power was highly stratified and structured on an aristocratic sociopolitical order, which relied on religious and merchant classes to adjudicate commercial, legal, and religious day-to-day governance. Under

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1 A Bey is an Ottoman title for governor. When we refer to the pre-colonial ‘Beylical’ period in Tunisia, two distinct periods, the period dating from Ottoman control of Tunisia (1574-1705) and the Hussaynid period (1705-1957). During the former, Tunisia’s Beys were officially nominated by and usually sent from Istanbul. Husayn Bey took power in 1705. Subsequent Beys, until the declaration of the Republic on 25 July 1957, were drawn directly from Husayn’s descendants.
the Beys of the Hussaynid Dynasty (1705-1957), society was organized with royal and auxiliary Turkish ruling families at the apex, followed by the commercial and urban bourgeoisie (beldi)^2 of middle status, and finally, agricultural provincial families and local legal scholars and judges (cadi). Non-elites included lower-level administrators, small merchants, lower-level religious scholars (‘ulama), and wealthier artisans, followed by farmers and various strata of artisans, fishermen, laborers, sharecroppers, peasants, the poor, and freed slaves (ca. 1846). Tunisia’s cities and coastal plains were organized by the state, its elites, and communities, with respect to customary property rights, licensing, taxation, and the commercialization of agricultural produce, such as olives and wheat. Diversity within strata was great, owing to differences in property, livelihood, and familial proximity to power and authority, largely limited social mobility between classes and groups.

In the western highlands and southern Saharan regions, society was largely transhumant and predicated on vertical patriarchal relations between extended family networks (or ‘tribes’) composed of greater and lesser clans (tribal subdivisions) and affiliated allied families, which enjoyed fewer rights to wells, pastures, and oases. Large families were the lynchpin of cooperation between the central government and other transhumant groups. Though each clan was represented by a generally hereditary patriarch (shaykh), the combined body of patriarchs of the most important sub-divisions, made the political decisions regarding war, taxation, circumscription, migration.\(^3\)

While matrimonial strategies between tribal clans and urban classes limited social mobility, in the decades immediately preceding French occupation, the old order has already begun to erode. As the prestige and authority of the aristocracy declined, intermarriages increased between them and the urban bourgeoisie. Similarly, as new forms of technology re-arranged capital accumulation strategies, the patronage, contracts, and property rights that bound bourgeoisie to sharecropping families, the ‘ulama to urban managers of religious endowments and land, and provincial and urban elites to artisanal groups producing goods for market and export began to erode. And in the countryside, as the Hussaynid dynasty adopted new techniques of power and governance in these rural hinterlands, patriarchy and patronage increasingly were not the sole bases of tribal governance and leadership selection. By the mid nineteenth century, Tunis increasingly either directly controlled or shared governance of the rural periphery.

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Colonial Trajectories

Tunisia’s colonial legacy (1881-1956) is deeply embedded in the country’s economic, political, and social fabric. France occupied Tunisia in 1881, forcing the beylical regime to sign the 1881 Treaty of Bardo and 1883 La Marsa Convention. The accords established a Paris-nominated French Resident General with paramount authority over diplomacy, defense and taxation. French authorities quickly occupied key posts in the Bey’s ministries, including the Ministry of Finance and Ministry of Justice. Whereas the former was fully controlled by the new administration, the Ministry of Justice was bifurcated into a French and Tunisian system. The Tunisian legal system
primarily dealt with cases involving family code\textsuperscript{4} – which continued to be adjudicated by Islamic law – whereas the French legal system was used to enforce the Resident General’s political demands, and thus buttressed an illiberal system of rule by law, not rule of law.\textsuperscript{5} Though all colonial regimes are authoritarian by design, the legal system did allow Tunisians to appeal administrative decisions that contravened Protectoral law.\textsuperscript{6} The French maintained traditional regional and local authorities in the countryside, though the Resident General named civil controllers to oversee provincial politics and security. Though France was eager to represent the Resident General and administration as a continuation of the status-quo, the eighty-year Protectorate fundamentally re-wired power, society, and economy in the nation in ways that would structure post-colonial politics with important implications to various claims made of transitional justice.\textsuperscript{7}

The Resident General and his administration effectively transformed state-society relations, especially at the regional and local level. Centralizing the system from the top-down, the French protectorate eliminated nearly half of the regional administrative districts while multiplying the number of sub-divisions and administration-named local auxiliaries, reducing the number of countryside authorities with real decentralized control. The civilian service was initially organized according to a two-track system (similar to Justice), legally separating the rules and administration of French and Tunisian cadres. Under this system, Tunisian nationals were legally prohibited from occupying high-ranking administrative posts. The law legally barred Tunisians from serving as high cadres in key administrations such as the Ministries of Finance, Justice, or Interior. French nationals continued to occupy top positions in the civil service, and were dually accountable to Resident General and French ministries from which they were detached for career advancement. Largely limited to clerical positions, Tunisian cadres were expected to simply apply decisions made higher up in the Jacobin, colonial-driven administration, or risk being dismissed for insubordination.\textsuperscript{8} Whereas prior to occupation notable families, local elites, religious leaders, and craftsman guilds maintained a significant degree of autonomy in local political and economic management, French reforms swiftly brought them under the Resident General’s centralized

\footnotesize{\textsuperscript{4} The Tunisian Personal Status Code was promulgated in 1956 and establishes a unique position for women in society, particularly by abolishing polygamy, establishing judicial procedures for divorce as well as mutual consent of both parties for marriage, as well as a minimum age for marriage. It is the first code in an Arab Muslim country that instituted the principle of consent as a requirement for all marriages.}

\footnotesize{\textsuperscript{5} See: Nada Auzary-Schmaltz, Ed. 2007. La justice française et le droit pendant le protectorat en Tunisie. Rabat: Connaissance du Maghreb.}

\footnotesize{\textsuperscript{6} This did not go unnoticed by the nascent nationalist movement (see below): four of the five founding members of the Neo-Destour party were lawyers trained at French universities.}


administration, promoting a culture of control—a top-down administrative culture that would continue in the post-colonial period. The administrations, in turn, would be used to push for a reorganization of the modes of production.⁹

The French Protectorate changed the political, economic, and social order. The Protectorate encouraged French administrators, farmers, industrialists, and merchants to immigrate (and settle), enticing them with the distribution of forcefully confiscated agricultural and urban land. Between 1892 and 1915, close to one-fifth of arable land had been transferred to French settlers and agro-business, encouraging rapid rural migration to Tunisia’s cities, and creating a mass of cheap labor. Particularly targeted were peasant lands in the arable cereal lands of the Northwest and fertile Cap Bon regions. Development of the railway system underscored the foundation of the colonial economy: the expansion of French industries in the coastal cities and the exploitation of agriculture and phosphates from the interior regions. Many Tunisians living in the interior were recruited as permanent laborers on colonial farms, yet many more, especially the displaced, were forced into agricultural day labor or unskilled manufacturing. Through this movement of labor, they were largely excluded from syndical leadership positions.

While there had always been regional disparities, the pre-colonial economy was a decentralized, integrated system, linking countryside to rural villages and towns. These were linked to port cities, which in turn had engaged in trans-Mediterranean trade, connecting Tunisia to Naples, Tripoli, and Cairo. Colonial economic development broke that system, accelerating regional inequalities and retarding local and rural reinvestment in multiple ways. The rapid depopulation of the countryside, a result of dislocated markets and colonial expropriation, affected economic development in rural towns, which had once served as important market centers for vibrant interior trade. In port cities, manufactured and/or imported goods displaced an economy for locally produced goods, especially textiles. Riches from agriculture and (later) phosphate production not transferred to Marseille or other international markets were invested in Tunis, and to a lesser degree in key coastal cities such as Bizerte, Sousse, and Sfax. The re-organization of the economy from a pre-colonial integrated system linking the countryside to major towns and cities into a centralized colonial export-oriented economy based on industrialization of the coastal littoral, increased rural/urban inequalities. This economic structure set into place a model of uneven development that benefited the coastal regions at the expense of the rural hinterland. Created during the Protectorate, these processes would continue into the post-colonial era, generating longstanding grievances among Tunisians excluded from this development model.

Decolonization and Enduring Grievances

The effects of economic dislocation transformed modes of social and political organization, marked by the creation of the anti-colonial Neo-Destour party in 1934. Founded by Habib Bourguiba and Salah Ben Youssef, the Neo-Destour party attracted young men who received their secondary education in Franco-Tunisian schools, who went on to postgraduate studies in France, and who were frustrated by continued socio-economic and political inequalities under the Protectorate: in 1939, only 5,500 of 14,000 administrative posts in the Protectorate were held by Tunisians – posts that offered few career advancement opportunities. Breaking from previous elitist modes of political organization, the Neo-Destour’s founding leadership came predominantly from the coastal Sahel region, and believed that only mass mobilization could ensure political and economic development in preparation for independence. Extremely popular from the outset, by 1937, the Neo-Destour party had close to 28,000 members and four hundred party branches, densely concentrated in Tunis, the Cap Bon Peninsula, and especially the Sahel – areas that received disproportionate investment during the Protectorate (and post-colonial) era. A decade later, in 1946, a nationalist labor organizer, Farhat Hached, broke with existing French labor unions to found the General Union of Tunisian Workers (Union Générale des Travailleurs Tunisiens, UGTT), which by the mid-1950s had a membership base of close to 150,000, or half the Tunisian workforce.

Predicated on authoritarian administrative and racial practices, enforced by the colonial judiciary and police forces, the French Protectorate sought to crush the two organizations – the Neo-Destour and UGTT - through both legal and extra-legal means. Colonial authorities launched three major crackdowns on the Neo-Destour in 1934, 1938-1942, and 1953-1954, in which party leaders were either arrested, charged with sedition, imprisoned, or forced into exile. Indeed, Bourguiba spent more than 10 years in prison between 1934 and 1956 and many years in self-imposed exile. The UGTT faced similar (if not worse) repression, as its leadership was frequently arrested, and militants fell victim to violent anti-union crackdowns. These historical experiences of repression impacted powerful repertoires of authoritarian techniques, but also problematized the categories of victim, oppressor and state.

10 Other original founders include Bahri Guiga, Mahmoud El Materi, and Tahar Sfar, all of whom studied at the Sadiki College and Lycée Carnot, and spent time with Bourguiba and Ben Youssef while in France for graduate studies. Guiga, Sfar, Bourguiba, and Ben Youssef were trained as lawyers, El Materi was a medical doctor.


13 The 1940s was marked by a proliferation of sectoral organizations, which were more closely linked to the Neo-Destour party than the UGTT including the Tunisian Union of Industry, Trade, and Handicrafts (Union Tunisienne de l'Artisanat et de Commerce, UTAC; ca. 1948), the General Union of Tunisian Farmers (Union Générale des Agriculteurs Tunisiens, UGAT; ca. 1948), and the Union Générale des Étudiants de Tunisie, UGET; ca. 1952).

14 Moore 1970: 175.
The national movement paid a heavy toll, as French colonial repression increased in the early 1950s, using both legal and extra-legal methods. In 1952, UGTT founder Ferhat Hached was assassinated by the Main Rouge, a clandestine pro-colonial group with links to the French administration. During the same period, the Neo-Destour’s leadership was frequently imprisoned or forced into exile for fear of assassination. Habib Bourguiba spent more than 10 years in prison between 1934 and 1956 and half that time in exile, during which his comrade and Neo-Destour co-founder Salah Ben Youssef led the party. Ben Youssef, originally from the southern island of Djerba, expanded party membership to outside of its traditional territories located on the eastern coast, especially Tunis and the Sahel region (Bourguiba’s home region). Through this expansion, he included Tunisians from the disinherited central highlands and southern Saharan regions.

The rapid expansion of the party alerted French colonial administrators, which forced Ben Youssef, who had begun to call for a more radical political and economic independence, into exile in 1952. In tandem, administrators sought to actively play on the growing geographic divisions within the party, as well as possible jealousy between Bourguiba and Ben Youssef, the party’s two founding members. In late 1954, France began negotiations with an incarcerated Bourguiba, offering internal autonomy in return for a more measured nationalist approach to negotiations. Bourguiba was released from prison on 1 June 1955, two days before France and the Bey signed a new treaty. Ben Youssef, who also eyed power, returned to Tunisia in September 1955, sparking a series of events that led to violent intra-party confrontations, pitting the Bourguiba and Ben Youssef camps – the latter drawing from a Neo-Destour militant base primarily from the West and South, as well as from religious schools and the Communist party. Worried that the context would explode, France supported Bourguiba, whose positions increasingly backed a pro-Western stance, as Ben Youssef’s was increasingly linked to Pan-Arabism and socialism. This crisis crystalized an enduring cleavage in Tunisian politics between reformists and revolutionaries. While Bourguiba supported gradual independence, Ben Youssef’s position for immediate decolonization paralleled his position for pan-Arabist cooperation. To be sure, while Bourguiba supported Maghreb unity, he placed a premium on building the Tunisian nation. Faced with the dilemma of rising revolutionary ideologies of Socialism and pan-Arabism in Tunisia (and in neighboring Algeria), Bourguiba found it useful to adopt a more conciliatory pro-Western, if not economically liberal, discourse in order to gain assistance from the French-dominated protectorate’s security apparatus in his struggle against Ben Youssef. While Bourguiba’s position may appear to have wavered following the 1961 Bizerte crisis and later adoption of a soft socialism, that early position of reliance on France and later other external powers (United States), locked Bourguiba into a certain political choice-set: his early reformist positions took the form of an appeasable Western friendly modernism. Following the failed 1967 six-day war, many Tunisian proponents of revolution and Pan-Arabism began looking for other alternative (non-Western) sources of political inspiration. In his memoirs, for example, founder of the Movement of Islamic Tendency (later renamed
Ennahda) Rachid Ghannouchi, underscores the intellectual continuity of pan-Arabism to pan-Islamism as young revolutionaries looked for a political compass in the 1970s. The incompatibility of reformist and revolutionary outlooks on domestic and international politics, as well as the bitter and struggle between Bourguibist and Ben Youssefist factions in 1955 for dominance over both party and future state pushed the Protectorate government accelerated transfer of security forces to a pro-Bouguiba beylical government. While both factions were armed, using the full force of the colonial repressive regime (i.e. the legal system and colonial militias), Bourguiba struck the Ben Youssef faction and quickly asserted authority. In January 1956, Ben Youssef fled to Libya and his supporters were purged from the organs of the Neo Destour and the state. He was murdered in Frankfurt in 1961. The intra-party violence of 1955 has been likened to a civil war, and is at the foundation of the contemporary Tunisian state. That these struggles and grievances from 1955 have been incorporated into the Transitional Justice process underscores the lingering cleavage, in Tunisian politics, between reformists and revolutionaries.

Some Tunisians view Bourguiba’s victory as the country’s first coup d’état and see Salah Ben Youssef and his supporters as the first victims of state crimes in post-colonial Tunisia. Using the same violent repertoire as the colonial government, Bourguiba’s post-independence authoritarian regime (1956-1987) would use the judiciary, Ministry of Interior, and extra-legal methods of oppression against its opponents, including Leftists and later Islamists. As in the Protectorate system, the executive named key posts in the national administration, and a top-down culture of control was omnipresent. Large parts of the colonial judiciary were left in place (including colonial-era morality and anti-sedition laws). Unlike the colonial system, however, which sometimes pitted Resident General decisions against French and Protectorate law, allowing room for legal challenge, the post-colonial Ministry of Justice (and judge corps) were directly beholden to the presidency. Judges who did not uphold regime policy were sanctioned or disbarred. The techniques of using the judiciary to rule by law were hardened, coupled with legal and extra-legal violence would be perfected by the Ben Ali regime (1987-2011).

Two months following Ben Youssef’s flight, France abrogated the Treaty of Bardo, ending the Protectorate. Bourguiba organized a Constituent National Assembly five days later, securing the election of his faction to power, which formed a government led by Bourguiba as Prime Minister, Minister of Defense, and Minister of Foreign Affairs. Bourguiba moved to quickly consolidate power, marking his rule with a socially-liberal women’s emancipation program and the harsh repression of Islamist and Leftist movements. Though many critics argue that Bourguiba adopted

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this policy to please the West and that it mostly benefited liberal and coastal women, the program too sought to control population growth and its corollary rural migration. His emancipation program was directly linked to his own deep ideological (and rational) conviction of modernity and progress, captured in a Western-inspired development model that sought to place state-led women’s equality at the core of development projects in society, law, health systems, education, the arts and workforce. Having purged the pro-Ben Youssef camp in the Neo-Destour party, Bourguiba set about taking control over the religious establishment. In a series of 1956 and 1957 decrees, he abolished religious courts, liquidated Islamic land foundations, or waqf, and brought the Zaytouna University firmly under government control. The move disgruntled former allies from within the nationalist movement who had hoped that an independent Tunisia would re-assert its Islamic values – a group that widely had supported Salah Ben Youssef in his showdown with Bourguiba only a year before. The same year, Bourguiba’s government promulgated 1957 Personal Status Code, which granted expanded rights to women. The new code abolished polygamy, provided equal rules for divorce, fixed a minimum age for marriage, while acknowledged a near equality of women in providing for the family. The code changes involved the state directly in household affairs, and vastly increased its societal reach.

On 25 July 1957, the government proclaimed Tunisia a Republic with Bourguiba at its head, removing the royal family that had ruled for two and a half centuries. Unlike Bourguiba’s decision on religious institutions, the proclamation of the Republic was widely popular. Compared to Morocco, where the monarchy became a symbol of the independence movement, under Bourguiba, the Neo-Destour party represented a new, modern political order, which characterized the royal family as an outdated institution that had worked closely with the French. Finally, in 1963, a single party regime was declared, banning the Tunisian Communist party, which had been founded in the same year as the Neo-Destour, 1934. Within eight years of wrestling independence from France, Bourguiba had seized total control of his party, of state institutions, and eliminated all groups that questioned his politics during the Protectorate period: the royal family, parts of the religious establishment, and the political Left – groups around which opponents would rally during both the Bourguiba and Ben Ali regimes. And while Bourguiba’s relationship with the UGTT would remain ambiguous – its role in the national struggle could not be ignored – he worked throughout his presidency to have his men named in leadership posts.

Habib Bourguiba’s political project for independence was defined by cooperation with France to negotiate a series of steps, from internal autonomy to total independence, within the framework of a Western-allied, modern nation state. Initially the Tunisian and French governments negotiated a scheduled, long-term settler land buy-out agreement. Between 1956 and 1961, 250,000 hectares

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17 Public Islamic foundation land, close to 150,000 hectares, was incorporated into the State Domaine. The 1.45 million hectares of private foundation land was distributed to the descendants of the original founder.
of colonial land were purchased by the Tunisian government – close to 150,000 of which was redistributed to party cadres who had supported Bourguiba in his 1955 showdown with Salah Ben Youssef. Conflict over continued French military ownership of the port of Bizerte, along with French airstrikes on Algerian nationalists in Tunisian territory convinced Bourguiba to use the land as a bargaining chip. An August 1961 law decreed that all directors of modern-sector agro-capitalist farms needed to have Tunisian citizenship. Three years later, in 1964, Bourguiba decreed the nationalization of the remaining 600,000 hectares of settler land. Using that land, the regime initially tried to enact a far-reaching redistributive program of forced agricultural and industrial cooperatives in the 1960s (1964-1969), partly in order to manage expropriate settler land and liquidated waqf, partly as a political maneuver to side-line Leftist opponents who looked to neighboring revolutionary Algeria as a socio-economic model. The socialist program, however, encountered intense political opposition from the upper-echelons of the Neo-Destour party – Bourguiba’s core support group – and was abruptly ended in 1969.

The new economic model (1969-2011) was based on free-market principles, though the regime tightly controlled access to new markets through the selective and political distribution of credits as well as construction, distribution, export, and import licenses to key political and economic elites (who would become the captains of industry). The new strategy promoted an export-driven economy – the basis of which had been created during the colonial period. Whereas the socialist drive attempted to use state capital to redistribute development monies to the agricultural interior, the new policy perpetuated colonial-era wealth accumulation in major cities and port-towns. Under Bourguiba, liberalization was measured, and when possible negotiated with the UGTT. When negotiations broke down, however, the regime would crack down on the union, violently disburse strikes and demonstrations, and attempt to co-opt factions to promote a new regime-friendly leadership. Similarly, Bourguiba decimated the increasingly fractured Leftist movement on university campuses in the 1970s, only to turn his attention to the Islamist movement of the 1980s. Legal and extra-judicial repressive mechanisms, such as vaguely worded public order and morality laws and torture while in incarceration were used to silence opponents. Policies such as these – which continued into the Ben Ali period (1987-2011) – encouraged corruption from within the administration and reinforced the social and regional inequalities inherited from the colonial period, generating opposition from various groups in society.

Unable to deal with Tunisian resistance to this strategy, from within (Salah Ben Youssef, Leftists, Zaytouna students) and outside of the Neo-Destour party (religious establishment, Communist

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18 Moore, 1965: 142.
party, Pan-Arab movements), Bourguiba relied on legal and extra-legal methods of co-optation, coercion, exclusion, and violence to punish his opponents during the early to mid-1950s. The new regime effectively used a centralized, top-heavy administration and dependent judicial system – through institutions and governing strategies inherited from the colonial regime – to co-opt (and sometimes create) regime-dependent political and economic elites.\footnote{For a detailed analysis on how the Ben Ali regime created a preferential market for allies, see: Bob Rijkers, Caroline Freund, and Antonio Nucifora. 2014. “All in the Family: State Capture in Tunisia.” \textit{World Bank Policy Research Working Paper}. WPS No. 6810. Washington, DC: World Bank. For a nuanced discussion of the Bourguiba and early Ben Ali period, see: Eva Belin. 2002. \textit{Stalled Democracy: Capital, Labor, and the Paradox of State-Sponsored Development}. Ithaca: Cornell University Press.} Though violence was often used against opponents, extra-judicial killings were rare. Bourguiba and his successor, Zine el-Abidine Ben Ali who seized power in a 1987 bloodless coup d’état, would continue to use this repertoire to define exclusionary political and economic centralization and violent marginalization of opponents throughout their rule. By dating the transitional justice process to 1955, the Truth and Reconciliation Committee is seeking to publically unpack these defining contentious moments as well as the multiple forms of state-led violations committed under both Bourguiba’s (1956-1987) and Ben Ali’s (1987-2011) regimes.

II. \textbf{Transitional and Societal Factors}

The transitional justice process in the immediate post-transition period (2011) was comprised of a number of early mechanisms, including investigative and truth finding commissions and trials of state perpetrators, before it was formalized following the drafting and ratification of a Transitional Justice Law. This law mandates a set of mechanisms, including the establishment of a Truth and Dignity Commission and special judicial chambers situated within the trial court system and located in Tunis, Sousse, Sfax, Gabes, Kasserine, Sidi Bouzid, Bizerte, Le Kef, Gafsa, Kairouan, Medinine, Monastir and Nabeul, to investigate human rights violations. Early mechanism detailed in this section were implemented to investigate foremost state-led violations during the uprising that led to the ouster of Zine Abedine Ben Ali, but also served as the seeds to investigate structural crimes, including economic corruption and state violence against the protest movements. This section will chronologically detail the various mechanisms and place them within the context of the political transition that commenced on January 14, 2011.

On December 17, 2010, a produce seller from Sidi Bouzid, a town in the country’s interior within an economically marginalized area, immolated himself in front of the town hall. Earlier in the day, his scales and produce cart were confiscated by local authorities, a punishment for his unauthorized participation in an informal economic activity highlighting the mundane practice of repression and authority under the politics of fear that defined the twenty-seven-year dictatorship of Zine Abedine Ben Ali (1987-2011). Mohamed Bouazizi’s self-immolation represented more than just an
individual’s desperate act of protest against unjust policing: it too represented the multiple levels of outrage shared by many Tunisians, including the systematic marginalization of interior regions since independence, the wide-scale domestic household recourse to a parallel economy to make ends meet, and disgust at the dictatorship’s carefully managed system of inequality. Following Bouazizi’s suicide, an unprecedented level of protest erupted and quickly spread to neighboring regions: first across marginalized and historically repressed regions in the interior central highlands and Saharan south, and eventually erupting in the privileged eastern coastal zones and capital. Protests called for dignity, liberty, and an end of the Ben Ali dictatorship. The rapid spread of contentious political activity coalesced into a nation-wide movement, igniting sentiments of long-standing anti-state resistance and uniting decades of oppositional political activity and moments of defiance.22

The uprising culminated on January 14, 2011, when to the surprise of many, Ben Ali fled the country, settling in Saudi Arabia with his wife, Leila Trabelsi, and youngest son Mohamed. Other members of Ben Ali’s family, fearing pending corruption charges, fled to the Arab Gulf and Montreal, while other family members, unable to flee, were immediately detained. As the World watched Tunisians rise-up and eject a brutal dictator, elsewhere in the Middle East and North Africa, citizens of other authoritarian regimes too engaged in contentious anti-regime political activity, marking a period often referred to as “the Arab Uprisings.” Shortly after Ben Ali’s flight, Egyptian dictator Hosni Mubarak in Egypt fell (February 2011), followed by Muamar Gaddhafi (Tripoli fell in August 2011, Gaddhafi was killed in October 2011) in Libya, and Ali Abdullah Salah in Yemen (November 2011). Protests too ignited in Algeria, Bahrain, Jordan, Morocco, and Syria. While the incumbent regimes of Algeria, Jordan, and Morocco leveraged promises of deep reform to allay popular frustration, in Bahrain and Syria protests were met with violent state repression. Protests have since quelled in Bahrain, following Saudi military intervention, whereas Syria remains in a horrific state of civil war.

Ironically, in Tunisia it was the former dictator, Ben Ali, who initiated discussions of a form of transitional justice, at least a pro-forma truth finding mission. In his third speech to the nation during the twenty-nine days of the uprising, Ben Ali announced that “he had understood his people” and ordered a truth-finding initiative to investigate human rights abuses and state-led violence during the revolt. Ben Ali, in his last few days of power, sought to appease the growing anti-regime movement and secure his position and political apparatus by addressing some of the most evident grievances, such as freedom of expression through lifting internet censorship and

public promises to investigate state abuses, albeit limited to the period of the uprising. Created three days after Ben Ali’s exile, the first truth-finding mission, the Bouderbala Commission (see below), was ordained to focus on the state violence that had occurred between Bouazizi’s self-immolation and Ben Ali’s departure. That Commission’s well-documented evidence of calculated and fierce police-perpetrated violence during the uprising, in turn, prompted a broader investigation into the structures and practices of dictatorship.23 The Ben Ali dictatorship was perhaps one of the most robust authoritarian systems24 in the Arab World. Nicknamed the “Zinochet, or the Pinochet on the Mediterranean,” the dictatorship was characterized by a politics of fear operationalized through an omnipresent internal security apparatus, economic corruption practiced by a clan of families closely linked to Ben Ali, and a one-party system of the RCD (Constitutional Democratic Rally). Together, the regime’s repertoires of repression ensured the near elimination of formal political and civic life: political parties were closely monitored and kept on a tight leash, and neither were oppositional accredited civil society organizations nor media organs authorized to exist. Despite this ubiquitous system of control, unauthorized human rights and oppositional organizations continuously pushed against the state, both from exile or within Tunisia. Albeit limited, dissent likewise existed within authorized organizations such as the Tunisian Labor Union (UGTT) especially some local branches, the Bar Association and the Tunisian League for Human Rights. During this period, the most powerful opposition figures, from Leftists, Centrist-Nationalists, to Islamists had been either exiled or imprisoned despite a limited period of openness between 1987-1989 immediately following Ben Ali’s coup d’État, while the state employed an impressive propaganda machine to construct a cult-like national image of inclusiveness and development. Most were freed by the time of the Revolution or shortly thereafter, while oppositional figures returned following the fall of Ben Ali.

As a moment, the Tunisian Revolution was the largest challenge to the political status quo and continuity of the post-independence state (c.a. 1956), and culminated the fall of the regime. The ten-month period following the Ben Ali’s departure, was marked by Revolutionary fervor, multiple transitional governments and institutions, and the return of the exiled opposition leaders and militants, whose hitherto illegal movements were legalized into political parties under relaxed registration laws. Under transitional President, Fouad Mbazaa (February-October 2011), an aging politician who had served under both Bourguiba and Ben Ali, political prisoners were amnestied and released from prison. Rachid Ghannouchi, leader of the outlawed and heavily repressed Islamist Ennahda movement, and Moncef Marzouki, the exiled human rights activist and founder

23 The work of the Commission was limited by resources, including access to evidence. Many contested the final report as well as the absence of a final list of the victims from the December 2010-January 2011 uprising. The author would like to thank the anonymous reviewer for underscoring this point.

24 The robustness of the Ben Ali system does not necessarily relate to the level and type of violence, but rather to the intricate system of control beyond outright repression that was established over time and that buttressed the capacity of the state to sustain itself (see Beatrice Hibou, 2002).
of the Congress for the Republic (CPR), returned from London and Paris, respectively, to a huge welcome by their movement’s supporters. During the initial post-Ben Ali period, the elite was comprised of an overlap of technical experts, Bourguiba-era elites, and Ben Ali party members and cadres, however this configuration changed almost daily during a period of political uncertainty. Former regime dissidents and opponents made up the first elected government following the October 2011 National Constituency elections, and transitional justice was a top priority for this coalition government, stemming from a long history of human rights advocacy in the form of domestic dissent as well as international community advocacy efforts. The transition process that led to the country’s first free and fair elections in October 2011, was managed by the “High Authority for the Realization of the Objectives of the Revolution, Political Reform and Democratic Transition,” a commission headed by legal scholars Yadh Ben Achour.\(^{25}\) The Commission was charged with managing the early transition, drafting the electoral law, and setting the date for the country’s first free and fair polls, which would elect a National Constituent Assembly to draft a new Constitution, the basis of a new social contract between Tunisian citizens and the state.\(^{26}\) The Commission likewise debated whether former regime officials could compete in elections, which was instrumental to integrating transitional justice at the onset of institutional reforms.

During this period, many former top regime figures were tried in military tribunals empowered under Article 22 (law on general status of international security forces), facing charges of violence and murder committed by security forces during the uprising. While legally, Tunisian security forces can only be tried by military tribunals, use of such tribunals was too demanded by victims and citizens, who had little trust in the civil justice system, which was viewed as part of a system of oppression and control. The lack of trust in Tunisia’s judiciary proved to be one of the principle challenges to the establishment of the transitional justice process (see next section). Zine Abedine Ben Ali, two former interior ministers, four heads of security forces, and sixteen high-ranking army officers were prosecuted and convicted of murder during the December 2010-January 2011 uprising in the Military Court of Kef. Thirteen sentences were handed down by the court in June 2012 – eight months after the election of the National Constituent Assembly, and as discussions on the construction of a TJ process were well on their way. Ben Ali was convicted and charged with life imprisonment in absentia. In the Military Court of Tunis, 43 high ranking members of the previous regime were tried for similar crimes. In 2014, following a contentious period in Tunisia’s political transition that almost derailed the democratization process (see below), military court sentences were reduced, leading to the release of some former security service members. Among the reasons enumerated by the Court of Appeals are: the completion of sentences by 2014,

release due to medical conditions as well as the persistent advocacy, and lobby of former regime families who portrayed themselves as victims of post-Revolutionary justice. The transfer of cases to the Cassation Court sparked outrage was caused among victims of human right abuses, their families, as well as the families of martyrs of the Revolution. Under the new Constitution and Transitional Justice Law, these cases can technically be re-opened, however, this raises critical questions regarding the right of “non bis in idem” or double jeopardy.

On October 23, 2011, Tunisian citizens went to the polls and cast their votes for a representative government: the first fairly elected government since independence. Ennahda won the elections with 41% followed by a series of other oppositional parties and formed the “Troika government,” a power-sharing arrangement in which CPR’s Moncef Marzouki was appointed President of the Republic, Mustafa Ben Jaafar from the social-democratic Ettakatol party was speaker of the NCA, while Ennahda controlled the premiership. It was during this period that Tunisia’s Transitional Justice process took institutional form, with the first-time creation of a Ministry of Transitional Justice and Human Rights, headed by former political prisoner and senior Ennahda party member, Samir Dilou. The appointment of a senior-level figure from Ennahda was contested by some early on, particularly those opposed to the power-sharing Troika government. The choice of Dilou, too, represented a cross-ideological, decade-long oppositional coalition composed of activists from Islamist, nationalist, leftist-secularists camp with commitments to the fight for human rights and democracy under Ben Ali’s reign. The Ministry worked with families of martyrs of the Revolution and initiated a National Dialogue on Transitional Justice, supported by donor organizations and international as well as Tunisian civil society organizations, to begin outreach, sensitization, and a mapping of past human rights violations. The decision to include local civil society organizations was an explicit strategy to promote outreach: civil society organizations could explain the process of transitional justice and overcome longstanding mistrust by victims and non-victims alike.

A group of lawyers, psychologists, and other professionals participated in the nation-wide process (discussed in more detail below). A technical committee composed of Tunisian experts, civil society organizations, Ministry staff, and international advisors was established and housed within the Ministry and tasked with drafting a Transitional Justice law which was to be voted on in Parliament. The TJ process was driven by a coalition government of former human rights activists and regime opponents, who engaged in cross-ideological dialogue on issues of truth, justice, and a post-Ben Ali regime during the dictatorship. The TJ choices during

27 The “martyrs of the Revolution” refers to the families of those killed or injured in the December 17, 2010 to January 14, 2011 uprising. To date, only these families have been the recipients of material reparations under the early transitional justice mechanism.
28 The author would like to thank the anonymous reviewer for this critical addition.
29 Chomiak, book manuscript, forthcoming.
30 Author’s interview with Samir Dilou, Member of Parliament (Ennahda) and former Minister of Transitional Justice and Human Rights (2012-2014), February 5, 2018, Tunis, Tunisia.
this period reflected the interests of the former opposition, many of whom themselves were victims of human rights abuses and state violations. This post-Ben Ali power-sharing government initially placed TJ at the top of the country’s political agenda. However, many believed that the process was rapidly coopted by Islamists, leading to splits within the technical committee as well as contestation over the draft law even before it was passed to Parliament.

Between early 2012 to early 2013, the process enjoyed enough political backing by the government and from elected deputies to move forward, despite political cleavages and resistance by members of the former regime. Civil society was activated to participate in national consultative meetings, to inform the process, participate on the technical committee, help sensitize and reach out to victims, as well as work with Tunisian media, which remained largely controlled by anti-Revolutionary forces. It was during this post-revolution halcyon period – from early 2012 to early 2013 – that the Tunisian political scene was defined as “TJ friendly,”31 by organizations such as the ICTJ as well as civil society-based research initiatives such as the “Transitional Justice Barometer” established in 201632

In November 2012, five political parties, including the governing parties Ennahda and CPR, introduced to the committee the “Law on the Immunization of the Revolution,” which would bar government officials from the Ben Ali regime (1987-2011) and exclude all members from the ruling RCD party from holding office or running for elections for seven years, yet these lustrations ultimately failed. Supporters of the bill argued that it was necessary to exclude former regime and party members in the interest of protecting Tunisia’s nascent democracy, especially as inclusion of individuals constituting the previous repressive apparatus would allow them to reinvigorate networks of patronage and privilege, and possibly derail the democratization process. Introduced for vote on April 30, 2013, the bill (Article 167) faced much criticism. Especially criticized were the bill’s broad categories of excluded politicians, as well as criticisms that the bill could violate political rights without the possibility for due process and a chance for excluded individuals to rebut claims against them. As the proposed bill could have affected tens of thousands of Tunisian citizens, Human Rights Watch called for the law to be significantly amended.33 The bill also deepened already existing political divisions34 between the coalition parties in power, and an anti-

31 Author’s Interview with Salwa Gantri, International Center for Transitional Justice; October 3, 2017 Tunis, Tunisia; Author’s Interview with Amine Ghali, Kawakabi, The Kawakabi Democracy Transitions Center (KADEM), November 3, 2017, Tunis, Tunisia; see also Christopher K. Lamont and Héla Boujneh, “Transitional Justice in Tunisia: Negotiating Justice during Transition,” Politička misao, Vol. 49, No. 5, 2012 (pp. 32-49).
32 The Transitional justice Barometer is funded by the Netherland Organization for Scientific Research and works with other organizations in Tunisia to build research capacity for issue around Transitional Justice.
Islamist and anti-Troika movement within parliament and in civil society. At a time of growing public mistrust of the Ennahda-led government, uneven media coverage, the bill provoked the beginning of widespread calls for the government to resign. Though initially the coalition government resisted calls to abandon the bill, Ennahda leadership abruptly shifted its position against exclusion following meetings between party president Rachid Ghannouchi and Beji Caid Essebsi – former Bourguiba minister, transition period Prime Minister, and the founder of Nidaa Tounis – in Paris in August 2013. The day article 167 was debated in parliament was both tense and surprising. As individual representatives increasingly perceived the negative costs of exclusion in Iraq and Libya, deputies, including many from Ennahda, voted against the law’s adoption. Rejecting the bill paved the way for former regime members, both leadership and rank and file, to fill elected and appointed political positions.35

It was towards mid-2013, that the politically supportive environment for transitional justice began shifting. A number of developments led to this shift, both in terms of political backing as well as public opinion. First, the Troika government was sharply criticized for its failure to stop the September 13, 2012 Ansar al-Sharia-led attack on the U.S Embassy and American Cooperative School in Tunis – only days after the American Consulate in Beghazi, Libya, was attacked and U.S. Ambassador Christopher Stevens murdered. A few months later, on February 6, 2013, leftist-secularist politician Chokri Belaid was murdered in front of his home. The first public assassination on Tunisian territory (Salah Ben Youssef was assassinated in 1961 in Frankfurt), unleashed public outcry against the government, especially against Ennahda, for creating an unstable political environment. The assassination provoked a political crisis and led to the resignation of Prime Minister Hamadi Jebali, who was replaced by Minister of Interior Ali Larayedh, both members of Ennahda, who formed a new government. Though heralded as a rational act, Jebali’s resignation did not staunch the rising criticism against the Troika government, nor did it sway the media from dominating its coverage around political order, which quickly became the dominant political discussion outside of the government. Finally, on July 25, 2013, another leftist politician and parliamentarian, Mohamed Brahmi was assassinated. This second political assassination marked the most significant turning point in Tunisian’s political transition, marking not only the ascendance of security over transitional justice as the most discussed policy issue, but also the forced acceleration of a vote on a draft constitution and scheduling of elections to replace the Troika government. Pressed by popular outcry, the NCA passed the Transitional Justice Law on December 15, 2013.

After the Brahmi assassination, a dangerous political deadlock nearly derailed the political

35 http://www.huffpostmaghreb.com/2014/04/30/tunisie-exclusion-rcd_n_5242069.html
transition. The largest labor union called for a national strike, and a secularist-leftist anti-Ennahda protest movement against the elected Troika government took shape that summer calling for the dissolution of parliament. Shortly after the counter-revolutionary coup in Egypt (July 3, 2013), Ennahda engaged in negotiations with a secularist National Salvation Front, headed by Beji Caid Essebsi. Caid Essebsi, a 91-year-old politician, who had been a close confidant and minister of Tunisia’s first President Habib Bourguiba, and was elected to the 1989-1994 parliament as a member of the RCD where he held the post of the Head of the National Assembly from 1990-1991. Caid Essebsi also served an ambassadorial post in West Germany before becoming a member of parliament under the Ben Ali regime. Ennahda agreed to leave power after drafting and ratifying the Constitution and scheduling parliamentary and Presidential elections. The Tunisian Constitution was adopted on January 26, 2014, and the Ennahda-led government gave way to a new technocratic government charged with organizing elections for the end of that year. Though legal mechanisms to support transitional justice had been put into place only months earlier, the political environment became quickly less supportive, if not hostile, to supporting the adoption of TJ mechanisms, while criticisms from some segments of civil society also charged the process as increasingly serving an Islamist agenda.

Following the ratification of the Constitution, legislative elections were held on October 26, 2014 for an Assembly of the Representatives of the People. The secular-leaning Nidaa Tounes Party won the elections with securing 86 seats in the 217-seat assembly. Ennahda came in second, with 69 seats, 16 seats less than in the 2011 elections. The previous coalition partners, CPR and Ettakatol, also staunch supporters of the transitional justice process, lost all but a handful of seats. On November 23, 2014 the first round of Presidential elections were held, resulting in a run-off between Beji Caid Essebsi and incumbent president Moncef Marzouki, organized on December 21, 2014. Caid Essebsi won with 55.68% of the vote, securing a Nidaa Tounes control of both presidency and parliament. Nidaa Tounes formed a coalition government with a number of parties, including Ennahda, to overcome political polarization and setting the process for the consolidation of elite interests, however, proponents of transitional justice feared a significant diminishing of political support for the process.

Though passed in December 2013, the Transitional Justice Law, which created a Truth and Dignity Commission (see “TJ Policy Mechanisms” in section 3 for details on mandate and funding of the IVD), known by its French acronym IVD (Instance Vérité et Dignité), the process has faced major barriers, revealing the degree to which political support has diminished if not becoming outright hostile to a critical transitional justice process. Examples of semi-official hindrance include IVD’s President, and former human rights activist, Sihem Bensedrine’s attempt to retrieve files from the Presidential archives, containing six decades worth of material documenting corruption and state violations. When the files were not transferred to the Commission, she set out with three trucks in
a high-profile attempt to retrieve them herself. Her caravan was blocked by security forces who had closed off the street,\textsuperscript{36} and she quickly became a major target of criticism / smear campaign on social media and the mainstream media, which was still largely owned by media moguls from the Ben Ali era\textsuperscript{37}. During the same period, seventy deputies from the Nidaa-led parliament signed a petition to investigate Bensedrine for corruption, despite a clean audit released earlier that year. Another challenge to the establishment of the IVD was the selection process of IVD commissioners, which critics see as result of political deal-making rather than a transparent and public consultative process as stipulated by the law.\textsuperscript{38}

But the most telling challenge occurred in the fall of 2015 when President Beji Caid Essebsi introduced an “Economic Reconciliation Bill.” He began discussion this measure in March of that year following terrorist attacks against foreign tourists at the Bardo museum in Tunis and the beach resort of Sousse, shifting the national security discourse significantly. The Bill proposed a set of measures to grant amnesty for economic crimes and corruption committed by civil servants and businessmen under the Ben Ali regime in exchange for closed-door confession and pay-backs to the government. It too detached economic crimes from investigations by the Truth and Dignity Commission, moving these files from the TJ process to the executive to avoid the truth-seeking element of such crimes. This prompted the formation of the highly vocal and salient 	extit{Manish M’sameh} (I will not forgive) campaign (see details in section 4), which rapidly became a nationwide movement. The campaign has employed a variety of tactics to stimulate public discussion about the President’s proposal and to protect the sovereignty of Tunisia’s transitional justice process, calling for all crimes, especially economic crimes, to be investigated by the commission rather than forgiven in closed-door confessions. Politically, the campaign sought to block a coalescence of political consensus around “turning the page” by forgiving economic crimes, which constitute almost one third of cases brought forth to the Commission. The President’s reconciliation bill has since been amended to an “administrative reconciliation bill,” forgiving rank and file civil servants, and was signed into law on October 25, 2016.

Throughout Tunisia’s political transition since 2011, the transitional justice process has been “an inherently political project, linked to deep issues of identity and memory.”\textsuperscript{39} The transitional justice mechanisms that have been debated in Tunisia’s polarized and politically sensitive post-

\textsuperscript{36}https://www.theguardian.com/world/2015/sep/11/attacks-state-tunisia-truth-commission-crisis-democracy
\textsuperscript{37}Bensedrine was subjected to similar smear campaigns under the Ben Ali period, particularly after her appearance on Al-Hiwar on the London-based Mustakilla platform and her criticism of Ben Ali and human rights violations in 2002.
\textsuperscript{38}Author’s interview with with Dr. Kamel Gharbi, Founder of the Network for Transitional Justice, November 2, 2017, Tunis, Tunisia
\textsuperscript{39}“To participate is to hope, victim’s participation in Tunisia’s transitional justice process,” 	extit{Transitional Justice Barometer} (October 2015).
revolution environment have touched on fundamental questions of rethinking the relationship between state and society. The debate ranges from human rights violations and state-led crimes against citizens to economic crimes that occurred during the final years of decolonization, modernization and state-building period of Habib Bourguiba (1956-1987), to the twenty-seven year Ben Ali dictatorship. In interviews with IVD leadership, Commissioners stressed that the process in Tunisia is less retributive and more restorative (see below, discussion on the creation of special chambers stipulated by the TJ law to investigate human rights violations). The retributive element hinges on the functioning of specialized chambers to investigate gross human right abuses and situated within the existing court structure (within the “tribunal de première instance in 13 locations)\(^{40}\). However, challenges to the operation of specialized chambers could be created by bureaucratic and political obstacles, including question of access to Presidential Archives or arbitration agreements concluded with certain figures of the old regime. The chambers can possibly overlap with the prerogatives of the IVD and could further fragment the TJ process. Because these chambers are situated within the existing legal structure, they could be subjected to institutional blockages.\(^{41}\) Largely, the TJ process seeks to understand a violent past to determine a peaceful future for state-society relations (while preventing the repetition of new state-led violations). Negotiations over TJ mechanisms and their early implementation, reveal deep political fissures and push back against the process by large segments of Tunisian society for a number of reasons. The broad period of investigation spanning the three post-independence governments (1955-2013) and the centralized nature of the Tunisian state has rendered the category of perpetrator and victim difficult to define, particularly what constituted victimhood of structural violations, while the reality of dictatorship extends implications to mundane quotidian practices (i.e. petty corruption). In addition to privileged political and economic groups not supportive of the process as well as those critics who believe the TJ process is set up to serve primarily Islamist victims as well as Islamists seeking to take ownership of a different historical narrative, significant portions of the population prefer to turn the page rather than reveal, especially if the TJ process is unsuccessful and does not meet the needs and expectations of victims. Multiple mechanisms, sometimes overlapping, sometimes contradictory, have been employed since the immediate post-revolutionary period preceding the institutionalization of transitional justice in the form of the law. This has not only caused confusion among Tunisian citizens, but has also been a point manipulated by the mainstream media, and sidelined by new political forces adopting a security-oriented approach to national stability which offers very little space for transitional justice. With few achievements in judicial reform (beyond reforming the Superior Council of Magistrates yet the

\(^{40}\) Decree number 2014-2887 of August 8, 2014, modified by decree number 2016-1382 of December 19, 2016

\(^{41}\) Meriem Guetat, “Justice transitionnelle, Justice rétributive et réconciliation: le cas de la Tunisie”, in Justice et politique dans le Maghréb post-révoltes arabes: réforme, institutions, réconciliation ( Colloque international), 21-22 April 2017, Tunis
absence of the establishment of a Constitutional Court), especially as the judiciary was a principle pillar of Ben Ali’s repressive state apparatus as large numbers of judgments were predetermined and judges coopted, it remains unsure whether cases of the most grave human rights violations will be treated by the special chambers set up within the Court system as mandated by the Transitional Justice Law. The mandate of the Truth Commission was set to end in May 2018, at which point the Commission would present its report on implementation of transitional justice policies and mechanisms to ensure the process’ goals, meet victim’s expectations, and integrate the TJ process in existing Tunisian institutions. On March 6, 2018, the IVD announced its decision to extend its mandate by one year, a decision which raised a series of controversies between the IVD and parliament, which rejected the extension on March 26, 2018. On May 24th of that year, the IVD reached an agreement with the government to continue its work until December 2018.

III. Choices in Transitional Justice

Overview

The Tunisian transitional justice process is rooted in the ideas, goals, and aspirations of the country’s long-standing political opponents and human rights activists, who span various ideological approaches. Lead by founding members of former oppositional parties and organizations, including the Congress for the Republic (Moncef Marzouki), Ennahda (Rachid Ghannouchi), Ettakatol (Mustapha Ben Jaafar), the Tunisian National Center for Liberties (CNLT, Sihem Bensedrine) and other former activists and dissidents now in political positions, the centrality of the TJ process in the early transitional period was informed by their decades-long struggle against dictatorship and for the protection of human rights. Since its inception in 2011, the process has been defined by the possibilities and tied to the constraints of the broader political context of democratization in post-Revolution Tunisia. It has also been beholden to the competing interests of post-Revolutionary political elites as well as competing understandings of the meaning of and expectations from TJ in Tunisia. Thus, the choice-set available to TJ decision-makers lies not only within the time-span of post-Revolutionary Tunisia, but also within a broader historical engagement (and experience) of state-led abuses against citizens and the way in which Tunisia’s opposition in both exile and remaining in Tunisia under dictatorship envisioned and fought to address these abuses.

The choices for political elites to design a comprehensive transitional justice process are defined by the intersection of interests of revolutionary goals, divisions by political elites about political support for the process or to support a more limited reformist approach to transitional justice, as well as the interests of ancient regime members, from both Bourguiba and Ben Ali regimes, who have relatively swiftly re-integrated into Tunisia’s political, economic, civil society and social spheres, despite measures in the early transitional period such as passport confiscations as well as
freezing of assets. As it relates to contemporary support for or opposition to transitional justice, the Tunisian political elite transformed significantly in the 1980s. While PSD party elites (Bourguibist) from the Sahel and Tunisois beldi families remained an important source of regime support, during the 1980s, businessmen increasingly moved to the fore: a process accelerated under Ben Ali’s liberalizing economic reforms. The reintegration of some of these political elites in the post-2014 political sphere, has likewise defined the TJ-hostile political environment, as many were involved in both the political consolidation of dictatorship as well as economic crimes as defined by the TJ process. Another important development in this time frame is the significant shift within Ennahda itself, which lost some of its base support when it entered into a coalition government with Nidaa Tounes.

Choices and decisions in Tunisia’s transitional justice process have perhaps been one of the most contentious processes in Tunisia’s post-revolutionary trajectory, because (1) the broad time span to investigate abuses from late colonialism to the Revolution (1955-2011) encompassing the process of decolonization, the Bourguiba regime from 1956-1987, and the Ben Ali regime from 1987-2011; (2) competing interests between those political elites and citizens who seek to uncover and investigate crimes and punish perpetrators while granting amnesty to victims and those who seek to turn the page on abuses; (3) shifting political environments in which transitional justice has been a priority and later side-lined, if not redefined as destructive to efforts of reaching political, societal and economic consensus.

The principle aim of the TJ process, particularly the work of the Truth and Dignity Commission from 2014-2018, which to date has been the principle mechanism implemented in addition to the creation of special chambers to investigate human rights violations within the judicial system and sporadic memorialization efforts, is to assure the impossibility of a repetition of state-led abuses against Tunisian citizens through a public reconciliation process. To be sure, despite its difficulty in taking both legal and institutional form, the TJ process in Tunisia is the brainchild of the Tunisian Revolution and the pacts made among political opponents of different political orientations during the Ben Ali regime, coalescing in the first democratically elected National Constituent Assembly government (2011). To many Tunisian citizens, especially victims, the transitional justice process and the Truth Commission are the only remaining institutions that represent the aspirations and demands of the 2011 Revolution and provide hope for their reintegration into society with a minimal standard of life.

**Transitional Justice Policy Considerations**

The transitional justice process in Tunisia is the first such experience in the country’s modern history. It seeks to investigate a broad range of abuses, including torture, disappearances, and targeted oppression of oppositional groups and individuals, and to regional marginalization and punishment. Following the 2011 Revolution, both the initial transitional state (January-October 2011) and the first democratically elected government (2011-2014) decided to implement transitional justice at the core of its political transition. The choice to implement a comprehensive, broad, and inclusive process was primarily to unpack state violations dating from the late colonial period through 2013, when the Transitional Justice Law was passed. The process seeks to reveal the breadth, depth, and variation of state-led violations against Tunisian citizens but also to understand the variation and levels of societal violence that was designed and executed by the state. It places under the investigation state-led violations in the post-colonial state and national-building project, political consolidation towards authoritarianism in the 1970s and 1980s, and the reconfigured robust dictatorship defining the Zine Abedine Ben Ali era from 1987-2011. Further, it stretches into the post-Revolutionary period (2011-2013) until the passing of the TJ Law. This is to investigate both the possible continuity of abuses and to measure whether there has been change in state-led violations, particularly surrounding new waves of political imprisonment as well as repression against demonstrations post-2011.

Tunisia’s formal TJ process was constructed by the country’s first democratically elected government in October of 2011. Composed of former opponents and victims of state-led abuses, it was preceded by three investigative committees (see below), particularly the Fact-Finding Commission to Investigate the Abuses Committed from December 17, 2010 until the end of its mandate (Bouderbala Commission, Commission Nationale d’Investigation sur les Dépassements et les Violences), headed by lawyer, law professor, and former head of the Tunisian League for Human Rights Tawfik Bouderbala. The commission was mandated to investigate and record state violations and crimes committed between December 17, 2010 and 14 January 2011, as well as to launch an investigation of the state’s political and economic crimes. Bouderbala was chosen to head the committee because of his professional trajectory, which was viewed as a basis for ensuring the independence of the sensitive mission of this investigatory body. Created on January 17, 2011, three days after Ben Ali fled the country, the Bouderbala Commission was one of three national independent commissions created by transitional authorities, but first mentioned by Ben Ali in his final speech. It functioned alongside the High Commission for Political Reform, and

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43, 44 Author’s interview with Samir Dilou, Member of Parliament (Ennahda) and former Minister of Transitional Justice and Human Rights (2012-2014), February 5, 2018, Tunis, Tunisia.  
44 For a continuation of abuses in pretrial detention centers post-Revolution, see “Cracks in the System: Conditions of Pre-Charge Detainees in Tunisia,” Human Rights Watch, December 5, 2015.  
the National Commission for the Investigation of Bribery and Corruption (referred to as the Ben Amor Commission after the legal and constitutional law expert Abdelfattah Ben Amor). The Bouderbala and Ben Amor Commissions, both led by established and respected legal professionals, informed the public’s initial understanding of the breadth of state-led violations. The commissions published two comprehensive reports, one detailing the complex structure of corruption under the Ben Ali regime spanning private contracts, investment and a coopted judiciary (published November 2011), and the second documenting the human rights violations during the revolution and analyzing state responsibilities (1,040-page report published in May 2012). The latter report, based on comprehensive field-based research in the regions that witnessed some of the most violent and concentrated repression during the Revolution, recommended the creation and full political backing for a comprehensive transitional justice process, including the establishment of a Truth Commission and a fund for reparations for victims. Before the launch of the comprehensive transitional justice process and the establishment of the IVD in 2014, these independent commissions, effectively functioned as truth-seeking bodies, despite obstacles in terms of political pushback and resources.46

Following Tunisia’s first democratic and transparent elections on October 23, 2011, the Ennahda-led Troika established the Ministry of Transitional Justice and Human Rights, led by a former political prisoner and high-ranking member of the Islamist Ennahda Party,47 Samir Dilou. That appointment, according to an interview with a TJ expert in Tunisia, was of deep symbolic importance as it represented the political backing for the launching of a comprehensive process, led by a former victim.48 For critics of the Ennahda appointment, this signified the beginning of the politicization of the TJ process.

The initial TJ process remained sovereign and was supported with technical assistance primarily from the ICTJ, UNDP, and the OHCHR to begin a nation-wide consultative process, while civil society played a central, consultative, and constructive role (see below). The National Dialogue on Transitional Justice was officially announced on April 14, 2012 to commence wide-ranging

46 The Role of Lawyers as Transitional Actors in Tunisia, August 2015 Lawyers, Conflict & Transition, p.4.
47 Ennahda changed its label from Islamist to Muslim Democrat during its 2016 Party Congress. Following the 2014 Parliamentary and Presidential Elections, Ennahda lost its majority in Parliament and become the second largest political party, forming a coalition with the more recently established bloc of secularists, former regime elements, and other factions called Nidaa Tounes. Ennahda entered into a coalition government with Nidaa Tounes, to the disappointment of some Revolutionaries and former political opponents, but hailed by many as a step towards national unity and moderation. The choice to change the party from Islamist to Muslim Democrats is an attempt to distance itself Ennahda from other Islamist movements which have either been outlawed or oppressed across the region, but also to testify to its commitment to political participation as a coherent political party who competes for power solely through democratic elections and participation in represent government.
48 Samir Dilou was arrested in 1991 under the Ben Ali regime and sentenced to ten years in prison on charges of belonging to an illegal organization. Dilou is also a founder of the International Organization for the Defense of Political Prisoners. Author’s interview on the initial TJ process with Salwa Gantri, ICTJ, October 3, 2017, Tunis, Tunisia.
national consultations with Tunisian citizens, civil society organizations, political parties, branches of the main labor union UGTT, judges, lawyers and legal professionals to learn of how to approach the sensitive task of dealing with the legacy, memory and impact of Tunisia’s experience with dictatorship. Four special sectoral meetings were held as part of the national dialogue and organized in the capital Tunis as well as in the regions. This process was designed to sensitize the population to the concept of transitional justice, particularly to help victims overcome fear, come forward to retell their experiences, and, relatedly for policy-makers to discover the extent of abuses and their effect on quotidian life. One of the most important findings from the dialogue and subsequent policy implementation, was the creation of special chambers with Judges to be trained in dealing with human rights abuses, because of the deep-seated and saturated mistrust in the judiciary which, at the time, was a continuation of the Ben Ali regime. Following the consultative dialogue-based process, a twelve-member technical committee was founded with the purpose of supervising on-going consultations as well as drafting a Transitional Justice Law for the National Constituent Assembly. The committee was composed of 10 members of civil society and two representatives from the Ministry of Human Rights and Transitional Justice. Tunisia’s TJ process from the establishment of the Ministry to the passing of the TJ law in December 2013, was heavily supported by international and local civil society. International CSOs and actors include the ICTJ, the UNDP, Kawakabi Center, and beginning in 2016, Impunity Watch. About five dozen local CSOs have formed to support the process, to represent victims’ visions and expectations of the process, and also to monitor the work of the Truth Commission and the broader political and transitional context within which transitional justice occurs. The Troika government was inclusive of civil society actors because of its own commitment to expanding civil society in Tunisia in post-Ben Ali Tunisia but also to render the establishment and carrying out of the TJ process legitimate among Tunisian citizens (see below on sensitization of the process).

Incumbent politicians – elected deputies as well as government officials – supported by the technical committee of transitional justice, focused heavily on the debating and passing of Law 53, the Organic Law Establishing and Organizing Transitional Justice (December 24, 2013). The TJ Law defines Tunisia’s comprehensive approach to deal with its past human rights abuses, calls for the creation of the IVD, which is tasked with collecting files, holding closed listening sessions, organizing public hearings, and advising on reparations, accountability, possibilities for national reconciliation and reforming institutions, including those that represented and protected perpetrators as well as the judicial system, to which cases will eventually be referred. The TJ law likewise stipulates the creation of special chambers with judges specialized in working with abuses

49 Author’s interview with Salwa Gantri, ICTJ, October 3, 2017, Tunis, Tunisia.
50 Author’s Interview with Nisaat Tounsiyat (September 8, 2017) and NEBRAS (November 2, 2017), Tunis, Tunisia.
51 Cite, Author’s Interview with Salwa Gantri, ICTJ, October 3, 2017, Tunis, Tunisia.
against human rights as well as the establishment of a “Fund for the Dignity and Rehabilitation of Victim’s of Tyranny,” which will determine the extent of reparations to be distributed to victims.\textsuperscript{52} Tunisia’s Truth Commission was finally established in 2014, and the former human rights activist and oppositional journalist, Sihem Ben Sedrine, was appointed as its President.

Another critical call in amending TJ policies was also determined by a group of CSOs with the assistance of organizations such as the ICTJ. Following the establishment of the IVD, and its appointment of 15 commissioners in charge of a variety of categories of inquiry, investigation and reparation, the IVD began receiving files from victims documenting a wide variety of abuses. While international organizations such as the UNDP worked with networks of grassroots victims’ organizations to conduct outreach to victims to encourage the submission of files, the IVD realized early in the process that only five percent of testimonies and files were received from female victims. Ibtihel Abdelatif cites\textsuperscript{53} that of the first 13,278 files received, only 1,626 submissions were by women and only 400 by former political prisoners, which does not represent the actual level of state-led human rights abuses. This is especially true of sexual violence and rape, which specifically targeted women, with a focus on women belonging to and sympathetic to opposition political formations, mainly Islamists and Leftists. The ICTJ, in response, helped form a network composed of eleven women victims’ organizations called “Transitional Justice is also for Women.” The majority of the networks’ members were female victims of state violence, and over a two-year period, members of the network travelled to areas across Tunisia to encourage women to submit files through meetings, seminars, as well as smaller community and family meetings. With the backing of the IVD, nine larger meetings were held in Tunis and the regions, to explain the transitional justice process as well as the work of the IVD, while also working on a sensitization campaign geared at women. Reasons for the low percentage of submissions of files by women include a lack of knowledge about the TJ process, particularly what it serves to achieve, as well as issues of confidentiality about coming forward. Through the meetings, the network and the IVD recognized that the Truth Commission needed to publically clarify its work and role in the political transition and what it would offer to victims, especially women, once they came forward.\textsuperscript{54}

In the first meeting of the network, Ibtihel Abdelatif, a founder of a women’s victim organization \textit{Nisaat Tounsiyat}, and later Commissioner within the IVD to head the Commission on Women,\textsuperscript{52} The IVD plays an advisory role with respect to the establishment of the Dignity Fund. At the time of writing, a proposal has been submitted to the Prime Ministry, from which the fund will be managed once the mandate of the IVD comes to an end.

\textsuperscript{53} Author’s Interview with Ibtihel Abdelatif in her role as IVD Commissioner for Women, September 8, 2017, Tunis, Tunisia; see also https://inkyfada.com/2015/07/ibtihel-abdelatif-commission-femme-ivd-tunisie/

was chosen to lead the sensitization process and hold meetings across Tunisia to explain to women precisely what the Truth Commission has to offer.\textsuperscript{55} According to interviews with experts, Ibtihel Abdelatif was perceived to be the most appropriate choice to head this commission as she was able to quickly build trust among women of various social classes and political orientations, and sensitize them to the TJ process. Through her work with \textit{Nisaat Tounsiyat} in the immediate post-revolutionary period, she was keenly aware of the condition of women in marginalized areas, particularly religious women and Ennahda sympathizers, while also addressing broader issues of gender inequality across the country (i.e. the engagement of rural women). During the second meeting of the network, ICTJ collaborated with NABRAS, a Tunisian victims of torture organization, to include psychologists in the meetings. The various stages of consultative meetings nation-wide revealed that expert psychologists were required to work with the trauma victims faced when remembering, recounting and revealing their experiences of torture and violence while in detention and imprisonment. This nation-wide outreach, consultative and sensitization campaign resulted in a drastic increase of files and testimonies by women, estimated at an approximate 20% increase following the work of the network.

In summary, policy considerations around the implementation of the broader TJ process and its institutions were largely sovereign, with technical assistance, guidance, as well as support from a wide network of Tunisian and international civil society organizations as well as international institutions, primarily the UNDP and OHCHR. Most importantly, multiple stages of public consultations first headed by the Ministry of Human Rights and Transitional Justice, and later through collaborations with civil society to build societal trust in the TJ process while sensitizing Tunisian victims to come forward and testify. This victim-centered outreach and sensitization campaign was technically and financially supported by the international donor community and civil society realm throughout the entire TJ process and continues to this day (the IVD mandate is slated to conclude in December 2018). By the time of the first public hearing in November 2016, the IVD received 62,600 files and conducted over 42,000 listening sessions nation-wide. Policy choices around TJ in Tunisia, especially in its inception, were consultative, inclusive and supported by domestic and international actors. The work of the Truth Commission was also monitored by two civil society-based watch dog networks: (1) The Observatory of Transitional Justice headed by Farah Hached with a secularist-bent, and (2) the Tunisian Network of Transitional Justice, which worked closely with the TJ process since its inception and is primarily supported by victims with an Islamist tendency. However, the two watchdog initiatives have been defined by a contentious relationship. On a broader public sensitization level, a variety of conferences were organized by civil society organizations, foundations, academic institutions, and the international donor community, to discuss Tunisia’s TJ process in comparative perspective, with comparative

\textsuperscript{55} Author’s Interview with Ibtihel Abdelatif in her role as IVD Commissioner for Women, September 8, 2017, Tunis, Tunisia.
analysis primarily, but not exclusively, from the South African, Chilean, and Moroccan experiences. While the leadership and commissioners of the IVD actively participated in these comparative initiatives, the main impact has been an insistence on the public nature and transparency of the TJ process to achieve its principal goal to expose violations, especially their structural nature, and assure the non-repetition of state-led violence against its population. However, the very transparency of multiple moments within the TJ process has been questioned from the start, ranging from fears of the politicization of the process, to critiques about the timespan of investigation particularly during debates of the TJ law, and the lack of transparency in selecting IVD Commissioners.

The principle challenge to Tunisia’s TJ process (discussed in more detail below) has been the shift from a TJ friendly political environment (2011-2014), to a TJ-hostile political environment following the 2014 parliamentary and presidential elections which brought former regime members back to power (see discussion in transitional factors). Political support, both within Parliament and the government, has waned dramatically since 2014, particularly with a controversial proposed law by the current President, Beji Caid Essebsi, to forgive corrupt businessmen and state officials for purposes of “economic reconciliation,” to turn the page on corruption and move forward towards national unity and spur economic growth. A secondary challenge has been a very contentious environment within the IVD, due to infighting between leadership and staff, multiple resignations and dismissals of commissioners.56 As of March 2018, 6 of the 15 Commissioner seats remain vacant following dismissals and resignations.

**Transitional Justice Policy Mechanisms**

As described in detail above, the Tunisian state has deployed two specific57 and interrelated phases of transitional justice policies to address the nation’s history of human rights violations. The first was the establishment of a Ministry of Transitional Justice and Human Rights following the October 2011 National Constituency Assembly (NCA) elections. Headed by former political prisoner and senior member of the previously outlawed Ennahda party Samir Dilou, the Ministry was instrumental in paving the way for the passing of the *Organic Law Establishing and Organizing Transitional Justice* in December of 2013 and informing the law’s content. In addition to a series of nation-wide consultations with citizens and civil society to understand the extent of abuses, and how to address the legacy of decade-long human rights abuses against targeted oppositional groups and citizens, the Ministry housed a technical committee of civil society and

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56 Author’s Interview with Judge Afeh Nahali, September 21, 2017, Tunis, Tunisia; Author’s Interview with Ibtihel Abdelatif, September 8, 2017, Tunis, Tunisia.

57 In the immediate post-Revolutionary period (January-October 2011) three independent commissions were established to work on political reform, investigate economic crimes as well as state repression during the revolutionary uprising (December 17, 2010 – January 14, 2011). The latter two effectively functioned as truth-finding initiatives which revealed critical information prior to the institutionalization of transitional justice in 2012.
Ministry representatives to draft the Transitional Justice Law for introduction to and vote by parliament. The TJ law was voted in by Parliament with 125 of 126 deputies (of the 217 member assembly) present, voting in favor of the legislation. The law stipulates a series of TJ mechanisms, including the creation of a Truth Commission, special chambers within the administrative court structure to address human rights abuses, and the establishment of a “Fund for the Dignity and Rehabilitation of Victims of Tyranny.” The Ministry of Transitional Justice and Human Rights was instrumental in protecting a TJ friendly political environment, sensitizing the Tunisian population nationwide to the TJ process, as well as bringing experts together to draft and push for the passing of the TJ law.

The second policy phase to date has been the creation of the l’Instance Vérité et Dignité (IVD), the Truth and Dignity Commission, as stipulated by the Transitional Justice Law, as well as the 2014 creation of specialized chambers to investigate human rights abuses in the Tunisian criminal court structure in 13 cities across the nation. The first file was transferred from the IVD to the specialized chamber in Gabes on March 2, 2018 and the hearings began on May 29, 2018. The IVD was formally established in 2014 and the first six months of its four-year mandate were spent preparing its organizational structure and appointing its leadership and fifteen independent commissioners. Sihem Ben Sedrine, a former human rights activist, victim of state abuse and harassment and oppositional journalist, was appointed to head the Commission. Ben Sedrine was a central oppositional figure in Tunisia since the 1990s, a founding member of one of the largest unauthorized oppositional organizations, the Tunisian Center for National Liberties (CNLT) in 1999, and imprisoned in 2001 for her appearance on the London-based oppositional television program Mustakilla, in which she criticized the Ben Ali regime for its violation of rights and politics of repression. Six separate commissions within the IVD were established: The commission on arbitration and conciliation as well as the Victim’s Commission were mandated by the TJ law. Additional commissions include “Investigation and Research,” “Reparation and rehabilitation,” “Preservation of Memory,” and the “Women’s Commission.” The latter is special in the sense that it works to integrate violations against women into the work and analysis of all other commissions. In January of 2015, the IVD began receiving testimonies and files for a one year period, as specified by the law, which was extended by another six months. It also began organizing private listening sessions across the country. The IVD, in accordance with the TJ law, treats an impressively wide range of abuses committed by the state or groups associated with the state to carry out human rights abuses. The purview of the IVD is inclusive in terms of its fifty-

eight year time-span of investigation (1955-2013), as well as its definition of state-led violence which includes the challenging category of collective victims such as entire regions, political commitments and ideologies, as well as socio-economic groups and gender. Challenges to the notion of regions as victims are related to the legal definition of region as well as to the abstract treatment of marginalization as a human rights violation on par with violations against citizens. Here, a link must be made between the exclusion of a region and the violation of the individuals social and economic rights. The Transitional Justice Law does not stipulate a system of reparations for regions as victims. Tunisia, as noted in Part I, is a fairly ethnically homogenous society, though is stratified primarily on class but also on political orientation (which often overlaps with class). The IVD’s authority is to gather testimonies, research and analyze trends, perceptions and issues related to transitional justice, rehabilitation and reparation, organize closed and public hearing sessions, and make recommendations to the government.

The IVD is an independent institution with a budget set by Parliament and a mandate of four years (2014-2018). Its work is to investigate state-led human rights violations, including torture, disappearances, persecution of political opponents, as well as economic crimes and structural violence (marginalization and exclusion) from late colonialism in 1955 through 2013, encompassing the period of decolonization, the post-independence regime of Habib Bourguiba (1956-1987), the regime of Zine Abedine Ben Ali who deposed Bourguiba in a “medical coup d’état” on November 7, 1987, as well as possible crimes committed under the governments that followed the Tunisian Revolution. Its expansive time-span and victim-based approach seeks to uncover the structural conditions that led to repression and state-led abuses. The insistence on economic crimes stems from the centrality that corruption and economic manipulation played in the sustainability and longevity of the Ben Ali regime. These grievances were clearly pronounced in slogans during the revolutionary period, and more so in subsequent protest activity following Ben Ali’s fall. In particular, the TJ process in Tunisia seeks to uncover which groups specifically were targeted by the state, including nationalists, unionists, Leftists, Islamists, as well as other regime opponents, including savvy young cyber activists and bloggers. The IVD’s goal is defined as achieving societal reconciliation with its history of state-led abuses, in other words social peace, and to ensure the deliverance of both material and moral reparations through the Fund. Its’ central mission is to provide a final report with recommendations to the Tunisian government in early 2019 of how to integrate transitional justice mechanisms in various institutions to assure reparations as well as prevent reoccurrence of state-led human rights violations.

The Commission has created three categories of victims: (1) Individual Victims, (2) Collective Victims, and (3) Regional Victims. A program of reparations is currently being developed for all

59 Interview with legal scholar, Dr. Meriem Guetat, March 14, 2018, Tunis, Tunisia
three types of victims and three teams work on each categorization of victim to determine recommendations for a system of reparation. While categories of victimhood overlap, the Commissioner heading the reparations and rehabilitation committee insisted that a separate system of reparations for each category needed to be established and that work on each group of victims even though the categories of victims oftentimes overlap, the reparations for each category still have to be established. For individual victims, reparations are constructed on both moral and material rehabilitation, which includes medical, physical, and forms of societal integration. The majority of victims have been subjected to torture while in detention or imprisoned. Because of the unprecedented psychological, physical, and moral effects of torture on individual life, the goal is to provide a system of reparation and rehabilitation for victims to “live in dignity.” The concept of dignity is central to all of the IVDs work, in part because it was a principle call of the Tunisian population during the 2010/2011 uprising. Dignity is much broader and more complex than simply providing victims with monetary reparations. It symbolized and operationalizes a more comprehensive approach to reintegrating victims into citizenship as well as their communities. Another important element of reparations is the symbolic dimension, that is how to preserve the memory of victims and integrate it into a process to rethink and examine national history especially as it pertains to nation and state building. Relatedly, the commission has worked to evaluate laws and decrees that concern individual rights following the Revolution, granting amnesty for victims, and addressing the victims, or martyrs, of the Revolution (Dec 17, 2010-Jan 14, 2011), in order to create coherence between various decrees and the mandate of the IVD. The analysis of existing laws and how they can be married with transitional justice mechanisms has been published by the IVD with a set of recommendations of what is needed to address reparations and rehabilitation of individual victims.

Rehabilitation for collective victims centers on the creation of policies to eliminate group-based discrimination (race, religion, political orientation). This policy mechanism considers a form of reparation that touches all Tunisian citizens beyond those involved in the TJ process, in other words it seeks to identify a collective solution to the experience of state-led violence. It considers how future generations will understand violence against groups with the goal to find solutions on how to guarantee the non-repetition of state-led violence and human rights abuses. According to the Commissioner, one of the most effective ways to address rehabilitation for this category is through legislation, revision of existing laws, as well as creation of new laws. Perhaps the most

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60 Author’s Interview with Hayet Ouertani, IVD Commissioner for Reparation and Rehabilitation, September 5, 2017, Tunis, Tunisia.

61 The choice of these dates was also contested as it excluded victims of a six-months long rebellion from January-June 2008 in the Gafsa phosphate mining region, particularly in the town of Redeyef. Many consider 2008 to be the real start of the revolution. Claims to the real roots of the revolution have been manifold (see Chomiak, 2013), however, following protests victims of the 2008 rebellion were considered as beneficiaries of reparations and as martyrs as well.
unique category is that of regional victims, as it addresses structural violations of the state against entire regions in terms of socio-economic exclusion and marginalization and abuse of political and cultural rights, dating from independence.

In summary, all forms of reparations suggested by the IVD consider both active and passive forms of violence (i.e. pollution in marginalized areas because of uneven budget distributions). In cases of budgetary marginalization leading to targeted collective socio-economic ills, the Commission is working to uncover the precise strategies the state constructed and whether or not post-Revolutionary governments have continued or eliminated exclusionary policies. The TJ process in Tunisia is victim-centered, inclusive in abuses from individual rights violations to collective punishment through structural inequality, with an emphasis on restoration over retribution, notwithstanding the creation of specialized chambers in 13 cities across Tunisia to review gross human rights violations.

The six different commissions within the IVD are headed by a fairly even distribution of men and women. Overall, the commission is staffed with 288 permanent employees and an overall affiliated and consultative staff of 550. On December 7, 2016, parliament approved a budget of 10.910 million Tunisian Dinars ($US 4.747 million), a 0.1% increase from the previous year from the IVD. The President of the IVD, Sihem Ben Sedrine, requested a budget of 27 million Tunisian Dinars for the last year of the Commission’s mandate to finalize its work. Even though the IVD is financed through public funds which are approved by parliament, the commission’s work has been relatively independent from state and elite interests. However, since 2014, the overall TJ process has experienced waning political support (see above, section on transitional and societal factors), if not a political and social environment based on public perception that is hostile to both transitional justice as well as the work of the IVD. While the IVD has been able to collect 65,000 files and testimonies since its inception, and treat approximately 50,000 of the files, hold nationwide closed hearing sessions, in addition to holding eleven prime-time televised public hearings since November 2016 (see below), political support for the process has been absent. Neither the President of the Republic, Beji Caid Essebsi, nor the Prime Minister, Youssef Chahed, attended the public hearings, and the President proposed a controversial economic reconciliation law in 2015 that would grant amnesty to former corrupt business men as well as state officials. The law was reduced to amnesty for rank-and-file state cadres and renamed administrative reconciliation law, passed by parliament, reviewed for Constitutionality and finally signed by the President on

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63 http://www.leconomistemaghrebin.com/2016/12/08/arp-budget-ivd-adopte/

64 The deadline for submitting files and conducting closed hearing sessions is November 30, 2017. After that date, the IVD will focus primarily on drafting its report and recommendations for the government.
October 24, 2017 (see section on transitional and societal factors).65

The power of the IVD is limited to making recommendations based on its investigation of crimes, however access to state files that provide information about human rights abuses is constitutionally guaranteed.66 Testimonies and cases of abuse submitted are voluntary. The adaptation of transitional justice mechanisms following the end of the IVDs mandate are dependent on the political commitment of other institutions within the state. Particularly, these include the Ministry of Justice and court system to adjudicate, the Prime Ministry and Parliament to guarantee the establishment and funding of the Fund for Reparations, and other Ministries involved in the preservation of national memory, including the Ministry of Education, Ministry of Culture, among others. So far, reparations have only been extended to victims and families of victims of the Revolution in the immediate post-Ben Ali regime (See section I on “Martyrs of the Revolution), as the mandate and work of the IVD has not yet concluded.

In its final mandate year and in preparation of its final report of recommendations, the IVD is currently executing a project to map all existing services across Tunisia that offer some sort of service related to transitional justice or to assist victims of abuse. This includes various CSOs that offer relevant services, including legal, health, psychological, and educational. Through this mapping exercise, the IVD learned early on that CSOs are concentrated in specific areas while absent from others, particularly in areas where concentrated violations occurred.67

While analyzing the quality of existing services, this exercise was crucial in the preliminary drafting of recommendations with specific attention to context and geography. The study underscored the need for the Tunisian state to respond to regional needs and gaps. In particular, it allowed for a correlation of location of victims (those who registered testimonies) to available services. By understanding what is available and where, the IVD will be able to produce more precise recommendation on addressing issues of dignity and citizenship, while addressing broader debates about the politics of development in Tunisia.

IV. Determinants of Transitional Justice Policies

Overview

As analyzed in the previous section, the transitional justice process in Tunisia was conceived of

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65 “BCE a eu gain de cause,” Le Temps, Wednesday, October 25, 2017, p.4.
67 Author’s Interview with Hayet Ouertani, IVD Commissioner for Reparation and Rehabilitation, September 5, 2017, Tunis, Tunisia.
and implemented first in a transitional justice-friendly environment (2011-2013) under the Troika government which regarded transitional justice as a central element of democratization and institution-building, and then significantly hindered in what has become a transitional justice hostile environment (2014-present). The first phase was defined by revolutionary fervor, a return of Islamism and other alternative political ideologies to Tunisia’s official political sphere, and a broad public desire to uncover state-led abuses of the past and compensate victims for societal healing, non-repetition and to reconstruct a nation based on rule of law, respect, dignity and equality. Reparations to martyrs of the Revolution was a key issue in this early phase. However, during the same period, former regime members as well as those segments of society that have benefitted from clientelistic relationships with political and economic power-holders, began to either push against the transitional justice process or stymying it significantly.68 From a procedural perspective, transitional justice has likewise been a confusing process, especially for Tunisian citizens, as it has encompassed many overlapping mechanisms, including those preceding the passing of the TJ Law and later initiatives by the Executive to circumvent transitional justice.69 These many overlapping mechanisms parallel to those stipulated clearly by the TJ Law, have led to public criticism, if not mistrust, of the process and include military trials of former regime members and security forces without a truth process, proposals for economic reconciliation to circumvent the public investigation of economic crimes (see below), as well as a recent government initiative of a “war on corruption,” which has resulted in many high-level arrests.

The principal turning point for transitional justice, however, was Tunisia’s most complex political crisis in 2013 (see “Transitional Factors,” above), in which a movement of anti-Troika government and anti-Ennahda called for the dissolution of the elected NCA, stating that it had overstayed its mandate to draft a Constitution, was incapable of managing the deteriorating security situation in the country, and while legal (elected democratically), was no longer legitimate. NCA President Mustafa Ben Jaafar, in response, briefly suspended parliament, while Rachid Ghannouchi from Ennahda and Beji Caid Essebsi, from Nidaa Tounes (now President of the Republic), met in Paris to discuss a road-map, which was shortly thereafter implemented by a civil society quartet of the UGTT (largest labor union), UTICA (business association), Tunisian League of Human Rights, and the Tunisian Bar Association. This civil society quartet won the Nobel Peace prize the following year, for steering Tunisia out of its political deadlock.

The TJ law was passed within this political environment, in December of 2013, by the 2011-elected parliament that was largely supportive of the transitional justice process. The law was drafted by

68 Author’s Interview with Souad Abderrahim, former NCA deputy (independent, part of Ennahda bloc, now member of Ennahda political bureau with independent status), and head of the NCA Rights and Liberties Commission, November 3, 2017, Manouba, Tunisia.

69 ‘“To participate is to have hope…” Victim participation in Tunisia’s transitional justice process,’ The Barometer for Transitional Justice, October 2015.
a technical committee then housed in the Ministry of Human Rights and Transitional Justice, approved with very little revisions by the Prime Minister (Hamadi Jebali, Ennahda) and the President of the Republic (Moncef Marzouki) and transferred to the NCA for vote, where it remained for approximately one year. The key discussion within parliament regarding the passing of the TJ Law concerned the types of crimes to be covered, the temporal mandate and period of investigation, and the definition of “victim,” a concept neither clearly defined in the penal nor the personal status code. By the time the TJ Law was up for vote, it was passed almost unanimously among those deputies present, even though the vote occurred during Tunisia’s most tense and contentious period in its post-revolutionary political transition, and parliamentary session boycotted by a significant number of elected officials.

The choices and constraints of decision makers with regard to TJ policies are directly linked to an evolving transitional context, which includes the gradual return of former regime members who are not supportive of the TJ process, beyond symbolic reconciliation, and who support “turning the page” on state-crimes in order to forge “national unity” and focus on democratic consolidation and economic development. This group of political and economic elites have also influenced public perception through media, which has widely promoted the idea that TJ can be disruptive to the project of national unity, can open unhealable wounds, and create more societal conflict rather than achieve social peace. Tunisia’s civil society has actively engaged in helping to rescue to the TJ process – this section will identify the constraints decision-makers have faced as well as the opportunities that have become available through the work of civil society and social movements.

Institutions

The transitional justice process in Tunisia is designed to be integrated into existing institutions beyond the mandate of the IVD. One of the principle confusions among the public is the conflation of the IVD with the overall TJ process, whereas the IVD represents but one of the TJ mechanisms stipulated by the TJ law. The IVD is charged with transferring cases directly to specialized courts set up within the existing Tunisian judicial system. To this extent, and because at the time of writing the IVD is in its last mandate year, international organizations such as ICTJ and UNDP have initiated training programs for judges who will be reviewing cases of human rights abuses transferred to them by the Commission. The inclusion of these specialized courts within the transitional justice law is a direct result of the National Dialogue on Transitional Justice carried out in 2012 by the Ministry of Transitional Justice and Human Rights in close collaboration with civil society, especially victims’ organizations. During these consultative meetings, victims expressed their deep mistrust of Tunisia’s judiciary, which was a principle antenna of the repressive state apparatus prior to the Revolution. In fact, one of the first institutions to be coopted by Ben Ali was the judiciary and was contested by the late dissident judge and important
oppositional figure, Judge Mokhtar Yahyaoui in an open letter to Ben Ali on July 6, 2001.\textsuperscript{70} For this reason, the drafters of the TJ law insisted on the creation of specialized chambers with judges trained in reviewing human rights abuses located within the existing court system, to establish a certain level of independence from the judiciary while also integrating the TJ process into Tunisia’s legally and procedurally robust system of law. However, a principal constraint has been both a slow judicial reform process post-Revolution, the ongoing failure to appoint a Constitutional Court that reviews legislation for constitutionality, as well as the slow construction of specialized chambers that can begin receiving files. An additional issue is the coherence and judicial challenges in relation to files that are already adjudicated by Tunisian courts. The IVD began transferring files to specialized chambers for review, hearing and judgment, in March 2018.

Secondly, public confusion around transitional justice stems directly from media coverage critical of the process as well as an insufficient public relations strategy by the IVD. Even though the 2011 Revolution has opened a new space for freedom of expression and opinion, some media organs (though not all) in Tunisia continue to be under the control of media business professionals with ties to either the previous regime, or the political factions that have pushed against the revolutionary ambitions of 2011 to 2013.

The appointment of Sihem Bensedrine as the President of the Truth Commission was met with particular resistance, which included a hefty media smear campaign against her character as well as allegations of corruption. However, public perception of the IVD (and conflation with the overall TJ process) are also directly linked to the appointment of the 15 slated positions for Commissioners.\textsuperscript{71} While the TJ law calls for a public audition process, observers from civil society\textsuperscript{72} point to the lack of transparency in the selection process of commissioners, whose candidacy was dependent on objective criteria, non-affiliation with political parties in power, as well as an engagement with the public. Commissioners, however, were selected as part of political brokerage, leading to the inability to fill all 15 seats (while six seats are currently vacant, from the outset, only 13 Commissioners were appointed), early resignations as well as dismissals. The internal IVD struggles were heavily criticized in Tunisia’s media, particularly between the President and Commissioners, including the blocking of key staff, such as Judges seconded to the Investigative Committee, being barred from entering their offices and subsequently dismissed.\textsuperscript{73} Additionally, in its first six months, the IVD was charged with creating internal procedures and


\textsuperscript{71} “Tunisia in Transition: One Year After the Creation of the Truth and Dignity Commission,” ICTJ Briefing, Rim El Gantri, September 2015.

\textsuperscript{72} Author’s Interview with Dr. Kamel Gharbi, Founder of the Network for Transitional Justice, November 2, 2017, Tunis, Tunisia

\textsuperscript{73} Author’s Interview with Judge Aref Nahali, September 21, 2017, Tunis, Tunisia.
drafting the equivalent of by-laws, establishing its expected horizontal working structure and defining managerial categories. This too was marred by conflict resulting in an internal procedural document that is vague and has solidified the IVDs ongoing and deepening internal governance crisis.\textsuperscript{74} The media, critical of the IVD and the transitional justice process as a whole, has covered these internal struggles, resignations and dismissals heavily and in the absence of a coherent public relations and sensitization strategy on behalf of the IVD, public opinion has turned not only against the Commission but also against the broader transitional justice process. Media coverage seeking to provide an alternative analysis of the process and re-integrating it into debates about political transition and democratization, have depended on social media as well as alternative news sources.

**Civil Society**

A principle determinant in shaping the possibilities as well as constraints for decision makers has been the constructive role of civil society since the inception of an organized transitional justice process. Civil society has supported the transitional justice process for outreach, sensitization, representing victim’s demands, aspirations and fears, providing social services to victims of torture, assisting victims with an understanding of their rights guaranteed by law, assisted in drafting the transitional justice law, lobbying the National Constituent Assembly to push the Transitional Justice Law at a time of immense political tension, demanded transparency in the appointment of IVD leadership, and continued fighting for the continuation and protection of the transitional justice process in a TJ-hostile political environment. International civil society groups have provided critical technical assistance in discussing and designing TJ mechanisms, involving external experts especially those involved in the construction of other TJ processes particularly from South Africa, and worked to build the capacity of grass-roots civil society organizations to support the overall process. The involvement of civil society has been instructive, albeit divided along political lines, because of its almost immediate participation in the process, the integration of civil society in drafting key documents establishing TJ mechanisms, its work in monitoring TJ processes, as well as the diversity of organizations representing different ideologies as well as offering a variety of services.

A central element of the civil society realm as it relates to transitional justice has been victims’ organizations.\textsuperscript{75} These organizations supported both the initial outreach and sensitization campaign that was part of the 2012 National Dialogue on Transitional Justice, and later were

\textsuperscript{74} Author’s Interview with Dr. Kamel Gharbi, Founder of the Network for Transitional Justice, November 2, 2017, Tunis, Tunisia

\textsuperscript{75} There are approximately 50 victims’ organizations in Tunisia today, including broader umbrella organizations such as the network for Transitional Justice, Karama Association - Dignity for Political Prisoners, Nissat Tounsiyat,
crucial in helping the IVD encourage victims to submit files, especially from female victims of torture and human rights abuses. In particular, victim’s organizations helped explain the TJ process to victims and their families, and help build trust in the process. Civil society was instrumental in defining the various categories of victimhood, particularly the definition of marginalized regions as collective victims, and the international CSO group Lawyers without Borders, along with the Tunisian Forum for Economic and Social Rights, provided technical assistance to the filing of these marginalized regions’ cases, particularly the case of Kasserine, in coordination with the IVD.

The focus on victim inclusion in Tunisia’s transitional justice process is both a result of the quick formation of grassroots organizations representing victims immediately following the Revolution – a time when associational registration laws were significantly relaxed prompting a mushrooming of an independent civil society early in Tunisia’s political transition. It is too the result of technical assistance provided from the United Nations High Commissioner for Human Rights (OHCHR), UNDP, ICTJ and other international rights organizations. Tunisian decision makers understood early on, that for the TJ process to be legitimate the voices of victims had to take center stage in the discussion and construction of TJ mechanisms. The participation of victims has also solidified the restorative character of Tunisia’s transitional justice experience, where victims are seeking state recognition of its crimes against a population followed by material and moral reparations.

Victim’s organizations have also filled gaps in existing TJ mechanisms, as exemplified in the previous section by the role of civil society in supporting the IVD in gathering more complaints and testimonies from female victims of human rights abuses and torture. The low submission of files by female victims, both political prisoners and wives of political prisoners, early in the process was attributed to fear of stigma associated with violations against women, particularly victims of sexual violence, as well as husbands and families forbidding their wives to testify. Both male and female victims have expressed fear of testifying, especially with indications of the former Ben Ali regime returning to power (after 2014), and torturers still present in the system of the Ministry of the Interior, including police stations, detention centers and prisons, as well as in other areas of the administrative apparatus, as a result of limitations in security sector and broader institutional reforms.

Finally, organizations such as the Tunisian Institute for Rehabilitation of Torture Survivors (NABRAS) have played a pivotal role in providing necessary psychological and physiological/medical care for victims of torture. Organizations providing care to victims have likewise helped policy-makers in shaping decisions around complex issues such as rehabilitation.

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76 “To participate is to have hope: Victim participation in Tunisia’s transitional justice process, Transitional Justice Barometer (Tunis: October 2015).

77 Author’s Interview with Dr. Kamel Gharbi, Founder of the Network for Transitional Justice, November 2, 2017, Tunis, Tunisia.

78 Author’s interview with Dr. Melik Lakhoua, President of NABRAS, November 2, 2017, Tunis, Tunisia.
a debate which occupied a central space in TJ discussions between 2012-2014. NABRAS, which grew out of a 2012 task force to establish the institute based on the philosophy and approach of Doctors for Human Rights, signed memorandums of understanding with the Ministry of Health (December 2015) as well as the Ministry of Social Affairs (2016). These MOUs provided important avenues to help victims overcome barriers at the social and legal levels. As the status of victims is not clearly specified in Tunisian law, the integration of victims into Tunisia’s medical and social affairs sectors allowed NABRAS to work with victims towards social recognition as well as a realization of their rights. Many victims who have benefited from NABRAS services have been sensitized to understand that they have rights, and that care for psycho-physiological effects of torture are available, such as post-traumatic stress disorder, transitional justice mechanisms, such as the IVD, depend on organizations that provide services or references to victims, while policy-and decision-makers have been able to sign important agreements that opens avenues for victims to search necessary psychological, social and health services.

One of the most critical ways in which civil society, or a broader social movement, has sought to rescue and protect the TJ process in a political context that seeks to circumvent transitional justice is the Manish M’sameh (I will not forgive campaign). MM is a broad social movement that is supported by political parties and civil society organizations who are against a 2015 Presidential initiative to forgive economic crimes committed by corrupt business men and officials, called the “Law of Economic Reconciliation.” The youth-led, and now nation-wide movement, is the first movement since the 2010/2011 uprising that has brought together Tunisians of various political orientations to unite against a Presidential decision to “turn the page” on a complex and large set of crimes. The movement is first and foremost for the protection of the Revolutionary process yet at its core are the principles of the TJ process: social justice, the right to social reintegration and work, and to safeguard national memory to understand what happened. In this sense, MM is an important movement supporting transitional justice, especially in a TJ hostile political environment, yet it also works to redirect public opinion around issues of political transition and democratization. Since 2016, Tunisia’s democratic transition has been coopted by the very individuals were not part of the Revolution that sought to usher in democracy and freedom. With its creative approach to street-based political mobilization and powerful symbolism utilized in communicating the dangers of economic reconciliation (for instance, posting “Wanted” posters with headshots corrupt members of the previous regime and reward sums in public spaces), MM reinvigorated a political discussion about the dangers of turning the page and sidelining mechanisms of transitional justice, particularly as economic crimes constitute more than a quarter of the cases brought to the IVD. By activating the public and lobbying Members of Parliament,

80 Author’s interview with Samar Tili, Manesh M’sameh organizer, September 24, 2017; Tunis, Tunisia.
MM was powerful in that it blocked parliamentary discussions regarding the reconciliation bill and also in criticizing existing reconciliation mechanisms. In particular, the MM opposed the IVD’s decision to invite Slim Chiboub, one of the most corrupt members of the Ben Ali-Trabelsi clan, to testify in front of the Commission – a testimony in which Chiboub described the functioning of the system of corruption under Ben Ali and then asked for forgiveness, indicating that he too was a victim of the system. Manish M’sameh published an open letter against the IVD, reminding that the Truth and Dignity Commission represents the last hope for justice for many victims as well as citizens and of the symbolic damage a testimony by a high-level corrupt member of the previous elite clan can do to the legitimacy of the overall TJ process.

While MM was able to block discussions in parliament on economic reconciliation and raise public opinion for a two-year period, the bill was eventually re-written as an administrative reconciliation bill in which amnesty is granted to state cadres who were involved in corruption but who did not personally benefit from it. This version of the bill was passed by Parliament in September 2017 amidst protests by dissenting deputies and MM, but nonetheless signed into law by the President in October 2017. Critics of the law, like the ICTJ who denounced it, argue that the new law does not provide any guidance on mechanisms to investigate past corruption nor does it require that those amnestied provide any information about their past actions, thus blocking an important investigation into mechanisms of corruption and repression, a core goal of the transitional justice process. Beyond the legal considerations highlighted in the economic reconciliation law, the process too took place in a political context in which memorialisation has permutated. For example, President Beji Caïd Essebsi actively rehabilitated the memory of Habib Bourguiba (i.e. reinstalling his statue on Avenue Bourguba which was moved by Ben Ali to La Goulette in his early rule), whereas collective memory of victims of the revolution and the former regime remains minimal.

In the two-year period following the Revolution (2011-2013), TJ was framed by both political elites, the international donor community as well as civil society as a central element of democratization and building a nation based on rule of law, societal peace, as well as liberty and transparency. The discussion about the scope and time-line of the process, opened public debates to rethinking Tunisian modern history, from decolonization, to modernization, gender equity, security, political identity and the economy. As such, the TJ process, beyond its legalistic and procedural dimensions, touched on almost all aspects of recent Tunisian history, placing the debates around human rights protections and non-recurrence of state-led violence into a broader social, cultural, economic and political context. That is how both the first elected post-

82 The author would like to thank the anonymous reviewer for this observation.
Revolutionary Troika government, the drafters of the TJ Law, as well as the majority of deputies within the NCA conceptualized Tunisia’s struggle to understand and make peace with its past. During this time, civil society was instrumental in supporting the process, with the difficult task of sensitizing a population that has lived through decades of dictatorship and experienced its politics of fear daily – whether as direct victims of human rights abuses or indirect victims of exclusion and marginalization from processes of development and modernization. As analyzed in the section on transitional factors above, this environment changed significantly with a hitherto unknown security crisis defined by political assassinations, terrorist attacks, as well as a general break down of the security system. The focus of political and economic elites as well as the international donor community shifted to security, closer military cooperation, rapid economic development, liberalization and job creation, to thwart the destabilization and collapse of both democracy as well as the Tunisian state, particularly as Tunisia shares a border with Libya. During this heightened security environment and the fear of political failure, transitional justice as both a broader process and the principle mechanism of the Truth Commission and creating of specialized chambers implemented to this day, have been sidelined, if not circumvented by political elites. Neither civil society nor the IVD believes that the process will garner much more political support, particularly after the end of the IVD’s mandate in December 2018. Thus, the strategy of civil society, particularly of victim’s groups, has shifted to protecting the TJ process and pushing for the implementation of the remaining TJ mechanisms: the effective work of special courts to review and hear cases of human rights abuses as well as the establishment of the Fund of Dignity to extend material reparations. Additionally, youth-led initiatives, such as Manesh M’sameh, have effectively thwarted government efforts to completely circumvent the TJ process, and delegitimize it further.

V. Effectiveness of Implemented Transitional Justice Policies

Overview

It is difficult to assess the effectiveness of implemented transitional justice policies at a time when the principle implemented mechanism – the Truth and Dignity Commission – is in its final mandate year and specialized chambers have only recently received files. While the Truth Commission has so far met its stated aims, that is to collect cases of abuse, hold closed listening sessions and public auditions, while preparing its final report for recommendations for the government to ensure the continuation, sustainability and effectiveness of the TJ process, pressures from both a non-TJ embracing government as well as civil society highlight the potential limitations in effectiveness of mechanisms.

The Work of the Truth Commission
The Tunisian Commission for Truth and Dignity (L’Instance Vérité et Dignité en Tunisie – IVD) is an independent commission, funded publicly, and constitutionally mandated by the Organic Law on Transitional Justice, no. 53. With a mandate of four years, the Commission is tasked with examining past human rights abuses, financial crimes and electoral fraud from 1955-2013. To date, the IVD has received over 62,696 cases, held 43,740 closed listening sessions. The IVD has established regional offices in Gafsa, Kasserine, Le Kef, Sfax, Sidi Bouzid, Gabes, Medenine, Jendouba and Sousse (mainly in the marginalized interior) have been created to facilitate the Commission’s outreach and sensitization while assisting victims with the filing of their cases and conducting listening sessions. The work of the IVD has been effective in raising public awareness about transitional justice, working with civil society organizations to help victims overcome fear and to come forward to testify and file claims. Moreover, the IVD established a Commission for women to integrate gender-based violations across all mechanisms, and actively has worked with women and families across the nation to overcome fear of stigma in testifying about crimes, particularly sexual violations. The equal inclusion of testimonies from female victims during the public hearings, publically highlighted the state’s gendered strategy in executing violations. In particular, women and wives of political opponents were targeted and harassed.

The effectiveness of the IVD’s work and public perception of the Commission has been affected early on, by an opaque selection process of Commissioners, internal struggles between Commissioners and the IVD’s President and among Commissioners, as well as a media smear campaign against the President, both against her character as well as allegations of corruption. The negative press has significantly shifted public opinion against transitional justice, especially as many Tunisians equate the Commission with the entire TJ process, rather than as one of the mechanisms of TJ. Nonetheless, for TJ-supportive civil society, engaged youth hopeful of achieving the goals and dreams of the Revolution, as well as the many victims organizations both the IVD and the transitional justice process represent a last hope. In short, despite waning political support for transitional justice in Tunisia as well as limited resources allocated to the work of the IVD, and the establishment of other mechanisms, the IVD has pushed through its mandate and is set to present its recommendations in early 2019.

To date, eleven public hearings have been organized by the IVD in the capital Tunis. The first and second hearings were organized on November 17-18, 2017 on the “Victims of the 2010/2011 Revolution.” To the surprise of many, neither the President of the Republic nor the Prime Minister attended the hearings, a decision to symbolize not only the government’s unwillingness to fully back the process but also indicative of the TJ-hostile environment within which the public

84 I was invited to attend two of the public hearings in person.
auditions were held. The hearings were covered live on prime-time television, covered in radio as well as streamed on-line with translations to reach as broad of an audience as possible. The second and third public hearings on human rights violations against targeted groups (leftists, Islamists, nationalists, women, political opponents, unionists) were held on December 16-17, 2017. On January 14, 2017, on the sixth anniversary of the Revolution, a public hearing session was organized on the wounded of the Revolution, victims of state-violence during uprisings as well as victims of the 2008 uprising in Redeyef, which lasted six months. Many regard this uprising as the real roots of Ben Ali’s demise and precursor to the 2010/2011 uprising that eventually lead to his ouster.85 A public hearing on the “January 26, 1978 Black Thursday Incident” was held on January 26, 2017 a day which marked a major confrontation between the UGTT as well as the ruling PSD political party, resulting in deadly clashes between striking unionists and security forces. Scores of demonstrators were killed while hundreds arrested, including the UGTT leader Habib Achour.

On March 10, 2017, a public session was organized for female victims who were forced to remove headscarves as part of a law that prohibited headscarves in public spaces and administrative positions. March 11, 2017 marked the eighth public session on internet censorship, with testimonies by oppositional bloggers as well as activists mobilization against the regime via on-line mechanisms. The ninth public hearing occurred on March 24, 2017 for victims of the Bourguiba regime, followed by the May 19th, 2017 public hearing on corruption in which one of the most corrupt individuals of the Ben Ali-Trabelsi clan testified. The eleventh hearing was held on July 21, 2017 on electoral fraud and rigging and included testimonies by high-level members of Ben Ali’s ruling RCD political party.

A criticism of the public hearings, both by proponents and opponents of transitional justice in Tunisia, has been the strategic choice of what kind of victims would be heard publically over others. During the ninth public hearing session on the victims of the Bourguiba era, a polemic occurred between Sihem Ben Sedrine and a group of historians from universities and research institutes in Tunisia. In her remarks, Sihem Ben Sedrine charged Tunisian scholars of history of complicity with the regime in producing a regime-compliant historical record, either out of fear or non-engagement with all historical facts. Sixty historians responded with a statement in the weekly *Al-Maghrib* denouncing Ben Sedrine, her accusations and insisting on their life-long engagement with historical facts and multiple narratives of Tunisia’s modern history.86

The IVD is also committed to recommending a series of memorialization measures, from cultural production, official speeches, holidays, to literary production and educational curricula. This would build on official measures implemented in the early post-Ben Ali period, such as the renaming of street names to “January 14” to commemorate the Revolution (and the removal of

85 Chomiak, 2011; 2013.
86 [http://ar.lemaghreb.tn/%D8%B3%D9%8A%D8%A7%D8%B3%D8%A9/item/17620](http://ar.lemaghreb.tn/%D8%B3%D9%8A%D8%A7%D8%B3%D8%A9/item/17620)
Ben Ali era cult symbols in public), designating January 14th as a national holiday, erecting a statue in Sidi Bouzid to commemorate the self-immolation of Mohamed Bouazizi, and naming a square in the town of Ariana (near Tunis), Zoubayr Yahyaoui place to commemorate the death following imprisonment of one of Tunisia’s first cyber activists and creator of an on-line oppositional platforms. Additionally, a number of initiatives both state and privately-funded have resulted in films documenting abuses and the system of repression, public art such as the Dream City initiative, as well as music. Most recently in September 2018, ICTJ and the University of Birmingham collaborated with Tunisian film-makers and artists for a nation-wide campaign on collective memory, titled “The Voice of Memory,” paying tribute to the silenced voices of female victims of human rights abuses under dictatorship.

As mentioned in the brief overview, it is too early to assess the effectiveness of the IVD or the specialized chambers as a mechanisms of transitional justice because the process is still on-going and other mechanisms have not yet been put into place. More recently, the IVD’s mandate was extended to December 2018 after an agreement between the Commission and the government. However, given the lack of political support for transitional justice, civil society actors are beginning to mobilize to ensure the functioning of the specialized chambers to investigate human rights violations as well as the implementation and funding of the Dignity Fund to assure to victims’ rights to material reparations.87 Currently, the IVD is conducting nation-wide participant observation sessions and two nation-wide surveys to garner an idea of victim’s expectations for reparations, as well as to better understand public perception around the system of reparations.88 Another key issue is also to identify those who have already received reparations, as well as the many allegations of “fake victims,” who have allegedly falsified their medical files, to avoid repeated payments. According to the Commissioner heading the Committee of Reparations, the amount the Tunisian government will commit to the fund will likewise serve as an indication to what extent current decision-makers are willing to support, protect and continue the country’s transitional justice process.89

VI. Conclusion

The transitional justice in process in Tunisia has been decisively impacted by shifts in the political context and new power-configurations following two rounds of elections (2011 and 2014) and a hefty political crisis (2013) that nearly derailed the country’s transition towards democracy. In brief, the political context following the 2011 Tunisian Revolution was defined by a “transitional

87 Author’s Interview with Dr. Kamel Gharbi, Founder of the Network for Transitional Justice, November 2, 2017, Tunis, Tunisia
88 Some citizens view reparations as a mechanism for the first Islamist-led government to reward its supporters
89 Author’s Interview with Hayet Ouertani, IVD Commissioner for Reparation and Rehabilitation, September 5, 2017, Tunis, Tunisia.
justice friendly” environment in which a newly elected government of previous oppositional forces placed transitional justice at center stage of the democratization process. This environment changed following a series of security incidents as well as elections in 2014 that brought into power a secularist party which united various political leanings but also former regime (both Bourguiba and Ben Ali) figures, which was made possible through the passing of a lustration law in parliament. Two government reshuffles since the 2014 elections have increased the number of former regime members in high-level policy-position and the political environment in Tunisia has shifted to a “transitional justice-hostile” situation, in which all discussions about human rights, transitional justice and contentious politics have been sidelined for a prioritization on security, rapid economic growth, and democratic consolidation. While those supportive of the transitional justice process are continuing to push for the type of process that was envisioned and institutionalized in the TJ Law between 2011 and 2013, others have been calling for a consensus on transitional justice, in which current political elites understand and support the legitimate role transitional justice can play in justice, reconciliation, societal peace and democracy. Because of the return of former regime members and business elites to power, transitional justice is often conflated with “revolutionary justice,” or the ad hoc mechanisms that were put into place in the immediate post-revolutionary period (January -October 2011), which some groups identify as a witch hunt against high-level former state cadres, security forces and business men. The political polarization over transitional justice, one analysis argues, can only be overcome if those antagonistic to the process understand and embrace its utility, while its proponents agree to work within the context of a mixed political system of former opponents, former regime elites and private sector actors in politics.90

While the process in Tunisia is on-going and the mandate of the IVD has not yet ended, nor a final report produced for the government (now due in early 2019), a number of important lessons can be learned from the process so far, particularly for the engagement with civil society. First, in transitioning political situations, political backing of a sensitive process such as transitional justice is absolutely necessary. Not only is this important for ensuring the implementation of TJ mechanisms, but also to assure their effectiveness and protect their institutionalization.

Second, in the Tunisian case study, civil society has been involved in the TJ process from its very inception, supporting an important element of sensitization and outreach with respect to the TJ process itself as well as benefits victims can gain from it. Civil society was closely involved in the drafting of the TJ law, lobbied for transparency in the staffing of the Truth Commission, supported the IVD in encouraging victims to come forward, helped increase the gender percentage of files and testimonies, and provided psychological and physiological service delivery to victims of

torture. In a relatively TJ-hostile environment, civil society worked with political forces to protect the TJ process and will continue its fight to push for the implementation of mechanisms as stipulated in the TJ law.

Third, for transitional justice to have traction, an effective communication strategy and balanced and fair media coverage is crucial. More than any other post-revolutionary institution, the IVD has received intensive negative coverage in the press, spanning from personality issues of IVD appointees to critiques of the process itself. Tunisian citizens must understand why transitional justice, especially as the process has been defined in Tunisia, is not a witch hunt but rather a step towards societal reconciliation and healing in a post-dictatorship reality.

Fourth, while the time-span of investigation in Tunisia from late decolonization to the post-Revolutionary period (1955-2013) allows for an extremely broad scope of state-led abuses, especially the definition of victimhood from individual to regional victims, a four to five-year mandate with limited financial resources does not allow for a coherent and inclusive investigation of all crimes and also creates the possibility for interpretations that all Tunisians are victims of systemic violence, including some of the perpetrators.

In conclusion, indications for the effectiveness of the transitional justice process in Tunisia will become apparent in the next year, particularly the government’s commitment to protect the process. The fact that transitional justice is enshrined in the Constitution, ensures some protection for the process. Should the government seriously back and appropriately staff special chambers to investigate and try human rights abuses as well as provide a meaningful commitment to the Fund of Dignity to offer reparations to victims and their families, the potential to compensate victims morally, materially with full integration into society will become a reality.