

Post-revolutionary Tunisia: transitional justice at the heart of conflict resolution

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Abstract

In the aftermath of the Tunisian revolution, one question still stands: the one seeking truth, past reparations, judicial proceedings of those responsible and the compensation of victims in order to reconcile different actors. The people, who just untied themselves from a corrupt safe state, demand their revendications to be heard and written in the national agenda so that basic freedoms will be ensured. Although this revolution is usually mentioned as a reference in terms of democratic transition resolving conflict, transitional justice hasn't yet managed to re-establish a stable climate of peace and respect of basic freedoms.



This Sunday 18th October is the international day for conflict solving; an occasion to come back on the solving process of an important conflict of this last decade: the Jasmine Revolution. Since its independence in 1956, Tunisia has been the theatre of numerous human's rights violations, particularly arbitrary arrests and executions, tortures and sexual violences. A system of financial, administrative and political corruption led to important violations of economic, social and cultural rights. In 2011, the tunisian population overthrew Zine el-Abine Ben Ali's dictatorship, under which many of those violations happened. Tunisia becomes the starting point of what will be called the "Arab Spring" which will extend to numerous other countries of the Arab world. From then on, one question arises: the one searching for truth, past reparations, judicial proceedings of those responsible and the compensation of victims in order to reconcile different actors. In this perspective, measures linked to democratic transition are implemented in the form of a transitional justice plan. This latter can be defined as "a movement for human rights", promoting celebration of victims and disclosure of abuses there were victims of, in regard of a "pacific future"¹, celebration of truth and freedom. Despite being based on the civil management of conflicts, transitional justice takes an important characteristic when in a context of economic and social underdevelopment. For that matter, exiting this crisis is a synonym of hope for a better life, resulting in access to honorable life conditions for everyone. Transitional justice is a slow and collective process, which addresses the issues of reparation, healing and reconciliation through institutional reform which are necessary to the country.

Issues and conditionality of transitional justice

Transitional issues in post-revolutionary Tunisia

On 17th December 2010, a Tunisian man from Sidi Bouzid city, Tarek Bouazizi, committed suicide by immolating himself. This act reveals a deep unease, anchored within the tunisian society, which is crushed by economic and social difficulties and abandoned by its rulers. This event marks the starting point of a wide political crisis and a conflict characterized by numerous manifestations, mobilising Tunisians in a logic of distrust towards the regime.

However, it could not explain by itself this change of political regime. Exploited by politicians opposed to the police-regime of Ben Ali, Tarek Bouazizi's suicide fed the feeling of revolt which was rooted in the tunisian society since 1989, the starting point of the security democracy. In parallel to this circumstantial event, we find multiple variables explaining the deep unease of the people which fed this desire for change. The main circumstantial factor is the incompatibility of an educated civilian's society and the safety regime in which it is contained, exacerbating popular frustrations.

We then face a mass, fighting for its fundamental rights to be respected, people exhausted by the a corrupt regime, the development of a predatory economy² translating a high disinterest for the misery ravaging contry's working classes. The lack of consideration for human rights, especially the freedoms

¹ KORA, A. (2014). Confronter le passé de la dictature en Tunisie : la loi de "Justice Transitionnelle" en question. *iris-france.org*. [online] May. Available at: https://www.iris-france.org/docs/kfm_docs/docs/obs-monde-arabe/tunisie-justice-transitionnelle-mai-2014.pdf [Accessed 2 Oct 2020].

² Some of Ben Ali's close relations developed what is called a "predatory economy" consisting in using public fundings for personal purposes.

violated by the regime's constant control in which violence is a systematic means of domination, maintain the wish for a new regime in Tunisia. This regime, which would be transitory at first, would have the goal to fix economic, social and political ills, while taking into account the suffering and individual wishes of the people.

To this end, transitional justice incarnate, if not a means to respond to the mass' revendications, a way to establish a peaceful climate which is necessary to achieve such a goal. According to Kofi Annan, former Secretary-General of the United Nations, transitional justice is the whole of "diverse processes and mechanisms implemented by a society to face massive exactions committed in the past, in order to establish responsibilities, dispense justice and allow reconciliation."³

So that we may comprehend the importance of transitional justice in this process, it is necessary to understand the modalities of its application and the different steps of transition towards a new regime. The revolution allowed, indeed, to overthrow Ben Ali's safe state, but nothing is assured for Tunisians. The search for truth, reparation of past exactions, judicial proceedings of those responsible and the compensation of victims is yet to be attained in order to reconcile different actors. This is the goal that transitional justice wants to reach, by establishing a truth and reconciliation commission. Those two aims can only be accomplished in a pacified political regime: democracy. There is then a real necessity to institute, or re-institute, a fair democratic regime, appeased and not corrupt, favouring a dialogue with the people.

Modalities of application of tunisian transitional justice

The analysis of social and political climate is necessary to make the implementation of transitional justice most favourable as possible. The first step of this process is the engagement in a democratic transition. The re-establishment of democracy is the center point of a larger, efficient, transitional justice process. Moreover, democracy is, to this day, the only political regime capable of addressing a post-conflict situation. It allows the implementation of a dialogue between rulers and the people so that this latter may have their demands heard.

A proper democratic discourse is characterised by a will to solve conflict on multiple grounds - political, economic and social- through the implementation of a constructive dialogue between different groups of opinion which make society. In this perspective, there is a necessity to oust from the regime any politics which gag the opposition. Indeed, dictatorship or parody of democracy, in the case of Tunisia, are political regimes which function with a high corruption of rulers and with a complete absence of political alternation. In Tunisia, under Ben Ali's secular regime, the prohibition for the Ennahda party participated in the repression of its sympathisers, in their stigmatisation and in the implementation of discriminatory politics towards specific social and political groups. This targeted censorship is incompatible with the aims of transitional justice, hence the necessity to establish a peaceful democratic climate.

The post-Ben Ali interim governments put in place step-by-step transitional justice measures step focusing mainly on the harm received by the demonstrators during the weeks of the revolts. The a la carte choice to deal with the past underlines the need for security and stability after the fall of the regime which was then followed by the establishment of an interim policy. It seems appropriate, in that situation, to follow a policy of continuity rather than starting again from scratch. When the Islamist Troika government - headed by the Ennahdha - formed a new government following the 2011 autumn elections,

³ MABIALA, R. (2009). *La justice dans les pays en situation de post-conflit : Justice transitionnelle*. Paris: L'Harmattan.

a broader vision emerged, leading to the creation of the Ministry of Human Rights and of Transitional Justice run by Samir Dilou of the Ennahdha.

Despite this awareness, there is also a real need for Tunisia to renew government posts, in order for the country to free itself from the last shackles of the dictatorship. As a matter of fact, although the continuity policy may be legitimate, it prioritises keeping the corrupt individuals, who established the police regime, in power. Moreover, these technocrats, mostly over the age of 80, are unable to efficiently represent the Tunisian people whose average age is 31. This generational and class discrepancy is an explanatory factor of the revolution. Indeed, the youth were the main instigators of the revolutionary movement. Revolted by a system plagued by financial, administrative and political corruption, the youth invaded the streets to be heard. The renewal of the mandates of the technocrats is therefore part of a movement opposed to the demands of a people anxious for freedom and justice.

False start and popular protest

Despite discrepancies between the leaders and those they are supposed to embody as well as their wish to separate their population as much as possible from political decisions, it is noteworthy that the popular protest is one of the driving elements behind the fall of president Ben Ali. In fact, coupled with the hijacking of the regime's army and the collapse of government's support, the president's escape on 14th January 2011 forms a breach and allows the start of a political transition towards a resolution of the conflict.

First of all, there is a desire for certain policies of the old regime to take back the power and organise this political transition in accordance with the 1959 Constitution. Several populist actors claim to be the incarnation of the will of the people. As such, Mohamed Ghannouchi, the previous prime minister under Ben Ali, became interim and formed the first government on 17th January 2011. It was made up of old-regime members and declares that it would like to organise democratic presidential elections. The people, for whom the technocratic and conservative dimension of this government is in total rift with the demands established by the Jasmine Revolution, calls for the dissolution of the latter. It was thus announced on 2nd February 2011 by members of the radical left that the "January 14th Front" was created, portraying the populace's wish to completely sever any ties to the old regime through the election of a national constituent assembly⁴.

The lack of measures taken by the government, in line with the wishes of the people, led to the desire for a reunification within a National Council for the Protection of the Revolution (CNPR) of these actors, proclaimed as the custodians of the people's sovereignty. This includes the member-parties of the "January 14 Front", as well as associations for Human Rights defense.

Despite the major impact of the demonstrations organised by the population, the retrieval of power by the political elites close to the old regime reproduces the exclusion of young people from the transition process. While these are the catalysts of the revolution, the space dedicated to them to voice their demands is small, if not nonexistent on the political scene. For example, the Temimi Foundation, whose objective was to open a dialogue with the stakeholders of the revolution (activists, judges, lawyers, politicians, economists), did not integrate the youth, who were at the origin of the political upheavals of

⁴ A National Constituent Assembly is an institution whose mission is to draft or adopt a constitution, that is to say the fundamental organizational text of the public powers of a country.

the country. The latter nevertheless continue to fight for a fairer political transition, and against the reappointment of members of the old regime to power.

Transitional Justice in action

Constitutional transition et rupture with the old regime

Thus, we find a diversity of actors in Tunisia's political transition, wishing both to take part in the lawmaking process during the transitional period, but also to monitor the work of the provisional government. On 27th February 2011, Ghannouchi and his government resigned, yielding to the populations' pressure, and were replaced by Beji Caid Essebsi⁵. Subsequently, they planned the organization for the election of the National Constituent Assembly responsible for drafting the Constitution. On March 7th, the new government took office, and drew up a new text on the organization of power, which marked the break with the 1959 Constitution. During this period of 'constitutional' transition, a representative body was created: the High Authority for Achievement of the Objectives of the Revolution, Political Reform and Democratic Transition (HIROR), chaired by Yadh Ben Achour. The latter played a role in controlling the government and in proposing fundamental texts and subsequently transformed itself into a political body for deliberation (in particular by integrating the opposition's political parties and bringing militant groups together). Thus, HIROR gives the country the founding texts of its democratic transition process.

In Tunisia's case, syndicates, parties and human rights activists play a huge role in this post-revolutionary political transition. One of the objectives is to initiate a constitutional process and promote the rights of the population long ignored by the regime in power. After the Revolution of the 14th of January 2011 Revolution, public policies related to human rights occupied a central place within institutions, thus increasingly involving citizens. However, there must be institutional texts that specify the role of each institution, in order to allow a peaceful and transparent political transition. Indeed, a legal vacuum could have harmful consequences in the reconstruction of the country after a conflict, which is why the principle of transitional justice must appear in the authentic texts of the interim constitution⁶.

A multiplicity of national actors take part in the governance of human rights and, in an important manner, government bodies are created. The National Commission for International Humanitarian Law, for example, is responsible for disseminating the principles of fundamental human rights. After the 2011 autumn elections, the Islamist government led by Ennahdha and joined by Ettakatol and the republic's Congress, created a "Ministry of Human Rights and Transitional Justice". The latter's role is to monitor the execution of the policy on human rights, and to ensure the preservation and consecration of their values within national legislation.

⁵ Tunisian statesman, fervently resisting against the French protectorate, Béji Caïd Essebsi is Prime Minister from February 27 to December 24, 2011. He founded his own party Nidaa Tounes in 2012, and was President of the Tunisian Republic from December 31, 2014 until his death in July 2019.

⁶ An interim constitution is a text drawn up by an interim government.

With a focus on transparency and justice, other bodies are created. A National Commission for the Establishment of Facts on Embezzlement and Anti-Corruption Cases has also been set up, tasked with investigating acts of corruption committed by the former regime. A second National Commission of Inquiry was created in January 2011 to determine the abuses of the former regime, chaired by Taoufik Bouderbala, former president of the Tunisian League for the Defense of Human Rights.

Beyond these bodies, there is a significant participation of the population, consulted in order to help define policies in the human rights' field. It takes part in negotiations and the resolution of conflicts or tensions, particularly within the framework of the national dialogue on transitional justice from which emanates the enactment of the law on transitional justice (December 2013).

We are also witnessing increasing support from international actors; whether they are government organizations or not. They all have participated to a minimal extent in this transition process. Indeed, external interveners get involved and cooperate with national actors with transition being the priority. In spring 2012, the Ministry of Human Rights and Transitional Justice opened a dialogue on the transitional justice process in coordination with the United Nations Development Program (UNDP), the United Nations High Commissioner for Human Rights (UNHCHR), as well as the International Center for Transitional Justice (ICTJ). However, these negotiations only include the political elites and not the youth. The same year, the ICTJ launched an initiative aimed at integrating women into the transition process, but whose efforts were not proven.

Despite this, the international community plays its role and achieves its goals in the process of transitional justice. The latter include participating in the efforts to ensure that commissions conduct serious investigations of human rights violations. In Tunisia, it is the Truth and Dignity Commission that assumes this role. Encouraging the appointment of independent experts to investigate during the transition, support for democracy, transparency, good governance, as well as best practices in the management of the State and principles of free elections are also on the agenda of the transition process. It is therefore worth noting that the international community plays an important role in transitional justice, which civil society will use in the idea of institutional normalization.

Institutional standardisation as a necessary step towards conflict resolution

A second transitory phase, so-called "consensual"⁷ followed the nomination of Beji Caid Essebsi. Indeed, the decree-law n°14-2011 of 23rd March 2011, carrying out the founding values of a new constitutional order, temporarily organises public authority, establishing thereby the legislative and executive powers. This text reminds popular sovereignty of universal, free and fair suffrage. On top of that, the HIROR texts are highly important, especially the one about the election of the National Constituent Assembly introducing the greatest democratic advances on which the political transition builds. The Independent High Authority for Elections (IHAE) also proposes texts (decree-law n°87) based on the principle of freedom for political organisations. It is a real breach with all the ancient freedom-destroying laws which dominated until then, and therefore a major turning-point in the process of democratisation of the Tunisian political regime, enforcing the respect of republicans principles but also of fundamental rights.

⁷ BEN ACHOUR, R. & BEN ACHOUR, S. (2012). La transition démocratique en Tunisie : entre légalité constitutionnelle et légitimité révolutionnaire. *Cairn.info*. [online] Oct. 2012. Available at: <https://www.cairn.info/revue-francaise-de-droit-constitutionnel-2012-4-page-715.htm> [Accessed 10 Oct. 2020].

Eventually, the election date of the National Constituent Assembly was set on 23rd October 2011. Until that day, the IHAE required many adjustments, implying to specify its policy, in particular the conditions in which the election must take place, but also including observers of international organisations, both intergovernmental (OAU, EU, League of Arab States, OSCE...) and non-governmental (Carter Center).

The plurality of actors is remarkable, these are essential supporters of a transition towards conflict resolution through a democratic process. Together, they helped shape the institutions, combine people's wishes and use a wide range of means to achieve the same purpose: the institutionalisation of a stable regime, regulated by laws that are both democratic and respectful of fundamental freedoms. Under the process of democratisation, we also observe paramount changes in legislation. Since the decree-law n°2011-88 of 24th September 2011, laws on freedom of association were consistently modified and largely became consistent with international norms. This also applies to trade union pluralism.

Thus, a technical Commission was created. It is responsible for organising a national dialogue with the aim of proposing a draft law before the National Constituent Assembly. This commission turns to non-governmental organisations, but also to victims' associations, human rights associations, journalists and experts, including young people too, diplomats and representatives of international organisations, in order to produce the most transparent et représentative report possible to the population. Moreover, the National Commission of Inquiry on abuses and violations created in January 2011, concluded a report on the victims of the insurrectional movement from December 2010 to January 2011. Following this report, numerous texts were enacted, thus allowing the victims to obtain indemnities and reparations. The National Anti-Corruption Authority, created by the decree-law n° 2011-120 of 14th November 2011, is still working today.

Later in 2013, the process of transitional justice, still going, permitted a law the aim of which was to deal with abuses of the regime in the last sixty years. To do so, the organic law⁸ n°2013-53 of 24th December 2013 instigated the creation of the Truth and Dignity Commission, mandated to investigate human rights abuses. However, it accentuated disputes between the secularists and the Islamists, and made the politicisation of the process of transitional justice problematic.

That is why the dialogue between the international and national levels is important. Indeed, it allowed changes in legislation and institutions during the process of political transition. By starting with an exchange with the local population, it is made possible to spotlight the national claims, people's needs as well as the recognition of the victims. The latter can therefore be heard and supported.

The recognition and support of victims as a first step towards reconciliation: the convincing example of Islamic women.

To recognise and support victims is essential for the achievement of the process of transitional justice. Indeed, reparation and reconciliation are two key words of this politically motivated legal system.

Pre-revolutionary Tunisia was characterised by a system financially, administratively and politically corrupted, which led to human rights violations, including arbitrary arrests and executions, torture and sexual violences. Paradoxically, it is also under the successive governments of Habib Bourguiba and Zine

⁸ An organic law is a law provided for as such by the constitutional text. To this formal definition, a more concrete one can be added: the object of an organic law is generally to specify the organization and the functioning of the public powers, in application of articles of the Constitution.

el-Abidine Ben Ali that women's rights have been a development issue. The appropriation of this fight by the state, even if it permitted some judicial progress, mostly contributed to enforcing secularism as the basis of women's rights activism. To this day, this Islamic-secular schism is still a scourge in post-revolutionary Tunisia, and it interferes with transitional justice as it politicises a system supposed to remain above all judicial.

This raises the question of the search for the truth, past reparations, the prosecution of those responsible and the compensation of victims in order to achieve reconciliation between the different actors. To this end, measures related to the democratic transition are being put in place. In October 2011, the first democratic elections for the National Constituent Assembly take place, and the persecuted former Islamist party, Ennahda, wins 89 of 217 seats, giving it a relative majority. Despite the nascent transitional justice process, women's representation is low, only 41, the majority of whom are members of Ennahda. Combating this under-representation of women in political life is one of the challenges facing transitional justice.

The issue of women's participation both in political life and in the transitional justice process is fundamental, since one of its objectives is to ensure that women and marginalized groups play an effective role in the pursuit of a just society. Tunisian transitional justice pays particular attention to their integration in this process of rehabilitation and reconciliation. To this end, a Women's Commission was created and, between 2014 and 2015, many Tunisian women's associations conducted an awareness campaign to encourage women victims to submit their cases to the Truth and Dignity Commission. These combined efforts have increased the percentage of cases brought by women from 5% to 23%. However, this rate is still low. The major problem lies in the low level of belief that women have in the bodies and the mechanisms put in place to establish the truth. In spite of a number of cases filed that is not representative of reality, a trend can be established. Most of the cases concern specific forms of human rights violations, such as income deprivation, forced divorce, physical violence, rape, as well as the prohibition to study and work under the application of Circular 108 of 1984, which prohibits women to wear headscarf.

Some violations, such as the last mentioned, targeted a category of women, Islamists, likely to support the Ennahda party banned under Ben Ali. Indeed, the promotion of women's rights has become a trade-off for the oppression of women suspected of supporting Ennahda. An understanding of the identity of the victims is therefore also expressed through the prism of politicization, and through the observation of an implicit competition between victims ; secular victims feeling excluded from the transitional justice process, compared to Islamists. And, this is despite the fact that Islamist women suffered more under Ben Ali's secular security regime, so that they came to internalize their state of silence.

This persistent under-representation of women as witnesses and acknowledged victims cannot be explained by one variant alone. Multiple factors are involved. Indeed, in most countries of the Arab world, and this is the case in Tunisia, women occupy an important place within the family nucleus. What they do and what they suffer determines the honour of the family. This is why women are regularly the target of attacks on their economic and social rights. Women fear not only their own stigmatisation but also that of their whole family when they talk about these violations. In the case of exactions involving women's bodies, it is often the men themselves who prevent their wives from testifying, confirming a

patriarchal model in which it is the men who speak on behalf of the victim families. As a result, in Tunisia, shame and social taboos seem to persist around gender-based violations.

Finally, the vast majority of female victims have related accounts of violations committed against their husbands or sons. These women are described as indirect victims. However, although the classification of women as indirect victims highlights specific violations committed against them, it also defines the experiences of these women only through those of their male relatives, who are considered as the direct victims. Women's experience is therefore defined in terms of passive victimisation rather than giving their experience an active political value as direct victims.

Tunisia occupies a preponderant place in the field of transitional justice in the Maghreb and in the Arab world in general. The inclusion of women, especially Islamists as they are the largest group of victims, is important from the beginning of the process for the overall success of transitional justice and to ensure that women's rights are not eroded in this country. Moreover, Tunisia's special status as the precursor of the Arab Spring suggests that the country could also establish itself as a model in terms of respect for women's rights in the region. The assimilation of Islamist women is all the more important as they embody a movement that wants to get rid of a western connotation of feminism, maintained by most secular feminist movements.

Addressing the considerable challenges of women's participation is not only significantly improving the quality of the transitional justice process, but it also increases women's social participation and empowerment which are necessary for their reintegration and the reconciliation of the different actors.

Conclusion

Despite the many reparations and social progress made possible by the establishment of transitional justice, the system is still unstable in Tunisia. Many victims remain silent, and some politicians are still opposed to the process, while corruption persists. In addition, certain issues surrounding the current presidency of Kaïs Saïed, elected in 2019, weaken the transitional process. Indeed, he is in favor of the pursuit of justice, since he appointed a minister delegate for Transitional Justice, but also wishes to restore the application of the death penalty. This travesty of justice does not heal or offer reparation to the victims, and only sustains an aversion of the government in place. Transitional justice aims for the cooling down of society, as well as reconciliation and truth. A judicial system applying the death penalty would therefore be contrary to the will of the various parties working for the country's transition.

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