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## Tunisia in Transition

### One Year After the Creation of the Truth and Dignity Commission

On December 17, 2010, Mohamed Bouazizi, a young fruit cart vendor in Sidi Bouzid, Tunisia, set himself on fire outside of the governorate headquarters in protest against government oppression and poverty. This act of self-immolation set off a massive chain of events, with groups staging large public demonstrations throughout the country, calling for “jobs, freedom, and national dignity.” President Zine El Abidine Ben Ali fled to Saudi Arabia one month later. The Tunisian revolution became a turning point in the region, inspiring protests against authoritarian rule in other Arab countries.

Within a year, Tunisians had taken firm steps toward instituting democratic rule. They elected a new National Constituent Assembly (NCA) that, in addition to mandating the writing of a new constitution, drafted laws to guide the transition, including a transitional justice law.<sup>1</sup>

After surviving successive political crises, Tunisia’s Transitional Justice Law was passed in December 2013. The first law of its kind in the world, it sets out a comprehensive framework to address violations committed during the dictatorship period and the years immediately following (July 1955 to 2013) by revealing the truth about past abuses,<sup>2</sup> providing reparations to victims, and pursuing criminal accountability for serious crimes. The law establishes the Truth and Dignity Commission (TDC) as the official truth-seeking body to investigate and report on past abuses. Through the new law, Tunisia confirmed its commitment to a transition based on accountability for the past, respect for victims’ rights, adherence to international standards, and responding to the hopes of victims.

Nonetheless, like other transitions around the world, the Tunisian process has not been exempt from polarization and periods of upheaval and uncertainty. Since the revolution, rifts in Tunisian society that were hitherto unseen or suppressed have opened up. Political parties and civil society organizations increasingly reflect the gap between Islamists and secularists, left and right, coastal regions and the interior, and men and women, among other divisions. The first parliamentary elections held under the new constitution in 2014 brought to power a new political party, Nidaa Tounes, ending the political dominance of the Troika, an alliance led by the moderate Islamist Ennahda party. The shift in political power, as well as the tragic terrorist attacks and broad concerns about the country’s poor economic situation, have greatly complicated the process, as priorities have changed and the political will to follow through on the country’s transitional justice agenda has diminished.

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<sup>1</sup> Article 24 of the temporary constitution stipulates: “The National Constituent Assembly must enact an organic law regulating transitional justice, establishing its boundaries and remit.”

<sup>2</sup> Reflecting the growing international recognition of the right to truth, Article 2 of the Transitional Justice Law stipulates that “revealing the truth about the violations is a right guaranteed by law.” See UN High Commissioner for Human Rights, Preamble, Human Rights Resolution 2005/66, “Right to the truth,” April 20, 2005, E/CN.4/RES/2005/66.

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### About the Author

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New and proposed laws in two areas that reflect this changing context are of particular concern, because they could pose significant obstacles not only to the transitional justice process (and its potential contribution to guarantees of non-recurrence of violations), but also to the broader goals of human rights, democratization, and social justice, which defined the revolution. The first of these is the Anti-Terrorism law, passed by Parliament in 2015 with minimal opposition, in the wake of two devastating terrorist attacks at key tourist sites and amid increasing terrorist attacks on security forces. While the state has a clear obligation to protect its citizens from terrorism, the new law harkens back to the pre-revolution period with its authoritarian approach. It could eventually be used to limit space for public dissent and rights-based rule of law.<sup>3</sup>

The second piece of legislation, the "Reconciliation Law," would establish special measures concerning reconciliation in the economic and financial sphere. Strongly promoted by the president and his cabinet, the law, if approved by parliament, would set up a process controlled largely by the Executive to provide an amnesty and protection from prosecution to former public servants involved in misappropriation or embezzlement of public funds and to businessmen who benefited from such misappropriation of public funds. It would also formally eliminate elements of the TDC's mandate relating to corruption and misappropriation of state funds and effectively undermine the role of other anti-corruption bodies set up earlier in the transition.<sup>4</sup> The president has openly argued that such "reconciliation" is needed to help the country's economic recovery, and that it is time to move on from the past, and that prosecutions for corruption and other economic crimes will only impede the country's progress.

The logic of a "war on terror" and the political exploitation of the deteriorating economic situation to push for an amnesty for corrupt former government authorities and businessmen can only weaken the overall transition. The new government has made it increasingly clear that pursuing truth and accountability for serious human rights violations and economic crimes committed under past regimes is not one of its priorities.

However, victims' demands and expectations for truth, justice, and reparation have not weakened. Tunisia remains an inspiring example for the region and the world, having established sound bases to address the legacy of a violent and repressive past. Yet, the new political context means that there will be a complicated path forward for the TDC and other transitional justice initiatives, which will have to seek and establish strong public support in order to counterbalance the diminished political will to address the past and secure justice for victims.

This paper examines the work carried out so far, amid the changing political context, to pursue acknowledgment, accountability, and reform in Tunisia, particularly through the Transitional Justice Law and its first concrete establishment, the TDC. It sheds light on the first year of the TDC's practical implementation of Tunisia's truth-seeking exercise. It also offers recommendations on how to guide and redirect efforts to fulfill the Transitional Justice Law and its promises.

### 1. TDC as the Cornerstone of the Transitional Justice Process

Uncovering the truth about past human rights violations has been the primary demand of Tunisian victims, their families, human rights activists, and diverse sectors of society, who see it as the only way to heal the wounds of the country's dark past. Indeed, after nearly 60 years of authoritarian rule, it is not surprising that people want answers to questions like what happened, to whom, by whom, and why.

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<sup>3</sup> Among the most serious issues, the law: includes a very broad definition of terrorism, which could leave the door open to abuse in its application; allows for two weeks of pre-trial detention of suspects without access to a lawyer or family; permits trials closed to the public, with anonymous witnesses; allows for the death penalty in certain cases; and could put limits on freedom of expression.

<sup>4</sup> Other bodies include the National Anti-Corruption body and a commission in charge of confiscating illegally acquired assets.

The TDC was created to guide Tunisia's truth-seeking process.<sup>5</sup> Inaugurated on December 10, 2014, amid questions about its transparency and integrity, the TDC started receiving complaints from victims on December 15, 2014. Within one month, and with only limited outreach, the commission received approximately 3,000 complaints; as of May 2015, it has received approximately 12,000. This high level of response shows that, first, despite the tense political environment and differing opinions on the TDC, victims believe in the truth-seeking process and official mechanisms; and second, there are high expectations for the TDC, which is perceived as a possible vehicle of official acknowledgment of violations and victims' suffering.

Nonetheless, the TDC's current lack of a comprehensive strategy for conducting outreach to the larger public—and, indeed, to victims—about the purposes and nature of its work, as well as the disproportionate attention it has paid to its own internal politics (to the detriment of its work), are threatening its perceived legitimacy among victims and other initial supporters, while providing openings for attacks from spoilers. If not corrected soon, this will greatly hamper the commission's work and may threaten the process as a whole. The TDC needs to implement an effective and efficient way of working, and develop wider public ownership of the process, in order to fulfill its mandate.

### Selecting TDC Commissioners

As in other countries that have undertaken a truth-seeking exercise, the process of selecting commissioners has proven to be one of the most decisive moments in the life of the TDC.

Commissioners have the responsibility to inspire and lead society through the complex process of revealing the truth and amplifying the voices of those who have suffered the most—who are often members of marginalized groups. Commissioners' commitment to human rights and their impeccable track record are key elements for building a truth commission's legitimacy and gaining public support. Indeed, the qualities and integrity of commissioners directly affect the commission's public perception. Therefore, consultations and civil participation in the process of selecting commissioners are essential.

In Tunisia, while the integrity of the selected commissioners has not been the focus of most criticisms, serious problems arose with the selection process itself. Today, during nearly every discussion or media debate on the commission, attention is diverted away from the TDC's mission, progress, and challenges to the polemics surrounding the commissioners and their ideology, political affiliation, or past deeds. This is unfortunate because Tunisia has had positive experiences of selecting members for new state institutions, like the Independent High Authority for Elections.

Provisions in the Transitional Justice Law concerning the criteria and methods for selecting commissioners were very clear and specific.<sup>6</sup> Although these guidelines were formally followed, the NCA, which was responsible for selecting commissioners, was not able to generate public ownership of the process, nor was it able to foster full transparency or participation.

The NCA established a selection committee to choose the 15 members of the TDC,<sup>7</sup> and just 10 days after the publication of the Transitional Justice Law, it made a general call for nominations. However, the selection committee granted only a 15-day window to receive applications.

Civil society organizations and the international community heavily criticized the short application deadline, in part because it posed significant challenges to interested and eligible applicants

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<sup>5</sup> Article 16 of law 53 dated December 24, 2013, "Establishing and Organizing Transitional Justice."

<sup>6</sup> Transitional Justice Law, Part 2, Second Section, Articles 19 to 30, "In Terms of the Commission Composition."

<sup>7</sup> The first draft of the Transitional Justice Law provided for a selection committee comprising the heads of the parliamentary blocs (groups) in order to ensure diversity and equal representation of all political groups. However, the NCA amended the law, opting for a composition based on proportionality, to reflect the political partition of the NCA. Article 23 of law 53 dated December 24, 2013, "Establishing and Organizing Transitional Justice."

in regions outside of the capital. Groups also expressed concern that selections made in a hurried or less-than-transparent way would lead to politicization of the TDC.

After receiving 390 applications, the selection committee initiated an application screening process, which was administered without clear guidelines. After the initial screening, a list of 288 candidates was published on the NCA website and opened up to public objections; however, due to the lack of outreach, the opaqueness of the process, and the growing disengagement of the Tunisian public, the committee received none.

The NCA, under political pressure, pushed forward a shortlist of 15 candidates. Seven of these became subject to protest, mostly because of their perceived lack of independence. For example, one candidate had served as a deputy in the Ben Ali regime from 1994 to 1996. Despite the controversy, the selection committee dismissed the objections and referred its list to the plenary for a final vote. After the list was approved and the commissioners were named, a number of civil society groups appealed the decision before the administrative court, challenging both the selection of the commissioners and the constitutionality of the Transitional Justice Law.<sup>8</sup> Ultimately, their petitions were rejected.

During the first six months of the TDC's operations, three commissioners resigned, and in August 2015, a fourth commissioner resigned and another commissioner was removed.<sup>9</sup> This has, of course, further weakened the TDC's public standing and worsened the tense internal dynamics that have undermined the commission's ability to obtain a minimum consensus to implement its mandate. The commissioners' inability to put aside their personal and political differences to carry out the important and complex mission that has been entrusted to them has become critical, and if not overcome quickly, it could threaten the credibility of the entire transitional justice process.

Parliament now has at least two vacancies to fill. If it selects replacements again without an effective consultation process, it could have a crippling effect on the TDC's ability to implement its work effectively.<sup>10</sup> Parliamentarians should heed civil society's calls for meaningful participation and transparency in the commissioner-selection process. By doing so they would contribute greatly to the TDC's and civil society's efforts to carry out a meaningful truth-seeking exercise.

### First Steps: The TDC Gets to Work

In June 2014, the first 15 commissioners took the oath of office.<sup>11</sup> After nearly three years of ad hoc measures, Tunisians could finally see the institutionalization and materialization of a comprehensive process that represented a once-in-a-lifetime opportunity to address violations of the dictatorship period.

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<sup>8</sup> The National Independent Coordination of Transitional Justice and the Justice and Rehabilitation Association filed an appeal against the selection committee and the selection process and challenged the constitutionality of the law, highlighting that Article 25 stipulates: "The decisions of the committee on the objections shall be final and cannot be reviewed or appealed by any means even in claim of abuse of power." The Tunisian Network of Transitional Justice also challenged the nomination process before the administrative court, considering that the committee of selection departed from the Transitional Justice Law, notably Article 22, by selecting a deputy of the Ben Ali parliament.

<sup>9</sup> The initial resignation of Mr. Khemais Chamhari, for health reasons, came after the TDC's first official meeting. In August 2014, the specialist in religious affairs resigned because "he could not fit within the group." The third resignation happened right after the announcement of the legislative elections results, with many commentators reading it as an attempt to destabilize the commission. The fourth commissioner to resign indicated that the internal climate of the TDC was too hostile. A fifth commissioner was removed by the remaining commissioners after he was believed to have provided members of parliament who oppose the TDC with information to demonstrate serious internal mismanagement of the TDC.

<sup>10</sup> After the first resignations, parliament should have remedied the situation by adopting a more open and transparent process for selecting replacements; unfortunately, that has not been the case. The NCA opted for the same opacity in replacing commissioners. See Perrine Massy, "Lilia Brik Bouguerra, nouveau membre de l'Instance Vérité et Dignité," Webdo, September 19, 2014, [www.webdo.tn/2014/09/19/lilia-brik-bouguerra-nouveau-membre-linstance-verite-dignite/](http://www.webdo.tn/2014/09/19/lilia-brik-bouguerra-nouveau-membre-linstance-verite-dignite/)

<sup>11</sup> The inauguration coincided with an international conference on truth-seeking organized by the Ministry of Justice, Human Rights, and Transitional Justice, with the support of ICTJ, the United Nations Development Programme, and the Office of the High Commissioner for Human Rights. The conference was the first official presentation of commissioners to the public and brought commissioners from other truth commissions to Tunisia to share their experiences.

In keeping with the Transitional Justice Law, the first six months of the commission's tenure was to be dedicated to preparatory measures, such as developing internal bylaws and a work plan for the full term and establishing an executive body.<sup>12</sup> However, the preparatory period was marked by slow decision making. The TDC did not manage to create the executive management team, the work plan, a database, a communications plan in coordination with national media,<sup>13</sup> or a fully functional organizational structure.

Under the current structure, the TDC consists of a number of specialized committees, each led by a different commissioner.<sup>14</sup> These are:

- Research and Investigation Committee
- Reparations and Rehabilitation Committee
- Committee for Preserving National Memory
- Women's Committee

In other truth commissions, such a structure has complicated the decision-making process and reduced the space for executive decisions and an adequate role for professional staff. The Tunisian TDC will need to ensure and strengthen fluid internal communication channels, and foster a collegial work culture among commissioners, in order to overcome any difficulties inherent in this structure.

The Women's Committee was only created after considerable internal debate. The final decision to establish it was in line with best practices of truth commissions around the world. The committee will be key to mainstreaming gender across the commission's work, establishing appropriate conditions to account for the specific experiences of women and respond to women victims. A gendered approach to truth seeking is essential to guaranteeing a fair process, especially in a society where women were presented by the former regime as emancipated as a way to impose a single vision of Tunisian life on society and obscure differences among cultural and religious groups. The TDC will have to shed light on gender-based violations that occurred during the dictatorship, especially against women, and the socioeconomic impact of violations on women's lives, as the Transitional Justice Law mandates that the TDC take into account the particularities of how violations impacted women.

Yet, the committee's name—Women's Committee, instead of Gender Committee—may pose some limitations to revealing and understanding other types of gender violations and the specific impact and repercussions they may have. For example, sexual violence against men and boys may be overlooked. The commission, and primarily the Women's Committee, should take measures to record and analyze all gender-based violations.

The TDC has decided to create 24 regional offices to help facilitate its work outside of Tunis. This was a high-priority step because the TDC has been criticized for neglecting its communication and outreach role. These offices should help to ensure accessibility for victims in marginalized areas, many of whom may have difficulty in traveling to the capital.

However, establishing regional offices is not an easy task. It will take time and significant human and financial resources to make these offices operational. Given the complexity and resources required to establish a regional office, it may be advisable to create fewer of them—perhaps six—to reflect the six districts drawn during the 2012 National Transitional Justice Consultation Process.

<sup>12</sup> See articles 56 and 57 of Law 53 dated December 24, 2013, "Establishing and Organizing Transitional Justice."

<sup>13</sup> Ibid, article 56.

<sup>14</sup> The bylaws also establish five administrative departments falling under the supervision of the executive director, but the departments' functions and the kind of support they would provide to the specialized committees is unclear. See Article 47 of decision 1 of 2014 dated November 22, 2014, pertaining to the TDC internal bylaws.

Another practical approach could be to gradually set up offices over time, given that the deadline for receiving victims' complaints is not explicitly linked to the first day of operation of the TDC itself and could be interpreted as applying progressively to each new office. In any event, the decision to open a TDC office in a given region should be based on a thorough analysis of existing information on violations committed there and should take into account demand in that region.

Additionally, a number of countries have used mobile offices or teams as part of their truth commission operations. Such a system might be helpful for both the TDC and victims, especially for establishing a presence in the most remote areas, where the number of inhabitants likely does not necessitate a full office or where people may not have the resources to travel.

The importance of the TDC's devising a robust communication and outreach strategy cannot be stressed enough. Such a strategy could improve the public perception of the TDC, disseminate information about the process, and transmit victims' opinions and messages. As part of its mandate, the TDC should establish dialogue among the key stakeholders—the TDC, victims, civil society groups, and society at large—via a continual flow of information. A communications strategy would help to ensure that the TDC enjoys visibility and widespread public understanding of the purpose of its work and mission, particularly amid hostile or unstable political environments.

## 2. Role of Civil Society and Victims' Groups

Civil society organizations, including victims' groups, have played a critical role in fostering social change in Tunisia—before, during, and after the revolution. They have helped to raise awareness about transitional justice and advocated and lobbied for transitional justice measures as a cornerstone of a successful transition. In 2012, they made a significant contribution to the National Transitional Justice Consultation Process, with a number of groups on the technical committee helping to supervise the national dialogue and write a first draft of the Transitional Justice Law.

However, the low level of civil society's formal involvement in the early stages of the TDC, particularly during the commissioner-selection process, has come at a cost. Indeed, experiences of other truth commissions around the world show that civil society groups play a decisive and influential role in the truth-seeking exercise and the larger transitional justice process. Where civil society groups are engaged and involved in the full process, truth commissions are strongest. Critically, this includes the post-commission phase, when civil society's role expands to include advocating for implementation of the commission's recommendations.

Going forward, the commission must better understand and appreciate the valuable role played by civil society in order to capitalize on this historic opportunity—and fulfill its moral responsibility—to reveal the truth about Tunisia's past and make a firm contribution to the country's future.

At the same time, many civil society groups should recalibrate their expectations for their role, because they have sought a level of involvement that goes far beyond their role as contributors of insight and information, facilitators of access to victims, monitors, and observers. Indeed, the kind of involvement they have sought and demanded could be counterproductive, and may potentially undermine the independence and functioning of the TDC.

Several civil society networks will be important to the TDC's work. These include:

1. **Transitional Justice Network.** This civil society coalition comprises associations and victims' groups created after the revolution, including, for example, Tounissyet Association and El-Karama for Political Prisoners Association. While aware of and vocal about the law's imperfections, the Transitional Justice Network currently supports the TDC because it considers the group to be the last chance to ensure victims' right to the truth. They have re-

requested periodic meetings with TDC members in order to monitor their work and convey victims' impressions and provide feedback about the commission.

2. **Barometer of Transitional Justice.**<sup>15</sup> This initiative, started by the Al-Kawakibi Democracy Transition Center,<sup>16</sup> aims to measure Tunisians' perceptions of the transitional justice process and institutions, like the TDC, and provide qualitative research on progress.
3. **Transitional Justice Is Also for Women Network.** This group, aimed at boosting the TDC's gender perspective, seeks to contribute to the TDC's work by reaching out to local communities, particularly women victims, raising awareness about transitional justice, and enhancing women's capacity and willingness to testify before the TDC.
4. **Consultative Committee to the TDC.** Started by the Justice and Rehabilitation Association, this committee of victims' groups has a clear vision of how to cooperate with the TDC. It has proposed the creation of a consultative committee in the TDC composed of human rights activists and victims' representatives. However, the strong polarization between some civil society groups and the TDC has hindered the materialization of this initiative so far.
5. **Observatory of Transitional Justice.** The idea of forming the Observatory of Transitional Justice to monitor and support the transitional justice process arose in 2012, after the draft Transitional Justice Law was submitted. Organizations on the technical committee that had helped to write the law wanted to stay engaged in the process in an observatory capacity, in order to monitor the TDC, identify risks and potential breaches of the spirit of the law, and support the truth commission in case of any change in the political will to carry out transitional justice. Despite various attempts to frame a common understanding of its functions and objectives (supported by the international community), the initiative has not yet come into being. This failure is mainly due to differing positions of would-be members regarding the TDC and the law.

### 3. Seeking Accountability: Military Tribunals to Future Specialized Chambers

Establishing criminal accountability for past violations is an important element of the transitional justice process yet to be comprehensively addressed in Tunisia. The drafters of the Transitional Justice Law, aware of the lack of trust that most Tunisians have in the judiciary,<sup>17</sup> opted to create specialized chambers to try cases of human rights violations committed during the dictatorship period. According to the law, specialized chambers are defined as a “mechanism to prevent impunity and escaping responsibility.”<sup>18</sup>

Article 8 of the Transitional Justice Law identifies the specific violations to be prosecuted in the specialized chambers, including: deliberate killing; rape and any form of sexual violence; torture; enforced disappearance; execution without fair trial; and cases referred to it by the TDC related to election fraud, financial corruption, misuse of public funds, and forced migration for political reasons.

As of now, the specialized chambers are not operational: judges have not been selected and the courts have not been established. In the interim, military tribunals have started trying hundreds of cases involving violations that occurred during the uprising.<sup>19</sup> As discussed below, legislation

<sup>15</sup> This project will be developed in partnership with York University and Impunity Watch.

<sup>16</sup> KADEM is a nongovernmental regional organization founded in Jordan in 2006, specialized in transferring knowledge and building capacities in the field of democratic transition.

<sup>17</sup> Participants in the national dialogue raised this issue, and called for the creation of a specialized judicial body to deal with the cases of the martyrs and wounded of the revolution and human rights violations that occurred in the past. See Final Report of the National Dialogue on Transitional Justice, October 2013, 37-38.

<sup>18</sup> Article 6 of Law 53 dated December 24, 2013, “Establishing and Organizing Transitional Justice.”

<sup>19</sup> Most are currently at the cassation stage.

is needed that clearly identifies jurisdictions and procedures for such cases and brings them into compliance with the new constitution.<sup>20</sup>

In 2011, the wounded and the families of the martyrs of the revolution began seeking relief in the courts for violations of physical integrity. Because police officers were most often implicated in these cases, military courts, which continue to have jurisdiction over police conduct, received them for trial. However, despite reforms to the military jurisdiction, including the introduction of an appeal process, the objectivity and neutrality of such tribunals is not guaranteed. To start, judges are appointed by a military council chaired by the Minister of Defense.

Different military tribunals in different governorates have admitted and adjudicated cases and delivered contradictory decisions, especially with regard to the amount of compensation victims receive for physical and moral damages. The limitations of this ad-hoc approach came to a head in April 2014, when the Permanent Military Court of Appeal, in reviewing first-instance decisions, reclassified many crimes to lesser offenses and reduced the sentences of convicted offenders, even in cases involving killings and other serious crimes.<sup>21</sup> While these rulings can be seen as conforming with existing law, the decisions triggered bitterness among victims and led to protests and a hunger strike.

In an attempt to address the problem, the NCA initiated a series of discussions and consultations with legal experts to find a way to remove the cases from military jurisdiction. This is challenging because the new constitution forbids the creation of exceptional courts or jurisdictions that may hinder fair trials.<sup>22</sup> This led to the enactment of Organic Law 2014-17, which amends the Transitional Justice Law and assigns competency over cases involving violations that occurred during the revolution to the specialized chambers. It also orders the public prosecutor's office to automatically transfer pertinent files to the chambers, in order to ensure follow-up on cases and prevent cases from being closed. Thus, in addition to dealing with the human rights violations listed in the law, the specialized chambers will now also be responsible for cases related to violations committed during the revolution.

Although the issue of overlapping jurisdictions has been somewhat clarified, significant confusion persists. Article 8 of the Transitional Justice Law, which covers criminal accountability, is vague. It only states that the specialized chambers should be created "within the courts of first instance in the headquarters of appeal courts." It does not specify the degrees of jurisdiction for appeals or the number of specialized chambers to be created. It is also unclear on the time frame the specialized chambers will cover, the duration of its work, or which entities have the authority to refer cases to it.<sup>23</sup> For example, it is unclear if the specialized chambers will work in parallel with the TDC for a predetermined period of five years.

In March 2014, the Ministry of Justice, Human Rights, and Transitional Justice issued a decision creating a Reflection and Deliberation Committee to clarify Article 8.<sup>24</sup> The committee, which included a wide range of judicial and civil society actors, presented a set of recommenda-

20 Relevant current laws have yet to be amended to restrict military jurisdiction over these cases. Article 149 of the new Tunisian Constitution stipulates that "the military tribunals continue to exercise the jurisdiction they have been granted by the current laws until their amendment by the dispositions of Article 110." This, in turn, would limit military jurisdiction strictly to military crimes. Article 22 of Law 70 of 1982, the existing applicable law, establishes that military courts are competent over cases involving agents of the internal security forces or facts in connection with the performance of their duties when alleged offenses are related to their duties in providing internal or external state security.

21 In 2011, in the case of the martyrs and the wounded of Tunis, the Permanent Military Court of First Instance of Tunis convicted the former director of the Presidential Police, Ali Seriaty, of premeditated murder, and sentenced him to 20 years' imprisonment. However, the Permanent Military Court of Appeal reduced the sentence to only three years' imprisonment because the court considered the acts committed as crimes of omission—based on chapter 1 of Law 48 of 1966. Concerning the case of martyrs and wounded of the revolution of Thala and Kasserine, one defendant was convicted of attempted murder by the court of first instance and sentenced to five years in jail. On appeal, the Permanent Military Court of Appeal reclassified the act as extreme violence causing permanent incapacity of more than 20 percent, according to Article 219 of penal code, and reduced the sentence to two years imprisonment. In the case of the martyrs and the wounded of Sfax, the First Instance court sentenced two policemen to 20 years in jail for attempted murder. This judgment was appealed on April 12, 2014, and the qualification of committed acts was modified from attempted murder to omission of the prohibited, based on chapter 1 of Law 48 of 1966. The first accused was sentenced to six months' imprisonment and the second to one year.

22 Article 110 of the Tunisian constitution promulgated on January 27, 2014, stipulates: "The different categories of courts are established by law. No special courts may be established, nor any special procedures that may prejudice the principles of fair trial."

23 It is unclear whether the TDC has the exclusive capacity to transfer cases to the specialized chambers or whether victims can have direct access to these courts. Among other questions is whether victims may apply directly to the specialized chambers.

24 Decision of the Minister of Justice, Human Rights, and Transitional Justice, dated March 28, 2014, providing for the establishment of a Reflection and Deliberation Committee for enforcement of the provisions of Article 8 of Law 53.

tions that call for, among other amendments, a revision of the Tunisian penal code to include the list of violations mentioned in Article 8 that are currently not provided for. It also recommended the creation of multiple specialized chambers, criminal and misdemeanor specialized chambers, and a specialized chamber in Tunis, with others to follow in other geographical areas as needed. It did not address the issue of appeal or cassation, leaving these open to interpretation. It stressed the need for clarification of the criteria set out in the law for choosing judges for the specialized chambers from “among judges who have never participated in trials of a political nature.”<sup>25</sup> However, depending on how this provision is interpreted, it may unfairly limit the choice of possible candidates, because most active judges were assigned political cases during the dictatorship period, and according to them, sitting in a political trial did not mean endorsing or taking part in the decision—especially if the judge was not the president.

In August 2014, decree no. 2014-2887 was issued creating eight specialized chambers in Tunis, Gafsa, Gabes, Sousse, Kef, Bizerte, Kasserine, and Sidi Bouzid. A ninth chamber in Sfax was added later.<sup>26</sup> Yet, the need for this number of specialized chambers may be debatable. First, it would be costly. Second, nine chambers would require a significant number of judges to be specifically trained to deal with complex cases of serious human rights violations, which will be difficult to achieve in the short term. Third, the number of cases that the TDC will refer to the specialized chambers remains unknown, so the actual need for all nine chambers has not been determined. In order to conserve resources and respond to actual needs, one option may be to install the specialized chamber in Tunis and open chambers in other locations as demand arises.

Before trials can begin, the government needs to clarify the role of the TDC in the criminal accountability process, beginning with its investigative function. Article 8 of the Transitional Justice Law stipulates that the specialized chambers will adjudicate cases referred to it by the TDC. Article 42 of the same law, however, states that the TDC will refer cases to the public prosecutor in which gross human rights violations have been proven.<sup>27</sup> The threshold of proof needed for the TDC to pass a case to the specialized chamber has not been clarified. Even if Article 40 of the Transitional Justice Law grants the TDC the same powers as the judicial police (i.e., “to use any procedure or mechanism which may contribute to revealing the truth”), it does not mean that the TDC should replace the judicial authorities’ or the public prosecutor’s role. Indeed, a truth commission like the TDC generally focuses on establishing the basic facts and patterns of violations, and revealing the historical truth, not conducting criminal investigations. If the objective is to build criminal cases, investigations conducted by the TDC should be followed up by a criminal investigation led by a competent prosecutorial authority.

#### 4. Reparations

A comprehensive and coherent reparations policy with clear and objective criteria will complement the reparative effect that the truth-seeking and criminal accountability processes may bring to victims.

Some victims in Tunisia have started receiving sums of money as court-ordered compensation for material and moral damages for violations they suffered during the revolution, based on judicial decisions by military courts. The state began providing reparations near the beginning of the revolution when, after Ben Ali fled, the state compensated victims who had suffered violations during the uprising. This was followed by the general amnesty granted to former political prisoners—another form of reparation. State measures have focused on three areas—financial compensation, healthcare and social services, and work and professional support—thus providing some relief to victims and, to some extent, answering their demands for justice.

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<sup>25</sup> Article 8 of Law 53.

<sup>26</sup> The decree excluded Sfax. It was corrected later, and Sfax was added by decree 4555 dated December 29, 2014.

<sup>27</sup> This clarification is stressed by Article 3 of Law 17, which orders the public prosecutor’s office to refer cases from the TDC automatically to the specialized chambers.

A multitude of related laws have been passed since the revolution, and several committees within the competent ministries have been created to implement them. This situation has generated confusion about which provisions apply to which victims, particularly given that the laws do not establish clear criteria for calculating compensation for damages.<sup>28</sup>

In the absence of a consistent and comprehensive concept of reparation and a set of objective criteria, however, this practice may create perceptions of unequal treatment and frustration among victims who are not being compensated at the same level by the state. Further, it may prompt a misunderstanding of the concept of reparations, by reducing it to monetary compensation and excluding other important elements, such as acknowledgment, restitution, rehabilitation, and symbolic measures.

It is beyond the scope of this paper to discuss all of the current laws on reparations; however, a few are of particular significance:

1. **Decree Law 1 of February 19, 2011** grants amnesty to every person having been subject before January 14, 2011, to a conviction or a legal prosecution in the courts relating to the uprising, whatever his or her degree or category due to enumerated infringements. It entitles the beneficiaries of the amnesty to the right to return to their employment and to a request for damages. However, it does not define the reparations that may be granted or the time frame.
2. **Decree Law 97 of October 24, 2011** pertains to compensation for the martyrs and wounded of the revolution as amended by Law 26 of December 24, 2012.
3. **Decree 2013-2799 of July 9, 2013** was a response to the sit-ins of “Assoumoud” (or resistance),<sup>29</sup> which protested delays in the implementation of reparations measures provided by Decree Law 1.

Unfortunately, even with these multiple laws, the needs of victims are not being adequately addressed. A 2014 sample study carried out by the Tunisian Network of Transitional Justice in Gafsa to evaluate the effectiveness of reparations measures before the promulgation of the Transitional Justice Law shows that approximately 87 percent of beneficiaries were unsatisfied with the reparations they had received, with respondents citing various reasons, including lack of outreach and delays in processing files.<sup>30</sup> It is likely that beneficiaries’ lack of satisfaction stems, in part, from a conceptualization of reparations as being limited to only monetary compensation, in the absence of other measures by the state to acknowledge and affirm the suffering and dignity of victims.

As part of its mandate, the TDC may help to clarify Tunisia’s reparations measures and contribute to a more comprehensive notion of reparations for both individual victims and collective subjects.

## 5. Towards the Future

Unique among the so-called Arab Spring states, Tunisia has succeeded in establishing a credible transition to democratic rule in an increasingly difficult context. Stakeholders need to remember that this long and complex process goes far beyond the promulgation of a new constitution and

28 This lack of clarity is especially significant in relation to advances on compensation granted to victims, as regulated by Decree 2013-2799. According to article 9 of this decree, an advance on compensations is granted annually in one-lump sum that would be taken into consideration when deciding the final compensation for a victim. Some victims already received an advance of 6000TND without specifying the criteria that led to the determination of such an amount or the selection of a beneficiary.

29 A sit-in of the resistance by the beneficiaries of the general amnesty in la Kasbah (or Government Square) denouncing delays in granting compensation. The sit-in lasted from January 15 to July 15, 2013, and ended with police intervention.

30 “Reparations within the framework of Transitional Justice, Impact, and Effectiveness,” a local survey organized in Gafsa by the Tunisian Network of Transitional Justice with the support of ICTJ, UNDP, and OHCHR in 2014, and published in April 2015. The report is available in Arabic and French.

the holding of free-and-fair elections. It will face enormous challenges, such as the recent terrorist attacks, which the country will need to overcome to reach long-lasting stability. The country must assess the progress already made, its achievements, and the many difficulties that it has surmounted so far.

The first three years of Tunisia's transition have seen the adoption of the historic Transitional Justice Law, which is now being implemented, and the establishment of the TDC to guide the national truth-seeking effort. After being immersed in its own preparation process, the TDC is currently opening space for truth seeking and engaging with the public to have its intended impact on society.

Unfortunately, so far the TDC has largely failed to gain the support of civil society, victims, and the public at large. The high participation rate by victims in the registration process, with thousands of individuals providing testimony, shows the high demand for truth and justice in Tunisia and the high expectations and standards that the TDC will have to meet. In order to strengthen its relationship with civil society and the beneficiaries of its work and, most importantly, to improve its public perception, the TDC needs to adopt a more open and interactive approach and implement a robust communication and outreach strategy.

At the same time, transitional justice is not just about uncovering the truth. Other accountability processes, such as reparation, institutional reform, and criminal justice, have to advance simultaneously, as envisaged by the Transitional Justice Law and as demanded during the National Transitional Justice Consultation Process. These are pending issues for Tunisian society and institutions to address.

A national evaluation of the reparations measures implemented so far is needed to improve the current process and help to make it more comprehensive and inclusive, based on clear procedures. Collective reparations directed at the community level could help to address problems in marginalized regions as part of a comprehensive reparations policy.

Some claim that revealing the truth about past violations and holding perpetrators accountable in the framework of the Transitional Justice Law will hinder economic growth, an idea that has gained momentum among some sectors in Tunisia. The tragic terrorist attacks of recent months may sway policy toward a more restrictive approach to liberties and rights, as some argue that institutional reforms will hamper national security. However, national and international stakeholders must be firm with the message that these false dilemmas would be easily refuted if there were the political will to implement existing measures to address the country's painful past, acknowledge victims, and reform weak institutions. In fact, such efforts are essential to building a solid democracy and long-lasting stability. Lack of official acknowledgment of past wrongdoing, or any amnesty for perpetrators of serious human rights violations presented under the guise of a reconciliation initiative, would only reinforce impunity, maintain corruption, and undermine ongoing efforts to rebuild trust between the citizens and the state.

Transitional justice is a process that cannot succeed unless all crucial actors and stakeholders actively participate. While the TDC is a key protagonist leading the current phase of the process, it alone cannot satisfy victims' demands for justice. While implementing its mandate, the TDC should assume a leadership role to facilitate and promote the active participation of civil society, victims' groups, and Tunisian society at large. It should also help to foster the political will needed to implement other transitional justice measures, as envisaged in the Transitional Justice Law.

If Tunisia follows the course of a credible, participatory process, it will be able to demonstrate that achieving "national dignity" for all Tunisian citizens, as demanded during the revolution, is a feasible process, setting an example for the region and the world.

## Recommendations

The following recommendations are intended to help guide and redirect efforts to fulfill the Transitional Justice Law and its promises.

### To Tunisian Policy Makers

1. Provide strong political support and adequate state resources to implement the Transitional Justice Law; promote coordination of relevant state powers and honor the spirit and objectives of the law. Backing away from commitments in the law will weaken the overall transition.
2. Establish opportunities for meaningful participation of victims and civil society in crafting and implementing transitional justice policies, and ensure transparency in the process. This would help to build society's trust in transitional justice measures and the institutions that conduct them, and it would strengthen efforts by the TDC and civil society to carry out a credible truth-seeking process.
3. Clarify the role of the TDC in the criminal accountability process and take steps to harmonize Article 8 of the Transitional Justice Law with Tunisian legislation on the judicial system.
4. Develop clear criteria for opening regional specialized chambers based on actual needs. It would be advisable to adopt a progressive approach to opening additional regional chambers once an initial specialized chamber is established in Tunis.
5. Using a transparent and consultative process, promptly name new commissioners to the TDC to replace those who have resigned or been removed.

### To the TDC

1. Implement the TDC's mandate in a prompt, effective, and transparent way. A collegial approach is urgently needed to overcome the difficulties inherent in the current organizational structure, secure public support, and demonstrate the value of the TDC in an increasingly adverse political context.
2. Devise a robust communication and outreach strategy to ensure widespread visibility of the TDC, broad public understanding of its purpose and mission, and credibility, based on transparency and coherency of action.
3. Ensure proper attention and support to investigations of gender-based violations; analyze the impacts of all violations from a gender perspective.
4. Base decisions to open regional TDC offices on thorough analysis of existing information on violations and victim demand, in order to ensure the best utilization of resources and best response to victims.
5. In accordance with the Transitional Justice Law, create a comprehensive and coherent reparations framework based on assessments of measures implemented so far and on victims' needs.
6. Implement effective channels to ensure that civil society organizations, victims' groups, and other key stakeholders can contribute to the work of the TDC; include and encourage their active engagement, involvement, and participation in the full process.

### To Civil Society

1. Engage critically and constructively in the TDC process by contributing insights and information, facilitating access to victims, monitoring, and observing.