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Economic Reconciliation in the Context of Transitional Justice in Tunisia

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List of Abbreviations

ASF	Avocats Sans Frontières
CPI	Corruption Perceptions Index
ICTJ	International Center for Transitional Justice
IMF	International Monetary Fund
NCA	National Constituent Assembly
TI	Transparency International
TJRC	Truth, Justice and Reconciliation Commission
TRC	Truth and Reconciliation Commission
UNCAC	United Nations Convention against Corruption

Abstract

In spite of its existence since the development of the transitional justice in Tunisia; an increasing attention has been built up in the country as well as on the international level during the past three years regarding a new form of economic reconciliation in Tunisia due to a proposed initiative by the presidency and its anticipated effects on the community and on the outcomes of the transitional justice. This up-growing attention was the result of different parties within the Tunisian community that have initiated a strong opposition movement regarding this newly developed proposition. This movement is comprised of various efforts and approaches aiming at, mainly, rejecting an initiative that is considered to promote impunity. Consequently, the efforts were translated into a wide national movement that reflected the high sense of cooperation between different actors regardless of their diverse backgrounds. Though Tunisia has been considered as a promising example for adopting different anti-corruption policies after the Revolution, the current situation indicates that such policies were neither enough nor serious to essentially serve the goals of transitional justice. Therefore, obviously another approach has to be adopted in order to serve and achieve the goals of both the Revolution and transitional justice.

INTRODUCTION

1.1 Background

In his book, *Notes on the State of Virginia*, Thomas Jefferson stated that "In every government on earth is some trace of human weakness, some germ of corruption and degeneracy, which cunning will discover, and wickedness insensibly open, cultivate and improve."¹ This statement, though it dates back to the 18th century, has proven to be true and existing all over the globe including the MENA region countries that significantly suffered from all types of corruption whether grand, petty or political throughout the past decades. A firm proof to this is that these countries, with few exceptions, continuously fail to move up the corruption indicators and remain in their positions at the lower end of such indexes.² Nevertheless, even though it existed, regimes never attempted to substantially fight the phenomenon, only through façade practices including ratification and signing of international conventions against

¹ See T. Jefferson, 'Notes on the State of Virginia', Lilly and Wait, Boston, 1832, p.156

² Refer to the Corruption Perceptions Index issued by Transparency International on an annual basis. Retrieved from: <https://www.transparency.org/research/cpi/overview>

corruption. However, this has not prevented the citizens, and especially the youth, of these countries from rising against the deeply corrupted ruling regimes. Hence, corruption has played a pivotal role in triggering the Arab Spring Revolutions starting from Tunisia.

Nowadays, corruption occupies a critical place within the agenda of the transitional justice in Tunisia. The issue has seemingly always been on the agenda of the changing regimes in Tunisia post-Revolution. Still, it has gained momentum over the past two years especially after the presidency has adopted an initiative for an amended concept of economic reconciliation through a proposed bill.

1.2 Statement of the problem

Despite the adopted anti-corruption policies after the Revolution in Tunisia and while some are still unaware or are choosing to overlook the topic of the economic reconciliation with corrupted businessmen affiliated with the former regime; there is a mounting sense of injustice experienced by a fragment of the community. Consequently, continuous disregard of the citizens' growing dissatisfaction may lead to the latter's losing faith in the system of transitional justice and questioning the genuineness of the state's intentions to fight and eradicate corruption.

1.3 Aims and objectives of the study

This study is intended to define the various approaches adopted by different Tunisian regimes after the Revolution in 2011 in the name of transitional justice in order to take the adequate stand against corruption with the main focus on the concept of economic reconciliation. It goes through the various reasons behind the sense of injustice that might exist when it comes to reconciling with corrupted businessmen who are affiliated with the former regime. Over and above, it aims at evaluating the current presidential initiative for economic reconciliation. Also, it identifies different parties and actors who play a role within the Tunisian community with regards to the concept of economic reconciliation. Furthermore, it highlights the efforts and approaches adopted by such actors in an attempt to, finally, provide a perspective on how to serve the agenda of transitional justice.

1.4 Significance of the study

It is overwhelming to witness a promising experience on transitional justice, compared to other similar experiences, being jeopardized due to the ghost of corruption that continues to haunt the system. Notwithstanding the financial and economic status of the country; the consequences resulting from this plague's vicious and endless circle of consumption that is affecting the country's spirit and political scene constitute a reasonable reason to raise a red flag regarding the matter. It is even far much more frustrating when you observe the regime, obliquely, fighting the implementation of cleansing measures so as to serve their own personal benefits. The effects of selfishness and greed that leads to the suppression of the poor and demolition of their slightest hope to live a respectable life should be widely addressed and focused on in order to determine how it could be faced, diminished in time and, even though it might be wishful thinking, forever eliminated especially when it comes to a promising example for a country that is undergoing a transitional justice period like Tunisia.

1.5 Research questions

The main questions to be addressed in this study are:

- Why is it imperative for countries undergoing transitional justice to tangibly and substantially address the epidemic of corruption?
- What are the different anti-corruption approaches adopted by the different Tunisian regimes to face this phenomenon after the Revolution?
- Were these approaches sufficient in achieving the anticipated results of transitional justice?

Which brings us to the following questions:

- What is the extent of success achieved by the economic reconciliation in the course of transitional justice?
- What are the major factors that are playing a role in the due course of this process?
- What is the reaction of the Tunisian community towards the concept of economic reconciliation?
- and, finally, does the latest economic reconciliation initiative actually serve the purpose of transitional justice?

1.6 Literature review

Over the past decades, the topics of corruption, transitional justice and reconciliation have been the focus of many authors. When it came to corruption, not only have authors focused on it alone but they also covered the movement against it and some even described it as a "revolution".³ However, even though many provided different general definitions for it;⁴ others such as Heleen E. Bakker acknowledged further elements to the phenomenon by describing it as a "legal, economic, and socio-political distortion".⁵ Nevertheless, notwithstanding that it has existed since forever and that it is a major problem, not a lot of authors focused on corruption out of its usual context. Still, some made sure to mention it while discussing economic, social and cultural rights within the transitional justice. In the abstract of her article, Evelyne Schmid referenced the final report of the Liberian TRC and stated that it "claims that the root causes of the civil war that devastated Liberia between 1989 and 2003 were poverty, corruption, and inequality."⁶ hence, shedding the light on the fact that corruption has close ties with the process of transitional justice and is connected to violations of different human rights. In another article she also pointed out that the overlooking of economic and social rights violations became an important question for both scholars and practitioners.⁷ Furthermore, Rotberg (2009) believes that corruption is more aggressive in new nations, indicating developing countries; also, this might be considered as applicable to countries undergoing transitional justice due to the reformation process.⁸ Some actually went further in an attempt to demonstrate the devastating effects of corruption on the community, for instance Padraig McAuliffe suggested that large-scale corruption should be included under the crimes against humanity to provide a solution for

³ See P. Glynn, S. J. Kobrin, & M. Naím, 'The Globalization of Corruption' in K.A. Elliott (ed.) 'Corruption and the Global Economy', Institute for International Economics, 1997, pp. 7-27.

⁴ Under 'How Corruption Compromises World Peace and Stability' in 'Corruption, Global Security, and World Order', Brookings Institution Press, 2009, pp.1-26, R. I. Rotberg (ed.) described corruption as 'a human condition and an ancient phenomenon' while it was described as 'an unmitigated evil' by D. Kennedy, 'The International Anti-Corruption Campaign', *Connecticut Journal of Int'l Law*, Vol. 14:455, 1999, p.457. Retrieved from: <http://www.law.harvard.edu/faculty/dkennedy/publications/corruption.pdf>

⁵ See H.E. Bakker and N. G. Schulte Nordholt (eds), *Corruption and Legitimacy*, SISWO Publications, Amsterdam, 1996.

⁶ See E. Schmid, 'Liberia's Truth Commission Report: Economic, Social, and Cultural Rights in Transitional Justice', *The Fletcher Journal of Human Security*, Vol. XXIV, 2009, p.5.

⁷ See E. Schmid and A. Nolan, 'Do No Harm'? Exploring the Scope of Economic and Social Rights in Transitional Justice', *The International Journal of Transitional Justice*, Vol. 8, 2014, p.363.

⁸ See Rotberg, op. cit.

the deficiency of the criminal law with regards to facing economic crimes.⁹ Overall, all these authors and more considered corruption as one of the foremost controversial topics during the past decades. On the other hand, transitional justice has been the focus of countless authors as of its emergence since post World War II. Its definition has varied from one author to the other, but even though there is no unified definition for the concept of transitional justice, still, it all comes down to the same notion that it is whatever means countries adopt in order to reconstruct their systems and heal the tissue of the community from violations of human rights post conflicts or dictatorial regimes.¹⁰ For example, Ziad Abdel Tawab defined it as:

*... A set of varied tools – both judicial and otherwise – which may include trials of individuals, reparations, fact-finding commissions, legislative and constitutional reforms, the vetting of public officials and security personnel, and other measures considered by the society to be necessary for dealing with the legacy of repression and human rights violations left by the previous regime.*¹¹

Its applicability through the years made it a subject for the critical analysis of some authors in their writings. Rosemary Nagy wrote a piece reflecting on the process of transitional justice and said that it lead to a “fairly narrow interpretation of violence within a somewhat artificial time frame”,¹² which yet again indicates that the scope of the process was also limited to the focus on political and civil abuses while neglecting the social, economic and cultural aspects of violations, hence, not focusing on corruption as a unique violation of economic human rights that requires reparation during the course of transitional justice. Affirming this idea, Arbour argued that there is a “comparative” negligence towards these rights in transitional justice despite their “long lasting” and more damaging effects.¹³ Others like Zinaida Miller suggested that solving economic violations during the course of transitional justice has proven to be “insufficient”.¹⁴

⁹ See P. McAuliffe, ‘Rhetoric and Realpolitik: Interrogating the Relationship Between Transitional Justice and Socio-Economic Justice’, *Finnish Yearbook of International Law*, Vol. 23, 2012-2013, p.273.

¹⁰ ICTJ defined it as ‘the ways countries emerging from periods of conflict and repression address large scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response.’ Retrieved from: <https://www.ictj.org/about/transitional-justice>

¹¹ See Z. A. Tawab, ‘The Crisis of Transitional Justice Following the “Arab Spring”: Egypt as a Model’, 2013, p.96. Retrieved from: <http://www.cihrs.org/wp-content/uploads/2013/09/Transitional-Justice.pdf>

¹² See R. Nagy, ‘Transitional Justice as Global Project: critical reflections’, *Third World Quarterly*, Vol. 29, No. 2, 2008, p. 275.

¹³ See L. Arbour, ‘Economic and Social Justice for Societies in Transition’, *International Law and Politics*, Vol. 40:1, p.14. Arbour referred to the Timor Leste Commission report that dedicated a chapter to discuss the effects of violations of economic and social rights and the extent of their gravity.

¹⁴ See Z. Miller, ‘(Re)Distributing Transition’, *The International Journal of Transitional Justice*, 2013, p.8.

Finally, reconciliation, which is a term that has been the subject of dispute for long without coming to a consensus regarding its exact definition. According to Juan E. Mendez reconciliation is a “long-term setting aside of disputes between factions that have divided a nation”¹⁵, however, reconciliation is argued to be more than just the act of “setting aside” a conflict but it also includes many elements as reparation and acknowledgment of the committed crime and seeking amnesty.¹⁶ Regardless of their diverse definitions, causes and effects, only few authors actually focused on joining the aforementioned aspects together and tackling them as one component of a major problem and deficiency that faces a successful process of transitional justice. Some acknowledged the evident relationship between “reconciliation and justice/impunity” in the course of transitional justice.¹⁷ Still, only those such as Isabel Robinson addressed the issue clearly when she wrote an article examining the “extent to which transitional justice should address corruption in terms of both theory and practice”¹⁸. Additionally, Rubin Carranza, dedicated an article to discuss incorporating economic crimes and corruption within the framework of transitional justice and the comparative experiences of reconciliation commissions.¹⁹ He further argued that by addressing the issue of corruption within transitional justice mainstream countries are preventing what he described as an “impunity gap” from existing.

1.7 Research methodology

This study includes primary sources such as cases, national statutes and regulations as well as interviews and first hand information collected during an internship with a domestic organization in Tunisia.²⁰ It, also, includes secondary sources like books, Internet websites, press releases, journals and articles, statistical indexes as well as researches. It depends primarily upon

¹⁵ See J. E. Mendez, ‘National Reconciliation, Transnational Justice and the International Criminal Court’, *Ethics and International Affairs*, Vol. 15.1, 2001.

¹⁶ See Y. Manzi, ‘Reconciliation in Transitional and Post-conflict Societies: Healing or Impunity?’, SOAS (University of London), 2014. Retrieved from: <http://www.e-ir.info/2016/09/02/reconciliation-in-transitional-and-post-conflict-societies-healing-or-impunity/>.

¹⁷ *ibid*.

¹⁸ See I. Robinson, ‘Truth Commissions and Anti-Corruption: Towards A complementary Framework?’, *International Journal of Transitional Justice*, 2015, pp. 33-50.

¹⁹ See R. Carranza, ‘Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?’, *The International Journal of Transitional Justice*, Vol. 2, 2008, pp. 310-330.

²⁰ Salma Sharif underwent an internship with IWATCH, ‘a Tunisian watchdog organization created after the Tunisian revolution’, for a month. For more information about the Organization visit: <https://www.iwatch.tn/ar/>

articles and journals in addition to legislations. The study approaches the adopted methods by the Tunisian government to face corruption with an emphasis on economic reconciliation by going through these primary sources including adopted laws and regulations, etc. within Tunisia and weighing their efficiency based on other various sources.

1.8 Thesis statement

It is probably clear how anti-corruption policies should be acknowledged as playing an important role during transitional justice period, and how Tunisia recognized the importance of trying to achieve a solution for economic crimes, consequently, it adopted and developed a national mechanism in order to stand up for the phenomenon that affected the fabric of the society and was one of the leading reasons for sparking the Revolution. However, notwithstanding the importance of these newly adopted measures, the economic reconciliation as a tool for achieving transitional justice must be well-studied in order to allow people to feel justice and the fruits of reconciliation and this shall be discussed at the end of this study.

1.9 Research scope

The study of economic reconciliation in the course of transitional justice is going to be restricted to the past six years post the Revolution in Tunisia. Although the transitional justice usually includes reconciliation in general; only economic reconciliation is viewed due to its significance during the current period. Also, countries which have underwent similar experiences in Latin America, Middle East and Africa are included along within the study as a comparative study with an emphasis on the measures it took to achieve economic reconciliation. Additionally, Tunisian civil society and community are also included to evaluate their role towards the economic reconciliation especially during the past two years.²¹

1.10 Outline

In order to answer the questions that this study raise, chapter one shall be discussing the different measures the Tunisian regimes have developed and implemented post-Revolution in order to deal with corruption and economic crimes, first through involving various institutions and bodies and then through newly adopted legislations leading up to the “economic”

²¹ As of the presidential initiative that has proposed a bill pushing for a new form of economic reconciliation.

reconciliation. The study shall review the emergence of economic reconciliation in the form it was implemented as part of the transitional justice system and it shall then assess the mechanism as an effective tool for achieving transitional justice. Following that, it will stop at the latest suggested form for economic reconciliation, which was initiated by the presidency of Tunisia. After that chapter two shall demonstrate the number of reasons behind the failure of economic reconciliation to reach its anticipated goals within the framework of transitional justice. Finally, at the end the study shall evaluate the continuous efforts and stances of the Tunisian community and civil society, amongst others, vis-à-vis economic reconciliation and its outcomes and effectiveness.

CHAPTER ONE

Anti-Corruption Policies Adopted by Tunisia Post-Revolution

In his keynote word in the report prepared by the National Fact Finding Committee on Bribery and Corruption, Chairman Abdel Fattah Omar pointed out that during the period of Zine El Abidine Ben Ali's regime Tunisia was a "victim to a system of bribery and corruption" that controlled and monopolized every aspect of the State and community.²² At the same time, if we look at the Egyptian experience we would find similarity in the wide spread systematic corruption. Such epidemic was one of the main triggers that sparked the Arab Spring starting from Tunisia.²³ The people chants included personal dignity, freedom and social justice that indicated that the people were demanding the end of the era of corruption.²⁴ Nonetheless, countries dealt with this phenomenon after the revolutions in different ways. While some focused on merely legislative reformatations, criminal prosecutions and reparations; others combined legislative and institutional reform, prosecutions, truth seeking, and reparations as part of a larger and more inclusive framework. Tunisia adopted different approaches as part of its transitional justice agenda. Such approaches aimed at combating corruption and eradicating the remnants of

²² See The National Fact Finding Committee on Bribery and Corruption Report, 2011, pp.1-2. Retrieved from: http://www.inlucc.tn/fileadmin/user1/doc/0_rapport_cicm.pdf

²³ See A. Khalil, 'Map of Transitional Justice in Egypt as of 25 January 2011 (The Road, Challenges and Policies)', 2017. In page 37, the author describes the Egyptian Revolution as 'an angry Revolution against the deterioration of political, social and economical status of the Egyptian people and the spread of corruption...' acknowledging the role of corruption in sparking the earlier demonstrations that later evolved into a Revolution.

²⁴ See 'Transitional Justice Should Take on Corruption', Freedom House, 2013. Retrieved from: <https://freedomhouse.org/blog/transitional-justice-should-take-corruption>

the former regime and the businessmen associated with it. Hence, at first this Chapter shall be in general discussing the most prominent approaches with a brief evaluation on its successfulness. However, later it shall focus on the economic reconciliation mechanism, which was developed post-Revolution in order to serve the agenda of transitional justice. It shall present its emergence as well as analyze its actual effectiveness and impact on the Tunisian community.

I. Efforts in the Fight Against Corruption

As previously mentioned, Tunisia developed an anti-corruption mechanism that was included within its post-revolutionary transition agenda. This mechanism included all aspects of transitional justice approaches and not only did the agenda focus on reform through its laws as well as developing and revolutionizing institutions that can help with achieving different goals but it also included reparations.²⁵ The following shall indicate the different efforts that have been exerted by the Government to serve the transitional justice goals.

i. Institutions and Bodies

In 2011, during the Government of Mohamed Ghannouchi, the interim President at the time, Fouad Mebazaa, issued Decree by Law No. 7 of 2011 creating the National Fact Finding Committee on Bribery and Corruption in order to investigate cases of corruption and bribery that occurred between the period of 7 November 1987 and 14 January 2011. This Committee was the first step in the anti-corruption mechanism that was created post-Revolution in Tunisia. The Committee was composed out of a number of independent national experts and figures who were distributed between two subcommittees, general and technical. The General Subcommittee was delegated to draw future plans in order to face corruption and bribery while the Technical Subcommittee was delegated to reveal all the facts related to the previously mentioned cases via the gathering of all the necessary information, documents and testimonies through whatever means required in order to assert its legitimacy and then refer it to the competent judicial body so

²⁵ According to ICTJ paper titled ‘What is Transitional justice?’, the many “basic approaches” that are adopted by governments in order to achieve transitional justice include the reparations programs initiative. These “state-sponsored” initiatives basically aim at ‘repairing the material and moral damages of past abuse.’ Those programs include ‘financial compensations and official apologies’. Retrieved from: <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf>

as to prosecute those involved in committing such crimes.²⁶ After receiving around 10000 complaints involving corruption,²⁷ the Committee presented its final report on November 11, 2011.²⁸ In the endnotes of the report, the Committee provided recommendations such as undertaking a powerful gesture by including an independent authority dedicated to combating corruption and bribery in the, back then, anticipated Constitution. The Committee also acknowledged the importance of including corruption within the educational curriculums so that the future generations become aware of the values of integrity.

Three days after the issuance of the above-mentioned report, the interim President once again issued another Decree by Law establishing an independent body, as a successor to the Fact Finding Committee, within the framework of combating corruption.²⁹ The National Anti-Corruption Commission is comprised out of 20-30 members and was established in order to, inter alia, receive and carry out investigations regarding corruption cases before referring them to competent bodies including judiciary, provide suggestions on policies to combating corruption and follow up with its execution in coordination with the competent bodies, reveal the sources of corruption in both the public and private sectors.³⁰ The Commission issues an annual report, which includes its suggestions and recommendations, to be referred to the President of the Republic and the Legislative Power. A Chairman was assigned to the Commission in March

²⁶ See Decree by Law No.7 of 2011, issued on February 18, 2011. Retrieved from: http://www.legislation.tn/detailtexte/D%C3%A9cret-loi-num-2011-7-du-18-02-2011-jort-2011-013_2011013000072?shorten=jP42

²⁷ See 'The National Fact Finding Committee on Bribery and Corruption'. According to the information provided, only around 5% of the cases were referred to the prosecution. Retrieved from: <http://www.justice-transitionnelle.tn/ar/%D8%A7%D9%84%D8%AC%D9%87%D8%A7%D8%AA-%D8%A7%D9%84%D9%81%D8%A7%D8%B9%D9%84%D8%A9/%D8%A7%D9%84%D8%AC%D9%87%D8%A7%D8%AA-%D8%A7%D9%84%D9%81%D8%A7%D8%B9%D9%84%D8%A9-%D8%A7%D9%84%D9%88%D8%B7%D9%86%D9%8A%D8%A9/%D8%A7%D9%84%D9%84%D8%AC%D9%86%D8%A9-%D8%A7%D9%84%D9%88%D8%B7%D9%86%D9%8A%D8%A9-%D9%84%D8%AA%D9%82%D8%B5%D9%8A-%D8%A7%D9%84%D8%AD%D9%82%D8%A7%D8%A6%D9%82-%D8%AD%D9%88%D9%84-%D8%A7%D9%84%D9%81%D8%B3%D8%A7%D8%AF-%D9%88%D8%A7%D9%84%D8%B1%D8%B4%D9%88%D8%A9/>

²⁸ See The Fact Finding Committee on Bribery and Corruption Report, op. cit.

²⁹ See Decree by Law No.120 of 2011 on Combating Corruption, issued on November 14, 2011. Retrieved from: http://www.legislation.tn/detailtexte/D%C3%A9cret-loi-num-2011-120-du-14-11-2011-jort-2011-088_2011088001202

³⁰ Members of the Commission are appointed based on nominations by the Government after deliberations with the concerned parties. The Law listed 9 competencies for the Commission.

2012,³¹ meaning that it took the Government 5 months to appoint a chairman to the Commission to start its work. It was obvious that the Commission suffered since the beginning starting from the late appointing of its chairman as well as its members to the lack of resources.³²

Almost two years later, an independent entity was established to play a major role in the course of transitional justice in Tunisia and in the efforts of trying to reach reconciliation in crimes related to corruption. The Truth and Dignity Commission was established via Organic Law No.53 of 2013,³³ and its members were appointed according to Government Decree No.1872 of 2014 under which the first meeting has been scheduled to take place on June 17, 2014.³⁴ Once again, it took the State more than 5 months to appoint members of an independent commission delegated with the corruption agenda in order to officially and effectively undertake its jurisdiction. The Commission is constituted out of 15 members who are nominated and appointed based on certain criteria defined by law.³⁵ This Commission has a very unique scope of jurisdiction since; contrary to other bodies that were established earlier, reconciliation falls within its scope of work explicitly. Under the jurisdiction of the Commission, a special committee for arbitration and reconciliation is established in order to review and decide on reconciliation requests in economic/financial corruption cases. However, even though the procedures to any other legal processes shall be suspended; in case the violator was proven to have intentionally concealed the truth or the correct amount of money he/she have acquired then the procedures of a trial or the enforcement and execution of a sentence shall be recommenced.³⁶ The Commission issued its internal regulation by the end of 2014.³⁷ The Commission included the achievement of national reconciliation as one of its many competencies. It also included revision of legislations that were one of the reasons for the wide spreading of corruption in order to reinforce building of democracy and a country based on the rule of law. Still, after its

³¹ See 'Appointing Samir Annabi Chairman to the National Anti-Corruption Commission', *Babnet*, March 27, 2012. Retrieved from: <https://www.babnet.net/cadredetail-47521.asp>

³² More in depth analysis of this observation shall be made herein.

³³ See Organic Law No.53 of 2013 on Establishing and Organizing Transitional Justice, issued on December 24, 2013. Retrieved from: <http://www.legislation.tn/sites/default/files/news/ta2013531.pdf>

³⁴ See Government Decree No.1872 of 2014 Naming Members of the Truth and Dignity Commission and Calling them for Meeting, issued on May 30, 2014. Retrieved from: <http://www.ivd.tn/ar/wp-content/uploads/2015/12/D%C3%A9cret-n%C2%B0-2014-1872-du-30-Mai-2014-Ar.pdf>

³⁵ Refer to Arts.19, 20, 21 and 22 of Organic Law No.53 of 2013.

³⁶ Refer to Art.45 of Organic Law No.53 of 2013.

³⁷ See Decision No.1 of 2014, Setting Internal Regulation for the Truth and Dignity Commission, issued on November 22, 2014. Retrieved from: <http://www.ivd.tn/ar/wp-content/uploads/2015/12/الداخلي-النظام.pdf>

establishing and commencing its work, the Truth and Dignity Commission faced a lot of challenges such as the limited period of time it has been given in order to undertake its competencies.³⁸ Furthermore, the restricted period that has been determined in order for it to receive the complaints, testimonies, etc. regarding any of the crimes mentioned under Law No.53 of 2013.³⁹ Within the several publications that the Commission has released, it issued a General Guide for Procedures on September 2014.⁴⁰ It should be noted that even though the Guide was issued almost two months before the Internal Regulation of the Commission, the Internal Regulation with its latter issuance date is included within the Guide, which might cause confusion on how a subsequent decision is included as a basis for a prior one. Nonetheless, The Guide provides a detailed manual on the procedures adopted by the Commission in its different committees and divisions in order to facilitate its work. Amongst those are procedures of carrying out investigations and the hearings sessions. It also includes procedures regarding annual reports and the final report the Commission is going to issue upon the fulfillment of its work. A number of decisions were issued afterwards setting specific guides on the procedures of every committee within the Commission, one of which was a decision with the Guide on Arbitration and Reconciliation for the competent Committee that was issued almost a year later.⁴¹ The Guide determined those entitled to submit an arbitration and reconciliation application as well the listing the procedures and conditions related to the process, inter alia. According to the Guide, the Committee may receive a file referred to it by the National Anti-Corruption Commission. Also, if an application received by the Committee is related to financial corruption then the Guide requires that it must include a list of the facts that lead to the unlawful

³⁸ According to Art.18 of Law No.53 of 2013, the Commission shall undertake its duties for a period of 4 years starting from the date of appointing its members, end of May 2014, which can be extended for one more term for a period of one year through a detailed decision to be submitted three months before the conclusion of its term to the legislative authority in power at the time. It is not clear at this point whether the Commission is going to ask for an extension or not since it is expected to finish its work in less than a year.

³⁹ For this purpose, in December 9, 2015, the Commission issued a Press Release stating that it has decided to extend the timeline for accepting files for another six months according to Law 53 of 2013. The Commission reasoned its decision to the requests of the civil society for the Commission to take such action. Hence, the Commission was opened the door for accepting files until June 14, 2016. Also, according to the Press Release, out of a total of 62674 files, the Commission has received by then more than 22 thousand files. Retrieved from: <http://www.ivd.tn/ar/?p=408>

⁴⁰ See Decision No.2 of 2014, Setting the General Guide for Procedures for the Truth and Dignity Commission, issued on September 19, 2014. Retrieved from: <http://www.ivd.tn/ar/wp-content/uploads/2015/12/الاجراءات-دليل-العام.pdf>

⁴¹ See Decision No.5 of 2015, Guide with the Procedures of Arbitration and Reconciliation for the Arbitration and Reconciliation Committee, issued on July 13, 2015. Retrieved from: <http://www.ivd.tn/ar/wp-content/uploads/2015/12/الاجراءات-دليل-المصالحة-التحكيم-الاجراءات-دليل-العام.pdf>

enrichment and the amount acquired. It, moreover, determines that the implementation of the reconciliation concluded by the Committee regarding financial corruption shall suspend the procedures of any public case or trial or enforcement of sentence. However, as previously mentioned, if it has been proven that the offender has deliberately concealed the truth or not declare the correct amount of money acquired then all the aforementioned procedures shall be resumed. Furthermore, another decision was issued to set up the procedures for the Investigation Committee and it included the financial corruption within the crimes that fall under the jurisdiction of the Committee.⁴² Hence, the Truth and Dignity Commission has established a comprehensive framework for itself in order to pursue its competencies including achieving reconciliation in financial corruption cases.

There were other bodies that were established, additionally, to be part of the anti-corruption mechanism, however, their part cannot be considered as significant since there was no real impact to their establishment. For instance, a Higher Council for the Fight against Corruption and Assets Recovery and State Assets was established in 2012.⁴³ It was founded so as to monitor and suggest solutions and mechanisms for other bodies, including the National Anti-Corruption Commission, delegated with the corruption agenda as well as provide suggestions and proposals to assets recovery and administration bodies on the most suitable means for the utilization of confiscated assets. It has its first meeting on October 30, 2012, under the presidency of the Head of the interim Government back then, Hamadi, Jebali, during which chairmen of competed committees delegated with this agenda presented data and went through difficulties and hurdles that they face within their work.⁴⁴ The Minister delegated with Governance and Combating Corruption has been listed within the formation of this Higher Council. This brings us to another body that has been delegated with the corruption agenda but never seemed to have accomplished anything significant. During 2012 the Head of Government, Hamadi Jebali, delegated a Minister, Abdelrahman Al-Adgham at the time, with both

⁴² See Decision No.6 of 2016, Guide with the Procedures of the Investigation Committee, issued on January 29, 2016. Retrieved from: <https://www.docdroid.net/gShNixt/-pdf.html>

⁴³ See Decree No.1425 of 2012, issued on August 31, 2012, amending Decree 3080 of 2010, issued on December 2010, Establishing Higher Advisory Councils. Retrieved from: http://www.legislation.tn/detailtexte/Dcret-num-2012-1425-du-31-08-2012-jort-2012-069_2012069014253?shorten=YfqQ

⁴⁴ See 'Commencement of First Meeting for the Higher Council for the Fight against Corruption and Assets Recovery and State Assets', *Presidency of Government Portal*, October 30, 2012. Retrieved from: <http://www.pm.gov.tn/pm/actualites/actualite.php?lang=ar&id=6090>

governance and fighting corruption.⁴⁵ However, almost 4 years later a Ministry of Public Service, Governance and the Fight Against Corruption has been established under the ruling of a new government headed by Habib Essid according to a Government Decree.⁴⁶ The jurisdictions of the Ministry were then determined under another decree that was issued around five months later.⁴⁷ These jurisdictions were divided between governance and corruption. The jurisdictions covering the subject of corruption included referring complaints submitted to it to competent bodies and developing and implementing a national strategy for combating corruption, amongst other things. When the Ministry was first established, Kamel El Ayadi was appointed as the Minister, then under Youssef Chahed's Government, Abid Briki was appointed as the new and last official to fill in and undertake the tasks of the position before the Ministry was eliminated.⁴⁸ During the period of its existence and functioning, in a similar case to the Higher Council, this

⁴⁵ On April 2012 the Minister, Abedlrahman Al-Adgham, reportedly declared that establishing a ministry solely dedicated to governance and fighting corruption as well as creating regulatory, legislative and institutional mechanisms in going to present a strong signal in dealing with all the deficiencies in this field. He also referred back the partial failure in this field to the absence of a clear political will. See 'Abdelrahman Al-Adgham: Establishing a Ministry for Governance and Fighting Corruption Represents a Strong Sign to Resolve all the Deficiencies', *Presidency of Government Portal*, April 27, 2012. Retrieved from: <http://www.pm.gov.tn/pm/actualites/actualite.php?lang=ar&id=5539>

⁴⁶ See Decree No.271 of 2016, Establishing the Ministry of Public Service, Governance and the Fight Against Corruption and Attaching Structures to it, issued on March 2, 2016. Retrieved from: http://www.legislation.tn/en/detailtexte/D%C3%A9cret%20Gouvernemental-num-2016-271-du-02-03-2016-jort-2016-019_20160190027132

⁴⁷ See Decree No.962 of 2016, Regulating the Jurisdictions of the Ministry of Public Service, Governance and the Fight Against Corruption, issued on August 4, 2016. Retrieved from: http://www.legislation.tn/detailtexte/D%C3%A9cret%20Gouvernemental-num-2016-962-du-04-08-2016-jort-2016-066_20160660096232

⁴⁸ Chahed appointed Khalil Ghariani on February 25, 2017, as the new Minister. See S. El-Tarhoni, 'The Curriculum Vitae of Khalil Ghariani the new Minister of Public Service', *Tunisien*, February 25, 2017. Retrieved from: <http://www.tunisien.tn/%D8%AA%D9%88%D9%86%D8%B3/%D8%A7%D9%84%D8%B3%D9%8A%D8%B1%D8%A9-%D8%A7%D9%84%D8%B0%D8%A7%D8%AA%D9%8A%D8%A9-%D9%84%D9%80-%D8%AE%D9%84%D9%8A%D9%84-%D8%A7%D9%84%D8%BA%D8%B1%D9%8A%D8%A7%D9%86%D9%8A-%D9%88%D8%B2%D9%8A%D8%B1>. However, less than a week later Ghariani declared that he refuses the appointment. See K. Wanas, 'Khalil Ghariani Apologizes for the Minister of Public Service and Governance Minister Position', *Mosaiquefm*, March 2, 2017. Retrieved from: <http://www.mosaiquefm.net/ar/%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1-%D8%B3%D9%8A%D8%A7%D8%B3%D8%A9-%D8%AA%D9%88%D9%86%D8%B3/103008/%D8%AE%D9%84%D9%8A%D9%84-%D8%A7%D9%84%D8%BA%D8%B1%D9%8A%D8%A7%D9%86%D9%8A-%D9%8A%D8%B9%D8%AA%D8%B0%D8%B1-%D8%B9%D9%86-%D9%85%D9%86%D8%B5%D8%A8-%D9%88%D8%B2%D9%8A%D8%B1-%D8%A7%D9%84%D9%88%D8%B8%D9%8A%D9%81%D8%A9-%D8%A7%D9%84%D8%B9%D9%85%D9%88%D9%85%D9%8A%D8%A9-%D9%88%D8%A7%D9%84%D8%AD%D9%88%D9%83%D9%85%D8%A9>

Ministry, as shall be discussed hereunder, has not proven to be an efficient body in the approach of combating corruption.⁴⁹

Notwithstanding other bodies and institutions that exist in Tunisia within the anti-corruption mechanism and their importance, but the abovementioned bodies are more associated with the context of the study; consequently, contrary to the others, the latter were subject to the discussion.⁵⁰

When it comes other comparative experiences to the Tunisian, other countries might not have adopted the same approach as Tunisia did. In Egypt, after January 25 Revolution there were no specific institutions or bodies that were established in order to combat corruption. In fact the calls for developing and adopting a transitional justice framework were disregarded,⁵¹ consecutive governments and stakeholders only focused on what they called the “democratic transition” or the “road map”. Trials were held and a number of fact-finding committees were formed over the years, however, even though there were a lot of trials for corruption cases that included a lot of businessmen and figures associated with the former regime; the fact finding committees were never established to investigate corruption and most of the time the reports were not even made public.⁵² The same goes for countries like Chile and South Africa. In fact, in Tunisia stakeholders seem to have chosen not to adopt the South African experience, despite always being described as the most successful experience, since they view it as a failed experience.⁵³ South Africa’s Truth and Reconciliation Commission was established in order to tackle the crimes and human rights violations committed by the apartheid system, but it only limited such crimes to severe physical mistreatment.⁵⁴ South Africa’s TRC dealt with some other

⁴⁹ The study shall point out probable political reasoning for founding this Ministry and the implications that lead to its elimination.

⁵⁰ There are judicial, independent and administrative bodies in Tunisia, which are all involved in the corruption agenda including but not limited to different courts and judicial circuits, the HAICA, confiscation committee, etc.

⁵¹ See Z. Abdel Tawab, ‘The Crisis of Transitional Justice Following the “Arab Spring”: Egypt as a Model’, Cairo Institute for Human Rights Studies, 2012. p.106. Retrieved from: <http://www.cihrs.org/wp-content/uploads/2013/09/Transitional-Justice.pdf>

⁵² *ibid.*

⁵³ See K. Fisher & R. Stewart, ‘Transitional Justice and the Arab Spring’, Routledge, 2014, cited in L. Leonardsson, ‘Transitional Justice in Tunisia: Implementation and Challenges’, Graduate Thesis, Lund University, 2015, p.43. Retrieved from: <http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=5434663&fileId=5470694>

⁵⁴ See Z. Miller, ‘Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice’, *The International Journal Of Transitional Justice*, Vol.2, 2008. p.12. Retrieved from: https://oup.silverchair-cdn.com/oup/backfile/Content_public/Journal/ijtj/2/3/10.1093_ijtj_ijn022/2/ijn022.pdf?Expires=1496588919&Signature=CubaAo0A67SddqIhp15GdY1C2tBWbmKY4duzRkxSk699eTqpBdU70kmsOixb0ky7Y4Eo0buW1e2uqd7e

aspects such as arson to include the economic rights, but it did not tackle corruption.⁵⁵ Furthermore, even though Chile TRC never focused on corruption, only of forced disappearances and on other grave civil and political rights abuses still, Chileans are opposers of corruption and economic crimes.⁵⁶ Nevertheless, despite the fact that he was never convicted, the late Chilean President Augusto Pinochet has been subject to investigations on the ground of corruption. However, the assets he acquired through corruption were suggested to be subject to possible recovery as a mechanism of transitional justice.⁵⁷ Consequently, it should be noted that in the course of transitional justice Chile and South Africa did not extend an effort to establish bodies in order to focus on corruption, in fact both truth commissions in these countries did not tackle corruption or include it in their framework,⁵⁸ which can be considered as a missed opportunity to mend and try to recover from the subsequent effects of corruption.⁵⁹ The latter can be explained that these effects extend even if you set a solid framework of transitional justice without including an anti-corruption mechanism to deal with the current situation and set up a plan for the future. Then again, if we look beyond the framework of transitional justice of the two countries, South Africa has a team of prosecutors and investigators who work on corruption in coordination with other specialized state agencies. Also, in Chile there is a system based on networking between different institutions in the state in order to fight corruption.⁶⁰

YRzqd144D4uGHD9YIAwN4q8vCN56ilVWU6aj-Wzst069X6ZY5KJWpp-2DEt2S0hNa6RhCNx6Jfod2TU~KAUlg83LUqaPipaqVEjQ5-iN5~v8z3-LpaOVYygSGS5wE-9a7U95Ni9pAHSgZF6kimdwm0ELPt3HZSfScLdxA67JcXm4usgXi1K4AXryLca1Yp8VT2a4xMRyTahybnieEW9A9jMQSSyE837jluP7hWDra1wKx71KDnHQzZ7y~~g9ALAIC1eLwg__&Key-Pair-Id=APKAIUCZBIA4LVPVW3Q. Miller described the TRC's work and conclusions that disregarded economic redistribution amongst other things as disappointing.

⁵⁵ See M. Mamdani, 'Amnesty of Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa', *Diacritics*, The John Hopkins University Press, 2002, Vol.32, No.3/4, pp.39 & 40. Retrieved from: <http://www.jstor.org/stable/1566444>. See Arbour, op. cit. p.17. The author argues that even though the normal mainstream trend is to focus on civil and political rights, housing and property restitution as well as land reform programs were created in South Africa as part of reparations programs that goes beyond these rights and extend to economic, social and cultural rights. Still, apparently the extent did not include corruption.

⁵⁶ See J. L. Cavallaro & S. Albuja, 'The Lost Agenda: Economic Crimes and Truth Commissions in Latin America and Beyond', in K. McEvoy & L. Gregor (ed.), *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, Hart Publishing, 2008.

⁵⁷ See Carranza, op. cit. p.312.

⁵⁸ See Nagy, op. cit., p.284. The author criticizes the South Africa TRC for having a narrow mandate.

⁵⁹ See International Center for Transitional Justice, 'Fighting Corruption: What Role for Transitional Justice Methods?', 2011. Retrieved from: <https://www.ictj.org/sites/default/files/subsites/tjcairo/en/fighting-corruption-what-role-transitional-justice-methods/>

⁶⁰ See J. Olaya & K. Hussmann, 'Preventing and Combating Corruption: Good Governance and Constitutional Law in Tunisia', in Z. Al-Ali & R. Stacey (ed.), *Consolidating the Arab Spring: Constitutional Transition in Egypt and*

Mostly all of the above-mentioned bodies or institutions are independent national bodies which presents a pattern on how the Tunisian state started focusing on not only eradicating already existing corruption by adopting institutional reforms but also on founding new institutions that enjoy their independence, financial amongst other aspects, in a step to mitigate corrupted acts and prevent them from occurring.

ii. Legislations

In its endnotes, the National Fact Finding Committee on Bribery and Corruption stated that the Tunisian legislation is in need of a drastic and inclusive revision in order to assure its effectiveness to help citizens regain their trust in the state and its different institutions.⁶¹ This was apparently adopted in the future approach of the consecutive governments and stakeholders, as not only did the Tunisian Constitution, issued on 2014, explicitly include corruption in a number of its chapters but also different statutes were issued as part of the anti-corruption legal framework as shall be discussed hereunder.

Prior to the Revolution, Tunisia has adopted and implemented different national laws and international conventions within its framework to fight corruption. However, such laws and the adoption of different international conventions has proven to be part of the façade democracy practiced by the former regimes through which they were trying to give the illusion that they were effectively implementing anti-corruption policies and mechanisms. However, this all changed after the Revolution, as corruption became the subject of many reforms that were suggested by different parties in the country. Most of the laws issued after the Revolution included establishing independent new bodies or entities within the anti-corruption framework. Legislations including Anti-Corruption Law and Transitional Justice Law were issued setting up the general framework for the mainstream of the anti-corruption policies. However, earlier in 2011, after the Tunisian Revolution, a Decree has been issued by the interim President in order to confiscate assets of the former regime and those associated with it, those whom acquired such movable or immovable assets as well as rights through their connections with Ben Ali's

Tunisia, International IDEA and The Center for Constitutional Transitions at NYU Law, 2013, p.20. Retrieved from: <http://www.constitutionaltransitions.org/publications/consolidating-arab-spring/>

⁶¹ See The National Fact Finding Committee on Bribery and Corruption Report, op. cit. In more that one point the Committee seemed to focus on the Tunisian legislation as a pivotal element in the anti-corruption approach.

regime.⁶² The Decree was intended to confiscate these all assets and rights that were acquired after November 7, 1987 for the benefit of the Tunisian State. The Decree also provided the establishing of a committee within the Ministry of State Property and Real Estate Affairs called the Confiscation Committee, which shall be competent to carry out the jurisdictions stated under the Law starting with the act of confiscation. Nevertheless, the legality of this Decree was challenged before the administrative courts, and in June 2015 the Administrative Court decided to invalidate the Decree.⁶³ However, almost a year later the Court of Appeal vacated the decision of the court of first instance.⁶⁴ Another Decree was then issued a few months later establishing another committee in order to manage the recovered assets.⁶⁵ Still, the committees were subject to some criticism since the administering of the assets that were, reportedly, confiscated was not transparent and nor easily available to access.⁶⁶

Other than the establishing of the National Anti-corruption Commission, the Anti-corruption Law provided definition for corruption and other principles connected to the phenomenon including transparency and accountability. It provided a framework for public institutions in order to function in a corruption free and transparent environment. The Law also highlighted the role of the state in setting up the required systems in order to rehabilitate the competent bodies and provide them with financial and human resources so as to be able to undertake their tasks and responsibilities to fight corruption efficiently. Furthermore, the Law pointed out that not only is the public sector involved in implementing the anti-corruption policies but it also the role and responsibility of the private sector is as essential in the undertaking of the general anti-corruption framework. Moreover, it emphasized the important role of the citizens and civil society's involvement in the anti-corruption efforts. After reviewing the Law, it shows that the Tunisian legislator was aware that the fight against corruption is not

⁶² See Decree No.13 of 2011 on Confiscating Money and Movable and Immovable Assets, issued on March 14, 2011, amended by Decree No.47 of 2011, issued on May 31, 2011. Retrieved from: <http://www.inlucc.tn/fileadmin/user1/doc/lois-national/11.pdf> & <http://www.inlucc.tn/fileadmin/user1/doc/lois-national/12.pdf>

⁶³ See 'Tunisian Judicial Decision Invalidates Decree Confiscating Ben Ali and his Relatives Assets', *AlHurra*, June 10, 2015. Retrieved from: <https://www.alhurra.com/a/ben-ali-tunisia/272857.html>

⁶⁴ See 'Tunisia – Vacating the First Instance Decision Invalidating Confiscation Decree', *African Manager*, April 7, 2016. Retrieved from: http://africanmanager.com/site_ar/إلغاء-تونس-الحكم-الابتدائي-القباضي-بال-القاضي-الابتدائي-القباضي

⁶⁵ See Decree No.68 of 2011 Establishing a National Committee to Manage the Money and Confiscated Assets for the Benefit of the State, issued on July 14, 2011. Retrieved from: <http://www.inlucc.tn/fileadmin/user1/doc/lois-national/13.pdf>

⁶⁶ See 'Confiscated Property in Tunisia: From Revolutionary Justice to Prolific Corruption', *The Legal Agenda*, April 6, 2015. Retrieved from: <http://legal-agenda.com/en/article.php?id=693&folder=articles&lang=en>

the responsibility of one party in the country but all parties. The Anti-corruption Law can be considered as if it has originated the tone for the subsequent legislations and it helped in setting off the approach of the consecutive governments regarding the phenomenon of corruption.

The second major law following the Anti-corruption Law was the Transitional Justice Law, which defined transitional justice from the Tunisian legislature's perspective.⁶⁷ The Law determined the main elements to the framework of the transitional justice in Tunisia, which are the truth seeking, prosecution, reparation, reconciliation and memorialization. The law subsequently defined each element on its own. Under Art.8 of the Transitional Justice Law, certain judicial circuits were delegated to investigate and review cases involving a number of human rights violations, including financial corruption. The cases based on the violations stated according to Art.8 of the Law may not lapse no matter the period. Hence, confirming the gravity of corruption as a crime under the Tunisian statutes. The Law also provided a chapter specifically dedicated to highlight the significance of institutional reform. Art.14 explains that institutional reform takes apart the system of corruption. Significantly enough, this Law also pointed out the importance of reviewing the already existing legislations.⁶⁸

Other laws such as the Freedom of Information Law, or the Right to Access to Information Law, was adopted later to help promote transparency in order to reinforce the anti-corruption mechanism.⁶⁹ This Law was issued while including almost all the governmental institutions as well as CSOs as subjects to its application. The Law entitles every natural or juridical person to follow certain steps and regulations in order to access information, as long as it does not tamper with general national security or national defense or international relations or finally the right of others to protect their private lives including personal information and intellectual property.⁷⁰ The Law provides the establishing of an independent body, a commission,

⁶⁷ As above-mentioned, no specific collective definition has been set for transitional justice. According to Law 53 of 2013, Transitional Justice is a comprehensive course of mechanisms and adopted methods to understand and deal with past human rights violations by revealing their truths, and holding those responsible accountable, providing reparations and restitution for the victims in a way that achieves national reconciliation, preserves and documents the collective memory, guarantees the non- recurrence of such violations and transitions from an dictatorship to a democratic system that contributes to reinforcement of the human rights system.

⁶⁸ The same article also pointed out that the state has to cleanse its institutions from those who have been proven to be involved and committed corrupted acts

⁶⁹ See Law No.22 of 2016 on the Right to Access to Information, issued on March 24, 2016. Retrieved from: <http://www.legislation.tn/sites/default/files/news/ta2016221.pdf>

⁷⁰ According to the Law, such exceptions are subject to the discretion in order to determine their true damage or harm that may occur if the right to access has been granted.

to undertake the jurisdictions determined through articles in relation with the right to access to information. This Law constitutes a step towards the achievement of transparency in different institutions in the country.

One of the latest laws to be adopted regarding corruption was concerning reporting corruption and protection of whistleblowers.⁷¹ The Law provides a strong asset and an important step to the anti-corruption mechanism since mostly whistleblowers don't usually come forward with the information they have on corruption due to fear of being subjects to scrutiny or vengeance of those reported or becoming legally responsible before state bodies. According to the Law, the Good Governance and Anti-Corruption Authority is the competent body to provide protection for the whistleblowers that come forward with information that falls within its jurisdiction.

Nevertheless, all of the above-mentioned laws can be subject to challenges for their legality, for instance, at one point or the other, but luckily the most vital legislative protector of such laws and the supreme law of the land, the Constitution, has set off an anti-corruption legal framework. After the National Constituent Assembly concluded its work drafting the Constitution, it was issued early 2014.⁷² It is noticeable that the Tunisian Constitution had an anti-corruption agenda due to the fact that corruption is mentioned in its preamble at the very first lines. It stated that

... Taking pride in the struggle of our people for independence, to build the state, for freedom from tyranny, responding to its free will, and to achieve the objectives of the revolution for freedom and dignity, the revolution of December 17, 2010 through January 14, 2011, with loyalty to the blood of our virtuous martyrs, to the sacrifices of Tunisian men and women over the course of generations, and breaking with injustice, inequity, and corruption, ... We, in the name of the Tunisian people, with the help of God, draft this Constitution.

The NCA focused on corruption on many levels. For instance, according to Art.10, the state has the obligation to prevent corruption. Nevertheless, most importantly, amongst the independent constitutional authorities, one authority has been solely dedicated to undertake certain

⁷¹ See Organic Law No.10 of 2017, on Reporting Corruption and Protection of Whistleblowers, issued on March 7, 2017. Retrieved from: <http://www.legislation.tn/actualites/قانون-عدد-10-لسنة-2017-مؤرخ-7-فبراير-2017-المدبلغي-اي-قو-م-الفساد-عن-بالابل-اغ-يتعلق>

⁷² See Constitution of the Arab Republic of Tunisia, issued on February 10, 2014. Retrieved from: <http://www.legislation.tn/sites/default/files/constitution/constitution.pdf>

competencies in relation with corruption.⁷³ The, above-mentioned, Good Governance and Anti-Corruption Authority is an administratively and financially independent authority that shall be elected by the House of the People's Representatives and shall submit an annual report to it to be discussed accordingly.⁷⁴ It should be noted that the Authority was not delegated with a decision-making power regarding corruption cases, but it is competent to detect, investigate and refer such cases to other competent bodies.⁷⁵ Be that as it may, the Authority has not been established yet, but when it is it shall be composed out of independent impartial members known for their expertise and integrity.

In addition to the above-mentioned national legislations, the Tunisian state adopted international treaties and conventions. In 2008, under the Ben Ali regime, the Tunisia has ratified the United Nations Convention against Corruption.⁷⁶ However, it wasn't until after the Revolution when the UNCAC was seriously implemented within the legislative framework in Tunisia. During the year 2012, the Tunisian Head of Government sent a number of proclamations to the different ministers of the state and other officials under the subject of reviewing the UNCAC.⁷⁷ In these proclamations the Head of the Government, Hamadi, Jebali, delegated certain officials with the duty of carrying out what is necessary in order to review and successfully implement the Convention especially when it comes to drafting and preparing the annual evaluation. As a matter of fact, Mr. Jebali explicitly described this matter as one of a 'great importance'. This presented a glimpse of the policy and the approach that the government has adopted regarding the matter of corruption. Tunisia has also signed the African Union Convention on Preventing and Combating Corruption on January 27, 2013 but still did not take the steps to ratify it. Furthermore, late during the year of 2016, the House of the People's

⁷³ Refer to Art.130 of the Tunisian Constitution 2014.

⁷⁴ *ibid*, Art.125.

⁷⁵ *ibid*.

⁷⁶ See United Nations Convention against Corruption (adopted October 31, 2003, entered into force December 14, 2005) A/58/422. Retrieved from: https://www.unodc.org/pdf/crime/convention_corruption/session_7/422e.pdf Tunisia had first signed the Convention on March 30, 2004. Then on September 23, 2008 it has ratified it. The list of signatories can be retrieved from: <https://www.unodc.org/unodc/en/treaties/CAC/signatories.html>.

Also, refer to Law No.16 of 2008, Approving the United Nations Convention against Corruption, issued on February 25, 2008. Furthermore refer to Decree 763 of 2008, issued on March 24, 2008. Apparently Tunisia had a reservation that it has submitted with the ratification application. Retrieved from: http://www.legislation.tn/detailtexte/Loi-num-2008-16-du-25-02-2008-jort-2008-018_2008018000161 & http://www.legislation.tn/detailtexte/Arrêté-num-2008-763-du-24-03-2008-jort-2008-026_2008026007634

⁷⁷ See Proclamation No.52, issued on September 7, 2012. Retrieved from: <http://www.inluc.tn/fileadmin/user1/doc/lois-national/19.pdf>. Also see Proclamation No.57, issued on October 12, 2012. Retrieved from: <http://www.inluc.tn/fileadmin/user1/doc/lois-national/21.pdf>

Representatives approved a bill by which Tunisia has ratified the Arab Convention to Fight Corruption.⁷⁸ Almost five months later Tunisia has submitted the ratification of the Convention to Arab League.⁷⁹ Thus, ratifying and adopting such international conventions also indicates the mindset of the Tunisian state regarding corruption.

Overall, all of the above-mentioned national statutes or legislations mostly established legal rules as well as the bodies or institutions that undertook the enforcement of such rules while the international conventions set the general complementary framework under which the Tunisian state shall operate in order to successfully fight corruption within its course of transitional justice.

Still, when it comes to the extent of success that these laws and multiple institutions and bodies have participated in accomplishing, it is hard to conclude that they have truly had a real concrete impact as Tunisia has not shown improvement in its CPI ranking over the years since the Revolution, but instead it has dropped down the ladder.⁸⁰

II. Economic Reconciliation and the Extent of its Effectiveness

After suffering from economic crimes and living under a corruption regime for more than 20 years, the Tunisian stakeholders and transitional justice community considered these

⁷⁸ See ‘Approving Bill regarding Arab Convention to Fight Corruption’, *Mosaiquefm*, November 2, 2016. Retrieved from: <http://www.mosaiquefm.net/ar/%D8%AA%D9%88%D9%86%D8%B3-%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1-%D9%88%D8%B7%D9%86%D9%8A%D8%A9/43576/%D8%A7%D9%84%D9%85%D8%B5%D8%A7%D8%AF%D9%82%D8%A9-%D8%B9%D9%84%D9%89-%D9%85%D8%B4%D8%B1%D9%88%D8%B9-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%AE%D8%A7%D8%B5-%D8%A8%D8%A7%D9%84%D8%A7%D8%AA%D9%81%D8%A7%D9%82%D9%8A%D8%A9-%D8%A7%D9%84%D8%B9%D8%B1%D8%A8%D9%8A%D8%A9-%D9%84%D9%85%D9%83%D8%A7%D9%81%D8%AD%D8%A9-%D8%A7%D9%84%D9%81%D8%B3%D8%A7%D8%AF>

⁷⁹ See ‘Tunisia Submits Documents of Ratification of the “Convention to Fight Corruption” at the Arab League’, *Youm7*, March 16, 2017. Retrieved from: <http://www.youm7.com/story/2017/3/16/%D8%AA%D9%88%D9%86%D8%B3-%D8%AA%D9%8F%D9%88%D8%AF%D8%B9-%D9%88%D8%AB%D8%A7%D8%A6%D9%82-%D8%A7%D9%84%D8%AA%D8%B5%D8%AF%D9%8A%D9%82-%D8%B9%D9%84%D9%89-%D8%A7%D8%AA%D9%81%D8%A7%D9%82%D9%8A%D8%A9-%D9%85%D9%83%D8%A7%D9%81%D8%AD%D8%A9-%D8%A7%D9%84%D9%81%D8%B3%D8%A7%D8%AF-%D8%A8%D8%A7%D9%84%D8%AC%D8%A7%D9%85%D8%B9%D8%A9-%D8%A7%D9%84%D8%B9%D8%B1%D8%A8%D9%8A%D8%A9/3146822>

⁸⁰ Refer to TI’s official website <https://www.transparency.org/> for the CPI of Tunisia over the past years post-Revolution.

phenomenon as abuse that amounts up to abuses of other rights, e.g. civil and political human rights, and it became obvious for them that a remedy has to be introduced in the framework of the transitional justice in order to achieve the sought goals. Reconciliation is a process that involves many aspects depending on how justice is viewed. However, in the context of a democratic transition and when trying to achieve justice and correct wrongdoings, most countries nowadays consider it important to promote reconciliation rather than retaliation.⁸¹ The following shall highlight how and when the concept of economic reconciliation has emerged and subsequently assess its effectiveness so far within the Tunisian community.

i. Emergence of the Concept of Economic Reconciliation

After the Revolution, the Tunisian state has undertaken many steps and procedures in order to confiscate and prosecute Ben Ali and anyone associated with his regime for cases concerning corruption and economic crimes. As a matter of fact, both him and his wife were sentenced to 35 years in jail in absentia for crimes involving stealing and corruption.⁸² Then again, it seems that stakeholders chose to adopt a method that allows perpetrators to acquire amnesty but at the same time it aims at strengthening national unity. Consequently, reconciliation was introduced by legislation, as aforesaid, in order to provide a solution to patch the offenses of those who committed such corrupted acts and achieve justice.

Under Transitional Justice Law the concept of reconciliation was introduced as part of the end goals of transitional justice. According to the Law reconciliation aims at “strengthening national unity achieving justice and social peace, building rule of law state and reinstating the trust of the citizen in the state institutions”.⁸³ After its establishing and commencing its duties, the Truth and Dignity Commission established a Reconciliation and Arbitration Committee that was delegated with a specific dispute resolution mechanism that helps it decide on a dispute that involves different human rights violations including financial corruption. The perpetrators or the victims either request the reconciliation.⁸⁴ Its mechanism and procedures can be seen as mimicking the usual course of normal trials before courts but with more flexibility since the

⁸¹ See L. Radzik & C. Murphy, ‘Reconciliation’, Stanford Encyclopedia of Philosophy, 2015. Retrieved from: <https://plato.stanford.edu/entries/reconciliation/>

⁸² See T. Amara, ‘Tunisia’s Ben Ali sentenced in absentia to 35 years in jail’, *Reuters*, June 20, 2011. Retrieved from: <http://www.reuters.com/article/us-tunisia-benali-trial-idUSTRE75J2A020110620>

⁸³ Refer to Art.15 of Organic Law No.53 of 2013.

⁸⁴ In this case the Tunisian state may be a perpetrator or a victim.

Committee does not face the same difficulties in having to review the overwhelming number of cases that courts receive and review everyday. It is noticeable that the stakeholders and legislator were attempting to make sure that the concept of reconciliation serves its purpose and not deviate from the course of transitional justice since the law requires that the perpetrator admits the wrongdoings that he/she have committed and provides an explicit apology for it. Reconciliation provides a quasi-judicial apparatus for corruption cases that allows offenders to avoid having to go through the course of normal justice, before the court system, and it offers them a chance to avoid harsher sentences that include imprisonment in addition to financial penalties. This form of reconciliation constitutes a very interesting anti-corruption mechanism since not a lot of comparative experiences have dedicated a separate mechanism within the mandate of their commissions in the framework of transitional justice to investigate and reconcile in corruption cases but they were rather created with limited mandates. An example to a similar experience to the Tunisian is the Kenyan. Even though the Truth, Justice and Reconciliation Commission of Kenya, which was established in 2008, had a mandate that explicitly included corruption. However, it chose to depend on the findings of investigations carried out by another independent body, the Ethics and Anti-corruption Commission, rather than to tackle such issues by itself.⁸⁵ Another similar experience is the Liberian Commission. It focused in its investigations on economic crimes and it held hearing on such violations.⁸⁶ However, contrary to the Tunisian experience, these commissions have only issued findings and recommendations for the future,⁸⁷ but have not tackled cases thus not realizing concrete developments in the context since they did not have the same unique status, quasi-judicial, as the Arbitration and Reconciliation Committee in Tunisia.

However, despite the already existing mechanism in the financial corruption context a new approach to economic reconciliation has been introduced by the Tunisian presidency back in

⁸⁵ See Robinson, op. cit.

⁸⁶ See Schmid, 2009, op. cit., pp.8 &9.

⁸⁷ See K. Lanegran, 'Justice for Economic Crimes? Kenya's Truth Commission', *ASPJ Africa & Francophone*, 4th quartet, 2015. Retrieved from: http://www.au.af.mil/au/afri/aspj/apjinternational/aspj_f/digital/pdf/articles/2015_4/lanegran_e.pdf. Also see K. Aplan, 'Legacies of Injustice in Liberia: Transitional Justice and Economic Crimes', *Justice in Conflict*, [web blog], February 16, 2012. Retrieved from: <https://justiceinconflict.org/2012/02/16/legacies-of-injustice-in-liberia-transitional-justice-and-economic-crimes/>. The author highlighted that despite the fact that the Liberian Truth and Reconciliation Commission held public hearings and carried out investigations regarding economic crimes no real tangible result, "asset recovery or judicial accountability", has been achieved.

2015. It was announced through a release issued by the presidency on July 15 of that year that a ministerial council chaired by the President, Mohamed Beji Caïd Essebsi, approved a bill on July 14 by which judicial prosecution of those involved in corruption during the era of the former regime would be suspended.⁸⁸ The release further explained that the approval on such bill was fueled by the desire to push transitional justice to success and prevent negative consequences resulting from deferring the treatment of financial and economic violations that affects national economy.⁸⁹ This bill also included an establishing of a new body that shall undertake reviewing the requests submitted by the perpetrators in order to decide whether to reconcile with them or not.⁹⁰ The bill, which constitutes the first presidential legislative initiative, was faced with a lot of criticism since it was, and still is, considered and described as an attempt to ‘whitewash corruption’.⁹¹ Even though the bill was referred to the House of People’s Representatives, after facing a lot of backlash regarding the bill, as shall be elaborated hereunder, the discussion regarding it has been halted. Furthermore, it was on July 22, 2015, when Sihem Bensedrine, Chairman of the Truth and Dignity Commission, has sent a letter to the Venice Committee asking for a legal opinion on the draft law.⁹² The Committee focused in its report on the institutional aspects of the bill and especially on how it might affect the Commission’s jurisdiction by answering five main questions. The Venice Committee issued its legal opinion regarding the draft law on October 27, 2015.⁹³ The presidency then was said to have retracted the

⁸⁸ See ‘Approving a bill suspending the prosecution of those involved in financial corruption during former regime’, *Tunisien*, July 15, 2015. Retrieved from: <http://www.tunisien.tn/%D8%AA%D9%88%D9%86%D8%B3/%D8%A7%D9%84%D9%85%D9%88%D8%A7%D9%81%D9%82%D8%A9-%D8%B9%D9%84%D9%89-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A5%D9%8A%D9%82%D8%A7%D9%81-%D8%A7%D9%84%D8%AA%D8%AA%D8%A8%D9%91%D8%B9%D8%A7%D8%AA-%D8%B6%D8%AF>

⁸⁹ See ‘Organic Law Bill Regarding Procedures for Reconciliation in Economic and Financial Field’, *Essahafa*, June 14, 2015. Retrieved from: http://www.essahafa.tn/index.php?id=24&tx_ttnews%5Btt_news%5D=71197&tx_ttnews%5BbackPid%5D=6&cHash=8e051c8758

⁹⁰ Refer to Annex 1.

⁹¹ On July 23, 2015, Chairman of the Truth and Dignity Commission, Sihem Bensedrine, reportedly stated during an interview that the approved bill is intended to whitewash the corrupted. She also pointed out that there is pressure to get corrupted people, including members of the former regime, acquitted and stop the seizure and recovery of the stolen assets. See ‘Sihem Bensedrine: National Reconciliation Bill Aims at Whitewashing the Corrupted’, *Babnet*, July 24, 2015. Retrieved from: <https://www.babnet.net/rttdetail-109246.asp>

⁹² The Venice Committee, or the European Commission for Democracy through Law, was established in May 1990. It is an advisory body, which provides legal advice on constitutional issues for the Council of Europe. Tunisia is a member of the Committee.

⁹³ See ‘Temporary Opinion Regarding the Institutional Aspects of the Draft Law on Financial and Economic Reconciliation in Tunisia’, Venice Committee, Ratified during General Session No.104 in Venice on October 23-24, 2015. Retrieved from: <http://www.ivd.tn/ar/wp-content/uploads/2015/12/%D8%B1%D8%A3%D9%8A->

draft law and supposedly amended it accordingly. However, almost a year later, the parliament yet again announced that they are going to initiate discussing the draft law after it was referred to the General Legislation Committee by the office of the parliament.⁹⁴ Subsequently, later that year, 2016, it was decided that discussing the bill would be deferred once again due to what can be described as pure technical reasons not political ones and that there is no intention to discard the bill.⁹⁵

Notwithstanding all the momentum that this issue has gained since the presidential initiative was first introduced; it wasn't until early this year, 2017, that the situation has massively escalated as shall be discussed later. In an unprecedented insistence by the presidency and other supportive actors to pass this bill by any means necessary, the parliament started discussing the bill again during sessions within the General Committee.⁹⁶ It was never clear over the past couple of years whether the bill at question was always the same draft submitted by the

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%D8%A7%D9%84%D8%AC%D9%88%D8%A7%D9%86%D8%A8-
%D8%A7%D9%84%D9%85%D8%A4%D8%B3%D8%B3%D8%A7%D8%AA%D9%8A%D8%A9-
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%E2%80%93%D8%A7%D9%84%D9%86%D8%B3%D8%AE%D8%A9-
%D8%A7%D9%84%D8%B9%D8%B1%D8%A8%D9%8A%D8%A9.pdf

⁹⁴ See 'Chairman of the House of Representatives in an interview: July... Reconciliation bill discussions', *Assabah*, June 26, 2016. Retrieved from: <http://www.assabah.com.tn/article/121278/%D8%B1%D8%A6%D9%8A%D8%B3-%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D9%86%D9%88%D8%A7%D8%A8-%D9%81%D9%8A-%D9%84%D9%82%D8%A7%D8%A1-%D8%B5%D8%AD%D9%81%D9%8A-%D8%AC%D9%88%D9%8A%D9%84%D9%8A%D8%A9-%D9%85%D9%86%D8%A7%D9%82%D8%B4%D8%A9-%D9%85%D8%B4%D8%B1%D9%88%D8%B9-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D9%85%D8%B5%D8%A7%D9%84%D8%AD%D8%A9>

⁹⁵ Nidaa Tounes's Taieb Madani, Chairman of the General Committee, reportedly confirmed at the time that there is no political motive behind the deferral and further explained that the main reason is that there are a lot of members of the parliament who have no solid background regarding the subject who have just joined the Committee. See 'Within the General Legislation Committee in the House of Representatives: Deferring the Review of the Reconciliation Draft Law', *Assabah*, October 21, 2016. Retrieved from: <http://www.assabah.com.tn/article/126214/%D9%81%D9%8A-%D9%84%D8%AC%D9%86%D8%A9-%D8%A7%D9%84%D8%AA%D8%B4%D8%B1%D9%8A%D8%B9-%D8%A7%D9%84%D8%B9%D8%A7%D9%85-%D8%A8%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D9%86%D9%88%D8%A7%D8%A8-%D8%AA%D8%A3%D8%AC%D9%8A%D9%84-%D8%A7%D9%84%D9%86%D8%B8%D8%B1-%D9%81%D9%8A-%D9%85%D8%B4%D8%B1%D9%88%D8%B9-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D9%85%D8%B5%D8%A7%D9%84%D8%AD%D8%A9>

⁹⁶ The Draft Law was scheduled to be discussed at the parliament on April 25, 2017.

presidency or if it was an amended version.⁹⁷ According to an interview with one member of the civil society, this matter remained vague and no one was able to figure out what exactly is being discussed.⁹⁸ During this year there were even talks about different drafts that were pushed by other parties including certain members of the parliament.⁹⁹

Overall, the economic reconciliation in the course of the current transitional period can be seen as a concept that has been first introduced by the Transitional Justice Law then carried on through the debated economic reconciliation draft law.

ii. Assessing its Effectiveness

When it comes to assessing the effectiveness of the concept of economic reconciliation in Tunisia we have to review two different aspects to the equation. The already implemented reconciliation mechanism, presented in the reconciliation and arbitration requests submitted to the competent committee at the Truth and Dignity Commission, and to the potentially implemented financial/economic reconciliation draft law proposed by the presidency. It would not be a comprehensive assessment otherwise since both of them currently form two intersected elements to the overall framework.

First, when it comes to the enforced mechanism that falls under the jurisdiction of the Truth and Dignity in general according to the Transitional Justice Law, since the commencement of its duties, the Commission has issued a report regarding the progress of its work. In fact, in an annual report is has issued for the years 2014-2015, the Commission stated that 1802 applications were submitted for arbitration and reconciliation.¹⁰⁰ Out of those requests the

⁹⁷ According to a news report, official sources have stated that the draft law subject to discussions at the parliament is an amended version. See 'Public Session to Ratify Economic Reconciliation Law', *Mosaiquefm*, April 19, 2017. Retrieved from: <http://www.mosaiquefm.net/ar/print/127541/%D8%AC%D9%84%D8%B3%D8%A9-%D8%B9%D8%A7%D9%85%D8%A9-%D9%84%D9%84%D9%85%D8>

⁹⁸ During an interview conducted on April 12, 2017, with Ms. Salwa El Gantri, the Head of ICTJ Tunisia Office.

⁹⁹ According to information acquired during the period of the internship, it was brought up a number of times by members of civil society that so far there has been more than one initiative and that even some members of the parliament are pushing for reconciliation with public sector employees only amongst other suggestions. A copy of the draft submitted by a number of members of the parliament as a legislative initiative during the month of February can be found on the House of the People's Representatives under this link http://www.arp.tn/site/servlet/Fichier?code_obj=97198&code_exp=1&langue=1. It can be noticed that it is a different draft that the one submitted by the presidency, which can be found under this link: http://arp.tn/site/servlet/Fichier?code_obj=90496&code_exp=1&langue=1

¹⁰⁰ See Truth and Dignity Commission, Annual Report for the Year 2015, 2015. Retrieved from: <https://www.docdroid.net/cVWRyKT/-2015.pdf.html>

Commission has reviewed 190 files. On another occasion, during a press conference held by the Commission during the year 2016, Khaled Krichi, stated that out of the total of 65000 files that the Commission has received by that time there were 6000 arbitration and reconciliation files and that out of those 6000 files there were 685 files submitted by the officer in charge of State litigation on behalf of the Tunisian state as a victim of financial corruption of those associated with the former regime who are accused of corruption cases before the judiciary.¹⁰¹ Even though that the effort exerted by the Commission to review the requests for reconciliation is indeed admirable, it seems that it is still not enough in order to resolve all those amounts of requests and pending files within the designated time it has been given to undertake and conclude its work.¹⁰² This was in fact pointed out by members of the Commission as shall be presented later. However, contrary to what might be visible, the Commission has announced a number of times the conclusion of arbitration and reconciliation agreements with a number of people.¹⁰³ Furthermore, Mr. Krichi, reportedly, declared that the Commission has been successful in concluding numerous reconciliation agreements, but due to its obligation to protect the personal information of the parties it is not possible to announce all those cases.¹⁰⁴ However, on December 2016 the Commission announced that the first reconciliation agreement has been

¹⁰¹ See ‘Khaled Krichi: the State has submitted 685 files to the Commission related to damages it has suffered due to financial corruption during the former regime’, Truth and Dignity Commission, June, 17, 2016. Retrieved from: <http://www.ivd.tn/ar/?p=3213>. See also ‘Presentation of Statistics Regarding the Progress in Administering Arbitration and Reconciliation Requests’, Truth and Dignity Commission, July 21, 2016. Retrieved from: <http://www.ivd.tn/ar/?p=3574>. During the presentation, Mr. Krichi stated that until June 15, 2016, the Commission has received 5580 requests in total for arbitration and reconciliation that included financial corruption and that these requests were either submitted by the perpetrators or the state as a victim. He stated that the Commission has reviewed 749 financial corruption cases.

¹⁰² Refer to *supra* note 38.

¹⁰³ The Commission has an official active Facebook page on which it posts related news and releases. <https://www.facebook.com/IVDTN/>. It has published a number of posts announcing the conclusion of an arbitration and reconciliation agreement in a number of occasions. One of which is a recent agreement that included the brother-in-law of the ousted former president Ben Ali. Mohamed Trabelsi has signed an agreement as an offender with another party as the victim before the Commission on April 27, 2017. Refer to <https://www.facebook.com/IVDTN/posts/1960977944125022>

¹⁰⁴ See ‘Truth and Dignity Commission Concludes an Arbitration and Reconciliation Agreement in a Financial Corruption Violation’, *Assabahnews*, April 28, 2017. Retrieved from: <http://www.assabahnews.tn/article/148986/%D9%87%D9%8A%D8%A6%D8%A9-%D8%A7%D9%84%D8%AD%D9%82%D9%8A%D9%82%D8%A9-%D9%88%D8%A7%D9%84%D9%83%D8%B1%D8%A7%D9%85%D8%A9-%D8%AA%D8%A8%D8%B1%D9%85-%D8%A5%D8%AA%D9%81%D8%A7%D9%82%D9%8A%D8%A9-%D8%AA%D8%AD%D9%83%D9%8A%D9%85-%D9%88%D9%85%D8%B5%D8%A7%D9%84%D8%AD%D8%A9-%D9%81%D9%8A-%D8%A5%D9%86%D8%AA%D9%87%D8%A7%D9%83-%D9%81%D8%B3%D8%A7%D8%AF-%D9%85%D8%A7%D9%84%D9%8A>

issued as a final enforceable decision by the Court of Appeals in Tunis.¹⁰⁵ There were two other major incidents that occurred during this year affecting the overall assessment of the Commission's performance. One, which has occurred recently, is the transfer of the amount of 3.5 (three point five) million euros to the Tunisian Treasury General by Mohamed Slim Chiboub as part of the reconciliation agreement with the Tunisian state as a victim that was concluded on May 5, 2016. It should be noted that the Commission has not issued its final decision regarding this file yet and that it is still undertaking the necessary steps and carrying out investigations in order to finally decide on the case.¹⁰⁶ The other incident is the public hearing that the Commission held on May 19, 2017, to hear testimonies regarding financial corruption. During the public hearing, Mohamed Emad Trabelsi, who is the son-in-law of the former ousted president Ben Ali, presenting his testimony regarding corruption case that he submitted a reconciliation request for before the Commission.¹⁰⁷ Nonetheless, it was reported that Ms. Bensedrine stated after the hearing took place that a witness, who was involved in the case, was subjected to pressure that made him deviate from giving a comprehensive full testimony.¹⁰⁸ The aforementioned points out a very serious indication, which is that there is still a strong network of corruption that is still able to suspend and tamper with the course of justice and achieving national unity.

During a hearing before the General Committee at the parliament, Mr. Krichi also referred to a grave problem that faces the Commission, which is the tardiness of the state in accepting being part of an agreement, as a perpetrator, and submitting requests of arbitration and reconciliation. He explained that if the state was more active in accepting or submitting those,

¹⁰⁵ See 'First Arbitration Decision issued by the Truth and Reconciliation Commission Given the Power of Execution by the First Chairman of the Court of Appeals in Tunis', Truth and Reconciliation Commission, December 30, 2016. Retrieved from: <http://www.ivd.tn/ar/?p=5544>

¹⁰⁶ See 'Transferring an Amount of 3.5 Million Euros to Tunisia in the Framework of an Arbitration and Reconciliation File', Truth and Dignity Commission, [Facebook Post], May 27, 2017. Retrieved from: <https://www.facebook.com/IVDTN/posts/1975228429366640:0>

¹⁰⁷ See 'The Tenth Public Hearing: the Commission Presents Testimonies of Offenders', Truth and Dignity Commission, [Facebook Post], May 20, 2017. Retrieved from: <https://www.facebook.com/IVDTN/posts/1971546619734821>. According to the post, Mr. Trabelsi was the first to submit a request for arbitration and reconciliation before the Commission. His request was submitted on January 26, 2015.

¹⁰⁸ See 'Public Hearing.. Bensedrine confirms that the witness was subjected to pressure in order to change his testimony in a corruption case for the favor of relatives of Ben Ali', *kadhanews*, May 20, 2017. Retrieved from: <http://kadhanews.com/index.php/1/item/10089-2017-05-20-08-10-14>

685, files on an earlier time before the Commission it would have been able to conclude a lot of those cases by that time.¹⁰⁹

Also, even with the high number of requests submitted to the Commission, the issue of the clarity and accessibility of procedures should be highlighted. It looks like the procedures for arbitration and reconciliation before the Commission might appear as an easily comprehended process; however, to ordinary people the internal mechanism might cause them frustration since the number of procedures that the competent committee has to undertake after receiving the submitted requests until a final decision has been made are not that easy nor simple to grasp.¹¹⁰

It is undeniable that the arbitration and reconciliation mechanism administered by the Truth and Dignity Commission is facing difficulties in order to operate in a way that sufficiently serves the course of transitional justice especially due to the many obstacles it encounters as illustrated above. It suffers from deficiencies that might hamper the stakeholders' ability to deliver the sense of reconciliation and achievement of transitional justice to the normal citizen. Still this does not strip it from the endeavors it has tried to accomplish during the course of its operation.

Now we move the discussion to the economic reconciliation draft law. It is believed that this bill is merely an attempt to legitimize impunity by disguising it in a legal form. This draft law has been subject to criticism for a number of reasons. First of all, even though Tunisia has declined on the index of corruption after the Revolution; it has still shown some improvement even if it is a slight one.¹¹¹ The sense of achieving "justice" has an important role in realizing the goals of transitional justice. In Egypt, as aforementioned, the stakeholders did not pay attention to the calls for having a transitional justice mechanism. Instead they adopted a legislative amendment that can be described as a similar legislative practice. Back in 2011, after the Revolution, the ousted former president's wife, Suzan Mubarak was released after signing away

¹⁰⁹ See 'Krichi Before the General Legislation Committee: Procedural Delays Facing the Commission in its Relation with other State Bodies Delays its Work', Truth and Dignity Commission, July 21, 2016. Retrieved from: <http://www.ivd.tn/ar/?p=3581>

¹¹⁰ Ms. El Gantri explained during the interview that it was suggested to have an "open doors" initiative so that the people were allowed to ask the Commission regarding its internal process. Refer to *supra* note 98.

¹¹¹ See K. Hattar, 'Middle East and North Africa: A Very Drastic Decline', Transparency International, January 25, 2017. Retrieved from: https://www.transparency.org/news/feature/mena_a_very_drastic_decline. The study shows that Tunisia has adopted a number of policies that constituted a positive step towards a more transparent and corruption-free environment, but at the same time it pints out that the country has a long road ahead of it in order to achieve tangible results.

what she has illicitly gained to the benefit of the state.¹¹² This was then seen as a form of reconciliation, which provoked the Minister of Justice, Judge Mohamed Abdel Aziz El-Gendy, at the time to declare that the state would not reconcile with Mubarak and that if it appeared that Suzan Mubarak owned other assets she would get arrested and imprisoned again.¹¹³ However, this was only the beginning of the reconciliation “fest” as described by some.¹¹⁴ After approving the amendment of both the Law on Illicit Gains and the Code of Criminal Procedures back in 2015 and 2016, numerous businessmen who were involved in cases of corruption started racing to request amnesty in return for paying back what they have acquired through corrupted acts. Through these amendments and due to the absence of a transitional justice mechanism, infamous businessmen such as Hussein Salem, Ahmed Ezz as well as others associated with the Mubarak regime would be able to walk free just by paying an amount that may or may not reflect their real fortune that has been acquired illicitly. This can be considered as throwing away the goals of the January 25 Revolution that was triggered by the widespread corruption that such figures have nourished and participated in spreading it over the years. If we assume that Egypt has applied a transitional justice mechanism and decided to adopt these amendments as a form for economic reconciliation then the latter would be missing an important element which is the acceptance of reconciliation and forgiveness of the community to those corrupted figures rather than their acknowledgement of their corrupted acts.

The abovementioned can be considered as a comparative experience for the Tunisian attempt to masquerade impunity with justice. The creators of this initiative seems to have forgotten that the society and victims of corruption must be given the chance to heal and recover from the violations committed by the perpetrators even if they were not the direct victims of such

¹¹² See I. Qassem, ‘Releasing Suzan Mubarak After She Signs Away the Amount of 24 Million Egyptian Pounds’, *Youm7*, May 17, 2011. Retrieved from: <http://www.youm7.com/story/2011/5/17/%D8%A5%D8%AE%D9%84%D8%A7%D8%A1-%D8%B3%D8%A8%D9%8A%D9%84-%D8%B3%D9%88%D8%B2%D8%A7%D9%86-%D9%85%D8%A8%D8%A7%D8%B1%D9%83-%D8%A8%D8%B9%D8%AF-%D8%AA%D9%86%D8%A7%D8%B2%D9%84%D9%87%D8%A7-%D8%B9%D9%86-%D9%85%D8%A8%D9%84%D8%BA-24-%D9%85%D9%84%D9%8A%D9%88%D9%86/414398#.U3IRlvmSx1Y>

¹¹³ See B. Basha and different news agencies, ‘Minister of Justice: We Will Not Reconcile with Mubarak and We Will Arrest Suzan if it has been Revealed that She Owns Other Assets’, *ElBadil*, May 21, 2011. Retrieved from: <http://elbadil.com/2011/05/17598/>

¹¹⁴ See M. Ebeid, ‘Reconciliation Occasioned with Mubarak’s Figures.. «The Illicit Gain» Receives 51 Requests from Ministers and Businessmen.. Hussein Salem «The Most Prominent Assignor» with 5 Billion for «Amnesty».. Ahmed Ezz Washes His Hands Clean with 3 Billion’, *Vetogate*, February 12, 2017. Retrieved from: <http://www.vetogate.com/2581619>

violations. However, by offering protection to those who committed those crimes through maintaining information from being known by the public and not having to acknowledge their crimes and ask for forgiveness means that you are depriving the people and community from their chance to heal. In the case of this bill, reconciliation is seen as justice while it is not but at the same time it can serve its purpose if it was accompanied and safeguarded by the necessary tools.¹¹⁵ This leads to another argument that it can also be debated that this draft law is suffering from a grave defect. The latter can be seen in the fact that the bill fails to mention that the body/committee responsible for undertaking its articles is an independent body and that in fact it is mostly formed out of representatives of governmental institutions except for those representing the Commission. It seems that it has no financial nor administrative independence. Therefore, this would mean that such committee could fall under the pressure in order to undertake a certain agenda of those who are able to influence it. Since it is obvious from current experiences, such as the case of the Truth and Dignity Commission's tenth public hearing, that the ghost of corruption is still lurking in the shadows and has the ability to infiltrate and impede the course of transitional justice, how is it sensible not take comprehensive preventive measures in order to protect this proposed mechanism from such imminent threat?¹¹⁶

It is very easy to mistake the need for justice as seeking revenge or suggesting reconciliation as some form of impunity. There is a fine line that can be drawn in order to maintain the balance between justice and impunity. However, this draft seems to have missed it. It is not that it is merely substituting a functioning mechanism with another, it is the fact that the new mechanism in question does not provide the same guarantees as the arbitration and reconciliation mechanism in addition to creating a dispute on jurisdiction between two bodies over the same crime. This raises the question on why the presidency actually chose to take on such initiative and is still pushing for the adoption of such draft law, which genuinely doesn't seem to add anything new or constructive to the framework of transitional justice.

CHAPTER TWO

¹¹⁵ See S. Dwyer, 'Reconciliation for realists' in C. A.L. Prager & T. Govier (ed.), 'Dilemmas of reconciliation: cases and concepts', Wilfrid Laurier University Press, 2003, p.108.

¹¹⁶ See 'Tunisia: Amnesty Bill Would Set Back Transition Would Replace Better Model for Handling Corruption', Human Rights Watch, July 14, 2016. Retrieved from: <https://www.hrw.org/news/2016/07/14/tunisia-amnesty-bill-would-set-back-transition>. It was suggested in this report that the committee would be vulnerable in the face of political interests or retaliation.

Critical Analysis of the Economic Reconciliation

In the middle of all what has been going on in Tunisia during the past few years, it can be seen why economic reconciliation has been and still gaining attention and why the proposed reconciliation bill has caused a lot of raucous. The two mechanisms became intertwined and associated with one another to the extent that it became common that whenever either one is being discussed, whether the already implemented or the proposed, the reasonable thing is to discuss the other. It is undeniable that the Tunisian state has started on the right track when it decided in an unprecedented step from the very beginning to address corruption within the framework of its transitional justice agenda. This portrayed the acknowledgement by stakeholders and those in power that corruption is an impediment that needs to be eradicated if ever the state wants to reinstate the citizens' trust into the system.¹¹⁷ However, when an initiative presented by the, supposedly, very same system that has adopted such approach is received as a deviation from the set framework to achieving the end goals of a Revolution then there must be rational reasons behind such stance. This chapter shall identify and stop at those reasons and shall afterwards highlight how the community with its different actors and parties has played a role in the current anti-corruption mainstream.

I. Analyzing the Reasons behind the Failed Economic Reconciliation

The first thing that should be pointed out is that if an already existing mechanism of economic reconciliation is being implemented, then why and to who's benefit is it to propose a new initiative? Is this step stemming out of the sense that the implemented mechanism is not paying off or failed in serving its objective or are there other hidden agendas behind it? As previously mentioned, although the Commission as well as other bodies have been actively undertaking their duties in fighting corruption it is not evident that a true tangible reconciliation has up till now been achieved or sensed by the citizens; hence, it can be assumed that the economic reconciliation has yet to achieve its purpose. It can always be rightfully argued based on past and current comparative experiences that the first factor that contributes in accomplishing any goal during a democratic transition and within a transitional justice period, including reconciliation, is the existence of an actual and sincere political will. Additionally,

¹¹⁷ See Robinson, op. cit.

having the will on its own cannot possibly be enough; a positive network of interactions and coordination between different state bodies should exist in order to carry out the laid down framework with a clear vision.

i. The Political Will

Possessing a political will is a pivotal factor to go through the period of transition especially since one can never be %100 certain that some stakeholders are not involved within the deeply rooted context of former regime corruption. In Tunisia the legal framework exists; however, the will is missing. Under the transitional articles of the 2014 Tunisian Constitution, it is specified that the state is obligated to implement the transitional justice system within all its fields and that arguing the lapse of crime or sentence is not acceptable.¹¹⁸ This necessarily implies that a strong political will has to exist in order to sustain the framework of transitional justice while facing all the obstacles that may occur along the way.

Even though Tunisia has come this far in implementing different approaches and enforcing various legislations; it seems that a real efficient political will has been missing. This can be seen in a lot of aspects. One of the most important factors is the documented lack of both human and financial resources. When reviewing the legislations by which all these different bodies were established for the purpose of serving transitional justice, we notice that when it came to the resources the laws were clear that such resources mainly came from the state. In spite of this and according to a very well detailed report issued by IWATCH organization for the year of 2015, the National Anti-Corruption Commission has scored zero points when it came to the assessment that was carried out by the experts who worked on the study.¹¹⁹ As a matter of fact, on many occasions both the former and current chairmen of the Commission have been vocal regarding this issue. In an interview with Mr. Samir Annabi back in 2016, he insisted that all through his two years term he has always complained about the lack of resources and kept trying to resolve the issue of the Commission's budget but was always faced with what he has described as a "wall" represented in the general administration, and that due to the weakness of

¹¹⁸ Refer to Art.148, paragraph 9, of the Tunisian Constitution 2014.

¹¹⁹ See M. Ben Achour, C Mzoughi, K. Mejri and S. Klibi, 'Study: National Integrity System', IWATCH, 2015. Retrieved from: https://www.transparency.org/whatwedo/publication/national_integrity_system_tunisia_2015_arabic

the political will such power did not face a strong worthy opponent or resistance.¹²⁰ Furthermore, the current Chairman, Chawki Tabib mentioned during a recent interview that the Commission is lacking any support, mainly financial, which might eventually lead it to end the service of a number of its staff.¹²¹ On the other hand, by reviewing the annual report of the Truth and Dignity Commission for the year of 2015, it is noticed that the budget of the Commission has been increased from 2.5 million Dinars to 10 Million which might indicate an improvement, but still a financial budget is not the only element needed for the achieving success, effective human resources that is translated into specialist and experts is also an important factor that should exist to support the financial aspect.¹²²

After the Revolution, Tunisia has taken part of The Stolen Asset Recovery Initiative (StAR) in order to recover the assets of Ben Ali and his wife from abroad.¹²³ On April 2013 Lebanon handed over the amount of \$28,800,000 to the Tunisian President, Moncef Marzouki at the time, as part of an enforcement of a Tunisian court decision.¹²⁴ Tunisia was also successful in receiving other assets and amounts of money from other countries including Switzerland.¹²⁵

¹²⁰ See M. Herzy, ‘Samir Annabi on his First Interview Since Concluding His Duties.. The Administration is The Main Actor Responsible for the aggravation of Corruption’, *Assabah*, April 6, 2016. Retrieved from: <http://www.assabah.com.tn/article/117491/%D8%AD%D8%AF%D9%8A%D8%AB-%D8%A7%D9%84%D8%A3%D8%B1%D8%A8%D8%B9%D8%A7%D8%A1-%D8%B3%D9%85%D9%8A%D8%B1-%D8%A7%D9%84%D8%B9%D9%86%D8%A7%D8%A8%D9%8A-%D9%81%D9%8A-%D8%A3%D9%88%D9%84-%D8%AD%D8%AF%D9%8A%D8%AB-%D9%84%D9%87-%D8%A8%D8%B9%D8%AF-%D8%A7%D9%86%D8%AA%D9%87%D8%A7%D8%A1-%D9%85%D9%87%D8%A7%D9%85%D9%87-%D9%84%D9%80-%C2%AB%D8%A7%D9%84%D8%B5%D8%A8%D8%A7%D8%AD%C2%BB-%D8%A7%D9%84%D8%A5%D8%AF%D8%A7%D8%B1%D8%A9-%D9%87%D9%8A>

¹²¹ See ‘Chairman of Anti-Corruption Commission: If the Commission is not supported then it will have to sack a number of its employees’, *RadioSfax*, April 18, 2017. Retrieved from: <http://www.radiosfax.tn/مكافحة-هوية-رئسي> /ادع-ي-تم-لم-ان-الفساد. As it happens, according to news report issued on May 5, 2017, the Commission started sacking employees, 10 out of 80 as reported, since its budget is no longer sufficient to cover all its expenses. See ‘Anti-Corruption Commission Started Sacking its Employees’, *LeMaghreb*, May 5, 2017. Retrieved from: <http://ar.lemaghreb.tn/موظفي-ها-من-عدد-تسري-ح-في-تش-ر-ع-الفساد-مكافحة-هوية-18410/item/18410>

¹²² See M. Ben Achour, C Mzoughi, K. Mejri and S. Klibi, *op. cit.* Mr. Annabi also reflected on this point by pointing out that the Tunisian Administration does not possess people with expertise in this field.

¹²³ The StAR Initiative is a 'joint program of The World Bank Group and the United Nations Office on Drugs and Crime'.

¹²⁴ Refer to *supra* note 82. Also see Corruption Cases Database, StAR Databases. Retrieved from: <http://star.worldbank.org/corruption-cases/node/20311>

¹²⁵ See J.P. Brun and R. Miron, 'Tunisia's Cash Back: The start of more to come?', World Bank Blog, April 15, 2013. Retrieved from: <http://blogs.worldbank.org/psd/tunisia-cash-back-the-start-of-more-to-come>. Also see N. Nassar, 'This is how Tunisia Recovered Some of its Stolen assets from Switzerland', *Dotmsr*, May 30, 2016. Retrieved from: <http://www.dotmsr.com/details/524456/%D9%84%D9%85%D8%A7%D8%B0%D8%A7-%D9%84%D9%85-%D8%AA%D8%AD%D8%B5%D9%84-%D9%85%D8%B5%D8%B1-%D8%B9%D9%84%D9%89-%D8%A3%D9%85%D9%88%D8%A7%D9%84%D9%87%D8%A7-%D8%A7%D9%84%D9%85%D9%86%D9%87%D9%88%D8%A8%D8%A9-%D9%85%D9%86->

However, there is a lack of transparency regarding the recovered money and assets agenda by the state. There has been no illustration on how the recovered assets were utilized? This raises an important question “weren’t such recovered assets better been utilized to fund and fill-in the gap affecting the performance ability of the bodies delegated with the anti-corruption agenda?” In fact, after Switzerland has recently returned around 3.5 million euros to Tunisia, the Head of Government, Youssef Chahed, confirmed that the recovered assets shall be used to the benefit of development and the Anti-Corruption Commission, which gives hope for a future positive step.¹²⁶ Still, in order to assess if this statement has been implemented properly, a high level of transparency must be carried out by the Government so as to prove that the assets and money were utilized in such manner. Furthermore, it should be noted that though this constitutes an improvement on how the Government responds to the needs and requests of anti-corruption bodies as well as an indicator of its future policy towards the corruption agenda, be that as it may it could be described as an “overdue” step that reflects the tardiness of the stakeholders. Also, the fact that some people might not have it in their benefit that such assets are recovered is affected by the lack or absence of political will.

On another note, one of the main motives the Presidency has been arguing ever since it proposed its reconciliation initiative was that implementing this mechanism shall refresh the national economy through placing back all the money that shall be acquired into the benefit of

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%D8%AA%D9%88%D9%86%D8%B3. This article sheds the light on the success of the Tunisian experience in recovering its money and assets from Switzerland contrary to the Egyptian experience where the latter failed in recovering any asset or amount of seized money until this moment. It was credited to the correct steps that Tunisia has adopted in order to recover those assets.

¹²⁶ See B. Hughes, ‘Swiss return funds from Ben Ali relative to Tunisia’, *Reuters*, May 26, 2017. Retrieved from: <http://www.reuters.com/article/us-tunisia-swiss-assets-idUSKBN18M1RN?il=0>. Also see ‘Head of Government: the recovered money shall go to development and the Anti-Corruption Commission’, *Shemsfm*, June 4, 2017. Retrieved from:

http://www.shemsfm.net/ar/%D8%A7%D9%84%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1_%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1-%D8%AA%D9%88%D9%86%D8%B3_%D8%A7%D9%84%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1-%D8%A7%D9%84%D9%88%D8%B7%D9%86%D9%8A%D8%A9/168273/%D8%B1%D8%A6%D9%8A%D8%B3-%D8%A7%D9%84%D8%AD%D9%83%D9%88%D9%85%D8%A9-%D8%A7%D9%84%D8%A3%D9%85%D9%88%D8%A7%D9%84-%D8%A7%D9%84%D9%85%D8%B5%D8%A7%D8%AF%D8%B1%D8%A9-%D8%B3%D8%AA%D8%B0%D9%87%D8%A8-%D9%84%D9%84%D8%AA%D9%86%D9%85%D9%8A%D8%A9-%D9%88%D9%84%D9%87%D9%8A%D8%A6%D8%A9-%D9%85%D9%83%D8%A7%D9%81%D8%AD%D8%A9-%D8%A7%D9%84%D9%81%D8%B3%D8%A7%D8%AF

the country as well promoting for future investments.¹²⁷ Similarly, it should be noted that when economists decided, finally, to pay attention to the subject of corruption because of its increasing significance they were not that lucky in evaluating the phenomenon since some of them actually suggested the same argument that was made by the presidency and the promoters/supporters of this initiative, which is that corruption actually helps boost transactions and exchanges. On the contrary, others argued the exact opposite.¹²⁸ In an interview with ICTJ, the economist Dr. Abdul Jalil Al-Badawi refuted this argument.¹²⁹ He stated that the law would not answer to the needs of the Tunisian economy since the corrupted people who would be involved in the reconciliation were the reason in destroying the Tunisian economy in the first place. He also emphasized the fact that the process described under the draft law is a type of financial transactions and that it does not identify all the illicit gains which means that the implementation of the law will not tangibly contribute to the public revenues. He mentioned the pressure and impartiality factor as well as the difficulty in examining the validity and accuracy of all the submitted declarations of wealth that will eventually also lead to unfelt and disappointing gains. Dr. Al-Badawi argued that the country should not depend on the returned assets or money in development and he provided a number of suggestions to restore the economy. By reviewing his suggestions it is evident that they are all mainly linked to having a political will in order to undertake the necessary measures to realize them. What's more is the reply sent by the World Bank press contact to one of the Tunisian media outlets after they sent the Bank a list of questions pertaining to the draft law. In his answer the officer explained that the 'sustainable and inclusive growth depends on a level of economic playing field, and a relationship of trust and mutual accountability between citizens and governments'.¹³⁰ This statement indicates that the bill would not affect the economy for not

¹²⁷ See 'Organic Law Bill Regarding Procedures for Reconciliation in Economic and Financial Field', op. cit. Also see 'TUNISIA: Protest Over Corruption Amnesty', *Africa Research Bulletin*, John Wiley & Sons Ltd., 2015. DOI: 10.1111/j.1467-6346.2015.06618.x. According to the journal, the government stated that it would use the collected amounts of money in several development projects.

¹²⁸ See K. Basu, 'Some institutional and legal prerequisites of economic reform in India', in H.E. Bakker and N. G. Schulte Nordholt (ed.), *Corruption and Legitimacy*, SISWO Publications, Amsterdam, 1996. The author described such arguments as a 'deeply flawed view' rendering this description to the fact that corruption has damaging effects on the moral fabric of the society as well as preventing those who wish to enter into markets from fulfilling their goal just because they are not familiar with the corrupted means.

¹²⁹ See 'Proposed Tunisian Reconciliation Law will grant amnesty for corruption and fail in reviving the economy', International Center for Transitional Justice, July 21, 2016. Retrieved from: <https://www.ictj.org/node/22157>

¹³⁰ See V. Szakal, 'The Presidency's Incurable Faith in Economic Reconciliation', *Nawaat*, October 9, 2015. Retrieved from: <https://nawaat.org/portail/2015/10/09/the-presidencys-incorrigible-faith-in-economic-reconciliation/>

one but two reasons. First, since corruption still plagues the society, the economic playing field is not yet inclusive and secondly if this draft law did something it is that it shook the relationship between the Tunisian government and its citizens and was accused of grating amnesty and promoting impunity instead of accountability. Hence, it can be withdrawn from all of this that the draft law is most probably not going to help with reviving the economy as the president has argued.

In Egypt, the cost of lacking the proper political will to deal with corruption amongst other things has cost the country a lot, not only on the economic level but also social-wise to the extent of getting in the way of ever achieving transitional justice, regardless of the non-existence of an actual set up system.¹³¹ When it comes to corruption, Egypt was and is still settling at a low ranking position under the CPI which implies the gravity of the problem and contrary to what officials announced regarding a “national anti-corruption strategy” back in 2014 it does not seem that the stakeholders have actually tackled corruption in a way that mends the long torn fabric of the society which has been the victim of this preposterous phenomenon for several decades.¹³² Adding to the equation, the absence of measures for accountability and instead choosing the aforementioned form of “reconciliation” was regarded as a platform for impunity for those who took part in corruption during the Mubarak era.¹³³ The fact that these corrupted businessmen will be able to walk free in return of giving back money cannot possibly represent an existing solid political will that aims at eradicating corruption.¹³⁴

Alas. a similar situation is currently taking place in Tunisia. That initiative being introduced in spite of an already existing mechanism suggests that the government and

¹³¹ See M. El Feghery, ‘ Truth and reconciliation? Transitional Justice in Egypt, Libya and Tunisia’, FRIDE, 2014. Retrieved from: <http://fride.org/publication/1186/policy-brief>

¹³² See M. Fatafta, ‘Playing with Numbers Won’t Cure Egypt’s Corruption’, Transparency International, August 9, 2016. Retrieved from: <http://blog.transparency.org/2016/08/09/playing-with-numbers-wont-cure-egypts-corruption/>. Also see Hattar, op. cit. The report highlighted that corruption levels are still high in Egypt due to the absence of a ‘real political will to fight it’.

¹³³ See Abdel Tawab, op. cit.

¹³⁴ See R. Abou El Fadl, ‘Beyond Conventional Transitional Justice: Egypt’s 2011 Revolution and the Absence of Political Will’, *The International Journal of Transitional Justice*, Vol.6, 2012. Retrieved from: <https://academic.oup.com/ijtj/article/6/2/318/2357083/Beyond-Conventional-Transitional-Justice-Egypt-s>

stakeholders are only taking on a form of anti-corruption propaganda through waving “resonating” and empty political slogans that do not actually serve the cause.¹³⁵

The last and foremost element tackling the element of political will is translated into the following question: does current situation reflect genuine attempts by the stakeholders to serve transitional justice or does it expose personal interests? Ever since the presidential initiative has seen the light, it has been circulated that a deal was struck between President Essebsi and corrupted businessmen in exchange for their support during his presidential campaign in addition to agreeing to invest and help boost the Tunisian economy.¹³⁶ New outlets kept issuing reports that allegedly revealed documents on how the presidency has been plotting with other actors to pass the draft law.¹³⁷ Such allegations, even if they are not real, uncover the gravity and gloominess of the current situation in Tunisia and the extent of the mistrust between the community and the stakeholders. All of this and more can be attributed to the lack of a strong effective political will that, if it has otherwise existed and properly enforced, would have reflected the genuineness of those officials in exerting efforts to serve the interest of the country rather than the elites who controlled and still hold the levers of economy within their hands. Consequently, rather than relinquishing the former regime’s practices and denouncing

¹³⁵ See M. Ben Achour, C Mzoughi, K. Mejri and S. Klibi, op. cit. The report mentions that during the era of the troika (Ennahda, Ettakatol, and CPR alliance), fighting corruption was merely based on a number of slogans not seriously aiming at accomplishing any real end results.

¹³⁶ See M. Okkez, ‘National Reconciliation: Supporting the Transitional Course, or a Deal, Extortion and Detouring from the Constitution’, *Nawaat*, July 24, 2015. Retrieved from: <http://nawaat.org/portail/2015/07/24/%D8%A7%D9%84%D9%85%D8%B5%D8%A7%D9%84%D8%AD%D8%A9-%D8%A7%D9%84%D9%88%D8%B7%D9%86%D9%8A%D9%91%D8%A9-%D8%AA%D8%AF%D8%B9%D9%8A%D9%85-%D9%84%D9%84%D9%85%D8%B3%D8%A7%D8%B1-%D8%A7%D9%84%D8%A7%D9%86%D8%AA/>. Also see F. Selim, ‘Tunisia: Increase of Pressure from Businessmen to Pass “Reconciliation”’, *AlAraby*, July 17, 2016. Retrieved from: <https://www.alaraby.co.uk/economy/2016/7/17/%D8%AA%D9%88%D9%86%D8%B3-%D8%AA%D8%B2%D8%A7%D9%8A%D8%AF-%D8%B6%D8%BA%D9%88%D8%B7-%D8%B1%D8%AC%D8%A7%D9%84-%D8%A7%D9%84%D8%A3%D8%B9%D9%85%D8%A7%D9%84-%D9%84%D8%AA%D9%85%D8%B1%D9%8A%D8%B1-%D8%A7%D9%84%D9%85%D8%B5%D8%A7%D9%84%D8%AD%D8%A9-1#sthash.ugGzyaCK.dpuf>. What’s even more is that the former Prime Minister Rachid Safar pointed fingers at the President while highlighting the absence of the political will in Tunisia on the background of the draft law. See ‘He described the initiative as “unwise”: Rachid Safar the Prime Minister during the era of Bourguiba opens fire at the reconciliation draft law’, *Acharaa*, May 16, 2017. Retrieved from: <http://acharaa.com/ar/226825>

¹³⁷ See ‘Leak: the presidency’s plan to pass a new version of the reconciliation law’, *Nawaat*, April 21, 2017. Retrieved from: <https://nawaat.org/portail/2017/04/21/ان-ل-تدمير-ال-جمهوري-ة-رئ-اسة-عمل-خطة-تسري-ب/>

corruption, the system is seen aiding the corrupted elites in nurturing their own personal interests at the expense of transitional justice.¹³⁸

Adding to the abovementioned, when looking to the political will as an instrument to transitional justice, it must engage both the past and the future.¹³⁹ The priorities of the state must be visionary and anticipatory to the counter effects of its policies and actions. This brings us to the following point that represents another reason behind the failure of reconciliation in Tunisia so far.

ii. The Aimlessness of Stakeholders and Competent Bodies

It is only fair to consider the post-Revolution steps that have been adopted by different stakeholders as narrow sighted in respect of their effects in relation to the future. It appears that the consecutive Tunisian governments focused on short-term solutions rather than developing comprehensive mechanisms and a sophisticated system that will continue delivering results that serve the people even post the transitional justice period. Thus, the state has to be blamed given that it possess the competence to undertake all the necessary measures so as to put this into effect. The aimlessness in policy making has been a major factor and is still playing a key role in the failure of the reconciliation.

The fact that the state decision makers have established those numerous bodies delegated with corruption mirrors how confused and incoherent they are in carrying out the anti-corruption agenda. The duplication of work is not comprehended or justifiable at this point. This would also create an unnecessary overlapping in the work of all those bodies.¹⁴⁰ Not only that but also given that these bodies suffer from unclear mandates and limited resources that hinders their ability to

¹³⁸ See F. Heinrich, 'Corruption and inequality: how populists mislead people', Transparency International, January 25, 2017. Retrieved from: https://www.transparency.org/news/feature/corruption_and_inequality_how_populists_mislead_people. The report referenced what it has described as "influential" report issued by Oxfam in 2014 in which it was stated that 'Extreme economic inequality and political capture are too often interdependent. Left unchecked, political institutions become undermined and governments overwhelmingly serve the interests of economic elites to the detriment of ordinary people.' It interpreted such statement by explaining that 'corruption can flourish when elites control the levers of power without any accountability.'

¹³⁹ See Miller (2008), op. cit.

¹⁴⁰ See E. Loftus, 'Anticorruption Truth Commissions? Lessons to be Learned from Human Rights and Transitional Justice', The Global Anticorruption Blog, [web blog], August 17, 2015. Retrieved from: <https://globalanticorruptionblog.com/2015/08/17/anticorruption-truth-commissions-lessons-to-be-learned-from-human-rights-and-transitional-justice/>

perform their duties properly should have tipped off the government to stop establishing more and more bodies. A very blatant example to the aforementioned is when the troika government decided to establish the, previously mentioned, Ministry of Public Service, Governance and the Fight Against Corruption. This Ministry did not seem to have any new mandate that adds up to the anti-corruption mechanism. Instead, it appeared as if the Ministry's only mandate was to obstruct the work of the Anti-Corruption Commission. Thus, the Ministry can be considered as part of a façade anti-corruption policy. Moreover, establishing such Ministry created a conflict of jurisdiction. Also, such case can be seen as imposing the requirement to re-include the subject of corruption under the central administration of the state, which should no longer be according to the Constitution. The latter argument can be justified by trying to avoid any conflict of interest that might result due to the enforcement of anti-corruption policies on an administration through its subordinate. The most recent case that also reflects the same concern is the reconciliation draft law which includes a non-independent body formed out of a number of representatives from different state bodies. If established, in the case of passing and adopting the bill, this committee shall be in constant dispute with the Truth and Dignity Commission over jurisdiction on cases involving financial and economic corruption, which constitutes another argument against passing the draft law and further confirms the argument that the administration suffers from a considerable instance of dispersion.

Another factor that contributes to the failure of achieving reconciliation is the lack of coordination and existing miscommunication between the different bodies. This includes the relationship between independent bodies amongst each other together with independent bodies with state institutions.¹⁴¹ On a number of occasions during the year 2012, the Head of Government has sent a number of proclamations addressed to different officials in the state in order to set up the necessary communication networks between the different bodies in concern.¹⁴² In spite not being consulted with the drafting of the bill,¹⁴³ members of the Truth and

¹⁴¹ See J. Olaya & K. Hussmann, op. cit.

¹⁴² See Proclamation No.16, issued on March 27, 2012. Retrieved from: <http://www.ivd.tn/ar/wp-content/uploads/2015/12/circ16.pdf>. Also see Proclamation No.25, issued on May 5, 2012. Retrieved from: <http://www.ivd.tn/ar/wp-content/uploads/2015/12/%D9%85%D9%86%D8%B4%D9%88%D8%B1-%D8%B9%D8%AF%D8%AF-25-%D8%A8%D8%AA%D8%A7%D8%B1%D9%8A%D8%AE-05-%D9%85%D8%A7%D9%8A-2012-%D8%AD%D9%88%D9%84-%D8%A7%D9%84%D9%86%D9%81%D8%A7%D8%B0-%D8%A5%D9%84%D9%89-%D8%A7%D9%84%D9%88%D8%AB%D8%A7%D8%A6%D9%82-%D8%A7%D9%84%D8%A5%D8%AF%D8%A7%D8%B1%D9%8A%D8%A9->

Dignity Commission have participated in sessions within the parliament in order to comment and present the Commission's opinion regarding the draft law. During the session, the delegation made sure to voice their confidence that the Commission is able to resolve and decide on all the files it has received if there was a more effective communication between the latter and state bodies.¹⁴⁴ Furthermore, the Tunisian state has once announced that it has suspended the procedures in economic reconciliation, which is carried out by the Truth and Dignity Commission, due to the fact that the Arbitration and Reconciliation Committee, allegedly, refused to allow the officer in charge of State litigation to review the reconciliation requests.¹⁴⁵ Furthermore, recently, the Truth and Dignity Commission has issued an article tackling the issue of jurisdiction dispute and it pointed out the tardiness of the Ministry of State Property and Land Affairs in cooperating with the judiciary.¹⁴⁶ Moreover, in an attempt to create a wide-ranging network so as to effectively fight corruption, a national agreement was signed by different actors, including but not limited to the presidency and Anti-Corruption Commission, on December 9, 2016.¹⁴⁷ The agreement included means and rules necessary for cooperation. Nonetheless, it is not visible though that such means are carried out productively.

143 See 'In a discussion regarding reconciliation draft law in the House of Representatives: calling the civil society for impartiality', *Assabah*, July 23, 2016. Retrieved from: <http://www.assabah.com.tn/article/122344/%D9%81%D9%8A-%D9%86%D9%82%D8%A7%D8%B4-%D9%85%D8%B4%D8%B1%D9%88%D8%B9-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D9%85%D8%B5%D8%A7%D9%84%D8%AD%D8%A9-%D8%A8%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D9%86%D9%88%D8%A7%D8%A8-%D8%AF%D8%B9%D9%88%D8%A9-%D8%A7%D9%84%D9%85%D8%AC%D8%AA%D9%85%D8%B9-%D8%A7%D9%84%D9%85%D8%AF%D9%86%D9%8A-%D8%A5%D9%84%D9%89-%D8%A7%D9%84%D8%AD%D9%8A%D8%A7%D8%AF>. According to the article, neither the Truth and Dignity Commission nor the National Anti-Corruption Commission was consulted by the Presidency when drafting the law. It should be noted that the state is legally obligated to consult the Commissions with matters related to transitional justice.

¹⁴⁵ See 'Tunisian Government Suspends Reconciliation Procedures in Cases Involving Corruption of Former Officials', *AL Arab*, October 2, 2016. Retrieved from: <http://www.alarab.co.uk/article/الاجراءات-عقل-البتون-ساسة-الرجوع-إلى-مسؤولين-فساد-قضاة-الصلح-إجراءت-عقل-البتون-ساسة>

¹⁴⁷ See 'Signing the National Agreement for Activating the National Strategy for Good Governance and Anti-Corruption and its action plan', National Anti-Corruption Commission, December 9, 2016. Retrieved from: <http://www.nac.gov.lb/p/7833>

All of the above represents the miscommunication and lack of cooperation between the various bodies working on the corruption agenda.

Another contributing factor is the complexity of the anti-corruption mechanism. Rather than being satisfied with a single body that includes all the required expertise and adopting a reasonably simple and easy procedures in the fight against corruption; the Tunisian state kept on, at every available opportunity, founding bodies delegated with the same agenda, which resulted in creating a number of serious problems. During the session before the parliament, the delegation of the Truth and Dignity Commission pointed out that the multiplicity and repetition of committees creates an “institutional chaos” and that establishing a new committee under as a result of passing the economic reconciliation law is considered as a waste of money and time.¹⁴⁸ Let alone the already existing statutory mayhem,¹⁴⁹ such, accurately made, statement can be applicable throughout the entire mechanism especially with the existence of an “overboard” number of independent and state committees that are functioning at the same time while one commission can be capable of undertaking all those duties within a designated course of time. For instance, the Truth and Dignity Commission is the main body currently solely handling the economic reconciliation matter, but albeit that it appears to be suffering from the lack of freedom and is trying to escape the attempts of the executive power to control it; therefore, if provided with the required support it is possible that it can effectively conclude all its work within the legally determined period. Another aspect to this point is the delay in appointing members of such bodies. For example, members of the Anti-corruption Commission were appointed on June 4, 2013, meaning almost 8 months after establishing the Commission and 3 months after

<http://www.inlucc.tn/العمليات>

http://www.inlucc.tn/العمليات/tx_ttnews%5Btt_news%5D=145&cHash=ee86535813babd842a483f1cba0c4231

¹⁴⁸ See ‘Commission’s Delegation During a Hearing Before the General Legislation Committee: “Economic Reconciliation” Draft Law Empties the Transitional Justice System out of its Content and Disables it’, op. cit. Also see ‘Khaled Krichi: “the multiplicity of committees creates institutional chaos”’, Truth and Dignity Commission, July 21, 2016. Retrieved from: <http://www.ivd.tn/ar/?p=3568>.

¹⁴⁹ After expressing her disappointment regarding the smear campaign carried out against her by the current regime and comparing to Ben Ali’s, Ms. Bensedrine has pointed out that the draft law would leave her Commission with a very narrow mandate since it “would eliminate 16 articles”, hindering the ability of the Commission to undertake its duties. See C. Gall, ‘In Tunisia, an Ambitious Mission of Justice Meets a Moment of Reckoning’, *The New York Times*, November 6, 2015. Retrieved from: <https://www.nytimes.com/2015/11/07/world/africa/in-tunisia-a-mission-of-justice-and-a-moment-of-reckoning.html>

appointing its Chairman.¹⁵⁰ How is it expected for an institution to commence its work without human resources?

Along with the above-mentioned, the fact that bodies can still be subject to harassment by those who have interest in not achieving anything significant in the field of anti-corruption eventually affects the process of reconciliation. An illustration to that is the parliament with its members that are promoting for the passing of the economic reconciliation bill, and who on a number of occasions accused Ms. Bensedrine herself of corruption,¹⁵¹ that question the Truth and Dignity Commission and point the finger at it for not doing its job while the question to be asked is why haven't the Commission been provided with enough resources to be able to carry out its duties? This shows the negligence towards the Commission that is caused by the existence of a range of institutions plus not only that but it points out, like previously discussed, the lack of cooperation and communication between the different bodies.

To think that having more bodies and more legislation is going to help in achieving an economic reconciliation, or in fact any form of reconciliation, is incomprehensible. When institutional and statutory elements are formulated together in an inclusive framework that includes and focuses on having expertise and a reasonably sufficient budget, it is only then when the effects of an economic reconciliation, whether within its current or any anticipated form, are expected to be felt by the citizens and community.

II. Stance of the Tunisian Community

¹⁵⁰ Members of the Commission were first appointed according to Government Decree 2394 of 2014 issued in June 4, 2013. Retrieved from: http://www.legislation.tn/detailtexte/Décret-num-2013-2394-du-04-06-2013-jort-2013-049_2013049023943?shorten=Z4fX. However, according to Art.22 of the Decree by Law No.120 of 2011, in March 13, 2017 new members were appointed at the Commission. Retrieved from: http://www.legislation.tn/detailtexte/Décret%20Gouvernemental-num-2017-359-du-13-03-2017-jort-2017-022_20170220035932?shorten=Z4fX. Such delay has also occurred in the case of the Anti-Corruption Commission as previously stated.

¹⁵¹ See 'In the General Legislation Committee: The conclusion of general discussion for all the chapters of the reconciliation draft law', *Assabah*, July 15, 2016. Retrieved from: <http://www.assabah.com.tn/article/121994/%D9%81%D9%8A-%D9%84%D8%AC%D9%86%D8%A9-%D8%A7%D9%84%D8%AA%D8%B4%D8%B1%D9%8A%D8%B9-%D8%A7%D9%84%D8%B9%D8%A7%D9%85-%D8%A7%D9%84%D8%A7%D9%86%D8%AA%D9%87%D8%A7%D8%A1-%D9%85%D9%86-%D8%A7%D9%84%D9%86%D9%82%D8%A7%D8%B4-%D8%A7%D9%84%D8%B9%D8%A7%D9%85-%D9%84%D8%AC%D9%85%D9%8A%D8%B9-%D9%81%D8%B5%D9%88%D9%84-%D9%85%D8%B4%D8%B1%D9%88%D8%B9-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D9%85%D8%B5%D8%A7%D9%84%D8%AD%D8%A9>

Usually victims consider transitional justice as a type of recognition and apology for the wrongdoing they had to suffer, and reconciliation is usually only accepted when accompanied by an apology and acknowledgement of the violation by the perpetrators. Apparently, to the Tunisian community corruption is the main cause of wasting public money and is an intolerable crime. However, in the absence of real tangible concrete reforms its effects are still ongoing.¹⁵² This is definitely not helping in reaching any sort of reconciliation especially that ‘Tunisians have certainly not forgiven or forgotten corruption’.¹⁵³ Hence, it is only expected that the stance of the community would reflect this sentiment. Still, in Tunisia the concept of reconciliation, which was applied through the Truth and Dignity Commission, was tolerable and accepted. It wasn’t until the presidency came up with its initiative for economic reconciliation that the community, through its different actors, has took a strong vociferous stand towards reconciliation.¹⁵⁴

i. Youth Movements and CSOs

It was the Guatemalan Nobel Prize winner and political activist Rigoberta Menchú who said ‘without strong watchdog institutions, impunity becomes the very foundation upon which systems of corruption are built. And if impunity is not demolished, all efforts to bring an end to corruption are in vain.’ Before the Revolution even took place, it was the continuous work and exerted efforts by the Tunisian CSOs that founded the basis for the transitional justice platform that exists today.¹⁵⁵ After the Revolution, they promoted for including economic crimes and corruption within then framework of the transitional justice. In spite of some submissively following the system and administration and not accepting constructive criticism,¹⁵⁶ it is only fair to state that a fair number of CSOs played a pivotal role within the community in steering the

¹⁵² See K. Andrieu, W. Ferchichi, S. Robins, A. Aloui & H. Ben Hamza, ‘Transitional Justice in Tunisia: Perceptions and experiences’, 2016, Kawakibi Center. Retrieved from: <https://drive.google.com/drive/folders/0BxrR5ri7KlENdGIEcFM3cWhVV2M>

¹⁵³ See M. Lynch, ‘Tunisia May Be Lost in Transition’, Carnegie Middle East Center, September 8, 2016. Retrieved from: <http://carnegie-mec.org/diwan/64510>

¹⁵⁴ In an article published in Foreign Policy on September 11, 2015, it was stated that ‘it is perhaps reassuring that Tunisian civil society is continuing to keep up pressure on the politicians’ confirming the importance of a strong civil society in order to play an effective role regarding corruption. Read the full article: <http://foreignpolicy.com/2015/09/15/in-tunisia-a-new-reconciliation-law-stokes-protest-and-conflict-instead/>

¹⁵⁵ See S.N. Green, ‘On the Rocks: Tunisia’s Transitional Justice Process’, Center for Strategic and International Studies, October 14, 2015. Retrieved from: <https://www.csis.org/analysis/rocks-tunisia-s-transitional-justice-process>

¹⁵⁶ Refer to *supra* note 98. Ms. El Gantri criticized some CSOs for being blindly submissive to the Truth and Dignity Commission. She also criticized the attempts of trying to amend the Transitional Justice Law.

course of transitional justice. An organization like IWATCH for instance has developed a special bureau, YALAC, assigned to work with and guide victims of corruption. They provide these victims with technical assistance starting from filling out and following up with the requests to investigating the provided information and facts.¹⁵⁷ Therefore, it is obvious that Tunisian organizations were coping well with the idea of having a legal channel for reconciliation in corruption cases.

In many occasions these organizations rightfully represented the will of the people. Consequently, when a draft law that grants “unconditional” amnesty to the corrupt elite is proposed while basically waiving away the main elements of the reconciliation concept and promoting impunity,¹⁵⁸ then it is expected that such organizations will react and that is exactly what happened. Just upon the announcement of the presidential initiative, CSOs kept issuing statements, holding conferences and collaborating amongst themselves in order to express their standpoint regarding this bill. Some even formed a civil coalition against the draft law.¹⁵⁹ What is noteworthy regarding this is the fact that different organizations with different backgrounds came together regardless of their different beliefs and decided to start together in the face of what they believe to be whitewashing corruption and promoting impunity. Some of them we’re even outspoken against those who have accepted and decided to endorse the initiative.¹⁶⁰ Organizations such ICTJ, Al Bawsala, Al Karama, IWATCH, ASF, Youth Can, etc. made sure to keep vocal about this issue and they issued many statements, whether individual or joint,

¹⁵⁷ Refer to following link for IWATCH organization website for more information. Link: <https://www.iwatch.tn/ar/article/6>

¹⁵⁸ See UNCHR, Sixtieth Session 27 February 2004 “Promotion and Protection of Human Rights: Impunity” (UN Doc E/CN.4/2004/88. Retrieved from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G04/113/55/PDF/G0411355.pdf?OpenElement>. According to the report, impunity is the ‘impossibility, de jure or de facto, of bringing the perpetrators of violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.’

¹⁵⁹ See ‘Civil society prepares itself to stand against economic reconciliation draft law’, *Nawaat*, August 25, 2015. Retrieved from: <http://nawaat.org/portail/?p=47748>

¹⁶⁰ In an interview with Nawaat, Dr Al-Badawi criticized the Tunisian Union of Industry, Trade and Handicrafts (UTICA) for endorsing the draft law and the extortion it has been practicing in order to promote for it. See M. Beji, ‘Abdul Jalil Al-Badawi: «Legitimizing Corruption is Behind the Reconciliation Draft Law»’, *Nawaat*, September 19, 2015. Retrieved from: <https://nawaat.org/portail/2015/09/19/%D8%B9%D8%A8%D8%AF-%D8%A7%D9%84%D8%AC%D9%84%D9%8A%D9%84-%D8%A7%D9%84%D8%A8%D8%AF%D9%88%D9%8A-%D8%AA%D8%B4%D8%B1%D9%8A%D8%B9-%D8%A7%D9%84%D9%81%D8%B3%D8%A7%D8%AF-%D9%88%D8%B1%D8%A7%D8%A1-%D9%85/>

condemning the draft law.¹⁶¹ For instance, on two, recent, separate occasions ASF took part in statements that were issued regarding the bill.¹⁶² CSOs also organized debated between different parties with different backgrounds, whether they were against or with the bill, in order to discuss the matter.¹⁶³

Notwithstanding the CSO's role in the ongoing dilemma, it was on June 2015 that an independent national initiative was launched by Tunisian youth that has "changed the rules of the game". Manich Msamah organized and mobilized wide-ranging protests starting on August 28, 2015.¹⁶⁴ These protests and marches included participants from within the civil society in addition to activists and normal citizens.¹⁶⁵ Whether the movement was counting on gaining such vast momentum or not, it certainly caught a lot of attention nationwide and on the international level as well, and it kept its firm stance against the draft law year after year.¹⁶⁶ The persistent ongoing protests together with the issued statements and the stance lobbying of civil society organizations, amongst other political factors, pressured the decision makers, not once but a number of times, to suspend discussions regarding the draft law. However, it was in year 2017 that the movement initiated a new slogan titled "round three".¹⁶⁷ The protests they kept calling for and organizing week after week reflected the resilience against this detrimental initiative. Mass protests swept the streets of, not only Tunis but also, the entire country starting late April,

¹⁶¹ As an example, on July 1, 2016, a number of organizations issued a joint statement commenting on reopening the discussions regarding the draft law. The signatories to the statement pointed out that the bill is a far-fetched attempt to achieving transitional justice. They also questioned the constitutionality of the draft. The 14 civil society organizations have collaborated in issuing other joint statements on other occasions. Joint statement is available on the following link: <http://www.albawsala.com/ar/pub/57b70dd6cf44123b6af0e307>

¹⁶² On April 26, 2017 a number of organizations including ASF issued a joint statement demanding the withdrawal of the draft law and on May 2, 2017 it issued a lone statement also while making the same exact demand. Refer to the two statements on the following links: <https://www.ictj.org/news/tunisia-civil-society-reconciliation-bill> & <http://www.asf.be/blog/2017/05/02/human-rights-tunisia-under-scrutiny/>

¹⁶³ Youth Can Organization organized an interesting debate on April 14, 2017 that included Sami Ben Ghazi as representative for Manich Msamah Movement, MP Samia Abbou for Attayar, jurist Charfeddine Kellil and MP Wissam Saidi for Nidaa Tounes. After attending the debate, it became clear where each party and actor stands from the draft law.

¹⁶⁴ Refer to Manich Msamah Facebook post under the following link in order to know more about the movement: <https://www.facebook.com/media/set/?set=a.1488333594806000.1073741836.1467781516861208&type=3>

¹⁶⁵ See N. Ramadan, 'Amnesty for corrupt Ben Ali cronies, despite Tunisia protests', September 3, 2015. Retrieved from: <https://www.alaraby.co.uk/english/news/2015/9/3/amnesty-for-corrupt-ben-ali-cronies-despite-tunisia-protests>

¹⁶⁶ See 'Tunisian Activists Oppose Law That Would Grant Amnesty to Corruption', International Center for Transitional Justice, July 22, 2016. Retrieved from: <https://www.ictj.org/news/tunisia-reconciliation-protest-amnesty-corruption>

¹⁶⁷ Previously the movement created "grassroots state of emergency" as part of its slogans used against the reconciliation bill. See V. Szakal, 'Manich Msamah declares a "grassroots state of emergency"', *Nawaat*, July 27, 2016. Retrieved from: <https://nawaat.org/portail/2016/07/27/manich-msamah-declares-a-grassroots-state-of-emergency/>

just days after the parliament resumed discussing the draft law for the third time.¹⁶⁸ The movement also submitted an official request to the General Legislation Committee in order to present its reservations and comments on the draft law as part of the “round three” plan.¹⁶⁹ As previously mentioned, the protests kept on going and the number of participants kept growing which added more pressure on the government in addition to other political factors.¹⁷⁰ This eventually led to a change in the government’s attitude as shall be illustrated hereunder.

This illustrates the significance of the presence and involvement of a strong civil society in order to take the necessary steps in order to protect the course of transitional justice. For instance the TJRC law in Kenya faced a lot of criticism by different civil society groups, because it allowed amnesties for human rights violations.¹⁷¹ This could also be said in case of Tunisia, where these groups took a unified stand against the draft law that would grant amnesty to those involved in corruption by all means possible, including raising awareness and mobilizing. To all appearances, civil society actors in Tunisia did not leave anything to chance and covered all the possible areas in order to keep reminding the stakeholders that there are watchdogs observing and assessing their performance.¹⁷²

ii. Other Actors

Other actors that must be, additionally, included to the equation are the parliament represented in its members with their different affiliations, government or more specifically the head of the government, international organizations and media. These actors are key to paint the whole picture of the situation in Tunisia.

¹⁶⁸ See ‘Tunisian officials sacked after protests’, *France24*, April 29, 2017. Retrieved from: <http://www.france24.com/en/20170429-tunisian-officials-sacked-after-protests>. During 2016 Manich Msamah was also able to mobilize over 12 cities. See H. Chennaoui, ‘Manich Msameh: mobilization in 12 cities against the law on reconciliation’, *Nawaat*, July 25, 2016. Retrieved from: <https://nawaat.org/portail/2016/07/25/manich-msameh-mobilisation-dans-12-villes-contre-la-loi-sur-la-reconciliation/>

¹⁶⁹ Refer to Manich Msamah Facebook post under the following link: <https://www.facebook.com/manichmsame7/photos/a.1473039216335438.1073741828.1467781516861208/1693806747592016/?type=3>

¹⁷⁰ See T. Amara, ‘Thousands of Tunisians march against corruption amnesty law’, *Reuters*, May 13, 2017. Retrieved from: <http://www.reuters.com/article/us-tunisia-protest-idUSKBN1890R6>

¹⁷¹ See C. Manga Fombad, ‘Transitional Justice in Africa: The Experience with Truth Commissions’, *GlobaLex*, 2017. Retrieved from: http://www.nyulawglobal.org/globalex/Africa_Truth_Commissions1.html

¹⁷² See C. Yakinthou, C. Buff, and L. Clifford, ‘Advancing Transitional Justice in Conflict-Affected Contexts: A Case Study for Libya’, IREX. Retrieved from: <https://www.irex.org/sites/default/files/pdf/case-study-libya-transitional-justice-conflict.pdf>

Throughout the post-Revolution period of transition, and after being elected, members of the Tunisian House of People's Representatives have had different stands regarding reconciliation. Such attitude can be attributed to the possibility that some of those members were affiliated with the former regime so they chose not be outspoken until 2015 when the presidency proposed the reconciliation draft law, in other words they are simply protecting their own personal interest. Others simply "swore the oath of allegiance" to the current regime and therefore blindly support it in whatever decision it makes. It is not a secret that, due to a number of reasons, both Nidaa Tounes and al-Nahda have formed an alliance within the walls of the parliament. Despite resigning his position as a chairman of the party,¹⁷³ since President Essebsi is the founder of Nidaa Tounes, it is only normal that the representatives of the Party within the parliament, including the Chairman,¹⁷⁴ would back up and promote any initiative proposed by the presidency.¹⁷⁵ Consequently, both parties are leading the supporting movement of the draft law within the parliament. On the other hand, opposition parties have decided to join the lines of mobilization and movement with members of the civil society. For instance, during a recent march that took place last May, a number of opposition parties joined forces with the civil society, movements, public figures and others under the slogan of "No for whitewashing corruption" while demanding the withdrawal of the bill.¹⁷⁶ Attayar or the Democratic Current

¹⁷³ Essebsi resigned from his position as the chairman of Nidaa Tounes upon winning the presidential elections in 2014. See 'Essebsi resigns from presidency of Nidaa Tounes', *AlChourouk*, January 1, 2015. Retrieved from: <http://alchourouk.com/86094/151/1/-/%D8%A7%D9%84%D8%B3%D8%A8%D8%B3%D9%8A-%D9%8A%D8%B3%D8%AA%D9%82%D9%8A%D9%84-%D9%85%D9%86-%D8%B1%D8%A6%D8%A7%D8%B3%D8%A9-%D9%86%D8%AF%D8%A7%D8%A1-%D8%AA%D9%88%D9%86%D8%B3--.html>

¹⁷⁴ See 'Tunisia.. discussing the economic reconciliation law soon', *Al Arabiya*, June 30, 2016. Retrieved from: <http://www.alarabiya.net/ar/north-africa/tunisia/2016/06/30/%D8%AA%D9%88%D9%86%D8%B3-%D9%82%D8%B1%D9%8A%D8%A8%D8%A7-%D9%85%D9%86%D8%A7%D9%82%D8%B4%D8%A9-%D9%85%D8%B4%D8%B1%D9%88%D8%B9-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D9%84%D9%84%D9%85%D8%B5%D8%A7%D9%84%D8%AD%D8%A9-%D8%A7%D9%84%D8%A7%D9%82%D8%AA%D8%B5%D8%A7%D8%AF%D9%8A%D8%A9-.html>

¹⁷⁵ See Y. Nabli, 'Reconciliation Law: Opposition Objects and al-Nahda Practices Soft Support', *Nawaat*, July 14, 2016. Retrieved from: <https://nawaat.org/portail/2016/07/14/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D9%85%D8%B5%D8%A7%D9%84%D8%AD%D8%A9-%D8%A7%D9%84%D9%85%D8%B9%D8%A7%D8%B1%D8%B6%D8%A9-%D8%AA%D8%AD%D8%AA%D8%AC-%D9%88%D8%A7%D9%84%D9%86%D9%87%D8%B6%D8%A9/>

¹⁷⁶ See 'Charfeddine Kellil to Assabah news: More than 7 parties and 35 organizations are participating in Manich Msamah march tomorrow, Saturday', *Assabah*, May 12, 2017. Retrieved from: <http://www.assabahnews.tn/article/150156/%D8%B4%D8%B1%D9%81-%D8%A7%D9%84%D8%AF%D9%8A%D9%86-%D8%A7%D9%84%D9%82%D9%84%D9%8A%D9%84-%D9%84%D9%80%D8%A7%D9%84%D8%B5%D8%A8%D8%A7%D8%AD-%D9%86%D9%8A%D9%88%D8%B2-%D8%A7%D9%83%D8%AB%D8%B1-%D9%85%D9%86-7-%D8%A7%D8%AD%D8%B2%D8%A8-%D9%8835-%D9%85%D9%86%D8%B8%D9%85%D8%A9->

especially represented in MP Samia Abbou has formed the most ferocious resistance against the draft. The party even launched a social network campaign “kei net’hasbou tau netsalhou” meaning that in order to reconcile someone has to be held accountable.¹⁷⁷ The commendable position of opposition parties reflect the essence of transitional justice since a parliament supposedly should ensure that when a law is granting something as substantial as amnesty and particularly within a course of transitional justice its members should make sure that the rules set by that law are consistent with international law.¹⁷⁸

Another major actor is international organizations.¹⁷⁹ Due to its partnership with the Tunisian organization IWATCH, TI has been the most outspoken international organization regarding corruption and reconciliation in Tunisia. It has issued a number of reports and statements across the past years regarding several topics related to corruption in Tunisia.¹⁸⁰ As a matter of fact, in 2015 its Secretariat issued a statement “condemning” the draft law.¹⁸¹ Also, upon resuming the discussions on the bill earlier this year, it made sure it delivered its message through its social media pages while explicitly describing the draft as “BAD”.¹⁸² When conducting research on the issue of corruption and reconciliation it is clear that international

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%D8%B3%D8%AA%D8%B4%D8%A7%D8%B1%D9%83-%D9%81%D9%8A-

%D9%85%D8%B3%D9%8A%D8%B1%D8%A9-%D9%85%D8%A7%D9%86%D9%8A%D8%B4

¹⁷⁷ See “Democratic Current launches “kei net’hasbou tao netsalhou” campaign rejecting reconciliation law’, *Arabesque*, July 22, 2015. Retrieved from:

<http://www.arabesque.tn/ar/actualite/%D8%A7%D9%84%D8%AA%D9%8A%D8%A7%D8%B1-%D8%A7%D9%84%D8%AF%D9%8A%D9%85%D9%82%D8%B1%D8%A7%D8%B7%D9%8A-%D9%8A%D8%B7%D9%84%D9%82-%D8%AD%D9%85%D9%84%D8%A9-%D9%83%D9%8A-%D9%86%D8%AA%D8%AD%D8%A7%D8%B3%D8%A8%D9%88-%D8%AA%D9%88-%D9%86%D8%AA%D8%B5%D8%A7%D9%84%D8%AD%D9%88-%D8%B1%D9%81%D8%B6%D8%A7-%D9%84%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D9%85%D8%B5%D8%A7%D9%84%D8%AD%D8%A9-%D8%A7%D9%84%D9%88%D8%B7%D9%86%D9%8A%D8%A9?id=23797>

¹⁷⁸ See M. Freeman, ‘Making reconciliation work: the role of parliaments’, IDEA, 2005. Retrieved from: <http://www.idea.int/publications/catalogue/making-reconciliation-work-role-parliaments>

¹⁷⁹ During an interview with Carnegie Endowment for International Peace, Mr. Tabib stressed the importance of the role of the international community as well as political will in order to eradicate corruption. The full interview can be found on the following link: <http://carnegieendowment.org/sada/69939>

¹⁸⁰ Refer to following link for more information: <https://www.transparency.org/country/TUN>s

¹⁸¹ See Transparency International Secretariat, ‘TRANSPARENCY INTERNATIONAL CONDEMNS TUNISIAN DRAFT LAW THAT WOULD SET THE CORRUPT FREE’, TI, August 31, 2015. Retrieved from: https://www.transparency.org/news/pressrelease/transparency_international_condemns_tunisian_draft_law_that_would_set_the_c

¹⁸² Refer to TI’s Facebook post under the following link: <https://www.facebook.com/TransparencyInternational/photos/a.137606059626257.36309.111014922285371/1321088311278020/?type=3>

organizations such as TI, HRW amongst others have been closely monitoring the situation in Tunisia.

In relation to the international level, it has been rumored that the IMF warned President Essebsi about going forth with the economic reconciliation law and that this is the main reason why the initiative has been recently put on hold. However, the President's Advisor refuted these allegations.¹⁸³

It is unmistakably obvious that media has played a main role in steering the public opinion regarding transitional justice in general and reconciliation in specific. One of those outlets is the Tunisian community blog and NGO Nawaat. They were always keen on publishing anything related to the transitional justice agenda and became very actively involved in the coverage of the economic reconciliation initiative. On May 4, 2017, they issued a statement condemning calling their co-founder and director of editorial team for interrogation on account of the documents they have leaked, allegedly, exposing the current regime of plotting to pass the economic reconciliation draft law.¹⁸⁴ This can be easily considered as constituting a blatant violation to the freedom of speech that was one of the main gains of the Tunisian Revolution.

It took almost 6 years for a head of government to finally decide to join the real battle and announce waging real war against corruption.¹⁸⁵ Days after one of his ministers was outspoken about corruption and the extent of its gravity which threatens the existence of the state,¹⁸⁶ and after a number of arrests were made against, allegedly, majorly corrupted businessmen, the Head of the Government, Youssef Chahed gave his probably most famous statement yet saying

... There are no options, it's either corruption or the state, it's either corruption or Tunisia, and me like all Tunisians chose the state and chose Tunisia, and I want to assure all Tunisians and

¹⁸³ See 'IMF warns the president of the republic during a secret visit to Tunisia: Nouredine Ben Ticha explains', *Zoomtunisia*, May 20, 2017. Retrieved from: <http://www.zoomtunisia.tn/article/10/52078.html>

¹⁸⁴ Refer to *supra* note 137. To read the full statement, see 'Nawaat, target of harassment by the Presidency of the Republic', *Nawaat*, May 4, 2017. Available at: <https://nawaat.org/portail/2017/05/04/nawaat-target-of-harassment-by-the-presidency-of-the-republic/>

¹⁸⁵ See 'Tunisia declares 'war on graft' after social unrest', *Daily Mail*, May 24, 2017. Retrieved from: <http://www.dailymail.co.uk/wires/afp/article-4539128/Tunisia-declares-war-graft-social-unrest.html?printingPage=true>

¹⁸⁶ Tunisian Minister of Justice, Ghazi Jeribi, stated in a press conference that the Ministry will support the judicial pole by delegating a number of justice to work on cases of corruption. See 'Delegation 500 judges to fighting corruption', *Jawharafm*, May 15, 2017. Retrieved from: <http://www.jawharafm.net/ar/article/قاضي-500-انتداب/الفساد-لمحاربة/105/84784>

*tell them that the government is taking its responsibility and is going to rage the fight against corruption to the end*¹⁸⁷

Soon after this, the Chairman of the Anti-Corruption Commission, Chawki Tabib, expressed his happiness and gratitude regarding this move.¹⁸⁸

These steps and such positions, as imperative as they are, came late during the course of transitional justice. If the Government has adopted this attitude since the beginning of the road of transition a lot of aimlessness and waste of resources could have been avoided and most importantly the citizens would have felt a sense of satisfaction and justice. Furthermore, reconciliation could have been achieved through the undisputed means without giving the chance to the elitists to find their way back into the fabric of the Tunisian community in order to practice their corrupted means.¹⁸⁹ Thinking about all what could have been prevented underlines the wasted chance for a meaningful successful economic reconciliation that truly serve both the state, the people and consequently the transitional justice.

Whereas all the previously mentioned actors are important, still the most significant actor in all the entire anti-corruption and reconciliation equation is the “citizens”. They, themselves, decided and are still choosing to participate in the organized protests and are voicing out their frustrations and anticipations to the decision makers which reflects how the Tunisians are on that

¹⁸⁷ See ‘Chahed: it’s either the state or corruption.. and I chose Tunisia’, *Mosaiquefm*, May 24, 2017. Retrieved from: <http://www.mosaiquefm.net/ar/%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1-%D8%B3%D9%8A%D8%A7%D8%B3%D8%A9-%D8%AA%D9%88%D9%86%D8%B3/145254/%D8%A7%D9%84%D8%B4%D8%A7%D9%87%D8%AF-%D8%A5%D9%85%D8%A7-%D8%A7%D9%84%D8%AF%D9%88%D9%84%D8%A9-%D8%A3%D9%88-%D8%A7%D9%84%D9%81%D8%B3%D8%A7%D8%AF-%D9%88%D8%A3%D9%86%D8%A7-%D8%A7%D8%AE%D8%AA%D8%B1%D8%AA-%D8%AA%D9%88%D9%86%D8%B3>

¹⁸⁸ See ‘Chawki Tabib to Youssef Chahed: God bless you..’, *Mosaiquefm*, May 24, 2017. Retrieved from: <http://www.mosaiquefm.net/ar/%D8%AA%D9%88%D9%86%D8%B3-%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1-%D9%88%D8%B7%D9%86%D9%8A%D8%A9/145284/%D8%B4%D9%88%D9%82%D9%8A-%D8%A7%D9%84%D8%B7%D8%A8%D9%8A%D8%A8-%D9%84%D9%8A%D9%88%D8%B3%D9%81-%D8%A7%D9%84%D8%B4%D8%A7%D9%87%D8%AF-%D8%A8%D8%A7%D8%B1%D9%83-%D8%A7%D9%84%D9%84%D9%87-%D9%81%D9%8A%D9%83>. It should be noted that the Commission has issued a media announcement dated May 23, 2017 that included the slogan “either Tunisia or corruption: and we chose Tunisia”. The statement can be found on the following link: http://www.inlucc.tn/%D8%A7%D9%84%D8%B9%D9%85%D9%84%D9%8A%D8%A7%D8%AA-%D8%A7%D9%84%D8%AC%D8%A7%D8%B1%D9%8A%D8%A9/%D8%A7%D9%84%D9%85%D8%B3%D8%AA%D8%AC%D8%AF%D8%A7%D8%AA/?tx_ttnews%5Btt_news%5D=274&cHash=bae136bd9c41f82efdb2d84e910bb501

¹⁸⁹ See M. Gallien and M.D. Hammami, ‘Corruption and Reform in Tunisia: The Dangers of an Elitist Analysis’, *Jadaliyya*, May 30, 2017. Retrieved from: http://www.jadaliyya.com/pages/index/26622/corruption-and-reform-in-tunisia_the-dangers-of-an

level of awareness regarding the severity of corruption and how it was not just a mere coincidence that a revolution has taken place to face the corrupted elites who infested every aspect of the community with this plague.

Conclusion

José Ugaz, Chairman of Transparency International, have once stated that

*... It's as if the Arab Spring never happened. Leaders who fail to stop secrecy, fail to promote free speech and fail to stop bribery also fail to bring dignity to the daily lives of people living in the Middle East and North Africa. Peoples' human rights are seriously affected ...*¹⁹⁰

There is no doubt in mind that combating organized crime such as corruption falls within the scope of protecting these rights. Such protection requires a combined effort from different actors in order to achieve a tangible rewarding result. However, a lot has to be considered before adopting a certain approach within the context of transitional justice. The concept of reconciliation has long existed even before a system called transitional justice was introduced to communities. However, under no circumstances should reconciliation ever mean impunity and granting unconditional amnesty for those responsible for violations. “Reconciliation” as a concept has emerged to serve a specific goal for many transitional justice processes. Nevertheless, there is still much debate surrounding the meaning of the term, and little empirical evidence of how different transitional justice mechanisms may affect the achievement of it as a desired outcome.¹⁹¹

In Tunisia having the initiative for an economic reconciliation bill on the table naturally affected and is still affecting the effectiveness of the currently employed mechanism because if the corrupted perpetrators are aware that there is a potential option upon which they will be granted unconditional amnesty why would they approach the Truth and Dignity Commission and admit or acknowledge any wrongdoing? Thus, this bill is setting up what has been described as a “slippery slope of impunity” since if you provide amnesty to corrupted elitists, what is there to

¹⁹⁰ See ‘50 MILLION PEOPLE IN THE MIDDLE EAST AND NORTH AFRICA PAID BRIBES LAST YEAR’, Transparency International, May 3, 2016. Retrieved from: https://www.transparency.org/news/feature/50_million_people_in_the_middle_east_and_north_africa_paid_bribes_last_year

¹⁹¹ See E. Skaar, ‘Reconciliation in a Transitional Justice Perspective’, *Transitional Justice Review*, Vol.1, Issue 1, 2013. Retrieved from: <http://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1009&context=tjreview>

prevent decision makers from granting the same to others who have committed different crimes.¹⁹² Only then you begin losing the gains of a noble and glorious Revolution that sparked a stance against all the corrupt in the region. Adopting, for instance, the Egyptian type of amnesty that expunges the past has not proven to be the most successful instrument in righteously serving, not only transitional, but “JUSTICE” in general. A good example to that is the so-called successful South African experience.¹⁹³ The aftermath of impunity in Africa, that includes people dying from hunger everyday, should alert the Tunisian decision makers to shelve the presidential initiative.¹⁹⁴ It also suggests that Tunisia should have together short and long-term solutions and that it should also focus on simple rather than complex approaches.¹⁹⁵ In conclusion, despite the major anti-corruption efforts, which can be described as “commendable”, still this new approach by the state is jeopardizing the course of transitional justice and the set goals of the Tunisian Revolution.

¹⁹² See D. Tolbert, ‘Tunisia's "Reconciliation Bill" Threatens Gains of the Revolution’, International Center for Transitional Justice, August 17, 2015. Retrieved from: <https://www.ictj.org/news/tunisia-reconciliation-bill-danger-gains-revolution>

¹⁹³ Amnesty Does Not Erase the Truth Interview with Howard Varney, ICTJ Truth-Seeking Consultant, May 2011. Retrieved from: <https://www.ictj.org/news/amnesty-does-not-erase-truth>

¹⁹⁴ See A. Dieng, ‘Clarification of Concepts: Justice, Reconciliation and Impunity’, United Nations International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law committed in the territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994, May 24, 2002. Retrieved from: <http://ictr-archive09.library.cornell.edu/ENGLISH/africandialogue/papers/diengEN.pdf>

¹⁹⁵ See E. Schmid and Aoife Nolan, op. cit., pp.374 - 376

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Annex

مشروع قانون أساسي يتعلق بإجراءات خاصة بالمصالحة في المجال الاقتصادي والمالي

الفصل الأول: يندرج هذا القانون في إطار تدعيم منظومة العدالة الانتقالية وتهيئة مناخ ملائم يشجع على الاستثمار وينهض بالاقتصاد الوطني ويعزز الثقة بمؤسسات الدولة. ويهدف إلى إقرار تدابير خاصة بالانتهاكات المتعلقة بالفساد المالي والاعتداء على المال العام تفضي إلى غلق الملفات نهائيا وطي صفحة الماضي تحقيقا للمصالحة باعتبارها الغاية السامية للعدالة الانتقالية.

الفصل 2: تتوقف التبعات و المحاكمات و تسقط العقوبات في حق الموظفين العموميين وأشباههم من أجل أفعال تتعلق بالفساد المالي وبالاعتداء على المال العام باستثناء تلك المتعلقة بالرشوة وبالاستيلاء على الأموال العمومية.

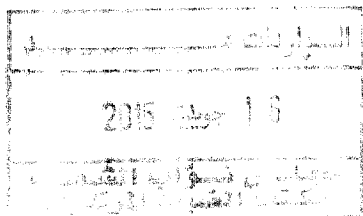
الفصل 3: يمكن لكل شخص حصلت له منفعة من أفعال تتعلق بالفساد المالي أو بالاعتداء على المال العام تقديم مطلب صالح إلى لجنة مصالحة تحدث برئاسة الحكومة يشار إليها فيما يلي باللجنة، وتركب من:

- ممثل عن رئاسة الحكومة : رئيس.
- ممثل عن الوزارة المكلفة بالعدل،
- ممثل عن الوزارة المكلفة بالمالية،
- ممثل عن الوزارة المكلفة بالتنمية والاستثمار والتعاون الدولي،
- عضوان عن هيئة الحقيقة والكرامة،
- المكلف العام بنزاعات الدولة أو من يمثله.

يتم تعيين أعضاء اللجنة في أجل عشرة (10) أيام من تاريخ نشر هذا القانون بقرار من رئيس الحكومة باقتراح من الهياكل المعنية يتضمن دعوتهم للاجتماع في أجل خمسة عشر (15) يوما. ولا يحول عدم تعيين عضو أو أكثر باللجنة دون تكوينها شريطة أن لا يقل عدد أعضائها عن خمسة (5).

يتعين على أعضاء اللجنة إبداع تصريح بالملكاسب وفق التشريع الجاري به العمل وذلك عند تعيينهم وبعد انتهاء مهامهم. تجتمع اللجنة بدعوة من رئيسها ولا يكتمل النصاب إلا بحضور أغلبية أعضائها وتتخذ قراراتها بالتوافق وإن تعذر فبأغلبية الأصوات وعند التساوي يكون صوت الرئيس مرجحا. ولها أن تستعين بأشخاص من ذوي الخبرة والاختصاص.

الفصل 4: تتعهد اللجنة بمقتضى مطلب يقدم من المعني بالأمر في أجل أقصاه ستون (60) يوما من تاريخ نشر قرار تعيين أعضائها. وتبت في مطالب الصلح في أجل لا يتجاوز ثلاثة (3) أشهر من تاريخ توصلها بها يمكن التمديد فيه بقرار معلل لنفس المدة مرة واحدة.



يتضمن المطلب وجوبا بيان الوقائع التي أدت إلى تحقيق المنفعة وقيمتها ويكون مرفوقا بالمؤيدات المثبتة لذلك.

يعتبر القيام أمام اللجنة عملا قاطعا لآجال التقادم ويتوقف نظر الهيئات القضائية في النزاعات المنشورة أمامها وعليها عند الاقتضاء اتخاذ الإجراءات والتدابير اللازمة لضمان عدم الإفلات من العقاب طيلة فترة تنفيذ الصلح.

وعلى اللجنة أو أحرص الأطراف إعلام الجهة القضائية المتعده بملف القضية بتعهد اللجنة بنفس الملف.

الفصل 5: تقدر اللجنة قيمة الأموال المستولى عليها أو المنفعة المتحصل عليها بعد التثبت من صحة المعطيات الواردة بطلب الصلح ويمكنها للغرض المطالبة بالوثائق الضرورية والقيام بكل إجراء تراه مناسبا. ولا يجوز معارضتها بالسر المهني.

يتم الصلح بمقتضى قرار يصدر من رئيس اللجنة و من المعني بالأمر مقابل دفع مبلغ مالي يعادل قيمة الأموال العمومية المستولى عليها أو المنفعة المتحصل عليها تضاف إليها نسبة 5 % عن كل سنة من تاريخ حصول ذلك.

ينص قرار الصلح وجوبا على طبيعة الأضرار وقيمتها وعلى قبول الأطراف به و اعتباره نهائيا.

لا يسري الصلح إلا في حدود ما تم التصريح به والتصالح في شأنه.

الفصل 6: يتم خلاص المبلغ المضمن بالقرار لدى صندوق الودائع والأمانات مقابل وصل يسلم للمعني بالأمر و يودع بحساب خاص يتم فتحه بالصندوق الذي يتولى توظيفه في مشاريع البنية التحتية أو التنمية الجهوية أو البيئة والتنمية المستدامة أو تدعيم المؤسسات الصغرى والمتوسطة أو أية مشاريع أخرى ذات صبغة اقتصادية بمناطق التشجيع على التنمية الجهوية. يخضع استعمال المبلغ المشار إليه أعلاه إلى رقابة دائرة المحاسبات التي ترفع تقريرها في ذلك إلى كل من : رئيس الجمهورية ورئيس مجلس نواب الشعب ورئيس الحكومة.

ويترتب عن تنفيذ بنود الصلح انقراض الدعوى العمومية و إيقاف المحاكمة و سقوط العقوبة. ويسلم الوكلاء العامون لمحاكم الاستئناف للمعني بالأمر شهادة في سقوط العقوبة بعد إدلائه بوصل الخلاص المذكور أعلاه.

الفصل 7: يتم العفو عن مخالفات الصرف المرتكبة قبل تاريخ دخول هذا القانون حيز التنفيذ والآتي ذكرها:

أ - عدم التصريح بالمكاسب بالخارج،

ب - عدم إعادة مداخيل ومحاصيل المكاسب المشار إليها بالفقرة "أ" أعلاه والمكاسب من العملات، إلى البلاد التونسية وعدم إحالتها كلما اقتضت الترتيب تلك الإحالة،

ج - مسك عملات في شكل أوراق نقدية أجنبية بالبلاد التونسية وعدم إيداعها لدى وسيط مقبول وعدم إحالة هذه العملات كلما اقتضت الترتيب تلك الإحالة.

كما يتم العفو عن المخالفات الجبائية المتعلقة بعدم التصريح بالمدخيل والأرباح المتعلقة بالمكاسب والعملات المشار إليها بالفقرات "أ" و "ب" و "ج" أعلاه، من العقوبات المنصوص عليها بالتشريع الجبائي الجاري به العمل.

الفصل 8: للانتفاع بالعفو المنصوص عليه بالفصل 7 من هذا القانون، يتعين على الأشخاص المعنيين في أجل لا يتجاوز السنة من تاريخ نشر هذا القانون:

1- إيداع تصريح لدى البنك المركزي التونسي بالمكاسب المشار إليها بالفقرة "أ" من الفصل 7 أعلاه،
2- إعادة المدخيل والمحاصيل والمكاسب من العملات المشار إليها بالفقرة "ب" من الفصل 7 أعلاه إلى البلاد التونسية،

3- إحالة العملات المشار إليها بالفقرتين "ب" و "ج" من الفصل 7 أعلاه أو إيداعها في حسابات خاصة بالعملة أو بالدينار القابل للتحويل. وتطبق على هذه الحسابات، بمقتضى منشور يصدره البنك المركزي التونسي، نفس شروط تسيير الحسابات الخاصة بالعملة أو بالدينار القابل للتحويل. وفي صورة عدم إيداع العملات بهذا الصنف من الحسابات، يتعين على كل هؤلاء الأشخاص إحالتها بالدينار بسوق الصرف.
4- إيداع تصريح خاص بالمدخيل والأرباح موضوع العفو لدى القبضة المالية المؤهلة وفقا لأنموذج تعدّه الإدارة و يرفق التصريح وجوبا بوثيقة تثبت إعادة المدخيل والأرباح والعملات إلى البلاد التونسية وبوثيقة تثبت إحالة المدخيل والأرباح والعملات إلى وسيط مقبول أو إيداعها في الحسابات المشار إليها أعلاه وبنسخة من التصريح لدى البنك المركزي إذا اقتضت الحالة هذا التصريح.

5- دفع مبلغ مالي يقدر بـ 5% من قيمة المكاسب في تاريخ التملك أو من المقابل بالدينار للمدخيل أو للأرباح أو للعملات التي تمت إعادتها إلى البلاد التونسية وإحالتها إلى وسيط مقبول أو إيداعها في الحسابات المشار إليها أعلاه، على أساس التصريح المنصوص عليه بالنقطة الرابعة من هذا الفصل.

ويحرّر هذا المبلغ المنتفعين بالعفو من دفع الضريبة على الدخل أو الضريبة على الشركات وخطايا التأخير المتعلقة بها والمستوجبة على المدخيل أو الأرباح والمكاسب موضوع العفو ومن أي تتبع إداري أو قضائي في مادة الصرف موضوع العفو.

الفصل 9: لا يجوز استعمال المعلومات المصرح بها أو المتحصل عليها في إطار تطبيق هذا القانون لغير الأغراض التي سن من أجلها.

الفصل 10: لا تنال التدابير المنصوص عليها بالفصلين 2 و 3 من هذا القانون من حقوق الغير.

الفصل 11: تنتهي مهام لجنة المصالحة بإعداد تقرير يتضمن حصيلة أعمالها في أجل أقصاه شهر من انقضاء أجل البت في المطالب المقدمة إليها. تحيل اللجنة تقريرها إلى رئيس الحكومة الذي يحيل نسخة منه إلى هيئة الحقيقة والكرامة في أجل شهر من تاريخ توصاه به.

الفصل 12: تلغى جميع الأحكام المتعلقة بالفساد المالي والاعتداء على المال العام الواردة بالقانون الأساسي عدد 53 لسنة 2013 المؤرخ في 24 ديسمبر 2013 المتعلق بإرساء العدالة الانتقالية وتنظيمها.

وثيقة شرح أسباب

يندرج مشروع القانون المعروض في إطار العمل على انخراط مسار العدالة الانتقالية في مجال الانتهاكات المتعلقة بالفساد المالي والاعتداء على المال العام والسعي إلى استكمال هذا المسار في أقرب الآجال الممكنة تلافاً للانعكاسات السلبية المترتبة عن طول أمد معالجة هذه الانتهاكات على الاقتصاد الوطني (انعدام الثقة في مناخ الاستثمار، توقف أو تعطل أنشطة المعنيين بالتتبع) علماً وأن غالب التجارب المقارنة خصتها بمعالجة مختلفة عن تلك المتعلقة بانتهاكات حقوق الإنسان حيث أثرت إرساء عدالة تصالحية مع الحفاظ على كشف الحقيقة وجبر الضرر المالي.

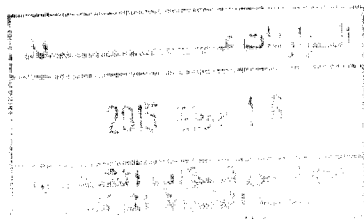
ويهدف هذا المشروع إلى غلق هذا الملف وطني صفحة الماضي بما يعزز ثقة المواطن في مؤسسات الدولة ويحسن مناخ الأعمال ويشجع على الاستثمار. وفي هذا السياق تضمن مشروع القانون من جهة سن تدابير تحقق المصالحة في المجال الاقتصادي والمالي باعتماد إجراءات خصوصية وآجال مختصرة مع ضمان الالتزام بكشف الحقيقة وجبر الضرر. ومن جهة أخرى إقرار عفو عن مخالفات تراتيب الصرف في انسجام مع مقاصده الرامية إلى تحقيق المصالحة الهادفة إلى انعاش الاقتصاد الوطني.

وتتمثل هذه التدابير في ما يلي:

- تدابير خاصة بالموظفين العموميين وأشباههم المنسوبة إليهم أفعال تتعلق بالفساد المالي والاعتداء على المال العام،
- تدابير خاصة بالمستفيدين من تلك الأفعال،
- تدابير خاصة بالمخالفين لتراتيب الصرف،

I. إيقاف التتبع و المحاكمة و إسقاط العقوبات في حق الموظفين العموميين وأشباههم من أجل أفعال تتعلق بالفساد المالي والاعتداء على المال العام باستثناء تلك المتعلقة بالرشوة والاستيلاء على الأموال العمومية:

يتنزل هذا الإجراء في إطار الأخذ بعين الاعتبار طبيعة منظومة الفساد المالي السائدة التي تحكمها مجموعة من العوامل المتداخلة والمتفاعلة فيما بينها (سياسية، اقتصادية، تنظيمية ...) ومن ثم فإنه لا يمكن أن تختزل المسؤولية عن استفحال ظاهرة الفساد في الموظفين العموميين أو أشباههم وإنما يتجه نسبتها إلى المنظومة بكافة مكوناتها.



وترتباً على ذلك ومراعاة لمبادئ العدالة والإنصاف وبغية إعادة بناء مناخ الثقة في الإدارة، فإنه يكون من المتجه عدم حصر المسؤولية المترتبة عن التسبب في حصول انتفاع بغير وجه حق لفائدة الغير في شريحة الموظفين العموميين وأشباههم وعدم مساءلتهم إلا بخصوص ما اقترفوه من أفعال تهدف إلى تحقيق منفعة شخصية (الرشوة والاستيلاء على الأموال العمومية).

وعلى هذا الأساس، تضمن مشروع القانون إيقاف التتبع و إحكامه وإسقاط العقوبات في حق الموظفين العموميين وأشباههم من أجل الأفعال المشار إليها أعلاه. مع الملاحظ أن هذه التدابير قابلة للتنفيذ بذاتها بمجرد صدور القانون حيث يكون على السلطة القضائية المتعده إيقاف نظرها وعلق الملف.

هذا ويتجه التأكيد على أنه يمكن للموظفين العموميين وأشباههم الذين اقترفوا الأفعال المتعلقة بالرشوة والاستيلاء على الأموال العمومية التقدم في شأنها بمطالب صلح إلى اللجنة المحدثة بمشروع هذا القانون.

II. إقرار امكانية إبرام صلح لفائدة كل شخص حصلت له منفعة من أفعال تتعلق بالفساد المالي والإعتداء على المال العام يفضي تنفيذه إلى انقراض الدعوى العمومية و إيقاف المحاكمة و سقوط العقوبة:

تكريساً لمسار المصالحة باعتبارها الغاية السامية للعدالة الانتقالية تضمن مشروع القانون فتح امكانية إبرام صلح لكل شخص حصلت له منفعة من أفعال تتعلق بالفساد المالي والإعتداء على المال العام ويكون ذلك بأن يبادر بتقديم مطلب في الغرض. ولا يشمل الصلح إلا الأموال والممتلكات التي لازالت ضمن ذمة المعني بالأمر وتخرج بذلك عن مجال المصالحة الأموال والممتلكات التي تمت مصادرتها لفائدة الدولة بموجب المرسوم عدد 13 لسنة 2011 المؤرخ في 14 مارس 2011 المتعلق بمصادرة أموال وممتلكات منقولة وعقارية.

وتشرف على إجراء الصلح لجنة تحدث بمقتضى مشروع هذا القانون لدى رئاسة الحكومة وتضم في تركيبها الوزارات والهيكل العمومية ذات العلاقة وعضوين من بين أعضاء هيئة الحقيقة والكرامة.

وحرصاً على استكمال المسار في أقرب الآجال تمّ تقييد اللجنة بآجال مختصرة حيث نص مشروع القانون على أن تبت في مطالب الصلح في أجل أقصاه ثلاثة (3) أشهر قابل للتديد مرة واحدة لنفس المدة. وللجنة القيام بالتحقيقات التي تراها مناسبة والمطالبة بمدّها بالوثائق الضرورية من كل الجهات المعنية ولا يمكن أن تعارض بالسّر المهني. و تقدر الأموال المستولى عليها أو الفائدة المتحصل عليها وتعرض على المعني بالأمر إبرام صلح في شأنها يتجسّم في دفع مبلغ مالي يعادل قيمتها يضاف إليه نسبة 5 % عن كل سنة من تاريخ حصول الاستفادة.

وتكريسا لمبدأ التمييز الإيجابي تم التنصيص صلب مشروع القانون على إيداع المبلغ المالي المذكور بصندوق الوادئ والأمانات الذي يتولى حصرا توظيفه بمناطق التشجيع على التنمية الجهوية في مشاريع تتعلق بالبنية التحتية أو التنمية الجهوية أو البيئة والتنمية المستدامة أو تدعيم المؤسسات الصغرى والمتوسطة أو أي مشاريع أخرى ذات صبغة اقتصادية.

وإعمالا لمبدأ الشفافية وضمان مراقبة حسن استعمال تلك الأموال تم إخضاع الصندوق المذكور إلى رقابة تجريها دائرة المحاسبات مع إلزام هذه الأخيرة برفع تقرير إلى كل من رئيس الجمهورية ورئيس الحكومة ورئيس مجلس نواب الشعب حتى يتسنى للسلط المذكورة الاطلاع والمتابعة.

ويتم تنفيذ بنود الصلح بدفع المبلغ المالي ويفضي ذلك إلى انقراض الدعوى العمومية أو إيقاف المحاكمة وسقوط العقوبة ويكون ذلك بتقديم المعني بالأمر أو من يمثله لوصل خلاص للجهة القضائية المتعده. ويسلم الوكلاء العامون لمحاكم الاستئناف للمعني بالأمر شهادة في سقوط العقوبة.

هذا ويتجه التأكد على أن الصلح لا يسري إلا في حدود ما تم التصريح به والتصالح في شأنه كما أنه لا ينال من حقوق الغير.

III. إقرار عفو عن مخالفات تراتيب الصرف:

تضمن مشروع القانون إقرار عفو عن مخالفات تراتيب الصرف قصد تسوية الوضعيات العالقة فضلا عن تعبئة موارد من العملة الصعبة لفائدة الدولة بما يساهم في انعاش الاقتصاد الوطني. وقد تم في هذا السياق اعتماد اجراءات تنسم بالمرونة كما تم ضبط التعويض عن المخالفات المذكورة في صيغة دفع مبلغ مالي يقدر بـ 5% من قيمة المكاسب في تاريخ التملك أو من المقابل بالدينار للمداخيل أو للأرباح أو للعمليات التي تمت إعادتها إلى البلاد التونسية وإحالتها إلى وسيط مقبول أو إيداعها في حسابات بالعملة أو بالدينار القابل للتحويل وهي نسبة من شأنها أن تشجع المخالفين عن الانخراط في هذا الإجراء وتحقيق الأهداف المرجوة.

هذا ولتدعيم الثقة بين المواطن و الدولة تضمن مشروع القانون التأكد على عدم جواز استعمال المعلومات المصرح بها أو المتحصل عليها في إطار تطبيقه لغير الأغراض التي سن من أجلها والمتمثلة في تحقيق المصالحة في المجال الاقتصادي والمالي والعفو عن مخالفات الصرف.

وطالما أن مشروع القانون ينصهر في إطار تطبيق منظومة العدالة الانتقالية فقد تضمن إحالة تقرير عن حصيلة عملية المصالحة إلى هيئة الحقيقة والكرامة حتى يتسنى لهذه الأخيرة استغلال مضمونه في إعداد تقريرها الختامي، وبذلك فإن دور هيئة الحقيقة والكرامة أصبح بخصوص الانتهاكات المتعلقة بالفساد المالي والاعتداء على المال العام ينحصر في تضمين نتائج التقرير المشار إليه أعلاه بتقريرها الختامي.

وعلى هذا الأساس تضمن مشروع القانون فصلاً ختامياً يلغي جميع الأحكام المتعلقة بالفساد المالي والاعتداء على المال العام والواردة بالقانون الأساسي عدد 53 لسنة 2013 المؤرخ في 24 ديسمبر 2013 المتعلق بإرساء العدالة الانتقالية وتنظيمها.

تلك هي الغاية من مشروع القانون المعروض.