

Working Paper Series

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**EQUALLY VICTIMS? POST-REVOLUTIONARY  
TUNISIA AND TRANSITIONAL JUSTICE**

SOG-WP29/2015

ISSN: 2282-4189

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Printed in Italy, November 2015

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# ABSTRACT

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*In Tunisia, after the 2010-2011 uprisings overthrowing the regime of Zine el-Abidine Ben Ali, a comprehensive mechanism of transitional justice was introduced in the attempt of reinforcing the legitimacy of the constitutional transition and the accountability of the new institutions with the punishment of crimes perpetrated by the former regime, the compensation of victims and national reconciliation. The establishment of a Ministry for Human Rights and Transitional Justice (October 2011) was followed by the approval of a Law on the issue (December 2013), that, drafted through nation-wide popular consultations and hearings, instituted a Truth and Dignity Commission. Such a Commission, charged of ascertaining the violations, started its activity between December 2014 and January 2015 after a troubled settlement period. This essay aims at assessing the efficacy of the Tunisian way to transitional justice in the light of the principle of equality, considering its approach to the victims of the violations and their effective participation in a formally open, inclusive process that has been clearly showing its limits.*

Keywords: *transitional justice, Tunisia, Arab Spring, reconciliation, constitutional making, women's rights*

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# INTRODUCTION: TRANSITIONAL JUSTICE FROM NUREMBERG TO TUNIS

Transitional justice is introduced for the first time after World War II in the attempt to overcome the decades of violations perpetrated by the authoritarian regimes and it then progressively evolved according to mechanisms that sided the punishment of crimes with the compensation of victims, the reconciliation of the population and the improvement of the institutional accountability.

The very beginning of such a phenomenon is represented by the Nuremberg (1945-1946) and Tokyo trials (1946-1948), which were limited to the definition of consistent punishments for the crimes perpetrated during WWII, according to the same strategy that had led to the introduction of sanctions against Germany at the end of the first world conflict.<sup>1</sup> Even though those trials used the international previously developed human rights law as a parameter, the further evolution of the mechanisms for transitional justice has been 'frozen' by the complex geopolitical situation derived from the cold war. After the end of the bipolar division of the world, two different approaches emerged.<sup>2</sup> On one side, there are the experiences of the Latin American and Eastern Europe transitions, mainly based on the definition at the national level of mechanisms to prosecute the criminals and to establish democratic governments. On the other side, there is the establishment of transitional justice through international interventions, as happened with the International Criminal Court for the Former Yugoslavia (1993) or the International Criminal Tribunal for Rwanda (1994). These Courts, recalling the post-WWII ones, represented the basis for the talks that led to the establishment of the International Criminal Court (1998). Both in Yugoslavia and Rwanda, however, national fact-finding commissions inquiring on abuses perpetrated during explicitly defined periods of time were entitled to ascertain the violations, representing a fundamental innovation in the transitional justice mechanisms. The system evolved again when the South African transition began and the Commission established there<sup>3</sup> focused also on national reconciliation, in order to compose the cleavages derived from a long period of racial segregation. A further relevant step in the definition of transitional justice instruments came from the

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\* Though all the essay derives from a joint reflections, Ludovica Benedizione is the author of paragraphs 3 and subparagraphs, Valentina Rita Scotti is the author of paragraphs 1, 2 and 4; the concluding remarks were jointly written by both the authors.

<sup>1</sup> R.G. Teitel, *Transitional Justice*, Oxford, Oxford University Press, 2000.

<sup>2</sup> R.G. Teitel, *Transitional Justice Genealogy*, in *Harvard Human Rights Journal*, 16, 2003, pp. 15-94.

<sup>3</sup> See *Promotion of National Unity and Reconciliation Act*, n. 34, 1995.

codification of such instruments by the United Nations at the beginning of the 21st century, according to which they have to be based on five pillars: prosecution, truth, reparations, institutional reforms and national consultations on transitional justice processes.<sup>4</sup> These pillars provide for the ascertainment of truth on the violations, the punishment of criminals and the restoration of the victims in the attempt to define a new common identity for the whole population, also allowing for a possibility of forgiveness of the criminals. This means that lustration policies, aiming at purging the institutions from the affiliates to the previous regimes, are often coupled with amnesty laws.

Thus, when Tunisia started its transition from authoritarianism in 2011, this was the background to look at for the establishment of its own mechanism of transitional justice and for the overcoming of the massive violations of fundamental rights suffered by the population. As for any other process of transitional justice, the risk was to give more relevance to revenge – prosecuting the authors of the violations and lustrating the system from them – rather than to reconciliation which would have required the creation of compensative mechanisms able to balance both the reasons of the victims and of the violators. Nevertheless, in the Tunisian case, this risk for a prevalence of revenge over reconciliation has been even more present because of the difficulties in individuating the victims of the regime.

Ever since the independence from France (1956), the Tunisian history has been characterized by the attempts to modernize the country through its secularization, at first led by the leader of the independence movement, Habib Bourguiba. Under his presidency, a new Code on personal status<sup>5</sup> was issued, proposing a modern interpretation of the Islamic law in order to almost fully recognize gender equality as a first step to establish a modern legal system.<sup>6</sup> Other reforms were then approved in order to progressively marginalize the role of religion in the society and in the public sphere, according to an approach confirmed even when Zine Al Abidine Ben Ali succeeded to Bourguiba in 1987. Ben Ali ostracized religion even harder than his predecessor, by completely excluding religiously inspired political parties<sup>7</sup> from the participation to public life and prosecuting their affiliates as political opponents, and automatically qualifying them as Islamic extremists claiming for the abolition of the secular Republic. This vision of political Islam as always interconnected with extremism and terrorism was generally diffused in the Tunisian

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<sup>4</sup> Cfr. United Nations, *Guidance Note of the Secretary General: United Nations Approach to Transitional Justice*, 2010.

<sup>5</sup> Cfr. Decree n. 229 of 13 August 1956.

<sup>6</sup> On this attempt of Bourguiba, see E. Dalmasso, F. Cavatorta, *Reforming the Family Code in Tunisia and Morocco – the Struggle between Religion, Globalisation and Democracy*, in *Totalitarian Movements and Political Religion*, 2 2010, pp. 213-228; H. Chekir, *Women, the Law and the Family in Tunisia*, in *Gender and Development*, 2, 1996, pp. 43-46.

<sup>7</sup> According to the law n. 88-32 of 3 May 1988.

society, which for long time seemed to justify the discriminations suffered by members of Islamic parties with their political behaviors. Thus, when the 2011 transition began, the main issue was to decide whether to consider them as possible victims. Another matter of concern was the possibility to recognize the status of victims to women, being controversial whether they may represent a discriminated group.

With the aim to focus on these two main issues, the present essay analyzes the process Tunisia passed through in order to define the mechanisms of transitional justice currently in force, with specific references to the definition of victims thereby provided. Indeed, it shows how institutions progressively enlarged the range of people considerable as victims to include also those who had suffered violations of rights because of their political belonging and those who were discriminated in their economic rights, thus consistently evolving the theoretical tenets on which the doctrine defining the pillars of transitional justice is based. Some hints on the involvement of women as a specific category of victims in transitional justice are also provided.

## **1. A STEP BACK. ORIGINS AND DEVELOPMENTS OF THE TUNISIAN UPRISING**

Since the 1987 “medical” coup d’état<sup>8</sup> against Habib Bourguiba, founder of modern Tunisia after the independence from France in 1956, Tunisia has been led by Zine al-Abidine Ben Ali<sup>9</sup>, who established an authoritarian, deeply corrupted and social-divisive regime. Although the 1959 Constitution continued to be into force, Ben Ali progressively extended the power of an already extra-powerful presidency through constitutional amendments: in 1988, the automatic succession of the Prime Minister to the President in case of vacancy was abolished; in 1997, the legislative attributions of the Chamber of Deputies were reduced in order to extend the presidential powers<sup>10</sup>; in 2002, a constitutional referendum approved the amendment to remove

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<sup>8</sup> The event has been named this way because of the way Ben Ali managed to seize the power on 7 November 1987. In fact, he pushed a commission of physicians to declare that Bourguiba was unable to keep on governing because of his senility (he was 84 years old at the time). Ben Ali was this way able to become the second President of the Tunisian Republic, in conformity with art. 57 of the then into force Constitution, which disposed that in case of sudden incapability of the President of the Republic, the latter was to be temporarily substituted by the President of the National Assembly (see L.B. Ware, *Ben Ali’s Constitutional Coup in Tunisia*, in *Middle East Journal*, 4, 1988, pp. 587-601).

<sup>9</sup> Ben Ali took the power with the declared aim to introduce a democratic transition, the so-called *changement*, in spite of the erratic policies led by Bourguiba in last years of his Presidency. The relevance of the new trend established under Ben Ali’s regime was celebrated each 7 November as a mean to consolidate the loyalty of the population toward this peculiar kind of authoritarianism that was able to increase the economic level of the country, even without concretely ensure an increasing of its democracy. See M. Camau, V. Geusser, *Le Syndrome autoritaire: politique en Tunisie de Bourguiba à Ben Ali*, Paris, Presse de Science Po, 2003.

<sup>10</sup> See the Law n. 97-65 of 27 October 1997.

presidential time limits and to recognize the President a judicial immunity for life. Furthermore, Ben Ali created a strong link between his party, the Rally for Democracy, police forces and the judiciary, *de facto* reducing the competence of the latter and transforming it in a complicit to the human rights violations, which the 2003 Law on Terrorism<sup>11</sup> definitively legitimized in name of the protection of the State's security. This police regime was coupled with a strong control of the economy, with paternalistic and corporatist hiring methods, with corruption at all the level of the State and of the society<sup>12</sup>.

Thus, in December 2010, the Tunisian people started a revolt after the decision of the fruit vendor Mohamed Bouazizi to set himself on fire (17 December 2010) in the town of Sidi Bouzid, protesting against the bribery and the denial of the authorization to sell in the public square.

Though this was the beginning of the uprising leading to the fall of Ben Ali's authoritarianism, some demonstrations against the regime had been organized even before, as some events dating back to 2008 show. In fact, in January and February of that year, the towns of Gafsa and Redeyef were at the center of massive demonstrations against the nepotistic hiring and the unfair labor conditions provided by the State-run *Compagnie Phosphate de Gafsa*. The workers' protests were supported also by student activists in universities and by the outlawed communist party (PCOT), which continued their activities even when State institutions accused them of conspiring against the State's stability and the public order, repressing them with violence. Particularly, on 4 April the wives of the imprisoned workers and the widows of the deceased Gafsa miners began a demonstration in Redeyef, which lasted until June, when the army shot two protesters. The story of those workers was modestly reported by international media, but became viral on social networks, particularly among the Tunisian diaspora. As a result, on 18 August, Ben Ali decided to shut down Facebook, and unblocked it only on 3 September, thanks to the international pressures in favor of freedom of expression in the country. From then on, social networks continued to be used as an "uncontrolled" place where to freely share opinions against the regime and organize the protests. An example is the peaceful demonstration against Internet censorship, called *Tunisie en Blanc*, which took place in 2010, when six young activists asked to participants, all clad in white, to walk on Avenue Bourguiba, the main boulevard of Tunis, showing with that color their desire of transparency and honesty. Therefore, when Bouazizi set himself on fire, the population – and in

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<sup>11</sup> Cfr. Law. n. 2003-75 of 10 December 2003.

<sup>12</sup> For further information on the Ben Ali's authoritarianism, see N. Jebnoun, *Ben Ali's Tunisia. The Authoritarian Path of a Dystopian State*, in N. Jebnoun, M. Kia, M. Kirk (eds.), *Modern Middle East Authoritarianism. Roots, Ramification, and Crisis*, London, Routledge, 2014, pp. 101-116.



particular the youngest people – had already developed a system for the organization of massive events, as it happened in that case to show the bias against the system built up by Ben Ali<sup>13</sup>.

As a reaction, on 28 December, in a public speech the dictator accused the protesters to damage the Tunisian economy and threatened severe punishments. As the protests continued, on 10 January 2011 Ben Ali delivered another speech, accusing the demonstrators to be terrorists serving foreign conspirators, but also tried to appease the crowd by promising a campaign to employ 300.000 people. With the same aim, on 13 January, Ben Ali appeared for a last speech promising not to run for a sixth presidential term<sup>14</sup> at the elections scheduled for October 2014. This declaration was not enough to satisfy the popular request for democracy, so that the demonstrations continued and even intensified. Thus, in order to avoid a possible trial after the overthrowing of his regime – which by then seemed imminent – Ben Ali fled to Saudi Arabia<sup>15</sup>.

In this decision of the dictator, the position took by the army seemed determinant. Even when the police forces continued to show their loyalty to the regime – as testified by the fact that, on 24 December, they opened the fire against the protesters, killing two of them<sup>16</sup> – the military decided to side the people. General Rachid Ammar, commander in chief of the Tunisian army, firstly decided to reject Ben Ali's order to fire on protesters; then, when the head of the Presidential Guard, Ali Seriate, tried to plot against the attempt to establish a civilian-led democracy in order to set the return of the dictator to ensure the stability, Ammar arrested him and ordered the army to secure cities, even providing for neighborhood-watch groups to keep the order at the local level.

These decisions granted a minimum level of stability, which allowed for the establishment of a provisional Government, the Council for the Protection of the Revolution, led by the former President of the Chamber of Deputies, Fouad Mebazaa (appointed as President), with the former Premier, Mohammed Ghannouchi, as a Prime Minister. The interim Government included representatives of the civil society organizations (CSOs), such as trade unions, the formerly banned Islamic party and some left-wing groups. Nevertheless, the population continued to claim for a complete holdover of all the previous supporters of the regime; therefore, on 27 February, the Ghannouchi Executive was obliged to resign in favor of a new Government led by Beji Caid

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<sup>13</sup> On the impact on the population of Bouazizi action, see K. Fahim, *Slap to a Man's Pride Set Off Tumult in Tunisia*, New York Times, 21 January 2011.

<sup>14</sup> As known, Ben Ali was "elected" for five mandates with landslide victories, also thanks to the constitutional amendment passed in 2002 to remove the limit of three term. After winning each election, his regime became more and more authoritarian and less attentive to the socio-economic problems of the country.

<sup>15</sup> Even *in absentia*, the Le Kef Military Tribunal then sentenced Ben Ali of life prison for the killings during the uprising in June 2012. On the trial, see Human Rights Watch, *Tunisia: Flaws in the Landmark Ben Ali Verdict*, 5 July 2012, [www.hrw.org](http://www.hrw.org).

<sup>16</sup> See the report of Amnesty International, *Tunisia in Revolt: State Violence During Anti-Governmental Protests*, 1<sup>st</sup> March 2011, [www.amnestyusa.org](http://www.amnestyusa.org).

Essebsi<sup>17</sup>. The demonstrations ceased, and the Essebsi Government started to re-organize the country. The high ranks of Ben Ali's regime were arrested, the political police was dismantled and all the properties of Ben Ali, of his party (the Rally for Constitutional Democracy – RCD<sup>18</sup>) and of his copious family were confiscated. Moreover, the decree issued on 23 March dissolved all the institutions that had been strongly influenced by the previous regime, such as the Chamber of Deputies, the Upper House and the Constitutional Court. Finally, in order to allow for the democratic development of the elections, planned for October 2011, a decree-law adopted on 18 April 2011<sup>19</sup> established the High Independent Authority for Elections and introduced the first provisions legalizing several political parties and prohibiting the political participation to anyone who had held functions in the RCD during the previous ten years. Then, the decreen. 35 finally excluded RCD former officials from both the active and passive electoral right for the forthcoming polls<sup>20</sup>.

The elections were finally held on 23 October 2011, using an electoral system based on proportionality and on blocked lists where male and female members had to be alternated. Of the 217 seats provided for the Constituent Assembly, 18 were assigned to representatives of the Tunisians abroad, while the other were allocated according to the demography of each district in which the territory had been divided. The electoral results assigned 89 seats to the Islam-inspired party Ennahda<sup>21</sup>, which formed the Government together with the Ettakatol coalition<sup>22</sup> (20 seats) and the Congress for the Republic<sup>23</sup> (30 seats). These parties agreed to distribute among them the highest-level charges, forming the s.c. *troika*, and to share a common schedule for governing the country during the constitutional drafting period. According to this agreement, on 10 December 2011 a provisional Constitution, the “Law on the provisional organization of public powers”, was

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<sup>17</sup> Political activist during the Bourguiba era, when he held relevant charged such as the presidency of the Parliament or the Ministry of Foreign Affairs, Essebsi retired in the '90 deciding to devote his time only to the career of lawyer and came back to the political life only after Ben Ali's fled in 2011.

<sup>18</sup> This name was introduced in 1987 by Ben Ali to rename the Destour party founded by Bourguiba during independence war against France.

<sup>19</sup> Cfr. Decree n. 27 of 18 April 2011.

<sup>20</sup> Cfr. Decree n. 35 of 10 May 2011. In effect, the party was definitively dissolved on 9 March 2011, through a decision of the Tribunal of First Instance of Tunis

<sup>21</sup> Heir of the Movement of Islamic Tendency established in 1981, Ennahda represents the supporters of a moderate political Islam. On the political inspiration of this party and on the political program realized since its election, see L. Guazzone, *Ennahada Islamist and the Test of Government in Tunisia*, in *Italian Journal of International Affairs*, 4, 2013, pp. 30-50. See also *Ennahda Movement Programme: For Freedom, Justice and Development in Tunisia*, Tunis, 2011 (the program is at disposal at the web site <http://kurzman.unc.edu>).

<sup>22</sup> Established in 1994 and officially recognized in 2002, Ettakatol represents a coalition of center-left movement also known with the name of Democratic Forum for Labor and Liberties.

<sup>23</sup> Established in 2001 but officially recognized only after the 2011 uprising, it is a leftist even heterogeneous party, grouping together far-leftists, social-democrats and Arab nationalists.

adopted<sup>24</sup> and, two days after, the leader of Congress for Republic (CPR), Moncef Marzouki<sup>25</sup>, became the interim President of the Republic<sup>26</sup>, then appointing the secretary-general of Ennahda, Hamadi Jebali, as Prime Minister on 14 December. The Executive was finally presented on 20 December and officially took office four days later.

The constitution-making process consequently started on 13 February 2012. The members of the Assembly divided themselves in six committees, each one charged to draft a specific chapter of the Charter. Each Committee was composed of 22 members, which proportionally represented the political groups elected at the Assembly. The preparation of the final draft and the coordination of the activity of the Committees should have been ensured by the *Joint Committee for Cooperation and Drafting*, whose composition had to respect the same proportionality provided for the other Committees.

However, the overwhelming presence of Ennahda members and the disclosure of the attempt of the President of the Joint Committee to change the draft without consulting the responsible Committee resulted in a political crisis, that risked to impair the constituent process. During this period, some difficulties in continuing the drafting process derived also from the tensions between political parties outside the Assembly. Particularly, the murder of two members of the opposition to Ennahda, Chokri Belaïd (6 February 2013) and Mohamed Brahmi (25 July 2013), brought to harsh demonstrations against the ruling party.

Only the intervention of several associations of civil society, led by the largest Tunisian labor union (the General Union of Tunisia Workers - UGTT), was able to overcome the crisis. They proposed a road map, called National Dialogue for Political Negotiations, which allowed for the beginning of talks between the coalition Government and the oppositions aiming at concluding the constitution-making process. Meanwhile, some suggestions on the possible content of the Charter were proposed also by the Commission for the Democracy through Law of the Council of Europe, better known as the Venice Commission. On 17 July 2013, after an explicit call by the President of the Constituent Assembly on 3 June, the Commission delivered its Opinion<sup>27</sup>, in which the endorsement for the drafting job done by the Tunisian constituent framers was sided by some suggestions to further develop the text, in particular in the fields of rights protection and of the functioning of the institutions. As to the first of these two aspects, it must be highlighted that a

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<sup>24</sup> Demonstrating some divisions inside the Assembly, the law was approved with 141 votes in favor, 37 against and 39 abstained.

<sup>25</sup> Founder of the CPR, he was already known for his engagement for the promotion of a human right-based culture in the country.

<sup>26</sup> In order to respect the *troika* agreement, Larbi Abid (CPR) were elected vice presidents.

<sup>27</sup> See the Venice Commission's opinion n. 733/2013 (CDL (2013)034).

very relevant role has been once again played by the mentioned UGTT, which, gathering other civil society associations, tried to focus the attention of the framers on the topic<sup>28</sup>.

On this new basis, the talks for continuing drafting the Constitution began on 23 October in the s.c. *Consensus Committee*, a new drafting body based on an equal representation of all the political groups. The main pillar of the agreement leading to the resumption of negotiations for the fundamental text was the resignation of the Ennahda coalition Government, with the subsequent appointment, on 29 January 2014, of a caretaker Executive, whose Prime Minister was the former Minister of Industry, the technocrat Mehdi Jomaa. Before resigning, the Ennahda Government nevertheless introduced to the Assembly the law on transitional justice, approved on 15 December 2013<sup>29</sup>, which set the rules to ensure the reconciliation of the population according to a mechanism allowing for the ascertainment of the violations perpetrated from 1955 to 2013<sup>30</sup> and the compensation for victims.

In this renewed framework, the Assembly approved the Constitution on 26 January 2014, by a majority of 200 votes, with 12 votes against and 4 abstentions. On the point, it is worthy to note that this fundamental step was made possible by the decision of Ennahda Government to resign, and by the dialoguing attitude maintained in the drafting phase by Ennahda MPs, who accepted to modify the original version of text they had proposed and to put aside several of their positions on the role of religion in the Constitution.

## **2. THE ESTABLISHMENT OF TRANSITIONAL JUSTICE MECHANISMS IN TUNISIA**

Soon after the end of the revolutionary vague defeating Ben Ali (2011), a first attempt of introducing transitional justice in Tunisia has been done by the interim government of Mohammed

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<sup>28</sup> The UGTT proved to be very active in the provisional period. It participated to the drafting of the Tunisian Pact on Rights and Liberties, issued on 25 July 2012 at the initiative of the Arab Institute for Human Rights (AIHR) and with the participation of the General Union of Tunisian Workers (UGTT), Tunisian League for the Defense of Human Rights (LTDH), Syndicate of Tunisian Journalists (SNJT), Tunisian National Lawyers Order (ONAT), Tunisian Association of Democratic Women (ATFD), and several human rights organizations; it also coordinated the open letter asking for the protection of the freedom of expression, issued on 6 December 2013 together with the Tunisian Industry, Trade and Handicrafts (UTICA), the Tunisian League for the Defense of Human Rights (LTDH) and the Tunisian Bar Association.

<sup>29</sup> It is worthy to note that the law has been drafted under the auspices of the Ministry for Human Right and Transitional Justice, whose establishment represents a solid innovation in the paramount of the practices concerning the transitional justice mechanisms.

<sup>30</sup> The period for the ascertainment of the violations by the Commission starts on 1 June 1955, the day when Bourguiba came back to Tunisia from the exile in France, and ends on 15 December 2013, the day of the approval of the law on transitional justice.

Gannouchi<sup>31</sup> with the presidential decree n. 7 of 18 September 2011 establishing the National Inquiry Commission on Human Rights Violation<sup>32</sup>.

In this phase, a first category of victims was individuated in those who had suffered violations of rights during the period of the revolts. In fact, the Commission highlighted that during the demonstrations against the authoritarian regime almost 240 civilians had been killed, hundreds of people had been arbitrary jailed and had then died in prison and more than a thousand were injured. As noted before, the recognition of truth is an important starting point in transitional justice, but the Commission has gone further, siding the verification of the violations with some forms of restorations for the victims, such as a monthly allowance and the free access to public health and transport, extended also to the families of the people who had suffered the ascertained violations. This recognition of some allowances also for relatives of the victims represented a first innovation of the Tunisian mechanism of transitional justice, because it included also 'second level' victims, in the awareness that even relatives' rights were violated when a member of their family had been 'entrapped' by the regime's repressive machine.

Even though the main focus of this phase seems to be on the victims of rights violations during the revolts, the provisional government started to concentrate its attention also on the victims of the abuses perpetrated during the authoritarian period. The mentioned presidential decree n. 7, in fact, has been followed by the presidential decree n. 8 of 18 September 2011, establishing the national inquiry commission on corruption and fraud. This Commission looked at the violations of economic rights, with a specific focus on those deriving from the discriminations in the allowance of licenses for the exploitation of public goods and of grants; both these sectors had in fact been subject to the highly corruptive control of Ben Ali's family. The activity of the Commission has been fundamental for the official recognition of the widespread high level of corruption during the authoritarian regime and has allowed for the establishment of an anti-corruption permanent and independent body.<sup>33</sup> Indeed, it has innovated the traditional range of parameters for transitional justice introducing also the violations of economic rights.

In order to recognize the abuses of the authoritarian regime, on 19 February 2011, the Ghannouchi government granted a general amnesty for all the people tried or condemned before 14 January 2011, with a specific compensation consisting in the reintegration in their previous job

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<sup>31</sup> This government was established on 14 September 2011, maintaining Mohammed Ghannouchi in his charge of Prime Minister already held during the Ben Ali regime. This government proclaimed itself as council for the protection of the revolution and lasted in charge until 27 February 2011.

<sup>32</sup> Even though they are not strictly related to the mechanism of transitional justice, the Ghannouchi government established also the high commission for the revolutionary aims, for the political reform and for the democratic transition (19 February 2011), the commission for the reform of media and communications (2 March 2011).

<sup>33</sup> Cfr. Decree n. 2011-120 of November 2011.

for people accused of political and syndicalist activities. As this amnesty did not include all the individuals that had been jailed during the revolts, but only those recognized as opponents of the Ben Ali's regime, it cannot be considered as an attempt of reconciliation, being instead more in line with the aim of lustrating the country from the influence of the supporters of the authoritarianism. In the same wake, the Ghannouchi government purged the state bureaucracy from all the employees officially affiliated to the regime, declaring the unconstitutionality of the Rally for Democracy (the *de facto* unique party under the regime, led by Ben Ali) and the impossibility for its members to run in the elections for the constituent assembly,<sup>34</sup> and dissolving the institutions loyal to the former leader, such as the parliament and the constitutional court. Furthermore, directly acting against Ben Ali and his family, the government confiscated all their goods and properties.

## 2.1 The Ministry for Human Rights and Transitional Justice

The general election for the constituent assembly, held on 23 October 2011, and the following appointment of a coalition government led by the Islamic-inspired party Ennahda<sup>35</sup>, represented a relevant turning point for the establishment of the Tunisian mechanisms of transitional justice.

As the activity of the two mentioned Commissions had been accused of ignoring the population and of proposing top-down approaches in the definition of the compensations and of the functioning of transitional justice, the Ennahda-led government tried to introduce a more participatory system by establishing the Ministry for Human Rights and Transitional Justice on 19 January 2012<sup>36</sup>. The appointed ministry is Samir Dilou, himself a victim of discriminations during the regime,<sup>37</sup> who tried to favor a participatory approach by organizing several activities aimed at involving the population through Civil Society Organizations (CSOs) and Non-Governmental Organizations (NGOs) devoted to the promotion of the respect of human rights.<sup>38</sup> Furthermore, the Ministry organized a national consultation, involving also the president of the Republic, the

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<sup>34</sup> Cfr. Decree-law n. 2011-35 of 10 May 2011.

<sup>35</sup> Ennahda obtained 89 seats over the 217 at disposal and formed a coalition government with the Congress for the Republic and with Ettakatol.

<sup>36</sup> For a comment on this, see A. Zaibi, *Droits de l'homme et justice transitionnelle. Un portefeuille plus lourd que prévue*, La Presse de Tunisie, 7 February 2012.

<sup>37</sup> Samir Dilou, member of Ennahada party, is a legal scholar engaged in the protection of human rights and, during Ben Ali's regime, he has been prosecuted for his political belonging and has been jailed for 10 years.

<sup>38</sup> Cfr. *Promotion of the national dialogue. Transitional Justice in Tunisia toward a participative and consensual path*, conference organized in March 2012 with the support of the International Center for Transitional Justice, of the High Commissariat for human rights, of the UNDP and of Tunisian NGOs. On that occasion, the Ministry declared that "the path toward transitional justice will be independent. The role of the Minister will mainly be of coordination and facilitation of the relation between the involved parties" (cfr. A. Ghribi, *Debating Transitional Justice in Tunisia*, Tunisia Live, 8 March 2012).

speaker of the assembly and the Prime Minister, resulting in the Conference on the definition of a national strategy (28 April). Thus, through such consultations, the Minister tried to enlarge popular participation, with the aim of better understanding the self-perception of victims and of defining proper means of compensation and reconciliation.

The Ministry was also the coordinating body for the drafting of the law on transitional justice, discussed later on, according to a procedure that aimed to be as participatory as possible.

The establishment of the Ministry once more demonstrated how the Tunisian transitional justice instruments have been able to innovate the traditional mechanisms generally introduced in countries facing transitions from authoritarian and discriminating legal systems. Nevertheless, such a relevance seemed not concretely understood by the same policy-makers who established the Ministry, as, during the drafting of the Constitution entered into force on 27 January 2014, it has been merged with the Ministry of Justice, forming a double-headed Ministry for Justice, Human Rights and Transitional Justice, led by Hafedh Ben Salah.

## **2.2 The Law on transitional justice**

In the attempt to establish a mechanism of transitional justice, art. 24 of the provisional Constitution<sup>39</sup> states that the constituent assembly has the duty to approve a law on the topic, disciplining the organization and the functioning of such a mechanism. Indeed, the Minister for Human Rights and Transitional Justice, on 28 May 2012, proposed the establishment of a Technical Commission. On the same day, the government approved the related proposal, and the Technical Commission for National Dialogue on Transitional Justice (composed of 2 representatives of the Minister itself, 10 representatives the CSOs and of the NGOs<sup>40</sup> and a rapporteur with administrative duties) was definitively established. The Commission, which is an independent body, had the main duty to present to the assembly, by no more than five months from its establishment, a bill on transitional justice, drafted auditioning national and international organizations involved in human rights protection as well as debating the possible contents of the bill with the Tunisians.<sup>41</sup>

In order to respect the latter target, the Commission appointed six regional committees, composed by 15 members and competent for a specific territorial area, charged to organize

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<sup>39</sup> Cfr. Constitutional Law n. 6-2011 on the provisional organization of public institutions of 10 December 2011.

<sup>40</sup> 2 members are from the KADEK, 2 from the National Independent Coordination of the Transitional Justice, 2 from the Tunis Center of Human Rights and Transitional Justice, 2 from the Tunisian Network for Transitional Justice.

<sup>41</sup> Cfr. Ministerial Decree of 9 October 2012. It is noteworthy that when the decree was issued the Commission had already started working, so it seems as an attempt to confirm the will to involve the whole population more than a decree to rule on competences and targets of the Commission.

seminars, consultations and debates at the regional level, involving in particular the victims of violations, so to inform them on the possibilities provided by transitional justice. The population has furthermore been involved in conferences and workshops organized at the national level.<sup>42</sup>

Having collected the results of the regional committees and the proposals presented directly by the CSOs and NGOs and by national and international experts, the Commission concluded the drafting process on 28 October 2012 and presented a bill on transitional justice to the assembly, which finally approved it on 15 December 2013. The bill was the object of a long and complex debate in the assembly, due to its crucial and sensitive nature; the final text resulted to be slightly different from the one proposed by the Commission, being the result of a political compromise that made it possible to approve it almost by consensus (125 votes in favor, 0 contrary, 1 abstention).

The Law is composed of two Titles, divided in chapters. The first Title provides for the guidelines of the transitional justice established in Tunisia, being clear since art. 1 that the aim is to unveil violations, restore victims and punish criminals. The objective is further detailed in the following articles. They state that national reconciliation goes through the definition of a shared collective history, under which the transition to democracy should be undertaken with the ultimate aim of respecting the dignity of all the citizens (art. 2), with a specific attention to women, children and all the other ‘weak categories’ of the population (art. 4), wishing to preserve the truth for the future generations (art. 5). This reference to future generations is also the reason why the Law contains several dispositions in which corruption is considered as a serious crime, as it effectively has been in Tunisia, where the greatest part of rights’ violations derived from the corruptive system established under Ben Ali. Art. 8 demonstrates how relevant the prosecution of corruption is, as it includes among the crimes to be investigated through the mechanism of transitional justice also economic crimes, in line with the previous choice of the commission on corruption established by the Ghannouchi government. The reference to economic crimes demonstrates also the relevance and the accuracy of the debate held in the constituent assembly. In fact, the draft presented by the Technical Commission only included crimes as kill, rape, torture, ‘disappearance’, death punishment sentenced without due processes; anyway, the assembly finally included also embezzlement and financial corruption.

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<sup>42</sup> The population has also been involved through education courses such as the one on ‘Empowerment of the support ability in the field of transitional justice’, organized by the Transitional Justice Academy on 22 and 23 November 2012, whose results are at disposal on the website [www.npwj.org](http://www.npwj.org).



To ascertain such violations, Title II of the Law establishes the Truth and Dignity Commission<sup>43</sup>, whose duties' definition demonstrates how hard it has been for the Tunisian lawmakers to individuate every possible category of victims<sup>44</sup>.

In effect, the first point debated when drafting the competences of this Commission concerned the relevant time frame for the ascertainment of violations. According to the 'secular party', the period had to start from the beginning of Ben Ali's regime, thus excluding the years when Bourguiba led the country and, significantly, when the secular pillars of the State were fixed even at the expenses of the supporters of an Islamic-oriented political inspiration. On the contrary, the abuses perpetrated against such individuals represented the core of the claims of the Ennahda majority in the assembly, claims that were finally satisfied by the extension of the relevant time frame, which was set from 1955 to 2013<sup>45</sup>. This allowed for the recognition on an equal footing of all discriminations, with the religiously-based ones considered as relevant and serious as the others concerning fundamental and economic rights.

In the verification of the possible violations, the Commission can either be directly appealed by the pretended victims or proceed via *motu proprio* inquiries; its activity should last no more than 5 years, after which it must forward the Parliament a report on the collected data, proposing possible solutions for national reconciliation. Once ascertained that a violation has been committed, the Commission might decide for compensation measures, having in its disposability a specific fund (the Fund for dignity and restoration of the victims) whose total amount is decided every year by the assembly when approving the law on the budget of the State.

Besides the possibility to appeal to the Commission, the Law allows victims and criminals also for the definition of an arbitration agreement establishing a specific Commission, whose decision is unappealable, irreversible and irrevocable (art. 46).

Aware that, after decades of mistrust in the institutions, the population could not be confident in the effectiveness of the Commission, the framers of the Law established the Commission for the public function and institutional reforms, charged to control the curricula of all the candidates to public institutions in order to avoid any possible form of corruption (art. 43). The establishment of this Commission, which has had great momentum when appointing the members of the Truth and

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<sup>43</sup> To safeguard their independence and autonomy from political influences, the Law states that the 15 members of the Commission have to be appointed by the constituent assembly among experts on transitional justice; excluded from the appointment are instead the affiliates to political parties; furthermore, to comply with the lustration rules, even the supporters of the previous regime cannot be appointed.

<sup>44</sup> For further information, see C.K. Lamont, H. Boujneh, *Transitional Justice in Tunisia: Negotiating Justice during Transition*, in *Politička misao*, 5, 2012, pp. 32-49.

<sup>45</sup> The period for the ascertainment of the violations by the Commission starts on 1 June 1955, the day when Bourguiba came back to Tunisia from the exile in France, and ends on 15 December 2013, the day of the approval of the law on transitional justice.

Dignity Commission, may be considered directly connected to the higher objective of achieving national reconciliation rather than to the restoration of victims, and in particular to the attempt of reconciling the population with the State institutions, assessing their accountability.

### **2.3 The Truth and Dignity Commission: first reflections on its functioning**

The Commission officially started working on 30 May 2014, with the appointment of its 15 components.<sup>46</sup> Such a consistent delay in the beginning of the activities has been caused by the appeals presented against some candidates before the Commission for the public function and institutional reforms, and by the huge popular debate that has arisen on them, mainly focusing on the fear that they could damage the neutrality of the body because of their proximity with political parties, and particularly with Ennahda.

All along June, the Commission debated on the election of its president and, on 17 June, finally elected Sihem Bensedrine, journalist and human rights activist, contested by some other members of the Commission for having been accused of limiting the freedom of expression of the journalists of the radio-show she conducted during the revolts. Indeed, her election caused the resignation of Khemais Chammari, another strongly contested component of the Commission, whose decision resulted in a deadlock in the functioning of the Commission. Only on 12 September, the vacant seat has been assigned to Lilia Brik Bougira; nevertheless, when the composition of the Commission seemed complete and the activity could finally start, other members began to resign.<sup>47</sup>

Meanwhile, president Bensedrine asked for 10 million dinars to pay for the salaries of the administrative clerks of the Commission and to start its activity<sup>48</sup>, as it effectively happened by the end of September. Since then, the still-in-charge members of the Commission travelled around the country to disseminate the knowledge of the contents of the law on transitional justice and the functioning of the mechanisms it provides. Finally, the Commission started the collection of the appeals of the population on 15 December 2014 in its office of Tunis and on 15 January 2015 in the offices dislocated at the regional level, announcing that, as stated by the law, this activity will have lasted for one year.

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<sup>46</sup> Cfr. Decree n. 2014-1872 of 30 May 2014.

<sup>47</sup> In effect, soon after the appointment of Bougira, Azzouz Chawail resigned, followed by Noura Bordali on 10 November.

<sup>48</sup> Because of the budgetary deficiency of Tunisia, the assembly allowed for a reduced attribution of funds, to be given in tranches.

### 3. A CASE STUDY: WOMEN AS A (NOT) RESIDUAL CATEGORY OF VICTIMS

In the path for the definition of the mechanism of transitional justice, women seemed to represent a specific category of victims, because of the peculiar approach the authoritarian regime had adopted toward them. First, it must be underlined that, in the Tunisian society, women represent a strongly active sector, which enjoyed the modernizing reforms introduced ever since the independence to overcome domestic relegation, typical of traditional societies, that impeded them to participate in public life. It is worthy to remind that since 1956 the introduction of the code on personal status abolished polygamy, increased the legal age for marrying at 17 and abolished the right of the father to decide on the daughter's husband, introduced the divorce also for women as well as the right to alimony and to children's custody. The code was followed by other reforms to recognize gender equality: the right to vote was introduced in 1957<sup>49</sup>; the right to education – with an explicit mention to women – was stated in 1958<sup>50</sup>; the right to seek public offices was introduced in 1959<sup>51</sup>; the constitutional recognition of the right to health for women in 1959 led to the right to abortion in 1965, to be operated according to the law<sup>52</sup>. Symbolically, the emancipation of women was also provided by abolishing the obligation to wear the *hijab*<sup>53</sup>. These reforms were confirmed and even strengthened by Ben Ali, who enforced the links between State institutions and the secular feminine organizations loyal to the regime even favoring the participation of his wife, Leyla, to several public events for female emancipation<sup>54</sup>.

Such a recognition of rights transformed Tunisia in a leading country on the protection of women's rights in the Arab paramount, but at the same time produced an unexpected consequence for its promoters. Educated and self-conscious, women elaborated independent positions toward the regime and, when deciding to oppose to it, mostly sided illegal parties based on Islamic traditionalism.<sup>55</sup> Particularly, a wide range of women seemed inspired by the speculations of Rachid Ghannouchi, the founder of Ennahda. He supported the idea that the Islamic State had to

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<sup>49</sup> See Decree on the municipal electoral law, 1 March 1957.

<sup>50</sup> See Law n. 58-118 of 4 November 1958 on education, art. 1.

<sup>51</sup> According to the equality among citizens stated in the Constitution (art. 6).

<sup>52</sup> See Law n. 65 of 1 July 1965. It clarified that abortion might be operated by 3 months from the conception or, at any time, when the psychological or physical health of the mother or of the child are in danger.

<sup>53</sup> Officially, the *hijab* was banned with the Law n. 108 of 1981 and the Law n. 102 of 1986.

<sup>54</sup> On the loyalty of feminine organizations to the regime, see E.C. Murphy, *Women in Tunisia: Between state feminism and economic reform*, in E. Abdella Doumato, M. Pripstein Posusney (eds.), *Women and Globalization in the Arab Middle East: Gender, Economy, and Society*, London, Lynne Rienner Publisher, 2003.

<sup>55</sup> On this point, it must be recognized that the majority of the people who support a religiously inspired vision of the State look at a moderate and progressive interpretation of Islam and, as also the electoral results in 2012 and in 2014 demonstrated, only a minor part of the population supports an extremist and Salafist vision of the State.

protect women, reconciling Islamic values and modernity, and dismantling the axiom associating Islam with women oppression, domestic reclusion and subjection to men. At the same time, however, he refused the Western model of female emancipation, seen as an enslavement to ‘evanescent’, superficial values.<sup>56</sup>

Thus, women who supported this idea suffered the same kind of discriminations of men involved in the opposition to the regime: arbitrary and long-lasting detentions, physical and psychological abuses, rapes and injuries. Nevertheless, these violations are probably more relevant for a woman than a man in the Tunisian cultural context. For instance, rapes suffered by jailed men are considered as an abuse but not as a social taboo, while, after the rape of a woman, her whole family loses its honor and, to save its respectability, may expel the woman, maintaining she provoked her raper. Furthermore, women might be also ‘second level victims’, suffering violations for being wives, mothers or sisters of men captured or exiled by the regime, over which lied the responsibility to carry on the whole family, facing the social – and furthermore economic – discriminations deriving from the absence of the head of the family.

Aware of these cultural presuppositions, the framers of the provisions to establish transitional justice in Tunisia had to provide for special measures toward women, following the well-known tool of the affirmative actions toward disadvantaged groups. As said, already the National Inquiry Commission on Human Rights Violations established by the Ghannouchi government considered second level victims (relatives of the victims of the regime during the period of the demonstration against it), allowing them a restoration in the form of free access to public health and transports. When the Ministry for Transitional Justice was established, the expectations were in the sense of a stronger protection of women as victims, but such expectations were not matched by reality. During the conferences and the consultations organized by the Ministry, the representation of the organizations specifically engaged in the protection of women’s rights has been less than expected and some observers underlined how this choice confirmed the Ennahda’s attempt to marginalize women in order to reduce the risk of feminist claims.<sup>57</sup> The same limited representation may be seen in the composition of the Technical Commission for national dialogue on transitional justice, which did not include representatives of feminine organizations. Nevertheless, the Law on transitional justice finally contains some provisions particularly referred to women: the last sentence of art. 4 states that the ascertainment of truth must look moreover at the violations

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<sup>56</sup> For a collection of the Ghannouchi’s statements on women, see R. Wright, *Islamist’s Theory of Relativity*, LA Times, 27 January 1995.

<sup>57</sup> Cfr. United Nations, *Statement by the United Nations Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of non-recurrence* (November 2012).

suffered by women and children; art. 8 considers as particularly deplorable the rape and other sexual abuses against women.

Effectively, the amount of violations suffered by women seems relevant also on the quantitative side; more than 500 out of the 12.000 dossiers opened by the Truth and Dignity Commission concern women, and the number gradually grows as the confidence of women in the functioning of the Commission increases<sup>58</sup>. As noted before, declaring a rape may have relevant social consequences for Tunisian women, therefore the Commission tries to soften this impact by providing a 20 percent higher economic restoration than the one recognized to men in order to acquaint the greater difficulties faced by women also from an economic point of view.

Finally, the composition of the Commission seems to lessen the objections on the marginalization of women in the definition of mechanism of transitional justice; in fact, the Law states that the members of the Commission must represent both genders and that the numerical difference between them has to be less than one-third. Nevertheless, the requested proportionality between members of the Commission and the political parties elected in the assembly may confirm the preponderance of the Islamic party and thus the will to orient the path for the recognition of violations according to its political values.

#### **4. THE VICTIMS AND THE TUNISIAN TRANSITIONAL JUSTICE: (NOT) CONCLUDING REMARKS**

Although it will be possible to propose consistent considerations on the effectiveness of the Tunisian mechanism of transitional justice only once the Truth and Dignity Commission will have ended its inquiry activity (providing victims for compensation and presenting its concluding report to the Assembly), some reflections can be proposed on the first steps moved by Tunisia toward the establishment of transitional justice.

Following the chronological developments in the light of the definition of the victims, it could be noted that the provisional Government led by Ghannouchi introduced a relevant innovation, but at the same time passed a controversial amnesty. As already anticipated, the novelty resided in the recognition of the status of victim for those who suffered a violation of their economic rights. A relatively groundbreaking approach that, as we have seen, has been maintained by the following Executives and finally transposed in the Law on Transitional Justice. As for the amnesty, it may

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<sup>58</sup> See also D.H. Gray, T. Coonan, *Notes from the Field: Silence Kills! Women and the Transitional Justice Process in Post-Revolutionary Tunisia*, in *International Journal of Transitional Justice*, 2, 2013, pp. 348-357.

be considered controversial and discriminatory in that it drew a distinction between the individuals that could benefit of it and those that could not according to the political front they had sided during the considered timeframe. Thus, this further measure did not actually work as a tool for reconciliation, instead creating another barrier between ‘those who were right’ – the demonstrators – and ‘those who were wrong’ – the supporters of Ben Ali –.

These two examples remounting to the first phases of the establishment of transitional justice mechanisms in Tunisia show, *in nuce*, some trends that will characterize the whole experience of this country, which – due to the relevant innovations introduced – may represent a sort of third wave in the evolution of transitional justice.<sup>59</sup> Nonetheless, the Tunisian experiment still maintains measures that are actually typical of the very first wave of transitional justice, such as the decision to ban the affiliates to Ben Ali’s party from the participation to the political life of the country. The same attitude toward the ‘losers’, in fact, was followed by the European countries after World War II against the supporters of the authoritarian regimes. Although such a punishment clearly hits the violators of rights, giving a sort of moral satisfaction to the victims, it seems to fail in providing for reconciliation, as the presence of rightist-extremist movements completely refusing the tenets of democracy and constitutionalism in the said European experiences demonstrates.

A consistent innovation, however, is represented by the establishment of a Ministry specifically entitled to develop the mechanism of transitional justice, a first appraisal of which shows all the limits of the participatory approach it promoted. From a first point of view, the overwhelming majority obtained by Ennahda at the Constituent Assembly elections and the consequent appointment of one of its affiliates as Ministry for transitional justice were considered as a possible threat to the impartiality and neutrality of the mechanism provided, fearing that the main aim of such a mechanism could be the revenge against the secular forces more than the reconciliation and the recognition of the violations suffered by all the opponents to the regime, including those who criticized it even not belonging from an Islamist party.<sup>60</sup> The involvement of several national organizations committed on this topic as well as the cooperation with the United Nations did not seem to drive away this fear and the population continued to look with mistrust at the activity of the Ministry and to organize independent forums of discussion on transitional justice.

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<sup>59</sup> Cfr. A. Ghali, *Tunisia in transition: start of a third wave of transitional justice?*, in *Al Kawakibi Democracy Transition Center*, 2013, [www.frient.de](http://www.frient.de). It is possible to identify at least two previous waves: the post-WWII and the one involving European, Latin American and African countries from the ‘70s all along the ‘90s (see R.G. Teitel, *Transitional Justice Genealogy*) For a different scan time, see A.B. De Brito, C. Gonzalez Enriquez, P. Aguilar (eds.), *The Politics of Memory: Transitional Justice in Democratizing Societies*, New York, Oxford University Press, 2001.

<sup>60</sup> See K. Andrieu, *Confronter le passé de la dictature en Tunisie: la loi de «justice transitionnelle» en question*, in *Institut de relations internationales et stratégiques – IRIS, Observatoire des Mutations Politiques dans le Monde Arabe*, May 2014, [www.iris-france.org](http://www.iris-france.org).

Furthermore, the pretended victims and their relatives considered themselves underrepresented in the drafting process of the rules on transitional justice, even showing their disappointment with public demonstrations, among which it is noteworthy to remind the sit-in organized outside the Ministry for Human Rights and Transitional Justice on 3 April 2012. When the police tried to disperse people, the sit-in degenerated in a real clash between the protesters and the police, according to a plot that unfortunately replicated in the following months. This clearly demonstrates how deep the lack of popular confidence in public institutions is and how difficult it will be for the latter to prove the effectiveness of the rules on transitional justice. Widespread criticism has concerned the procedure for the consultation of Tunisians provided for by the Ministry after the establishment of the Technical Commission for national dialogue, both at the local and at the national level. In effect, the people involved in such consultations were selected according an unknown procedure, but looking at the composition of the auditing groups it became clear that they were mainly made up of men, often close to Ennahda or involved in CSOs. Moreover, the results of such auditions have not been officially published, the only information about them being disseminated by a few journalists closely following the meetings. This led to the exclusion from the process of individuals that, although having suffered abuses on part of the regime, missed the chance to autonomously participate in the auditions to testify them. In fact, those who were not affiliated to any organization were left unaware of the time and place of the consultations, due to the lack of a proper system of public information and coordination. The general situation of disinformation was also mirrored by the results of the consultations. Besides the reproduction of the cleavage between rural and urbanized areas, there is a strong fragmentation in the expectations: some claimed for the recognition of violations even through the allowance of an economic compensation; some other asked for a public acknowledgment of their crimes by the affiliates of the authoritarian regime; some other, finally, suggested the not-specified introduction of measures aimed at establishing a democratic legal system.<sup>61</sup> Finally, some considerations regard the whole activity of the Ministry and its relationship with the Ennahda Government, whose decision to simultaneously allow for compensations to subjects individuated as victims according to a not clearly explained system demonstrated both the possible lack of confidence in the activity of the Ministry and the unaccountable use of the funds originally allocated for the compensations ascertained according to the rules to be defined by the Ministry itself.

The opacity and the contradictory approach of the Tunisian transitional justice system seem to find a confirmation also after the beginning of the activities of the Truth and Dignity

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<sup>61</sup> Cfr. Lamont, *supra* n. 21 at 45.

Commission.<sup>62</sup> Even welcoming the provision stating the need of including women among the components, the latter's selection procedure has been considered not responsible nor accountable, as later demonstrated by the resignations of some of them. Particularly significant is the statement of Noura Borsali when she quitted her office at the Commission: she affirmed to be confident in the Truth and Dignity Commission, but hoped that her choice to resign could allow for further legislative interventions in the field of transitional justice, to safeguard the mechanism from external influences on its functioning.

The fear of external influences is justified particularly by the provision concerning the donations the Commission may receive, as art. 63 of the Law on transitional justice does not clarify which information on the donors must be provided. Further, even the procedures the Commission has to follow in order to ascertain the violations are not established in the Law (art. 40), increasing the risks of a non-consistent use of the vast powers the members of the Commission have and moreover considering that they enjoy a full immunity in the exercise of their duties (art. 34).<sup>63</sup> Indeed, even the catalogue of the possible violations the Commission has to verify – even including the innovative category of the economic rights – could not be exhaustive and it probably would have been better to provide for an open list of violations with the aim not to exclude any possible group of victims.

Other criticalities may arise from the decision to establish, within the courts of first instance, chambers entitled to judge the cases concerning the martyrs of the revolution resulted by the inquiries of the Commission (2 June 2014). This provision is in clear contradiction with the constitutional provision prohibiting the establishment of special courts and, again, may represent an instrument to ensure revenge more than reconciliation. Furthermore, an organic law<sup>64</sup> recognized the penal immunity for those who participated to the events passed from 17 December 2010 to 28 February 2011. These two provisions, following the same approach of the mentioned amnesty issued by Ghannouchi, breach the homogeneity of the category of the victims creating a sort of double standard, distinguishing those who actively participated in the revolts from the other possible victims of the regime, for instance those who were forced to the exile and thus did not take part in the revolts.

Finally, some considerations must be made on the specific relation between transitional justice and the recognition of the violations suffered by women. As noted, the main objection to the

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<sup>62</sup> See the declarations of the CSOs engaged in the definition of the Tunisian transitional justice on the website of the association Labò Démocratique, <http://labodemocratique.files.wordpress.com>.

<sup>63</sup> The immunity enjoyed by the members of the Commission may be revoked only by a two-third majority vote of the said members.

<sup>64</sup> Cfr. Law n. 2014-17 of 12 June 2004.



mechanism provided by Tunisian framers is based on the observation that women have been marginalized in the consultations for the definition of the Law on transitional justice, thus limiting the ascertainment of the violations they suffered, especially when considering “second level” violations. This position seemed reinforced by the Islamic inspiration of the party leading the drafting phase, assuming that the religious belonging influenced the perception of women and the role they must have in the society. Nevertheless, only the outcomes of the Truth and Dignity Commission’s activity at the end of the inquiry period may demonstrate the validity of this assumption. For the moment, it seems reasonable to affirm that the provisions allowing for a more consistent compensation for the violations suffered by women and the formal declaration of rules providing for their participation in institutions reduce the credibility of the “religious objection”. Probably, the difficulties faced in involving women are related to the more general complexity in establishing transitional justice mechanisms in a socio-legal context resulting from decades of rights limitations, where the whole participatory and democratic “game” has to be rebuilt from its basements.

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