

Transitional Justice in Tunisia: Innovations, Continuities, Challenges

Recommendations for practice from an academic book project

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SUMMARY

An edited book project, collecting chapters containing original research around Tunisia's transitional justice process from a number of authors, has sought to learn lessons from the process for both Tunisia and broader practice. Whilst the focus of the book is academic, the novelty of many of the research areas and the approaches taken provide new directions to explore to deliver justice in the wake of Tunisia's revolution, as well as guiding transitional justice practice globally.

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INTRODUCTION

Tunisia stands alone among Arab states who have seen dramatic political change in the last decade as the only place where the promise of the 2011 revolution for peace and democracy, despite important challenges, still has the most chance of being upheld. Commitment to transitional justice has been a characteristic of the early stage of Tunisia's political transition, with the discourse and practice being rapidly integrated and appropriated by Tunisian actors across the political spectrum. The transitional justice process in Tunisia has indeed been driven by a global model, but it has also taken on certain characteristics that reflect the politics and peculiarities of the context. Transitional justice thus emerged subject to the fragile political balance that existed after the revolution of 2011, and in the light of continuing shifts in power following both elections and political realignments.

Despite these challenges, institutional mechanisms of transitional justice were created by an organic law passed in December 2013 during the first elected post-revolution government, led by the Islamists of Ennahda. This law created the Truth and Dignity Commission (TDC), a truth commission based on a global model but named to reflect a slogan and ideal of the revolution, the concept of dignity, and the Commission operated from 2014 to 2019.. The political environment in which transitional justice has unfolded in Tunisia has, however, seen the nation more and more divided between Islamists, who consider themselves to be the principle victims of past oppression, and "secularists", some of which still find it difficult to acknowledge the victimization of Islamists in the past. One impact of this politicisation of transitional justice has thus been the lack of any real accountability initiatives so far: military tribunals of former regime figures immediately after the revolution were contested as unfair or as a form of "victors' justice". The first public hearings of the TDC, whose broadcast entranced the nation, were remarkably characterized by the absence of any high official member of the government. Following release of the TDC Final Report, the Prime Minister did not officially recognize the report or take any steps to ensure implementation of its recommendations.

The volume from which this policy brief is derived seeks to research transitional justice in Tunisia, understood as both a formal process and a set of political and social movements for change. As such, the studies of the book engage not only with the TDC and issues of accountability and reparation, but also with youth movements, black activism, history and memory and issues of unemployment. The book aims not to be a comprehensive survey of such efforts at justice in transition, but an in-depth examination of some important elements. (See 0.) This policy brief seeks to distill some of the most important lessons – both for Tunisia and for transitional justice process elsewhere – in a form accessible to practitioners globally.

GENERAL LESSONS

While Tunisia's transitional justice process is far from over - indeed many elements remain incomplete – some principle mechanism, notably the TDC, are finished. The Tunisian process was innovative in many ways, and much can be learned from its successes and failures. General recommendations of the book chapters are:

- The global community of practice has little access to the detail of the process in Tunisia and there is a need to better disseminate the Tunisian experience. This can include:
 - o Translation the TDC Final Report, or a summary of it;
 - o Support for actors closest to the process, such as TDC Commissioners, to share their experience globally;
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FORMAL MECHANISMS

The Truth and Dignity Commission

The TDC was a focus both of the transitional justice process and of its politicisation. The research of the book suggest that such politicisation is inevitable: transitional justice is saturated with politics. This was clear in Tunisia, from the liberal and often neo-liberal politics of rights that the global discourse of transitional justice imports, through the secular-Islamic divide that maps onto party politics and drives contestation around the breadth and nature of the process, to the politics of victimhood, where victims and their representatives contest apparent hierarchies of victimhood. The recommendations here were in particular informed by the experience of one TDC Commissioner, who has shared her own reflections on a deeply challenging process and described the TDC as a 'foundation for future work', rather than an end in itself.

Recommendations for Tunisia are:

- There were constant challenges in ensuring the inclusion of women in the work of the TDC and, whilst women ultimately did contribute at a significant level, there is concern that some important issues - such as sexual violence – are largely absent from the Final Report. Both civil society and state bodies should ensure that justice issues linked to gender are given high priority in the immediate future;
- Similarly, youth were excluded from leadership positions within the IVD as the Commission followed many other Tunisian institutions in setting a minimum age of thirty-five, later reduced to thirty after successful youth campaigning, to be considered for these positions. Policymakers should reconsider the state's strict age-based conditions for state function and adopt more inclusive practices to bridge the youth-senior divide.

Recommendations for future truth processes are:

- In contested contexts a truth commission is always likely to become politicised and as such great care and significant and broad consultation should drive the selection of Commissioners. Ideally, they should not be perceived as representing one or other side in a divided context;
- Truth commissions should think through strategies to combat politicisation early on, to avoid reproducing, or even exacerbating, societal divisions through their work;
- The President of a truth commission should have powers limited through being obliged to seek a consensus among Commissioners, rather than being able to take significant decisions independently;
- Whilst the inclusion of issues of corruption in the TDC mandate was innovative and acknowledged the importance of the issue, there was a perception that this both stretched the resources of the Commission and was compromised by its politicisation. It may be more appropriate to ensure separate bodies, such as the National Commission to Investigate Corruption and Embezzlement, which reported in 2011, and the permanent National Anti-Corruption Authority are empowered to address such issues.
- The TDCs relations with civil society were both inconsistent and problematic. A truth commission should seek to maintain good relations with all civil society actors whilst maintaining an appropriate distance from their agendas in its work.
- The victim zone, acknowledging marginalised regions of the country as collective victims in need of reparation, was an innovation from which future processes can learn.

Reparation

Reparation in Tunisia's transitional justice process was both one of the earliest initiatives and the most politicised and contested. Approaches to reparation have so far been piecemeal and remain subject to great uncertainty despite the very clear process outline in the TDC Final Report, given the ambiguity over the funding of the Dignity Fund that must finance reparation. Recommendations of the research includes:

- Urgent need to activate the Dignity Fund – and ensure it is adequately financed - to avoid victims' loss of trust in the systems and institutions that were promising justice;
- Ensuring adequate post-TDC communication on what the criteria for receiving the various kinds of reparations were, so that everyone understands why they got the decision they got.

INFORMAL MECHANISMS

Gender issues

Issues impacting women, such as that of Circular 108 – the law proscribing the wearing of the Islamic head covering for women (*hijab*) was formally retracted only in 2020 - show how violations often traversed the boundaries of different types of human rights. This has also been revealed in studies of sexual violence against women, where victims see their victimhood reinforced by social attitudes. Recommendations are:

- Systematically map and annul all by-laws and directives (issued under Bourguiba and Ben Ali) that negatively affected women and other vulnerable groups;
- Ensure respect for the indivisibility of rights, but acknowledge that different kinds of analysis (including the social, economic and cultural) might be required to understand the dynamics leading up to, explaining and redressing certain kinds of violations;
- Gender justice demands broader changes in society to address the norms that see women stigmatised and these must be driven by legislation, advocacy and go beyond the transitional justice process.
- The work of the TDC Women's Commission was highly innovative in finding ways to engage with women, through the development - in an iterative way, based on experience – of a manual of procedures. Translation and publication of this manual would be an aid to future transitional justice work with women, in Tunisia and beyond.

Social movements and transitional justice

The studies of youth movements and black activism made here show that an informal politics, conducted in the 'claimed spaces' of the streets as well as advocating with the authorities can be both hugely important and drive real change. The activism of the *Mafrouzeen Amniya* (MA), those youth blacklisted for employment by the Interior Ministry, shows how the issue of dignity that drove the revolution and was widely understood to be centred on demands for employment, continue to be articulated through protest. That MA succeeded in gaining jobs for its members shows both the value of informal routes to justice and that resistance to the post-transition structures can be positive and constitutive. Both studies of youth movements show that a unique and valuable politics can be crafted beyond formal spaces and advance justice in transition, from the bottom up. More than this they indicate that driving systemic and structural change, and in particular targeting violations of social and economic rights, should be pursued both inside and outside a formal transitional justice process.

- Those involved in the drafting of the Transitional Justice Law and the National Dialogue process noted that the concept of "bottom-up" transitional justice was not widely known and was not mentioned in the formal discussions. The concept of informal and unofficial transitional justice initiatives should be integrated into the consultation and design process before the formalisation of any transitional justice

process. This would ensure that countries follow the UN's own emphasis on transitional justice as "the full range of processes and mechanisms..."

- Youth should be recognised as a critical, yet fluid, social group that can be a resource for peacebuilding, reconciliation, and transitional justice.
- Transitional justice donors should consider funding 'mobilisations from the margins' as well as formal transitional justice mechanisms. These bring to the fore different understandings of justice and transition; and should be funded whether or not the mobilisations seek to inform official mechanisms.

The activism of black Tunisians has had similarly positive outcomes, exploiting the political space for anti-discrimination legalisation – successfully achieved as a result of campaigning – that the ouster of Ben Ali opened up. This study shows that the most marginalised groups and the most chronic structural violations of rights can be addressed (or at least begin to be addressed) around a transitional justice process. It is of course interesting that the formal process barely engaged with the issue and rather it was black activist themselves who fought for change. It is also clear that social attitudes remain discriminatory and that passing the law is not sufficient, but provides a basis for broader and longer-term work. A viable and fair justice that could right the wrong of decades of injustices, marginalization and invisibility of black Tunisians should support the following recommendations:

- The justice system facilitating the legal change of family names of slave holders or with slave connotations, that were forced on many black citizens in the south of Tunisia.
- Rehabilitation of black figures, places, monuments and sites with black/West African heritage as part of Tunisian history; as well as the memorialization of black Tunisian/West African-inspired music and rituals as a non-material Tunisian heritage.
- Setting up of African/black Tunisian studies in the same vein as Tunisian Jewish studies, Morisco studies, Berber/Amazigh studies in universities to ground Tunisian academic foothold in its African studies.
- Safeguard black Tunisian heritage regarding cultural rights of minorities¹ including the Amazigh population and work towards the protection of their language and cultural heritage.
- Black Tunisian activists to consider organizing public hearings on human rights abuses against them, in consultation with the Tunisian parliament's Committee on Martyrs and Wounded of the Revolution and of the Implementation of the General Amnesty Law and Transitional Justice.

History and memory

Challenging totalitarian histories that emerge from a centralized state process with the memory of 'ordinary' Tunisians can drive a more humanised and embedded form of history, focusing on local events and real characters strongly rooted in their area. A crucial part of the process of transition is the democratisation of history. This can be done by:

¹ As required to respect UNESCO recommendations to the Tunisian state in 2009.

- Emphasising neglected or marginalised elements of memory, including local figures who actively participated in the independence struggle and seem forgotten in the national narrative.
- Incorporating such an approach into the formal teaching of history in schools, with a focus on elements of history and memory that have been ignored or marginalised, including local and regional history and cultural, artistic, scientific or social figures
- The TDC Final Report should inform a revised state-sanctioned history and inspire a deep reform of history textbook content.
- The dominant methodology of teaching recent history should promote critical thinking, by using techniques that are participatory and interactive and the selection, quality and training of teachers must support this.

Transitional Justice and Colonial Violence

The TDC issued a memorandum in 2019 highlighting the neo-colonial control by France of Tunisia's natural resources and demanding France to offer an official apology and pay reparations to Tunisian victims of colonial violence. However, any concrete progress on these issues has been prevented by opposition from both the Tunisian and French governments. The work of the TDC has however perhaps demonstrated that narratives can be changed by the revelation of such facts.

- Considering ways to address structural/systemic violence, truth commission should consider documenting continuities from the past in the present, including forms of neo-colonial influence and violence.

CORPORATE ACTORS IN TRANSITIONAL JUSTICE

Tunisia's transitional justice process has largely ignored corporate actors – both national and international – beyond a concern with corrupt practices that implicated those close to the dictatorship. Research suggests that such actors have broader responsibilities and the transitional justice process can be a catalyst both for greater corporate accountability and the addressing of broader structural injustice.

It is recommended that Tunisia:

- Adopt corporate criminal liability laws, which currently address only money laundering, not other offences;
- Establish appropriate sanctions for corrupt corporate actors;
- Address corporate malefactors that might not have engaged in corrupt practises, but they have engaged in complicity in human rights violations. This demands a broadening of the scope of corporate accountability.

For transitional justice practice more broadly, it is recommended to:

- Include corporate actors in transitional justice processes
- Examine and address the full spectrum of actors that were essential elements of systemic structural injustice prior to transition, including national and international corporate actors, beyond purely legalistic concerns.
- Develop normative and evidence-based arguments that challenge the view that business is so important to future development, framed in Tunisia as reconciliation, that past violations should be overlooked.

Appendix I THE BOOK CHAPTERS

Simon Robins and Houcine Bouchiba	From victims to actors: Victims, the process of claiming rights, and its impact on their lives (With Houcine Bouchiba)
Simon Robins, Ahmed Aloui, Kora Andrieu, Wahid Ferchichi, Hajer Ben Hamza	Making and remaking the past in post-revolutionary Tunisia: The uses of history in transitional justice (with)
Houda Mzioudet	Breaking the racial taboo: Black Tunisian activism as transitional justice
Aymen Bel Hadj	Victims, Restorative Justice and “Realpolitik:” The Politics of Transitional Justice in Post-Ben Ali Tunisia
Jérôme Heurtaux	“From one injustice to another”: Perceptions of justice and injustice among senior officials of the former regime in Tunisia
Sherif Mohyeldeen	Tunisia as a source of inspiration and Egypt as a source of alert, TJ shared lessons and experiences between Egypt and Tunisia
Lawrence Courtneay Robinson	From the Streets Up: Tunisian Youth Leadership of Informal Processes of Transitional Justice
Alicia Pastor y Camarasa	Lessons from transnational state-building: unpacking the involvement of transnational actors in transitional justice and constitution-making
Tine Destrooper / Safa Belghith	Active invisibilization or invisible activism? Tunisia’s truth and Dignity commission and the (non-) debate over Circular 108 on banning the headscarf
Taygeti Michalakea	Situating corporate actors within the Tunisian Transitional Justice topography
Saerom Han	Transitional Justice and the Struggle over the Right to Work
Ibtihel Abdelatif	Challenges and innovations in the TDC’s work with women
Elham Kazemi	Transitional Justice and Colonial Violence: Lessons from Tunisia
Simeon Gready	Reparations in post-Arab Spring Tunisia: At the Intersection of Innovation and Politicisation

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