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Transitional Justice in Tunisia: Negotiating Justice during Transition

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Summary

On 14 January 2011 the overthrow of President Zine al-Abidine Ben Ali left Tunisia confronted with the task of addressing the dual legacy of Ben Ali's violent crackdown on protesters in the weeks preceding his ouster and decades of widespread human rights abuses. In the immediate aftermath of 14 January, interim governments launched a number of improvised efforts to deal with the past. These efforts included investigative commissions, compensation, vetting of former regime officials, and criminal trials. However, it was only after the election of the National Constituent Assembly in October 2011 that there was a concerted effort to draft a comprehensive law on transitional justice. Tunisia's Ministry of Human Rights and Transitional Justice launched a national consultation to define and shape transitional justice mechanisms for post-Ben Ali Tunisia. This article argues that although Tunisia's national consultation on transitional justice can be heralded as a novel consultative initiative to transmit transitional justice demands into transitional justice legislation, it has also served to highlight contested visions of the post-Ben Ali state and contested memories of Tunisia's secularist and Islamist political traditions.

Keywords: transitional justice, Tunisia, Arab Spring

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Introduction

On 14 January 2011, Tunisia's President Zine al-Abidine Ben Ali fled into exile in the face of popular protests that ended a regime which had ruled Tunisia since 7 November 1987. Tunisia's *Jasmine* revolution, as the national wave of protests sparked by the suicide of a 26-year-old street vendor Mohammed Bouazizi in the southern city of Sidi Bouzid was globally popularized, constituted the first of the 2011 Arab Spring revolutions. Despite the public euphoria that greeted regime change in Tunisia, Ben Ali's ouster left Tunisia's interim authorities confronted with the complex task of establishing a new post-Ben Ali constitutional order in a deeply polarized domestic political setting while concurrently negotiating a package of transitional justice measures aimed at dealing with the 23-year legacy of a myriad of human rights abuses and financial crimes that were defining features of Ben Ali's autocratic rule. Although some observers expressed optimism as to the prospects for reconciling Tunisia's divergent political traditions and democratic consolidation (Feuer, 2012), it quickly became apparent that a deepening polarization between two dominant political traditions, Islamists and secularists, risked accelerating Tunisia's slide into political paralysis (Dhaouadi, 2012; Sadiki, 2012).¹

It is within the context of deepening domestic political polarization that Tunisia has undertaken a national consultation on transitional justice in order to set out a comprehensive transitional justice strategy for the post-Ben Ali state. Ironically, transitional justice debates in Tunisia were initiated by Ben Ali himself to quell growing public unrest through concessionary measures announced in his last official address to the nation on 13 January 2011, which included proposals to establish commissions to examine rights abuses, corruption and political reform.² The three commissions were eventually established under Ben Ali's successor Mohamed Ghannouchi's short-lived interim authority. After National Constituent Assembly elections, held on 23 October 2011, brought into government a three-party coalition led by Ennahdha, an Islamist movement that had borne the brunt of Ben Ali's

¹ Chomiak referred to this political divide as the Ennahdha, anti-Ennahdha schism, which was framed as a dichotomy between Islamism and modernisation (2011: 81), while Jouini described this bipolarisation of post-Ben Ali Tunisian politics as constituting an 'Islamist/Destourian' divide (2012: 10-11). Destourian is a reference to the political party led by Tunisia's secularist President Habib Bourguiba. Destourian ideology, which emphasised 'reason, human dignity, and human solidarity', was argued by Vandewalle to have functioned as a principle means for 'political and social cohesion' in post-independence Tunisia (1980: 150).

² Ben Ali's last address to the nation was broadcast on Tunisian national television on 13 January 2011. In response to the demands of the protesters, Ben Ali repeatedly stated 'I understand you'.

repressive police state,³ transitional justice has assumed greater political salience as it is perceived as not only a backwards-looking process aimed at dealing with the legacy of past abuses but also is likely to determine the trajectory of Tunisia's transition as it has set the terms for criminal prosecutions, excluding individuals from voting or holding public office, dismissing public officials and through a proposed truth and reconciliation commission has the potential to recast the narrative of modern Tunisian history with far-reaching consequences for political parties which embrace Tunisia's constitutional secularist, or Destourian, tradition set out by Tunisia's first post-independence president Habib Bourguiba.⁴

Given the political salience of transitional justice debates, it is not surprising that in 2012 Tunisia established a Ministry of Human Rights and Transitional Justice, which was created to coordinate and guide the transitional justice consultation process.⁵ Tunisia's national consultation produced a draft transitional justice law which was presented to the Ministry on 28 October 2012. Although Tunisia's transitional justice process remains at a very early stage, this article will reflect on transitional justice policies leading up to the presentation of the proposed draft law on transitional justice. It will thus focus on transitional justice during two post-transition phases. The first phase covers two pre-election interim authorities which governed from 14 January 2011 to 23 October 2011, while the second covers the period from the date of Tunisia's first democratic multiparty elections, 23 October 2011, to 28 October 2012 when the transitional justice draft law was presented to the Ministry of Human Rights and Transitional Justice.

In addition to introducing the reader to Tunisia's transitional justice process, this article will argue that transitional justice debates in Tunisia are just as much about shaping the post-Ben Ali state as they are about addressing past wrongs. It thus highlights the potential instrumentality of transitional justice, as local elites advance transitional justice mechanisms that serve to solidify their own hold on power while discrediting political opponents.⁶ Indeed, in Tunisia transitional justice has become a politically salient issue because of its potential to rewrite historical narratives that define how Tunisia's opposing political traditions, Islamists under the banner of En-

³ The three-party coalition government, known as the *troika*, includes Ennahdha, Congress for the Republic (CPR), and Ettakatol.

⁴ For more on narratives, memory and transitional justice see Lanegran, 2005; Laplante, 2007; Rowen, 2013.

⁵ The Ministry of Human Rights and Transitional Justice guided the process in cooperation with the International Center for Transitional Justice, the United Nations Development Program and the United Nations High Commissioner for Human Rights.

⁶ For more on the instrumentalization of transitional justice by domestic elites see Subotic, 2009.

nahdha, and secularists under Nida Tounes imagine the post-Ben Ali state.⁷ However, before turning to these observations, it is first important to revisit Ben Ali's Tunisia.

Tunisia under Ben Ali

Zine al-Abidine Ben Ali assumed Tunisia's presidency on 7 November 1987 through a non-violent coup in which he deposed President Habib Bourguiba, who had ruled since independence in 1956.⁸ Bourguiba established Tunisia as a modernist secular state and deeply embedded Destourian ideology within the state institutions. Bourguiba's secularism was particularly reflected in his promotion of public education and the adoption of the Personal Status Code.⁹ As Waltz observed, in Bourguiba's Tunisia '... Islam has been made subservient to a secular state and its role in society has been progressively circumscribed' (1986: 660). Bourguiba's authoritarian secularism was imposed with the aim of modernizing Tunisian society (Vandewalle, 1980: 149-159; Vandewalle, 1988: 603-604); however, Bourguiba's autocratic governance generated significant resistance from a wide range of societal actors ranging from rivals within his own party to the far left (Allani, 2009: 259).

Beginning in the 1970s, Tunisia's increasingly assertive Islamist movements attracted the attention of Tunisia's repressive security services. The subsequent contestation between Islamist regime opponents and the state, under Bourguiba and later Ben Ali, would become a focal point for an emergent political cleavage that gravitated around the question of Islam and politics. Indeed, in 2009 Allani observed that, 'one of the most important issues in Tunisia over the last four decades – perhaps the single most important issue – has been the proper relationship of Islam and politics' (2009: 257). Allani's words, while a description of Tunisia under Bourguiba and Ben Ali, are perhaps even more instructive when taken in the context

⁷ Nida Tounes or 'call for Tunisia' is a political party established by Béji Caïd Essebsi in April 2012 that has sought to bring together opposition parties to challenge Ennahdha, which is led by long-time opposition leader Rachid Ghannouchi. It is instructive to note that the leaders of Tunisia's two largest political movements are in themselves historical figures within Tunisia's modern history. The 71-year-old Ghannouchi spent over a decade in exile in London, while Essebsi, who is 86 years old, was a minister under Tunisia's first post-independence president, Habib Bourguiba. Transitional justice's narrative-writing function has been observed in the former Yugoslavia where states sought to advance their own narratives of transition and conflict. See Lamont, 2010; Subotic, 2009; and Pavlakovic, 2010.

⁸ Ben Ali deposed Bourguiba in a bloodless coup in which Bourguiba was declared unfit for office due to health problems (Chelly, 2012: 42-43).

⁹ Béji Caïd Essebsi emphasized Bourguiba's commitment to promoting women's emancipation through the Personal Status Code as constituting an important part of his modernisation programme (2009: 62-63). For more on Bourguiba's promotion of education see Vandewalle, 1980: 149-159.

of an on-going contestation over the relationship between Islam and the state in Tunisia's post-revolutionary constitutional debates.¹⁰

Ben Ali, Bourguiba's former minister of interior and briefly prime minister, rose through the security services keeping watch over domestic regime opponents. The key among these opposition movements was the Islamic Tendency Movement, a precursor to Ennahdha (Alexander, 1997: 37). Yet despite having emerged from Bourguiba's repressive security apparatus, Ben Ali initially moved to liberalise Tunisian politics upon becoming president (Sadiki, 2002: 132). Indeed, Ben Ali amnestied thousands of political prisoners, abolished presidencies for life, ratified the United Nations convention against torture, and even entered into a dialogue with Ennahdha (Alexander, 1997: 35; Sadiki, 2002: 132-133). Ben Ali also created a new ruling party, the *Rassemblement Constitutionnel Democratique* (RCD), or Constitutional Democratic Rally. However, unlike Bourguiba who cultivated multiple clientelistic power bases, within the RCD Ben Ali firmly established himself as the sole centre of gravity (Alexander, 1997: 36-37).

Despite the initial optimism that surrounded Tunisia's regime transition in 1987, beginning in 1988, Ben Ali reversed course and turned increasingly autocratic. In 1997 Alexander accurately captured this abrupt reversal in trajectory:

Ben Ali's November 7, 1987 coup inaugurated the heady period of political reform that swept across the Middle East and North Africa in the late 1980s. The new president promised to establish the rule of law, to respect human rights, and to implement the kind of democratic political reforms that Habib Bourguiba had steadfastly refused. Along with Algeria, Jordan and Yemen, Tunisia rode the leading edge of what many hoped would be a wave of democratic transitions in the region. Ten years later, it would be difficult to find another country that has moved so far in the opposite direction (Alexander, 1997: 34).

This reversal can be explained in the context of Ennahdha's increasing assertiveness during the late 1980s. To be sure, Ben Ali's temporary rapprochement with the Islamists had been entirely strategic. Sadiki pointed out, '[Ben] Ali was a general. Tactically, it would not have made good political sense to open up a second front against the Islamists when he was busy purging the country of Bourguiba's powerful lackeys who opposed the November 1987 bloodless coup' (2002: 132). Therefore, while the Islamists, who were repressed under Bourguiba, perceived the political opening that emerged with Ben Ali's coup in 1987 as an opportunity to pursue political power through the ballot box, after consolidating power Ben Ali moved against the Islamist opposition. Ben Ali banned Ennahdha and cracked down

¹⁰ At the time of writing Tunisia is continuing the process of constitution-drafting. Significantly, the most divisive draft articles relate to the relationship between the state and religion.

on its members and supporters. Tens of thousands of its members in Tunisia were imprisoned including future Ennahdha ministers Hamadi Jebali, who would spend 15 years in prison, Ali Larayedh, who also spent more than a decade in prison, and Samir Dilou, who would serve 10 years in prison. Ennahdha's leader Rachid Ghannouchi went into exile in London, after having also been imprisoned.

By the late 2000s Tunisia was included in some counts as being among the world's most repressive states.¹¹ The regime routinely carried out a catalogue of human rights abuses that ranged from intrusive surveillance to torture and extrajudicial killings (Henry, 2007: 300-324). In particular, those expressing dissenting views found themselves subjected to state surveillance and other forms of abuse (Amnesty International, 2010). In addition to violations of civil and political rights, the regime was also engaged in corruption on a massive scale that invoked comparisons to Haiti's Papa Doc Duvalier and Indonesia's Suharto (Sadiki, 2010). In fact, it was estimated Tunisia lost over a billion US dollars annually to corruption (Al-Amin, 2012: 45-46). Given rampant corruption, growing youth unemployment and systemic abuses of civil and political rights, the 28-day wave of national protests that dislodged Ben Ali from office drew upon a wide range of grievances that would in turn be reflected in transitional justice discourses in the immediate aftermath of the *Jasmine* revolution.

Interim Justice: Emergent Discourses

As previously noted, Tunisia's transitional justice process was born in the crucible of violent repression and regime collapse. At this point, it is important to emphasize that Tunisia did not experience a state of armed conflict, as observed in Libya and Syria, which produced hundreds of thousands of conflict-related victims at the point of regime transition and reinforced identity lines in divided societies, but rather Tunisia was faced with confronting the legacy of long-term repression that spanned decades and included both civil and economic abuses. Furthermore, Tunisia can be said to have experienced two transitions during 2011. The first marked the departure of President Ben Ali on 14 January and was followed by an attempt by the RCD elite to quickly cobble together an interim authority to hand over the presidency to Mohamed Ghannouchi, a senior figure within Ben Ali's RCD who served as prime minister from 1999 until 2011.¹² Although Ghannouchi resigned his position within

¹¹ Tunisia was included alongside North Korea, Zimbabwe and Uzbekistan, among others in a 2007 edited volume entitled *The Worst of the Worst: Dealing with Repressive and Rogue Nations* (Rotberg, 2007). Furthermore, in the final year of Ben Ali's rule, Freedom House ranked Tunisia at 7, the lowest possible ranking, in relation to political rights (Freedom House, 2010).

¹² Prior to becoming prime minister in 1999, Mohamed Ghannouchi had served various ministerial functions in Ben Ali's cabinets since 1989.

the RCD on 18 January and established a national unity government with representatives from opposition parties and civil society, Ghannouchi was perceived as too closely associated with the old regime to be able to advance any meaningful transition and thus protesters once again took to the streets and began massing outside the prime minister's office in Tunis to demand a more explicit break from the past. The second transition took place on 27 February, following a second wave of public protests and sit-ins that became known as *Kasbah Two*.¹³ On 27 February Ghannouchi resigned as interim prime minister and another prominent political figure, less tied to the Ben Ali regime, Béji Caïd Essebsi would guide Tunisia's interim government until National Constituent Assembly elections were held on 23 October 2011.

During the period that preceded National Constituent Assembly elections, Tunisia pursued interim justice measures aimed at tackling the most pressing transitional justice dilemmas. While, comparatively, the Tunisian revolution did not reach levels of violence seen in neighbouring states, Ben Ali's attempt to violently suppress public protests resulted in over 300 deaths and 2000 injuries.¹⁴ To be sure, during the 28 days that followed Bouazizi's act of self-immolation and leading up to Ben Ali's departure into exile in Saudi Arabia, Tunisian security forces violently suppressed public protests in a nationwide campaign of repression from Kasserine in the hinterland to the streets of Tunis.

Therefore, in the immediate aftermath of transition one of the first transitional justice demands was for accountability for the acts of violence perpetrated against protesters from 17 December 2010, the date of Bouazizi's self-immolation, until 14 January. Because Ben Ali had fled the country along with his wife, Leila Trabelsi, neither could be held directly accountable for past crimes, except symbolically through *in absentia* trials. Other pressing demands addressed during this period included the initiation of attempts to recover financial assets held by the Ben Ali family and political reforms aimed at launching a constitution-drafting process. In order to collectively address these demands, the three commissions proposed by Ben Ali in the final days of his regime were hastily established. In sum, the first phase of transition was characterized by *ad hoc* responses to a rapid and unexpected regime collapse, and thus transitional justice policies enacted during this phase lacked co-

¹³ *Kasbah One* is a reference to the protests that took place on 23-28 January 2011 which demanded that former RCD ministers should not participate in the transition government. *Kasbah Two*, the protests which resulted in Ghannouchi's resignation, began on 25 February.

¹⁴ The casualty figure of 300 is commonly cited and was reported by United Nations Special Rapporteur on Torture, Juan Mendez, following a fact-finding visit to Tunisia in May 2011 (Hajar, 2011). This figure was confirmed by Tunisia's fact-finding commission into human rights abuses during the revolution which established that 338 deaths and 2147 injuries were inflicted during the revolution (La Presse, 2012).

herence. Instead, they reflect improvised responses to a wide array of societal and political actors advancing competing transitional justice demands.

Interim Justice: Commissions, Courts and Compensation

In January 2011 President Ben Ali pledged in a televised address to the nation to hold individuals responsible for acts of violence against protesters accountable and to create three commissions to quell public protest: a commission for the investigation of corruption, a commission for the investigation of human rights abuses and a commission for political reform (Ferchichi, 2011: 251). While Ben Ali's concessions were offered as a late attempt to appease public outrage, they also marked the beginning of the transitional justice debate in the soon to be post-Ben Ali Tunisia.¹⁵

It was under the interim authority of Mohamed Ghannouchi that the three commissions proposed by Ben Ali were established.¹⁶ The interim authorities issued three decrees on 18 February 2011 formally establishing three commissions, the National Commission for the Investigation of Bribery and Corruption, the National Commission for the Investigation of the Facts of Abuses Recorded during the Period from 17 December 2010, and the High Commission for the Fulfilment of the Revolutionary Goals, Political Reform and Democratic Transition. While the first two commissions were tasked with uncovering past abuses, the Political Reform Commission under Yadh Ben Achour effectively guided Tunisia until the 23 October elections.¹⁷

In addition to the three commissions, two of which were explicitly tasked with exposing past abuses, criminal prosecutions were also initiated against former regime elites alleged to be responsible for acts of violence against protesters from 17 December 2010 until 14 January 2011. These proceedings eventually resulted in the convictions of the former president alongside other senior security service

¹⁵ Ben Ali initially promised to create investigative commissions on 10 January and repeated this promise on 13 January 2011.

¹⁶ The National Commission for the Investigation of Bribery and Corruption was formally established through a decree issued by the interim government, Decree No. 7, 18 February 2011. However, the Commission started its work two weeks prior to its official establishment under Tunisian law. Decree No. 8 established the National Commission for the Investigation of the Facts of Abuses Recorded during the Period from 17 December 2010. Decree No. 9 established the High Commission for the Fulfilment of the Revolutionary Goals, Political Reform and Democratic Transition to guide the transitional process. An additional commission, the Commission for the Reform of Media and Communication, was established on 2 March 2011.

¹⁷ For clarity, we will refer to the High Commission for the Fulfilment of the Revolutionary Goals, Political Reform and Democratic Transition as, simply, the Political Reform Commission. This Commission was also often referred to as the Ben Achour Commission, and it ceased operation on 11 October 2011.

figures which included a former minister of interior and senior officers within the Riot Police. The most prominent of these trials was held in June 2012 before the Le Kef Military Tribunal which sentenced Ben Ali to life in prison for the killings of protesters during the revolution in an *in absentia* trial.¹⁸ In an earlier separate trial held in 2011 Ben Ali and his wife, Leila Trabelsi, were convicted for embezzlement of public funds resulting in 35-year prison sentences (Kirkpatrick, 2011).¹⁹ Nevertheless, a continuing obstacle to accountability through criminal trials during this period was the absence of substantive reform of the judiciary, which complicated prosecutorial efforts.

In addition to criminal trials of perpetrators, financial compensation was provided to persons injured during the violent events between 17 December and 14 January 2011 and also to the families of individuals killed by Tunisian security services. These payments were distributed in two instalments, the first in February 2011 and the second in December 2011. However, *Human Rights Watch* noted that there were no clear criteria for determining whether or not an individual had been injured by the state while participating in the revolution or criteria that would establish the level of financial compensation of each victim (Human Rights Watch, 2012c). In sum, during the months following 14 January, transitional justice was advanced on a number of fronts ranging from investigative commissions and criminal trials to financial compensation; however, it would be the question of imposing a prohibition upon former regime officials and sympathisers from holding elected office that would set off a debate that would only temporarily be resolved through Tunisia's draft electoral law which established the legislative framework for National Constituent Assembly elections in October 2011.

Interim Justice: Identifying the Excluded

The question of whether regime officials affiliated with the RCD should be permitted to participate in shaping Tunisia's post-Ben Ali political order has become per-

¹⁸ Other senior officials also convicted and sentenced in the Kef Military Tribunal's proceedings included a 12-year sentence for former interior minister Rafiq Haj Kacem, 10-year sentences for Adel Tiouiri, former director general of National Security, and Jalel Boudrigua, former director of the Anti-Riot Police, Lotfi Ben Zouaoui, former director general of Public Security, Youssef Ben Abdelaziz, former brigadier general in the Anti-Riot Police, and Khaled Ben Said, former director of Special Anti-Terrorist Brigades (Human Rights Watch, 2012b).

¹⁹ Overall, the legal framework for holding individuals accountable for systemic crimes, such as torture, remains inadequate as noted by a recent *Human Rights Watch* report on Tunisia's first post-revolution criminal prosecution related to the crime of torture. Former Minister of Interior Abdallah Kallel was prosecuted for the crime of torture along with three other security officials in relation to Kallel's involvement in foiling an alleged plot of military officers against the regime (Human Rights Watch, 2012a).

haps the most divisive issue in post-revolution Tunisia. The Political Reform Commission was tasked with establishing the criteria for excluding individuals from participating in National Constituent Assembly elections and proposed Article 15 of the Tunisian Electoral Law to establish and identify individuals who would be prohibited from standing in Tunisia's first democratic multi-party elections. Article 15 established three categories of excluded persons: individuals who held ministerial office under Ben Ali, individuals with senior positions of responsibility within the RCD, and individuals who publicly called for Ben Ali to seek an additional term in office in August 2010. In relation to the first two categories of excluded persons, it was left to Tunisia's election oversight body, *L'Instance Supérieure Indépendante pour les Élections* (ISIE), an independent electoral commission established by the Political Reform Commission, to produce a list of excluded individuals. In relation to the third category, those who called for Ben Ali's re-election as president, known as *munachidine* or 'those who implored' in Tunisian Arabic, the High Commission on Political Reform itself was to produce a list of excluded individuals. The High Commission based its list on a published August 2010 petition that called for Ben Ali to seek an additional term as president in 2014; however, the Commission failed to notify individuals whose name appeared on this list or establish a process through which an individual could challenge their exclusion. The latter was of particular concern because some individuals were able to successfully challenge their exclusion through demonstrating that their names were added to the August 2010 petition without their knowledge (Carter Center, 2011: 18).

Interim Justice: Defining the Past

In sum, transitional justice from 14 January until 23 October 2011 proved limited because of its narrow temporal focus on acts of repression during the 28-day revolution or its *ad hoc* attempts to engage with systemic abuses of the *ancien régime*. Furthermore, a more fundamental question regarding temporality remained to be addressed. Should transitional justice measures focus on the abuses of the previous regime, that of Ben Ali, or should they also encompass Habib Bourguiba's regime which would potentially expose abuses going back to Tunisia's independence and founding as a secularist state? Significantly, it is not surprising that secularists express a preference for a narrower temporal scope for transitional justice measures that would focus on the Ben Ali regime while Ennahdha, which includes within its ranks numerous victims of rights abuses spanning across both the Bourguiba and Ben Ali presidencies, strongly advocates a broader temporal mandate that would go back to Tunisia's independence and thus present an opportunity to challenge the modernist founding myth of the Tunisian state.

Contested Narratives: The State of Transitional Justice

On 23 October 2011, Tunisia held its first democratic multi-party elections since independence. These elections resulted in Ennahdha's electoral triumph as voters propelled Tunisia's Islamist opposition into government with post-election coalition partners the Congress for the Republic (CPR) and Ettakatol. Under Ennahdha's three-party coalition government, commonly referred to as the *Troika*, Ennahdha set out first to promulgate an interim constitution to provide a framework for governance, then to carry out a constitution-drafting process. Once an interim constitution, the Law on the Interim Organisation of Public Powers of Tunisia, known in Tunisia as the 'little constitution', was adopted on 10 December 2011, the National Constituent Assembly elected an interim president, Moncef Marzouki, a long-time human rights advocate from the CPR, on 12 December. Marzouki in turn appointed Hamadi Jebali from Ennahdha to form a government, which was presented to the NCA on 24 December.

It was within this context that Ennahdha also sought to adopt a coherent transitional justice programme. Programmatically, Ennahdha embraced transitional justice as a means to symbolically break with the past. The Ennahdha party programme noted, 'The Ennahdha movement proposes to Tunisians to establish a political system that eradicates the roots of dictatorship' (Ennahdha, 2011). Furthermore, Chapter 4, Article 24 of the 'little constitution' expressly tasked the NCA with enacting a law on transitional justice within its mandate (Law on the Interim Organisation of Public Powers, 2011) and the Ministry of Human Rights and Transitional Justice was established on 19 January 2012. Ennahdha's Minister of Human Rights and Transitional Justice, Samir Dilou, enthusiastically embraced transitional justice and firmly embedded his new ministry at the core of transitional justice policy-making and debates.²⁰ However, Dilou claimed that the Ministry's role was not to impose Ennahdha's vision of transitional justice, but rather he suggested, 'the role of the ministry will mainly comprise of coordinating and facilitating communication between the different stakeholders' (Ghribi, 2012). Nevertheless, Dilou used his platform as Minister of Human Rights and Transitional Justice to make explicit his opposition to ex-RCD members returning to government, in a veiled reference to the emergent opposition bloc Nida Tounes.²¹

²⁰ Samir Dilou is a human rights lawyer who was initially detained for his participation in the 1984 bread riots and later spent a decade in prison under the Ben Ali regime (Lachheb, 2011).

²¹ The question of political exclusion remains open as Tunisia prepares for its first post-NCA elections. The CPR, a member of the governing coalition, submitted a draft law on political exclusion in April 2012 which would ban former RCD officials from joining other political parties for a period of five years. This law would have the effect of excluding thousands from the political process. In November 2012, Ennahdha proposed its own legislation entitled, 'law on the

In sharp contrast to the *ad hoc* attempts to address the legacies of past abuses undertaken by Mohamed Ghannouchi and Béji Caïd Essebsi's pre-NCA interim authorities, the Ministry of Human Rights and Transitional Justice sponsored an official launch of the transitional justice process in Tunisia in order to set the agenda for transitional justice debates under the NCA. In coordination with international actors, the United Nations Development Program (UNDP), the International Center for Transitional Justice (ICTJ) and the United Nations Office of the High Commissioner for Human Rights (OHCHR), the Ministry organised a national seminar to launch a national consultation on transitional justice on 14 April 2012 in Tunis that aimed to bring together relevant institutional stakeholders in the transitional justice process: domestic and international non-governmental organisations, international organisations, and domestic and international political officials. Illustrative of the extent to which Tunisia's transitional elites sought to promote transitional justice was the fact that Tunisia's *three presidencies*, as the President of the Republic Moncef Marzouki, the President of the National Constituent Assembly Mostafa Ben Jafaar and the Prime Minister Hamadi Jebali are known domestically, attended the event along with other governmental ministers.

In addition to bringing together domestic elites, the transitional justice launch event also attracted a number of international representatives including international organisations that worked closely with the Ministry of Human Rights and Transitional Justice in formulating Tunisia's transitional justice policies, such as a representative from the OHCHR, a resident representative of the UNDP in Tunisia, the President of the International Center for Transitional Justice. Others in attendance also included the President of the National Council for Human Rights in Morocco in addition to a number of ambassadors, national figures and representatives of political parties, associations and organisations.²²

Two weeks following the transitional justice launch event on 14 April, a transitional justice open day was hosted by the Ministry of Human Rights and Transitional Justice on 28 April. Relevant non-governmental organisations, identified by the Ministry, were invited to attend this event. These activities were aimed at initiating a consultation process that would underpin the process of drafting a law of transitional justice. During this period, a number of civil society actors expressed optimism as to the Ministry's engagement with domestic non-governmental organisations.²³

protection of the revolution' which would also exclude former RCD members from standing in elections, but also exclude them from a number of civil service positions, for a period of 10 years (Babnet Tunisie, 2012).

²² This event was attended by one of the authors.

²³ Fieldwork interview, June 2012.

Consultative Justice and the Transitional Justice Commissions

Transitional justice debates in Tunisia relate to two broad categories of perpetrators and victims. Those involved in historic abuses dating back to the founding of the Tunisian state in 1956 and those involved in the more immediate abuses perpetrated over the course of December 2010 and January 2011. In relation to each, demands for various transitional justice mechanisms have been advanced: criminal trials, truth commissions, reparations, and administrative purges. In an attempt to bundle these divergent and at times competing demands into coherent policies, Dilou established a technical commission to oversee a national dialogue on transitional justice, as the national consultation was known, through a ministerial decree issued on 28 May 2012.

In order to allay concerns that the Ennahdha-led coalition government, or the *Troika*, was agenda-setting transitional justice debates, the technical commission was established as an independent body outside the Ministry that would consist of both ministerial and civil society representatives and would be tasked with writing the draft law on transitional justice after a national consultation had been carried out through six regional consultative commissions.²⁴ The regional commissions were to engage in direct consultations with relevant stakeholders and victims, and were to be supervised by the technical commission.

Meanwhile, the technical commission's responsibilities were set out by the Ministry of Human Rights and Transitional Justice on 9 October 2012. The commission's duties included: the organization of the national dialogue on transitional justice; organizing public consultations; selecting members of sectorial committees, collecting the results of the national dialogue, drafting a final report, and preparing the draft law on transitional justice (Government of the Republic of Tunisia, 2012). In the end, despite continuing concerns that the Ministry of Human Rights and Transitional Justice has not been as inclusive as it could have been in its engagement with civil society,²⁵ the technical commission engaged with over 20 non-governmental organisations while preparing its draft law.

In relation to consultations, these were carried out by the six regional commissions from 16 September until 7 October 2012. Each regional commission was responsible for four governorates. Common methods used by these commissions to establish victim preferences included surveys and questionnaires. For example, survey data collected by the commissions, and made available to the authors, indi-

²⁴ Civil society representation in the technical commission included the Tunisian Centre for Transitional Justice; the Independent National Coordination of Transitional Justice; the Centre for Human Rights and Transitional Justice; the Centre for Democratic Transition and Transitional Justice (Kawakibi); the Tunisian Network for Transitional Justice.

²⁵ Fieldwork interview, October 2012.

cated that 1825 respondents drawn from 2600 participants expressed diverse views on expectations from transitional justice. Indeed, one finding of interest was that of the 1825 surveyed, 37 percent stated that they sought recognition or acknowledgment of their suffering through transitional justice, while 29 percent sought monetary compensation, and 28 percent sought admission on the part of the perpetrator.²⁶ Furthermore, regional consultation participants also frequently voiced concerns related to past economic wrongs and the need to address socio-economic rights within the context of transitional justice.²⁷

Transitional Justice after Consultation

While the transitional justice law proposed by the technical commission contains 75 articles and at the time of writing remains in draft form (Draft Law on Transitional Justice, 2012), one important feature of this law is that it would create a successor coordinating body for transitional justice in Tunisia. This body would be known as the Commission of Truth and Dignity and it would be charged with overseeing transitional justice (Samti, 2012).²⁸ However, as noted earlier, political exclusion debates continue to overshadow transitional justice discourses as attempts to negotiate the extent to which former RCD members and sympathisers would be purged from post-Ben Ali politics remain highly contested. Ennahdha's November 2012 draft law on political exclusion, entitled the *Law on the Protection of the Revolution* posits a more draconian exclusion regime than that which was put in place for the October 2011 NCA elections and that which was proposed by Ennahdha's coalition partner, CPR, in April 2012. Ennahdha's draft law would target those who were members of the RCD from 2 April 1989 until 14 January 2011, along with those who called for Ben Ali's re-election in 2014. These individuals would be prohibited from contesting elected office at both the national and local levels and prohibited from civil service positions for a period of 10 years (Law on the Protection of the Revolution, 2012). While Ennahdha argued this draft law did not target Essebsi's Nida Tounes, Essebsi rejected this claim and argued that the effect of this law would be to empty the ranks of the opposition (Al Chourouk, 2012).

Conclusions

Transitional justice in Tunisia, while initially characterized by a number of *ad hoc* attempts to address the legacy of a wide array of past abuses ranging from civil and political rights abuses to acts of corruption, became embedded in a national consul-

²⁶ Survey results on file with author.

²⁷ These discussions were observed by one of the authors of this article.

²⁸ It should also be noted that opposition parties, such as *al Jouhmouri*, have also proposed their own draft laws on transitional justice.

tation that sought to translate transitional justice demands into legislation. Tunisia's Ministry of Human Rights and Transitional Justice established itself as the principle coordinating body for transitional justice debates in Tunisia following NCA elections in October 2011 and launched a national consultation on transitional justice through its technical commission and six regional consultative commissions. Nevertheless, while Tunisia's national consultation resulted in a draft law on transitional justice that was presented to the Ministry and the NCA government in October 2012, transitional justice debates in Tunisia remain politically discordant as Tunisian elites seek to negotiate a new post-Ben Ali constitutional order. It is within this context that the temporal boundaries of transitional justice have expanded since the revolution. The first investigative commission to examine human rights abuses was mandated only to investigate abuses that took place after 17 December 2010. Today, many Tunisians, in particular Ennahdha, express a preference for transitional justice mechanisms to explore abuses dating back to the founding of the modern Tunisian state in 1956. These debates over the temporal boundaries of transitional justice reflect divergent perspectives on Tunisia's modern history and the secular state. As an opposition movement which had borne the brunt of state repression, it is not surprising that Ennahdha's leadership – many of whom were victims of long-term detention and torture – has embraced transitional justice as a means of deconstructing the modernist narratives of Bourguiba and Ben Ali. In Tunisia transitional justice has become perhaps one of the most divisive questions that emerged from the January 2011 revolution with on-going contestations over the temporal mandates of investigative bodies, criminal prosecutions, dismissals and the limits of political exclusion. Although how each of these questions will be addressed remains open at the time of writing, the negotiation of transitional justice during transition in Tunisia imparts how transitional justice mechanisms at once deal with the legacy of past abuses and shape the trajectory of transition.

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