

Addressing the Past, Building the Future: Justice in Times of Transition Conference Report Tunis, April 14-15, 2011

ICTJ's Middle East and North Africa Program, in partnership with the Arab Institute for Human Rights, the Tunisian League for Human Rights, and the Office of the High Commissioner for Human Rights, convened an international conference entitled "**Addressing the Past, Building the Future: Justice in Times of Transition**" in Tunis, Tunisia on April 14-15, 2011.

After 23 years in power, a month of sustained protests across the country forced Tunisian President Zine el-Abidine Ben Ali to step down in January 2011. The interim government has pledged its commitment to reform and has established three commissions focused on constitutional reforms,¹ corruption, and violations that occurred during the uprising.²

The conference brought together approximately 150 local, regional, and international actors to share experiences and identify the most appropriate transitional justice mechanisms for addressing the past in Tunisia. After decades of political oppression, the Tunisian participants were eager to express their views on this subject—and many in the room had already been leading internal discussions and engaging in emerging initiatives related to transitional justice.

The conference had five substantive sessions focusing on criminal accountability, security sector reform and vetting, truth-seeking, gender justice, and reparations.

CRIMINAL ACCOUNTABILITY

Tunisians are clear about the importance of criminal accountability for past crimes, and the steps taken so far have been in direct response to civil society demands. Many prominent members of Ben Ali's regime have been arrested and await trial, including former interior minister Rafik Belhaj Kacem, several senior officials, and members of the presidential security guard. A large number of the extended Ben Ali clan—several accused on corruption and extortion charges—is also in detention or under house arrest.

This session sought to clarify the scope and nature of transitional justice, as many Tunisian judges and lawyers were under the impression that transitional justice was an alternative to criminal accountability. Human rights lawyer Naziha Boudhib emphasized that criminal accountability is at the heart of transitional justice, and noted the important role of trials for past crimes in helping to re-establish the rule of law. ICTJ president David Tolbert expressed admiration for what Tunisians have accomplished already in such a short period of time. He stressed the importance of holding former senior officials accountable, of witness protection, and noted the value of a clear investigative strategy. ICTJ senior consultant Luc Côté explained that when criminal law is applied in transitional contexts after systematic crimes have been committed, the number and scope of crimes are often too much for any justice system—even a well-equipped one—to

¹ The commission on constitutional reform has since been renamed the "Higher Political Reform Commission."

² In an effort to demonstrate their commitment to international law, the interim authorities have also initiated the process of ratifying the Rome Statute and other human rights instruments. During a meeting between ICTJ president David Tolbert and the minister of justice, the minister confirmed that Tunisia would soon deposit the instrument of ratification for the Rome Statute.

handle. At the same time, he recognized the importance of recognizing victims' claims, and therefore emphasized that other transitional justice processes such as truth seeking and reparations are important complements to judicial mechanisms in the effort to restore faith in the country's institutions of justice.

Numerous reshuffles in the Interior Ministry have delayed the pace of prosecutions, and despite an international arrest warrant, Ben Ali remains free in Saudi Arabia. The slow progress in criminal investigations is triggering suspicion of a lack of political will. The justice system, plagued by political interference during the Ben Ali years, is also in need of an overhaul, and the commissions investigating corruption and past crimes lack clear mandates. With the flood of incoming cases, there is a severe shortfall of human resources and technical capacity. Speakers highlighted additional challenges, including case complexity, the large numbers of both perpetrators and victims, and limitations of criminal trials to provide adequate compensation. Ensuing participant dialogue focused on the need for reform and strengthening of investigative and prosecutorial bodies within the Tunisian judiciary, and underscored that doubt persists about the judiciary's independence. There was considerable debate about how to proceed with trials when the judiciary has yet to initiate reforms or vetting processes, and therefore lacks public trust.

SECURITY SECTOR REFORM AND VETTING

Habib Belkouche of the Center for the Study of Human Rights and Democracy in Morocco identified three key challenges for security sector reform (SSR) in the region: (1) lack of transparency and accountability, including in the realm of budgets; (2) ambiguity of mandates; and (3) consultation and the importance of involving civil society in SSR.

Marina Caparini of the Norwegian Institute of International Affairs outlined several options in the area of vetting, one of which would entail the complete dismantling of institutions (including those beyond the security sector) and the creation of new ones. This option was pursued in the Bosnian judiciary: former employees were allowed to re-apply, and the burden of proof shifted to the applicants. ICTJ's research director Pablo de Greiff pointed to Argentina as an example of indirect vetting, in which the senate presided over the budget of the security sector; the senate worked closely with members of civil society to confirm promotions of military; many human rights violators withdrew rather than face accusations, even with no formal vetting procedure.

Participants raised the issue of vetting throughout the conference, questioning the extent to which members of the old regime needed to be purged in order to establish more credible institutions. One participant noted there is a connection between poverty and corruption that is prevalent in the security sector: many Tunisian farmers who can no longer subsist on their land have joined the police, and they spend over 50% of their salaries on housing alone. For this reason, training and education alone may not address the economic challenges that often lead to corrupt practices as a means of survival.

TRUTH-SEEKING

The desire for the truth is evidenced by the numerous commissions that have already been created in the country. There is a clear interest in exposing cases of corruption: in early March, the anti-corruption commission announced it had received over 4,200 requests to investigate corruption and embezzlement.

In addition to outlining the broad purpose of a truth commission, Priscilla Hayner, senior advisor to the Centre for Humanitarian Dialogue, presented the experience of Argentina, where the findings of the country's truth commission led to the prosecution of high-level officials. Noting the strong interest in addressing corruption in Tunisia, ICTJ senior consultant Howard Varney explained that corruption and human rights violations are mutually reinforcing forms of abuse, and that recent truth commissions have acknowledged the importance of investigating economic crimes. Istvan Rev of Central European University

outlined the significance of archives, noting that the security sector generally keeps documentation of their actions, and that they are often determined to destroy this evidence, as has already been observed in Egypt.

Tawfik Bouderbla, president of the commission for investigating violations during the recent events, outlined the mandate and appointment procedure for the commission. Participants engaged in considerable debate about the work of this body, particularly on the types of violations being investigated, the criteria for appointments to the commission, public access to information about proceedings, and methods of gathering evidence and ensuring funding for its work. A heated exchange ensued between Bouderbla and a member of the press over access to information about the work of the commission and its lack of communication with the media and the public.

GENDER JUSTICE

Tunisian women have stressed the need to examine past experiences of gender-based violence, which they see as fundamentally linked to struggles for justice and equality. Sana Ben Achour of the Tunisian Association of Democratic Women outlined ongoing documentation efforts of violations that occurred against women during the revolution, emphasizing the importance of justice for these crimes.

Kelli Muddell, acting director of ICTJ's Gender Justice Program, explained how different transitional justice mechanisms can address violence against women and secure their participation. She noted the end of a repressive regime rarely translates into an end of violence against women, stating it is precisely pre-existing inequalities that make women vulnerable during a transition period. Amna Guellali from the International Criminal Court presented an overview of jurisprudence in international courts dealing with crimes against women, noting there is a clear link between parity in judges and court staff and the handling of sexual violence issues.

Tunisia has a history of upholding women's rights that dates back to the country's independence. The interim government has taken further steps toward the lifting of prior reservations to international treaties such as the *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW). As Tunisia has implemented legal measures to protect women's rights, the discussion focused more on political will and awareness of the importance of addressing gender-related crimes. For example, participants were concerned about the representation of women in the post-revolution investigative bodies, about the capacity of these bodies to adequately address sexual violence, and about the lack of freedom for women to speak about the violence they suffered. Some participants expressed concern about accusations that public conversations about sexual violence and other abuse would negatively taint the revolution.

REPARATIONS

Requests for reparations are already being brought before the Tunisian government. While the interim government has awarded some compensation to victims of violence during the uprising, no formal mechanism is in place, nor is there a clear strategy outlining the basis on which reparations might be made. Wahid Ferchichi, a law professor at the University of Tunis and a consultant for ICTJ, stressed the importance of consultations with victims in the design of a formal reparations policy. Mustafa Iznasni of the committee of human rights in Morocco shared lessons learned from the Moroccan experience with reparations, stressing the importance of their focus on gender issues, both in terms of recognizing the range of victims' experiences, and in determining appropriate forms of reparation.

Joseph Schechla of the Office of the High Commissioner for Human Rights (OHCHR) focused on the treatment of gross violations of economic and social rights as crimes against humanity, and on the ability of courts to try these crimes and order reparation. Ruben Carranza of ICTJ's Reparative Justice Program

emphasized that reparations programs must consider questions of access—for example, if reparations can only be pursued through the courts, it is important to ask whether everyone has access, which is shaped by questions of time and cost, among other considerations. He also reminded participants that a victory in the courts may not translate into tangible compensation for victims. Participants raised concerns about how and when reparations should be issued, who qualifies as a victim, and how best to address the varying experiences and needs of victims.

COMMUNICATIONS AT THE CONFERENCE

Knowing social media played an integral role in spreading the word and helping organize during the Tunisian revolution, the conference organizers decided social media should also be used to allow people outside of the conference to participate in the discussion about transitional justice in Tunisia. The conference staff used a blog (tjtunis.blogspot.com), Twitter feed (@tjtunis #tjtunis), live video stream (www.ustream.tv/channel/transitional-justice-conference-tunis), and Facebook (www.facebook.com/theICTJ) to broadcast the conference in Arabic, English, and French. The blog provided introductory information on transitional justice, logistical updates, and summaries of the sessions. The Twitter feed ran in real time from the conference on Thursday and Friday. Facebook posts reissued updates from the blog, Twitter, and Ustream. The blog reached thousands of viewers in the two days of the conference and continues to get regular traffic internationally, mostly from the United States and Tunisia.

CONCLUDING OBSERVATIONS

There are many challenges ahead. Noting the presence of individuals with ties to the former regime active in the interim government, several participants expressed concern that the political balance could shift back in favor of the old establishment. Despite the dissolution of Ben Ali's ruling party, many party members with ties to corrupt practice or human rights abuse have not been barred from politics; many have formed new political parties or joined others. In addition, some are skeptical about the inquiry commissions on corruption and violations that occurred during the uprising, alleging that these bodies were established without adequate consultation, and that they lack strong enforcement mechanisms such as subpoena powers. Many are troubled by the absence of young leadership and scarce representation of women among new positions of leadership. They worry that despite strong participation in the country's recent struggles, women might be sidelined in upcoming decision-making.

On the other hand, there are indications that the interim government is responding to public pressure. For example, the commission on constitutional reform was expanded (and renamed) to include different political groups in response to concerns about representation. The main debate among civil society actors in this regard is the extent to which they should invest time and energy in cooperating with the newly-created commissions, knowing that these are interim bodies that have yet to garner widespread legitimacy.

This conference was organized with generous support from the Open Society Foundations

