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GENDERING THE TUNISIAN TRANSITION

The Rights of Women in the Context of the Transitional Justice System
in Tunisia

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Abstract

This dissertation attempts to analyse the gender inclusiveness of the transitional justice process in Tunisia, more specifically the participation and influence of women in the Tunisian transitional justice mechanisms, to examine whether there is a case of under-inclusion of women. It aims to take in a gendered approach to transitional justice, which is the “determination, acknowledgement and addressing of unequal gender perspectives”. Even though Tunisia is known for having the most advanced women’s rights in the region, our historical analysis concluded that both former Tunisian presidents have instrumentalised the feminist theme in order to obtain other goals, leading to a top down state-feminism unable to tackle the underlying patriarchal structures. We concluded that even though there was a high involvement of women during the 2010-2011 revolution, there is in general an underinclusion of women in the transitional justice system and women representation is currently just not an issue that is high on the agenda. For now, hope lies with the work of the IVD and its handling of the received claims and statements, which will hopefully lead to a strong report with specific attention to the violations to women and binding recommendations to the government. This in combination with a cooperative state can ensure change, non-repetition and rehabilitation.

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List of abbreviations

- AFTD: Association de la Femmes Democrates
- AFTURD: Association des Femmes Pour la Recherche sur le Développement
- AIV: Advisory Council on International Affairs
- ANC: Assemblée Nationale Constituante
- ARP: Assemblée des Représentants du Peuple
- CAVV: Advisory Committee on Issues of Public International Law
- CEDAW: Elimination of all Forms of Discrimination against Women
- CICC: Coalition for the International Criminal Court
- CPR: Congrès pour la République
- CPS: Code of Personal Status
- FIDH: Fédération International des Ligues des Droits de l'Homme
- ICTJ: International Centre for Transitional Justice
- ISROR: Instance supérieure pour la realization des objectifs de la revolution, de la
réforme politique et de la transition démocratique
- IVD: Instance de Vérité et Dignité
- KADEM: Al-Kawakibi Democracy Transition Centre
- LTDH: Ligue Tunisienne des Droits de l'Homme
- NGO: Non-Governmental Organization
- NSF: National Salvation Front
- OHCHR: Office of the United Nations High Commissioner for Human Rights
- RCD: Rassemblement Constitutionnel Démocratique
- UGTT: Union Générale Tunisienne du Travail
- UTICA: Union Tunisienne de l'Industrie, du Commerce et de l'Artisanat
- UN: United Nations
- UNSC: United Nations Secretary General
- UNFT: Union Nationale des Femmes Tunisiennes

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Introduction

“If you do not recognise women as political subjects in the past, historically, they will not be recognized in the present.”¹

The self-immolation of Mohammed Bouazizi on 17 December 2010 caused a spread of demonstrations and protests throughout Tunisia, which led to the ousting of President Ben Ali on 14 January 2011. This sparked the so-called ‘Arab Spring’ and the proliferation of protests in the whole region.² The mostly non-violent and popular manifestations in the country called out against unemployment, corruption and repression.³ These events are called *thawra* (revolution) to underline the break with the past and underline its significance. It marks a turning point and the end of more than a 100 years of uninterrupted authoritarian regime: French colonialism (1881–1956), President Habib Bourguiba (1957–1987) and President Ben Ali (1987–2011).^{4 5}

A high level of female participation characterised the protests: women partook not only in the various strikes and demonstrations, but also in mobilising campaigns through sheltering, documenting events, coordination and social media. Especially in the latter one, female bloggers fulfilled an important part through advocating and activism online. Examples include Emna Ben Jemaa, who got detained following her criticism of Ben Ali on her blog, Neila Kilani and Lina Ben Mhenni, who also effectively spread their advocacy and activism through their blogs. Women from all sorts of backgrounds were involved in the protests: from highly educated to those from the rural areas and from Islamist to secular. They played a significant role in the revolution despite being exposed to specific types of police aggression and sexual harassment. Also after the overthrow of Ben Ali, women protested to claim their complete participation in the transitional process of Tunisia. They were thus not only present throughout the revolution, but also during the ‘aftermath’. According to Khalil, the masses of the 2011 revolution were based on the values of gender equality. Moreover, the high participation

¹ Fries, 2008.

² FIDH Report, 2012.

³ Roberts, 2016.

⁴ Mohsen-Finan, 2016.

⁵ Gray and Coonan, 2013.

rate of women should not be considered as something unexpected, since Tunisian women were already incorporated in the economic and social life long before the uprisings.^{6 7}

In the past, all the societal, political and economic changes following a revolution have given women unique chances to further their rights and representation, including in the Middle Eastern region. Traditional patriarchal and oppressing structures have often been removed as a consequence of an uprising and replaced by new, more equal constructions. Such transitions however might end up being short-lived in some cases and not offer any real replacements for the old structures. As a result, a return to the pre-revolution gender relations might occur.⁸ It is the aim of this dissertation to analyse the role of women before, during and after the revolution; the latter one focusing on the transitional justice process, in order to assess whether women are included in the process and women's concerns are addressed in these mechanisms after their active involvement in the uprising. Since transitional justice aims to facilitate rebuilding trust and inclusiveness in a community, gender is an essential part of it. The recently created transitional justice system in Tunisia thus presents an enormous opportunity to women to change laws, institutions, and societal norms and to create more equal structures.⁹

Gendering transitional justice comprises the inclusion of both men and women in its various components, identifying the risks and challenges both sexes face and containing men as well as women initiatives. It is the basic idea that women and men must get equal reparations and equal safeguards, which must be based on their understanding of the situation and their needs. Recent ideas even underline the need for 'transformative' reparations instead of just remedial ones, which were laid out in the UN Guidance Note on Reparations. This kind of reparations addresses not just the injustice that has been done but also the wider context of inequality that facilitated the situation to occur.¹⁰ Furthermore, the inclusion of gender in transitional justice constitutes a step towards

⁶ FIDH Report, 2012.

⁷ Khalil, 2014, pp. 287-288.

⁸ Fisher and Stewart, 2014, p. 153.

⁹ Fisher and Stewart, 2014, p. 155.

¹⁰ UNSG, 2014, p. 1.

establishing gender mainstreaming in the whole international human rights framework.¹¹

This leads to the following research question: Seen the high involvement of women during the revolution in Tunisia, is the transitional justice process following the overthrow of Ben Ali also gender inclusive as a consequence? Will this participation be translated into genuine inclusion and influence in the new political structures in Tunisia, keeping in mind the upswing of the previously repressed Islamist party?

Tunisia was chosen as the case study for this dissertation because it is one of the examples of the 2011 revolutions in the region that initiated transition. It is also often portrayed as the single success of those uprisings, however, when analysing the Tunisian case more, the aftermath of the revolution is not as one-sidedly positive as often depicted having to face not only with continued corruption and terrorism but also unemployment and a struggling economy.¹² According to International Centre for Transitional Justice (ICTJ), the country has furthermore shown a dedication to transitional justice in an effort to ensure its population's human rights.¹³ It was moreover the first state in the region to make efforts to encourage women empowerment long before the revolution. While a lot has been written about the female activism during the protests, little research has been done on the situation of women's rights post-uprising and their inclusion in the transition process.¹⁴ In the words of Mausher and Burns: "Although it only has 11 million people and an economic output less than that of Rhode Island, Tunisia matters—to regional order, to the fate of reform and democracy in the Arab world [...]".¹⁵

Tunisia had its first democratic elections in 2011, which selected the National Constituent Assembly that drafted the new Constitution. A Transitional Justice Law creating the Truth and Dignity Commission followed as well. This body will be in charge of scrutinizing all human rights violations from 1955 (a year before Tunisia's independence from France) until the revolution. It will thus not only cover the human

¹¹ Alam, 2012, p.11.

¹² M'Barek, 2016.

¹³ ICTJ, 2016.

¹⁴ Fisher and Stewart, 2014, p. 155.

¹⁵ Burns and Mausher, 2016.

rights violations during the uprising, which left 338 dead, but also the independence movement and the rule of both of Tunisia's dictators.¹⁶

In order to answer the research questions, we will first of all outline the method of our research. Subsequently, we will define the concept of transitional justice and its components (truth seeking, prosecution, reparations and political and institutional reform). Afterwards, we will elaborate on taking in a gender sensitive approach in this context, specifically focused on women. We will then continue with examining the situation of women in Tunisia and the evolution of their rights from its independence until the revolution under the rule of its Presidents Bourguibe and Ben Ali, as well as their participation and the importance of their concerns during the revolution. The legal development and framework of the Tunisian transitional justice system will be analysed afterwards, with a special emphasis on the political and institutional reform, which includes the new constitution and the transitional justice law, and the Truth and Dignity Commission, which are the most elaborate components in the case of Tunisia. More specifically, the focus will lie on the participation of women in these mechanisms and the inclusion of their interests.

¹⁶ ICTJ, 2016.

Method

This thesis will have a mix of a qualitative and legal research design: its case study will be the transitional justice system in Tunisia. In the transitional justice field researchers frequently discuss the usefulness of qualitative and quantitative methods and sometimes defend the superiority of one method over the other. However, they are complementary and are used for different research intentions. The reason to choose for a qualitative research design in this thesis is that it offers the possibility to analyse the subject more into depth and to examine more complex themes like the influence of gender.¹⁷ This would be more difficult to analyse with the use of quantitative methods. Additionally, the topic will also be researched through legal methods, by studying the new Constitution and other legal documents related to the development and working of the transitional justice mechanisms.

A case can be any “bounded system of interest, e.g. an institution, a programme, or even an entire population”.¹⁸ An individual or an enterprise is rarely the object of a case study, even though these are often thought of as cases. In this dissertation the transitional justice institutions in Tunisia comprise the case. The main aim of a case study is to expand the knowledge of the subject as much as possible, to grasp it in depth and to understand its complexity and background.¹⁹ Because of this holistic approach, the case study is also referred to as a strategy instead of a method. The aim of this research is to give more insight into the inclusion of gender in transitional justice, which is why this can be categorized as an instrumental case study. Case studies are a frequently used method in the human rights field. It gives the opportunity to include various sources and practices and can be used to combine various disciplines, which makes it a method that offers a lot of flexibility. Furthermore, case studies are an appealing manner to present human rights research, since they make it possible to examine the subject from different angles. It is therefore important to clearly delimit the project in order to avoid the case becoming too big. One of the main criticisms of the case study method is that it is not suitable for generalisation or abstract theoretical

¹⁷ Pham and Vinck, 2007, pp. 244-245.

¹⁸ Stake, 1987, p. 7.

¹⁹ Punch, 2014, pp.119-120.

studies.²⁰ However, this is not the objective of this dissertation. The reason to do this research is the fact that the case is interesting and important and is therefore worthy on its own of analysis. This is also one of two reasons Punch names as having no requirement for generalisation.²¹

There are multiple reasons to choose for this subject. First of all, women are essential in all facets of transition and development: economical, social, political and cultural. Even though they are often not officially recognised, they fulfil a critical positions at every level of society. Including women in policy and having a gendered approach creates important dividends in children's rights, education and democracy. It is therefore crucial to study the inclusion of women in transitions to democracy and in the development of countries.²² Secondly, the 2011 uprisings and their aftermath are interesting subjects because although comparable in the socio-economic area they contrast on the political side with the Latin American revolutions in the 1980s. The latter moved from a military and right wing order to a leftist political tradition, which brought about almost automatically more social and political rights. However, according to the literature the situation in the North African/Middle Eastern countries seems to be a shift from dictatorships with liberal socioeconomic goals to a more conservative political order, a process that is still continuing today. This in itself makes the revolutions a worthy study subject.²³ Thirdly, it is an interesting case to weigh the feminist view against the democratisation view: while the former one assumes that the inclusion of women in a democratic transition only occurs when they are either seen as essential to socioeconomic progress or when they want to appease them. The democratisation view on the other hand sees equality between men and women as an automatic consequence of the democratisation process. Therefore they prefer to focus on social classes instead of the different members of these classes like the feminist scholars.²⁴

According to Pham and Vinck, there are three types of evaluation in the transitional justice research field: formative, process and outcome. This dissertation will focus on

²⁰ Reed and Pads kocimaite, 2012, p.9.

²¹ Punch, 2014, p. 121.

²² Regan, 2012, pp. 240-241.

²³ Johansson-Nogués, 2013, p. 395.

²⁴ Johansson-Nogués, 2013, p. 396.

the former, which focuses on the question: “what justice for whom [and when]?”²⁵ In this case we will concentrate on how and in which way women and their interests are embodied in the transitional justice institutions. Formative evaluation gathers information at the population or stakeholder level. Furthermore, it aims to give more information on the nature of the institutions that are created to bring about justice and the transition towards democracy.²⁶

The first part of this thesis will be based on a literature study of scientific papers, books and articles concerning the situation of women’s rights before and during their participation in the revolution in Tunisia. This will be complemented by a content analysis of Non-Governmental Organisations’ (NGOs) reports of *Fédération Internationale des Ligues des Droits de l’Homme* (FIDH), *Association de la Femmes Democrat* (AFTD) and International Centre for Transitional Justice (ICTJ) among others. We will analyse first of all the evolution of women’s rights in Tunisia from its independence until the revolution under the regimes of presidents Bourguiba and Ben Ali and second of all the significance of their participation and concerns during the revolution.

The second part of this dissertation will be based on the analysis of legal documents concerning the development, framework and structure of the transitional justice institutions currently in place in Tunisia and the participation of women and their interests in these institutions, complemented by NGO reports concerning those institutions. Furthermore, a research trip was made in June 2016 to Tunis, Tunisia, to work at the Al-Kawakibi Democracy Transition Centre (KADEM) and make use of their library. KADEM is a regional NGO specialised in capacity building, research and awareness-raising in the field of democratic transition in Tunisia and the wider region. Finally, this research will also be based on interviews taken during the stay in Tunis with Samia Ltaief, Hend Bouziri and Salwa el Gantri in order to study the subject from a more local point of view and to get informed of the Tunisian perceptions on the topic. These people were chosen because of their expertise in gender and the involvement of their NGO in the transitional justice process. Samia Ltaief is part of *Association des*

²⁵ Pham and Vinck, 2007, pp. 244-245.

²⁶ Pham and Vinck, 2007, pp. 244-246.

Femmes Pour la Recherche sur le Développement (AFTURD), a research group which analyses the potential role of women in development and one of the two significant autonomous women's organisations created under the Ben Ali regime in 1989. Hend Bouziri works for Tounissiet, one of the newer NGOs established immediately after the 2011 revolution, which advocates for the enhancement of women's rights, especially socio-economic rights. Salwa el Gantri is head of the Tunisian office of ICTJ, an international non-profit organisation working specifically on transitional justice. They work on documenting and research, capacity building and advising local actors, and working with victims on the different components of transitional justice.

The writing of this dissertation also faced certain problems and limitations. One of the biggest ones is the language barrier due to the lack of the author's knowledge of the Arabic language. Much of the literature and source material was available in English and French however, since French is also widely spoken and a commercial and educational language in Tunisia. Nevertheless, access to Arabic sources would have certainly been an asset.

Secondly, there was the limited time frame to conduct this research project and consequently only a limited amount of time for literature review and for preparing and conducting a research trip. Even though this latter one was very useful and informative, a longer stay in Tunisia would have been beneficial and would have left the opportunity to contact more people and conduct more interviews. Moreover, the research trip was carried out during the Ramadan period, which also means shorter working days and thus less time to make contacts and do interviews. Again, with a longer time period for the dissertation this could have been evaded.

A final limitation is the fact that the transitional justice process in Tunisia is an ongoing process. This makes it sometimes challenging to get the most up to date information. Interviewing people directly involved in the process helped to address this challenge however, and to gain more insight in what is currently going on in the country.

1. Conceptual framework

1.1. Transitional Justice

The justice concept is defined in the literature as “the creation of egalitarian societies that guarantee freedom, liberty, and equality, while safeguarding the dignity of every human being. [...It] involves achieving material and discursive equality of opportunity.”²⁷ Building on this, there exist many definitions of transitional justice however the one used in this dissertation will be the one used by the ICTJ: “Transitional justice refers to the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses. These measures include criminal prosecutions, truth commissions, reparations programs, and various kinds of institutional reforms”.²⁸ What is common to most definitions is the inclusion of both formal and informal procedures in transitional justice with the aim to achieve justice and reconciliation in a response to past cruelty.²⁹

³⁰ ³¹ The focus is thus on complementary instruments specifically adapted to what is needed in a particular country in order for its transition to be successful. Transitional justice is therefore part of a broader peace-building strategy aimed to establish the rule of law and to transform the institutional and political structures.³² Furthermore, it has become the dominant framework to discuss political transformations in the twenty-first century as a consequence of the rise of human rights law and the faith in the ability of the law to bring about social change.³³ Because of this, transitional justice developed into an integral part of the United Nations (UN) toolbox in post-conflict states.³⁴

The importance of transitional justice lays in the fact that massive human rights abuse has an impact on the whole society. When they remain unaddressed, it can lead to continued claims for justice and eventually a recurrence of the violations. Additionally, victims have a right to obtain justice and to restore their human dignity. It is therefore

²⁷ Dhawan, 2012, pp.264-285.

²⁸ ICTJ, 2016b.

²⁹ Kaminski, Nalepa and O’Neill, 2006, pp. 295-296.

³⁰ Michel and Del Mar, 2014.

³¹ UNSC, 2004, p. 4.

³² Michel and Del Mar, 2014.

³³ Turner, 2013.

³⁴ Lemaitre and Sandvik, 2014, p. 244.

the duty of the state to reform and to address past human rights violations.³⁵ According to Nagy, there is now a “fairly settled consensus” that no sustainable reconciliation is possible without a form of accountability.³⁶ Transitional justice concentrates not only on the past, but also on the present and the future. Apart from analysing human rights violations in the past, it launches a new institutional and moral structure for present-day politics in order to stop future violations and conflicts.³⁷

There exist both endogenous and exogenous forms of transitional justice. While the former is managed by the society without interference from the outside, countries that were typically not involved in the human rights abuses administer the latter. Transitional justice thus does not include individual acts of vengeance or summary executions, nor externally managed retribution without taking into account the wishes of the affected citizens, because of its lack of legitimacy.³⁸ In the 2004 report of ex United Nations Secretary General (UNSG), Annan underlines the importance of both national and international specialists and the inclusion of all stakeholders of the state in transition in the transitional justice process. According to the report, sustainable methods must include a comprehensive assessment of the specific needs and capabilities of the country and the mobilisation of the knowledge of the locals.³⁹

Transitional justice is based on customary international law and a range of normative principles, of which the core one are the Guiding Principles of 2005. Over the years it has build up a significant basis in international law and case law. One of the main cases that provided the basis for the transitional justice framework was *Velásquez Rodríguez v. Honduras*. The decision of Inter-American Court of Human Rights in this 1988 case outlined four minimum human rights obligations for states: prevent human rights breaches, investigate them when they take place, impose penalties on violators and guarantee reparations for the injured party. These four points have been confirmed in successive jurisprudence of the Inter-American and other Courts and human right bodies, like the Human Rights Committee. They have also been adopted in numerous

³⁵ ICTJ, 2006b.

³⁶ Nagy, 2008, p. 277.

³⁷ Buckley-Zistel and Zolkos, 2012, p. 2.

³⁸ Elster, 2004, pp. 145.

³⁹ UNSC, 2004, p.6.

UN records, such as the 2004 report by the UNSG on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, reports of the Special Rapporteurs on the fight against impunity and General Assembly resolutions A/RES/60/147 and A/RES/40/34. Lastly, the statute of the in 1988 established International Criminal Court also underlines the importance of the latter two principles.⁴⁰

Transitional justice consists of four related core mechanisms: truth seeking, prosecutions (national and international), reparations and institutional reforms. The latter one can include both material aspects like payments and non-material aspects like a public apology. This list can still be complemented by other mechanisms used by different countries, like the reburial of victims or the building of public memorials. In each context a number of different mechanisms will be used and combined since there is no one-size-fits all formula.^{41 42 43} In this dissertation the focus will lie on the four core mechanisms in the case of Tunisia: truth seeking, prosecutions, reparations and institutional reforms.

1.1.1. Truth Seeking

There are three different truth-seeking mechanisms: the most known one is the truth commission, but there exist also other forms like commissions of inquiry or truth seeking as part of the judicial process. They all aim to create an unbiased and truthful account of past human rights abuses.⁴⁴ The focus here will lie on the former two, since the latter one is part of the prosecution mechanism.

Truth commissions are defined as “official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law, usually committed over a number of years”.⁴⁵ Since Argentina and Chile in the 1980s until today, around 40 truth commissions have been created. All of them differ in their mandate and operational set-up, depending on the local context.^{46 47} Their tasks exist of

⁴⁰ UN Peacebuilding Commission, 2008.

⁴¹ Franke, 2006, 813.

⁴² ICTJ, 2006b.

⁴³ Lemaitre and Sandvik, 2014, p. 244.

⁴⁴ Michel and Del Mar, 2014.

⁴⁵ UNSC, 2004, p. 17.

⁴⁶ OHCHR, 2006, p. 5.

collecting evidence and statements, investigating violations and conflicts and summarising their findings and recommendations in a report. In some cases they can provide a public platform or facilitate the debate about the history.^{48 49} Commissions of inquiry also aim for truth seeking, but unlike truth commissions they lay the groundwork before the actual transitional justice mechanisms take over. Their aim is to establish a general account of the events and to provide a report with conclusions and proposals.⁵⁰

1.1.2. Prosecutions

The investigation and prosecution of those who are suspected of having committed grave human rights abuses are an essential element of transitional justice and important for a society in transition.⁵¹ The UN Security Council confirmed this by stating: “ending impunity is essential if a society in conflict or recovering from conflict is to come to terms with past abuses committed against civilians affected by armed conflict and to prevent future such abuses”.⁵² Prosecutions furthermore remain the primary claim of the victims, since they offer a chance to offer them justice and dignity. However, when human rights abuses occurred on a large scale the focus often lies on the high ranked perpetrators, since the justice system otherwise gets overrun. This creates an ‘impunity gap’. Combining criminal justice with other transitional justice mechanisms can help to fill this gap.

Criminal prosecutions can be held both on the domestic and the international level or can take on a hybrid approach. National criminal justice has the advantage that they have a higher impact since it takes place in the country itself. However, the problem is that societies who have experienced conflict often do not have the capability or the political will to prosecute the offenders in their legal system. In this case hybrid courts may be the solution, which is a combination of the domestic and the international systems with assistance from outsiders. A final option is the International Criminal

⁴⁷ AIV/CAVV, 2009, p. 10.

⁴⁸ UNSC, 2004, p. 18.

⁴⁹ Michel and Del Mar, 2014.

⁵⁰ Michel and Del Mar, 2014.

⁵¹ Michel and Del Mar, 2014.

⁵² UNSC, 2006, p.2.

Court (ICC), but it can only prosecute individuals in the case of genocide, war crimes or crimes against humanity.⁵³ It furthermore works according to the ‘complementarity’ principle: it only acts as a last resort and when national systems fail to prosecute abusers themselves.⁵⁴ According to Michel and Del Mar, prosecution within the domestic system has gotten more and more backing in the last years than convictions on the international level.⁵⁵

1.1.3. Reparations

According to the Basic Principles and Guidelines, reparations are “intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law”.⁵⁶ They can help to repair the trust of the victims in the state and to foster reconciliation, mutual recognition and solidarity. Reparations can either be material or non-material, like rehabilitation programmes or the reinstallation of property rights.⁵⁷ There exist categorical, individual and collective forms of reparations. Categorical reparations consist of acknowledging the existence of an abstract group of victims, but the specific individuals remain unknown. These cases happen mostly when survivors do not dare to come forward and therefore, material reparations are not likely. Individual reparations are focussing on individual applicants while collective reparations are addressed towards a whole social group. According to Van Wahl, the former form of reparations is insufficient due to its lack of real claimants. The problem with the other two forms however is that they require that victims step forward and reveal their identity.⁵⁸ The 2014 Guidance Note on Reparations advocates for a combination of different types of reparations, both individual and collective, so they can complement and strengthen each other. Only comprehensive reparation programmes can address the injustice that has been done. It furthermore works out the idea of how reparations should attempt to be

⁵³ ICTJ, 2016c.

⁵⁴ CICC, 2016.

⁵⁵ Michel and Del Mar, 2014.

⁵⁶ General Assembly, 2005.

⁵⁷ UNSC, 2004, pp. 18-19.

⁵⁸ Von Wahl, 2012, p. 194.

transformative.⁵⁹ This means that instead of only trying to re-establish the situation prior the infringement, the aim is to tackle the whole context that oppresses women and is often one of the reasons the violations happen in the first place. This might even once more support a condition of disempowerment and insecurity. Transformative reparations thus strive to address the political, social and economic situation of women (or other disadvantaged groups) and consequently bring about structural changes.⁶⁰

Claims for reparations can be brought either for the national court or for international human rights courts after the exhaustion of national remedies or UN mechanisms, e.g. the European Court of Human Rights. Both claims against the state or against a specific individual are possible. A final option is to pursue reparations through non-judicial or traditional transitional justice mechanisms, e.g. truth commissions or the *gacaca* courts in Rwanda.⁶¹

1.1.4. Political and Institutional Reform

Institutional and political reorganisation is crucial for many countries in transition. State institutions may have been mixed up in corruption, human rights abuses or failed to impose the rule of law. Consequently, reform is a very important strategy in the transition process.⁶²

Political and institutional reform includes examinations of the roles of political figures and civil servants in the past, which can lead to their removal from office. This normally happens through specially made laws or commissions to investigate and transform the state structure in order to on the one hand restore the citizen's trust in the state institutions and on the other hand establish a setting that will prevent a repetition of the past wrongdoings. This reform can include both public and private institutions -like the media- to facilitate the transition to the rule of law.⁶³

⁵⁹ UNSG, 2014, p. 5.

⁶⁰ Walker, 2016.

⁶¹ Michel and Del Mar, 2014.

⁶² Aolain, 2012, pp. 62-63.

⁶³ AIV/CAVV, 2009, p. 40-41.

1.2. Gendering Transitional Justice

According to Bennoune, it is important to expand the transitional justice concept for the sake of progressing women's rights in the whole region of the protests in 2011.⁶⁴ Initially the gender dimension of the transitional justice field was "largely unrecognized and [...] under-researched".⁶⁵ However, in recent years it is accepted more and more as a separate and independent area of research.⁶⁶ Gendering transitional justice is defined in this dissertation as the "determination, acknowledgement and addressing of unequal gender perspectives".⁶⁷ Gender is defined as "a social construct, the categorisation that distinguishes men from women and through this categorization shape the roles, wellbeing and influence of each group's members."⁶⁸ Gender is a construct that exists in every culture but its precise content varies.

A large focus has consisted on women as victims of gender based violence in conflict and how to address this through transitional justice mechanisms. This however risks generating a stereotypical gender image by victimising women and reducing their experiences to a single aspect.⁶⁹ Without neglecting the significance of the recognition of gender-based violence in transitional justice, it is nevertheless important to widen the scope. According to O'Rourke, there are three main feminist research priorities in transitional justice: first of all, to incorporate specific troubles encountered by women into the mandates, secondly, to recognise the structural inequalities between sexes which make women more vulnerable and thirdly, to ensure women participation in the procedures and instruments.⁷⁰ In this dissertation the focus will lay on the latter and the link between the representation of women and the specific content and gender sensitivity of the transitional instruments. Since there is no accord between feminists on the priorities for women and transitional justice, the focal point mainly lies on the

⁶⁴ Bennoune, 2012, p. 502.

⁶⁵ Buckley-Zistel and Zolkos, 2012, p. 2.

⁶⁶ O'Rourke, 2015.

⁶⁷ Alam, 2012, p. 11.

⁶⁸ Alam, 2012, p. 11.

⁶⁹ Buckley-Zistel and Zolkos, 2012, p. 2.

⁷⁰ O'Rourke, 2015.

process. All agree that women should be integrated in the mechanisms and workings of the transitional justice system.⁷¹

The numerous examples of declarations insisting on the importance of women inclusion in peace building (e.g. UNSC Resolutions 1325, 1889, 2122; CEDAW General Recommendation 30, focus area of UN Women) demonstrate why this subject has also gained importance in transitional justice. Many of the arguments that emphasize the importance of women participation are instrumental and underline its role in ensuring the legitimacy of the transition and getting to a more substantive solution or they underlines the need for gender equality, non-discrimination and the taking into account of the specific needs of women.⁷²

O'Rourke identifies four main arguments regarding the importance of women's rights: justice, difference, politics of care and the 'larger dream'. The former one is the most popular line of reasoning: since women and men each make up half of the population it is unfair to exclude women from the transitional justice structures. The justice argument makes no predictions about what consequences an equal representation would have. It instead only focuses on the physical attendance of women and not on their actions or concerns they would address. Therefore, the argument also evades making up a stereotypical model of how women should act more compassionate and appealing.

Secondly, the difference argument relates to the idea that when women are not represented in the transitional justice institutions, neither will certain interests be. This claim is based on the premise that due to their gender, women have different roles, responsibilities and positions. In general, they have lower incomes, inferior employment and more responsibilities regarding children and elders. Consequently, when there is no women representation these concerns and their different agenda, which includes more social and economical rights, will never be addressed. There are two sides to this argument: on the one hand the UN has established that gender is an essential aspect in how conflict is perceived and that it is therefore important to include both women and men in all processes, but on the other hand it risks to categorise women into a certain stereotype and hinders them to differ from this classification.

⁷¹ O'Rourke, 2012, p. 36.

⁷² O'Rourke, 2015.

Thirdly, the care politics argument assumes that women are more considerate and selfless than men and that including them in the transitional justice structures would produce a more altruistic and accommodating policy and less of an individualistic one. This is obviously a very controversial assumption among feminists. While there are some supporters of this theory, most agree that this is too much based on the stereotypical position of the women as a mother. Lastly, the ‘larger dream’ argument connects female inclusion to a better democracy. It presumes that this will have a transformative character by creating a more participatory form of democracy. The reasoning behind this is the assumption that women dominate mainly in civil society and district politics and thus closer to the citizens. Consequently, this would empower the civilians to state their concerns from the bottom-up and result in greater participation from citizens from all different backgrounds in society.⁷³

In the past, women have been the group that is most excluded in transition processes. The presence of women could at least assure that their problems and interests are addressed in the substance of the transitional justice mechanisms. This is essential to deal with the gender issue, even though the inclusion of women does not automatically ensures better protection of women’s rights. Vigilance is needed against the risk of delegate certain topics as more important to women, since women and men clearly have common priorities in a post-conflict society, e.g. ending the violence. However, literature suggests that women and men express different concerns in a transitional context, due to different experiences and understandings during the conflict. Therefore Aolian concludes that the exclusion or under-inclusion of women leads to a decrease in equality and gender sensitive guarantees in transitional justice mechanisms.⁷⁴

This dissertation is thus limited to the female gender question and will thus not focus on other gender perspectives, e.g. masculinity or intersectionality.⁷⁵ In this thesis we will focus on two aspects: we will analyse the participation of women and we will look at whether their interests are included in the Tunisian transitional justice mechanisms. By looking at these two elements we will try to assess if there is a case of under-inclusion of women in the instruments. Apart from that we will also analyse the role and concerns

⁷³ O’Rourke, 2012, p.41-47.

⁷⁴ Aolian, 2012, pp. 77-78.

⁷⁵ O’Rourke, 2015.

of women that led to their participation in the protests of the revolution and their actual roles during the demonstrations. We will now first look at the situation of women before the protests, more specifically from the independence of Tunisia until the end of Ben-Ali's time in power.

2. Women in Tunisia

The uprising in Tunisia brought about a remarkable breach with the past and new challenges, especially for its women. Even though they were long seen as the most liberated and secular in the region, they are now also facing conservatism and growing Islamic forces in the country. This emancipated status women received partly thanks to the Code of Personal Status (CPS) in 1956, which gives them full participation rights and the opportunity to equal men in education and employment, among other rights.⁷⁶

However, women have engaged in protests in Tunisia long before the revolution. Since the 1920s they were involved in the national independence movement. They did not only partake in the demonstrations, but also organised themselves to support widows and wives of prisoners.⁷⁷ Inspired by the writings of Tunisian scholar Tahar Haddad of the Great Mosque of the Zitouna, who already urged for women emancipation and their right of education in 1930, women took up an active part in the country's battle for independence. The main party struggling for independence and party of Tunisia's first president Bourguiba, Neo-Destour, created its women's division in 1950. When the country gained its independence in 1965, women profited from their active role with the proclamation of the CPS in the same year.⁷⁸

This does not mean however that women enjoy full equality in Tunisia. An example: even though they have in general a high level of education and they even surpass men in enrolling in secondary and tertiary education, with 4% and 16% in 2011 respectively, these numbers are nevertheless not replicated in the employment figures.⁷⁹ In the Gender Gap Report of 2015, Tunisia holds the 130th place out of 145 countries in ensuring economic participation and opportunity and almost twice as many women were unemployed compared to men in late 2015 (12.5% and 22.6% respectively)^{80 81}

It is thus clear that while it may seem that women and men are equal in Tunisia, this is not yet the case and a lot remains to be done. In the next part we will examine the

⁷⁶ Tchaïcha and Arfaoui, 2012.

⁷⁷ Mahfoudh and Mahfoudh, 2014.

⁷⁸ Curtiss, 1993, p. 50.

⁷⁹ UNESCO Institute for Statistics, 2011.

⁸⁰ World Economic Forum, 2015, p. 10.

⁸¹ National Institute for Statistics Tunisia, 2015.

gender relations after the independence under Bourguiba's and Ali's regime and the renowned CPS.

2.1. Pre-Revolution Spring Gender Relations

Presidents Habib Bourguiba and Zine al-Abidine Ben Ali, embodiments of the pre-revolutionary Tunisia, both instrumentalised the feminist theme by letting the state control the actions of the women movements. While Bourguiba aim was to break the power of the tribal society, which had a lot of influence before the independence, Ben Ali mainly aspired to distract the attention from other human rights infringements in Tunisia. According to Debuysere, there were thus no genuine feminist concerns playing, but modernist and diplomatic matters instead.⁸²

2.1.1. Bourguiba's Regime

After Tunisia's independence in 1956, its first President Bourguiba perceived women emancipation as an element of the country's development towards modernisation and economic expansion. This led to a swift acquirement of advanced rights for Tunisian women and some of the most liberal in the region. It started in 1956 when the family code was amended with the adoption of the CPS or *majala* in Arabic, which put an end to polygamy and established an equal status for women in marriage, custody and divorce. He pronounced this in a famed speech in which he paid tribute to the important part of women in the struggle towards independence and the establishment of the Republic of Tunisia. The CPS was no reproduction of the European laws but it was a form of modernization directed by the interpretation of the Koran. Opposition from certain judges and a part of the population additionally hindered its application. The first constitution of the new Tunisia proclaimed it to be an Arabic and Muslim country and a nationalist policy was adopted with the aim to construct.⁸³

The next year women acquired the right to vote and the right to stand candidate. In 1958 primary education enrolment was universalised and in 1991 it became compulsory. Consequently, by the 1980s both boys and girls had high enrolment numbers. Education

⁸² Debuysere, 2016, p. 230

⁸³ Morrisson, 2004, p. 42.

was a central component in Bourguiba's vision to modernise Tunisia and change the perception of women. Bourguiba also repeatedly attempted to intervene against the wearing of the veil, especially in schools.⁸⁴ An example of this is the Circular 108, promulgated in 1981, which banned veils in the public places.⁸⁵ Law amendments in 1956 and 1957 gave women equal opportunities regarding contracts and property and voting rights respectively. The penal law was also amended in 1968 and now applies equal sanctions on women and men in cases of adultery. Moreover, the Islamic, Jewish and Christian judicial mechanisms were replaced by one secular court structure.⁸⁶

In 1987 Tunisia ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). It did so however with 4 reservations: to Article 9(2), Article 15(4), Article 16 and Article 29. These include the right of women to pass the nationality to the children, the right to choose her residence and the right to make decisions over the children.⁸⁷ Other conventions relating to women's rights that were ratified during Bourguiba's regime were the Convention on Combating Discrimination in the Workplace of 1959, Convention on the Political Rights of Women of 1967 and the Convention on the Economic, Social and Cultural Rights of Women of 1968.

Bourguiba perceived women's emancipation a priority and created the national association *Union Nationale des Femmes Tunisiennes* (UNFT) in 1955. The organisation was a big supporter of the CPS and advocated for the inclusion of women in both the economic and political sphere. His underlying reason to establish the UNFT however was to gain support for his party Neo-Destour. In the 1959 elections, the UNFT President was elected to the National Assembly and has since then proceeded as a mechanism to facilitate putting women on the list and electing them for the Neo-Destour party on all levels. In 1960 it had about 40 000 members. The UNFT was the only organisation Bourguiba allowed to advocate for women's rights, which consequently linked the successes in furthering women's interests to support for the

⁸⁴ Johansson-Nogués, 2013, p. 397.

⁸⁵ Belhassine, 2016.

⁸⁶ Curtiss, 1993, p. 51.

⁸⁷ Social Institutions & Gender Index, 2014.

government. Nevertheless, he allowed the creation of professional women's associations under the UNFT.⁸⁸

The euphoria of the independence in 1956 allowed then Prime Minister Bourguiba to gain a lot of power and this led in 1957 to the abolishment of the kingdom and the establishment of the republic, with Bourguiba as President. It also allowed him in the first years to pass the reforms he wanted, which benefitted especially the women. However, his policies continued to receive opposition from a part of the population until the end of his presidency.⁸⁹

In the last years of his presidency, Bourguiba became more and more repressive and unpredictable, the latter one due to his increasing senility. His Prime Minister Ben Ali, who had only been appointed to this post by Bourguiba five weeks earlier, disposed him in a bloodless coup in 1987. This post made him however the lawful Presidential successor after a medical statement proved that Bourguiba was unfit to continue ruling. His overthrow is therefore also called a "*coup de constitution*".⁹⁰

The progressive CPS is thus Bourguiba's most important legacy and will be examined in more detail in the next section. It is important to recognise however that every success concerning women's rights was steered by a top down process by either the Neo-Destour party or the state institutions instead of bottom-up pressures. This includes the UNFT, which cannot be seen as an independent feminist organisation challenging the government but rather as an elite association dependent on and mostly connected to Bourguiba's party.⁹¹

2.1.1.1. The Code of Personal Status (CPS)

The *Shari'a* or Islamic law was the document of reference in Tunisia before the Code of Personal Status (CPS), more specifically the Maliki school of Islamic law, which was left untouched by the French out of convenience. President Bourguiba proclaimed the CPS on 13 August 1956, only five months after the independence. Its secular design, trying to combine both religion and modernity, was a big step forward in providing

⁸⁸ Murphy, 2003, pp. 170-171.

⁸⁹ Morrisson, 2004, p. 45-46.

⁹⁰ Reich, 1990, pp. 78-80.

⁹¹ Murphy, 2003, pp. 175-176.

women with a more equal status.⁹² However, the main aim was not necessarily women emancipation, but disempowering the patriarchal, tribal communes, where women generally had a second-class status. This was done through the shrinking of the social units from tribal to immediate family. Women emancipation was thus instrumental for the formation of a modern Tunisia. It furthermore caused the mobilisation and support for the Neo-Destour party of a share of the population that was up to that time passive in politics. The CPS was part of a larger nationalist undertaking in opposition to the ancient Muslim and tribal communities.⁹³ Bourguiba managed to push through these reforms thanks to a lack of resistance, since all the more conservative Islamic groups had lost their influence after the anti-colonial conflict. It was moreover a time when electoral politics were not yet present.⁹⁴ The CPS only applies to Muslims, who make up 99 percent of the population (Christians and Jews have their own directives).⁹⁵ As being the first such regulation in the region, its most revolutionary change was the abolition of polygamy. It changed the whole family structure in Tunisia and extended the rights of women by adapting regulations on marriage, divorce, inheritance and custody among others.

In the area of marriage, the legal age was set on 17 and 20 for women and men respectively, although with parental consent and a court decision, marrying younger was still an option. The marriage furthermore needed the consent of both parties in order to happen and was standardised as a civil contract.⁹⁶ The termination of unilateral repudiation was as well an important adaption to the existing context. This custom enabled the husband with the help of two witnesses to independently terminate the marriage, without any say of the wife or a judge. Women on the other hand could only request divorce to a religious arbitrator and with detailed justification. Now both women and men can file for divorce and only the courts can settle it. Men and women furthermore get the same obligation and rights for financial settlements and divorce proceedings. The areas of inheritance and custody were altered as well to incorporate

⁹² Mahfoudh and Mahfoudh, 2014.

⁹³ Khalil, 2014, pp. 288-289

⁹⁴ Mounira, 2007.

⁹⁵ Sfeir, 1957, p. 309

⁹⁶ Curtiss, 1993, p. 52.

more protection for women rights. Instead of giving automatic custody to the father when girls and boys are younger than nine and seven respectively, the arrangements are now settled by a court and differ from case to case. Furthermore, in case of the death of a partner, the surviving father or mother keeps the custody of the children, while this was not automatically the case for a widow before the establishment of the Code.⁹⁷

Another significant change in the CPS includes the equal age of adulthood for both sexes at 20, instead of two years after the marriage for women. The right to abortion and birth control are also enshrined in the law, which caused the decrease of the standard number of persons per family and stabilised the Tunisian population expansion.⁹⁸ The reorganisation of Bourguiba was thus not only in the legal or ideological sphere but it tackled the traditional reproductive role of women as well. Bearing children shifted from then on from the public to the private sphere. Both socio-economic and civil political rights were thus advanced for women during this period.⁹⁹

In short, the CPS had a very important impact on the expansion of women's rights, equality between the sexes and family roles and dynamics. By limiting the privileges of men and by increasing the protection of women in divorce, marriage and other areas, the CPS can be considered as a groundbreaking piece of legislation in the region in 1956.

Nevertheless, it would be wrong to perceive the CPS as a triumph for feminism. It was a triumph of a strong leadership aiming at transforming Tunisia in a modern state and implemented a top-down reformist understanding of Islam. The activism of women in this time was not based specifically on feminism but primarily on nationalism, following the independence and the evolution towards an autonomous contemporary nation.¹⁰⁰ The drawback of this state feminism is that every chance in advancing women's rights is fixed to the willingness and capacity of the state to put it into effect. More importantly, the top-down approach of the government does not tackle the fundamental underlying structures and they can thus re-emerge whenever the state pulls out. This social structure can also weaken the active state policy of women

⁹⁷ Mounira, 2007.

⁹⁸ Curtiss, 1993, p. 51.

⁹⁹ Murphy, 2003, pp. 175-176.

¹⁰⁰ Mounira, 2007.

emancipation.¹⁰¹ The state-led feminism in Tunisia has therefore also been called ‘masculine feminism’, since it does not aim to truly advance women’s rights and change their social roles but to simply compose a more efficient role for them within the patriarchal structures.¹⁰²

When President Ben Ali succeeded Bourguiba in 1987, he created a working group to propose amendments to the CPS, which entered into force in 1993.¹⁰³ The clause determining that women had to follow their husband was changed to demand that men would be equally in charge of the household. Women got moreover the chance to give their veto regarding the marriage of under-aged daughters. Other amendments included the penalisation of domestic aggression and the creation of an alimony fund for divorced wives and children. A following amendment in 2007 changed the legal marriage age to 18 years for both sexes.¹⁰⁴

2.1.2. Ben Ali’s Regime

When Zine al-Abidine Ben Ali took over the presidency on November 7, 1987, expectations were that he would bring more liberalisation and stability. This is indeed what happened during his early years in office with the discharge of political prisoners, less dominance by the police and more media freedom. He moreover allowed the creation of other parties, although still with certain limitations, and the 1988 Law on Political Parties established a quota that 30 percent of the election candidates had to be women. This led in the 2009 elections to 28% female parliamentarians, or 59 out of 214, which was the highest of the countries in the region, but still not as good as many Western countries.¹⁰⁵

Another significant change was the end of the UNFT as the only feminist association, following the amendments in the Law of Association in 1988. Consequently, a variation of new women organisations in different fields arose in Tunisia, many of them with financial backing from the state. Examples include groups under the umbrella of another

¹⁰¹ Murphy, 2003, pp. 175-176.

¹⁰² UN Working Group on the Issue of Discrimination against Women in Law and in Practice, 2013, p.

14.

¹⁰³ Adas, 2007, p. 42

¹⁰⁴ Murphy, 2003, pp. 178-179.

¹⁰⁵ FIDH, 2012.

body like the *Chambre Nationale des Femmes Chefs d'Entreprise*, associations to perform research on women's questions used to decide on state policies like the *Association des Femmes Tunisiennes pour la Recherche et le Développement*, associations for direct advocacy for women's concerns and organisations supporting cultural activities for women. These latter ones existed also before the new law but in a non-political and elitist membership form like the *Association Sportive Féminine*. This membership problem is applicable to all associations. While there did occur an evolution into a more open and wider range of members corresponding to different levels of the society, these organizations still failed to represent all women in Tunisia. Furthermore, the fragmentation of women's organisations did not mean that its relationship with the state took on another form. On the contrary, they continued to support the government and its policies through the state structures.¹⁰⁶ According to Johansson-Nogués, the internalisation of these associations into the corporatist state system made them lose their independence and as a consequence they were mainly a tool to present a Tunisia concerned with women's rights and emancipation to the outside world.¹⁰⁷

Nevertheless, two significant autonomous women's organisations were created in 1989. One is the *Association des Femmes Pour la Recherche sur le Développement* (AFTURD), a research group which analyses the potential role of women in development. The other one is the *Association de la Femmes Democrates* (AFTD), which is the only network that classifies itself as feminist and is active in a range of women questions going from emancipation to human dignity. However, their working did face restrictions and their programs often faced repression due to the strict censorship on any critique towards the state. Apart from that they also had to co-survive with the state-sponsored women's organisations that did enjoy state funding and political power thanks to their close ties with the ruling party. As a result, AFTURD and AFTD were dependent upon foreign investments, which also limited their independence.¹⁰⁸

¹⁰⁶ Murphy, 2003, pp. 180-181.

¹⁰⁷ Johansson-Nogués, 2013, p. 400.

¹⁰⁸ Mulrine, 2011, pp. 13-14.

President Ben Ali did not turn out to be the tolerant democrat initially hoped for but instead maintained a police state disguised as a procedural democracy.¹⁰⁹ This was very clear in the first multi-party election in 1999, which was won by Ben Ali with a nonsensical 99,44%. Apart from stability, employment and enhanced living standards, also women's rights were used as a means to keep critics quiet and foreign investors and countries contented. In exchange for this the Tunisian people had to accept a non-critical media, little lenience towards dissents and opposition and a powerful police. The specific targets of Ben Ali's repression were mainly the Islamists and the Leftist groupings.¹¹⁰ Preysing describes his regime as "smoke and mirrors", a system where the actual source of power and control was concealed and where especially towards the outside world a façade of pluralism and democracy was put up. The main pillars of this state were a ubiquitous police force and rigorous administrative controls. The former one was estimated at 130.000 to 150.000 for a population of ten and a half million and consequently had an enormous impact not only on the daily life but also on the working of the state institutions.¹¹¹ Ben Ali's attention for women's rights was thus again not because of a sincere concern but can mainly be explained as a strategy to legitimise his regime and to hold on to power.¹¹²

Examples of Ben Ali's 'commitment' to women's rights include the creation of a post for Minister of Women's and Family affairs in 1992, a permanent secretary for women's affairs and an advisor to the President of women's affairs questions. Furthermore, six women were picked as ministers in an effort to involve women into the highest level. In 2011, right before the start of the revolution, there were four women out of 45 ministers part of the government, one of them being the Minister of Women and Family affairs. Seen the restriction on women's organisations, one of the triumphs for feminist academics was the formation of a Feminist Studies master at the university in 2003.¹¹³ Ben Ali moreover ratified the Optional Protocol of CEDAW and

¹⁰⁹ White, 2010.

¹¹⁰ Legg, 2011.

¹¹¹ Preysing, 2015, pp.74-75.

¹¹² Johansson-Nogués, 2013, p. 400.

¹¹³ Mahfoudh and Mahfoudh, 2014.

amended the Code of Nationality in 2010 in order to permit Tunisian women to transmit their nationality to their child even when they had a non-Tunisian father.

Other discriminatory articles stayed unchanged though, e.g. daughters could only receive an inheritance half the value of what sons receive (early May 2016 parliamentarian Gharbia started collecting signatures to introduce a law proposal that would make the inheritance law equal between the sexes¹¹⁴). Another strategy used by the government was to present a lot of enthusiasm and media attention when the UNFT received the UNESCO award for its efforts in eradicating illiteracy or when the Centre of Training and Research for Arab Women chose to set itself up in Tunisia.^{115 116}

Ben Ali's wife, Leila Trabelsi was used as a symbol for the liberal and contemporary woman during his regime. An example of this was making her the focal point of the Women's Day festivities on August 13 and as a consequence denying it to be a holiday for all Tunisian women. This caused widespread antipathy and bitterness of the population towards her, the Ministry of Women and Family affairs, and the general image of women Ben Ali encouraged. Though she was not popular within the Ministry either. According to Khalil, neither Muslim nor liberal women could identify with her due to a lack of religious recognition and a lack of actual artistic or intellectual accomplishments respectively. Another example of how Ben Ali instrumentalised the feminist movement in order to strengthen his regime was by using the CPS to weaken the Islamist Ennahda opposition party. By portraying a rise of the Islamists as a threat to the liberal Code, the dictator managed to mobilise the feminist movements against them and in support of his government.¹¹⁷ The ambiguity of the state's policies, which is in between conservatism and modernism, becomes very clear in the example of the struggle of women against domestic violence and harassment. Four years of advocacy of women's associations led in 2004 to the adoption of a law that enables women to demand reparations after facing sexual harassment. Even though this appears to be a positive development, after more examination the deterring effect of certain articles concerning proving the aggressions become clear. What made it worse was the

¹¹⁴ Boukhatia, 2016.

¹¹⁵ Murphy, 2003, pp. 180-181.

¹¹⁶ FIDH, 2012.

¹¹⁷ Khalil, 2014, pp. 291-292.

campaign promoting the preservation of the public morals following the adoption of this particular law. Thereafter the government created in a more liberal move the *Office National de la Famille et de la Population* in 2008, which issued its first analysis of aggression against Tunisian women in 2011.¹¹⁸

In short, Ben-Ali instrumentalised Bourguiba's legacy but did very little to further improve the status of women in Tunisia in areas other than family law. Due to the largely superficial concentration of both of Tunisia's presidents on women's civil-political and socio-economic rights and the neglect of the underlying structures, inequalities and patriarchal stereotypes, women kept on facing discrimination in areas like employment, domestic violence and law practices up to the revolution.¹¹⁹

2.2. The Political Transition

2.2.1. The Revolution

The uprising in Tunisia would set off the so-called 'Arab Spring' and protest against authoritarian regimes in the region, demanding dignity and rights. The impulse that set off the Tunisian revolution was initially not a demand for democracy but a claim for employment and an improved socio-economic situation. The structural inequalities in these areas between different regions of the country sparked unrest particularly in the underprivileged provinces, even before December 2010.¹²⁰

On December 17, 2010, Mohamed Bouazizi, a street fruit vendor, set himself on fire in front of the local government building in Sidi Bouzid, after his cart was confiscated by the police and he thus lost his only means of income.¹²¹ The video of Bouazizi's suicide was shared on social media and became a symbol of the protests that followed. Efforts to appease the demonstrators with promises of employment programs failed, mainly since this was not the first time that those promises were made and remained unfulfilled. Five days later, another young man, Houcine Falhi, killed himself through electrocution in Sidi Bouzid during a protest. Afterwards, the protests spread throughout

¹¹⁸ Mahfoudh and Mahfoudh, 2014.

¹¹⁹ Johansson-Nogués, 2013, p. 401.

¹²⁰ UN Working Group on the Issue of Discrimination against Women in Law and in Practice, 2013, p. 14.

¹²¹ Mulrine, 2011, pp. 15-16.

the country via the interior to the coast and by December 27 they reached the capital Tunis.¹²² Unemployment and corruption initially drove the events of 2011, but soon people were also demanding universal freedom, dignity, equality and the end of Ben Ali's rule by using the catchphrase *Irhal* and *Dégage*. The first reaction of the regime was tackling the protests with police violence, repression and threats, but this had no effect on the intensity of the demonstrations, on the contrary.¹²³

The unpredictability and enormous numbers of protesters made it unfeasible to continue the authoritarian regime over the people. In early January the websites of the state institutions were hacked and closed off and the lawyers and teachers went on a strike asking the halt of the police violence. Both the demonstrators and the police turned more violent over the course of the Revolution, causing fights, tear gas actions and even the use of snipers and ammunition. Pictures and movies of these events were shared all over social media and blogs, which was effective in mobilising more people and fortifying the persistence of the protesters. Due to this, Ben Ali decided to change strategy and on January 13, 2011, he promised change and reforms for more freedoms and proclaims not to run for president again in 2014. He moreover discharged his Minister of Interior Kacem, who was especially unpopular with the population due to his reaction to the demonstrators. These actions did not have an effect on the intensity of the protests either and a general strike of the Tunisian Labour Union commences demanding the dismissal of Ben Ali.

In a final frantic move, Tunisia's dictator announced the discharge of the government, early parliamentary elections and a state of emergency. He furthermore proclaimed a night curfew and a prohibition on meetings of more than three persons. In an effort to enforce this he shut down schools and universities and gave the permission to shoot any wrongdoers, which the military refused. With both the military and the labour union on the side of the demonstrators Ben Ali and his wife fled to Saudi Arabia, on the same day, January 14, after being declined landing permission in Malta and France. He would

¹²² El-Khawas, 2012, pp. 8-12.

¹²³ Preysing, 2015, pp.75-76.

later be prosecuted in absentia to 35 years for theft and to two life sentences for the incitement to murder and the violent repression of demonstrations.^{124 125}

The events of December 2010 – January 2011 are often called the ‘Jasmine revolution’ and part of the wider region ‘Arab Spring’. This dissertation will however refrain from using both terms because of the controversy surrounding them. The white jasmine flower reference was first used by Tunisian journalist Zine El Abidine Ben Ali as a symbol for the tolerance and richness of the country, but was later widely criticised since the term did not include the disadvantaged interior provinces of Tunisia, where the revolution erupted. It furthermore romanticises the uprising and fails to include its most important object: dignity.¹²⁶ The Arab Spring narrative on the other hand has been criticised for being Orientalists, which is based on romanticization as well as on ‘othering’ Arabs from the West.¹²⁷ For these reasons, this dissertation will only use the terms revolution or uprising.

2.2.2. The Transitional Government and Elections

The high degree of mobilisation during the revolution showed the end of the climate of fear and censorship during Ben Ali’s dictatorship. Instead there was a lot of willpower to make the voice of the people heard and demand a better economy and more freedom. The end of Ben Ali’s 23-year-old regime marked the beginning of the Tunisian transition towards a democratic state system and the conclusion of more than 100 years of uninterrupted authoritarian regime. On January 17, Mohammed Ghannouchi, who had been Prime Minister under Ben Ali for twelve years, formed the transitional government. Their main challenge however was trying to convert the abstract ideology of the revolution (apart from the claim for youth employment) into a new democratic state that could content the demands of the protesters. This process of state-building brought along discussions on religion, due to the end of the repression of the Islamist Ennahda party and the return of its leader, Rached Al-Ghannouchi after 20 years of exile in London at the end of January. The status and role of women in Tunisia was an

¹²⁴ El-Khawas, 2012, pp. 8-12.

¹²⁵ FIDH, 2012.

¹²⁶ M’Barek, 2016.

¹²⁷ El-Mahdi, 2011.

important element in these debates and produced fears of losing the liberal family law and rights gained under Bourguiba.¹²⁸

The ousting of Ben Ali did not stop all the demonstrations. The transitional government was perceived too close to the old regime and the protesters demanded the resignation of everyone related to the former government. After attempts to convince the public of the break with the Ben Ali regime and its party *Rassemblement Constitutionnel Démocratique* (RCD) by reshuffling the cabinet failed and opposition members drew back their support, Ghannouchi resigned on February 27 after growing protests and was replaced by Caïd Béji Essebsi. Contrary to Ghannouchi, Essebsi was popular by many Tunisians because he had been Minister for thirty years under Bourguiba, but had never been part of the Ben Ali regime. The new interim Prime Minister took immediate measures to demonstrate a clear break with the dictatorship: some of his first actions were the release of political prisoners, ending the censorship, reducing the power of the security forces and ending the prohibition on the working of the *Ligue Tunisienne des Droits de l'Homme* (LTDH) in combination with the liberalisation of associations.¹²⁹ He arrested all party executives and other connections of Ben Ali alleged of corruption and dispersed the RCD on March 9. Apart from not being a candidate in the upcoming elections himself, he also forbade nine thousand former bureaucrats from doing the same. Essebsi managed as well to reinstate security and peace to most of Tunisia in collaboration with the military.¹³⁰

In March the Constitution got suspended and elections for the *Assemblée Nationale Constituante* (ANC, an interim parliament) were planned for October. While awaiting the elections, the *Instance supérieure pour la réalisation des objectifs de la révolution, de la réforme politique et de la transition démocratique* (ISROR) was created by the Essebsi cabinet as a committee to counsel on matters of institutional reforms until the ANC would be in place. In reality, it was mainly a forum for political debates and the institution responsible for the organisation of the elections.¹³¹ ISROR was composed of 150 representatives of different political parties, trade unions and civil society

¹²⁸ Mulrine, 2011, pp. 15-16.

¹²⁹ FIDH, 2012.

¹³⁰ El-Khawas, 2012, pp. 8-12.

¹³¹ Preysing, 2015, pp. 75-76.

organizations and accepted the new electoral code on April 11.¹³² Tunisia's first free elections for the ANC in more than fifty years took place on October 23 in the presence of many national and international observers and had a turnout of 54 percent. Of the 217 seats, a considerable majority of 89 seats were won by the previously banned Islamist party Ennahda, followed by the secular-leftist party *Congrès pour la République* (CPR) with 29 seats and Ettakol, a centre-left party putting emphasis on reducing corruption, with 20 seats. The reason why Ennahda won so many votes is mainly because of the fragmentation of the progressive parties, who made up many of the 1570 parties on Election Day, in combination with the imbalance of votes between different the counties. Additionally there is the fact that Ennahda could take advantage from its image as the repressed and as icon of resistance. In reality, the party only got 37 percent of the votes.¹³³ Under the leadership of Ennahda a coalition government with three parties was formed including the two runner-ups CPR and Ettakol and the main posts were divided among them; Marzouki, member of the CPR party and one of the leading human rights activists in Tunisia became President and Jebali of Ennahda was the new Prime Minister. With the swearing in of this 'Troika' government on December 24, a new phase of the transitional course could start.^{134 135}

2.2.2.1. Women's Participation in the Revolution

The revolution was not specifically aimed against the repression of women but against the repression of all Tunisians. Their demands were thus universal freedoms, although the revolution did present a chance to further women's rights. However, there was also a risk to lose the freedoms they already enjoyed if conservatives would emerge as the strongest party.¹³⁶ Tunisian women were massively participating in the demonstrations and were equally present and devoted to the Revolution and to change. They came from all levels of society and various backgrounds and were a major contribution to the grassroots actions but were also advocating and mobilising through social media and blogs, like Lina Ben Mhenni's "A Tunisian Girl". During the revolution, men and

¹³² FIDH, 2012.

¹³³ ICAN, 2012, p. 3.

¹³⁴ El-Khawas, 2012, pp. 8-12.

¹³⁵ Preysing, 2015, pp. 75-76.

¹³⁶ Khalil, 2014, pp. 291-292.

women were deemed equal. More than anything, the protests turned around decades of top-down developments to a bottom-up approach, in which the people took up their political and democratic role.¹³⁷

However, women marched as well to claim their participation in the political transition process, for example, a rally of the AFDT and AFTURD for equality, freedom and against a potential return to Islam laws took place in Tunis on January 29. This latter one was a legitimate concern since even though Ennahda promised a commitment to women's rights; the rhetoric of certain party members was very contradictory, e.g. a representative called single mothers a dishonor. It is however important to point out that in comparison to other Islamic parties in the region, Ennahda is more open-minded and democratic. Incidents at the Manouba University in Tunis also occurred which involved Salafists demanding the veiling of women as a prerequisite to enter class. Nevertheless, one of the successes of the feminist associations included the withdrawal of the reservations Tunisia made on CEDAW on August 16.¹³⁸

During the revolution there were reports of sexual harassment and rape in several of the revolting countries. In Tunisia, this violence was initially not widespread. However, when the demonstrations became bigger in size and the role of women was increasingly highlighted, the strategy to solely containing the protest did not suffice and a gender-specific warning was initiated. Towards the end of the Revolution women were targeted by the police services and were facing gender-based violence. Cases include the protests in Thela and Kasserine on January 11 and 12 and in detention centres on January 14 and 15.¹³⁹

Poor women were especially aimed for but according to Johansson-Nogués, we can indirectly derive from this that the government was attempting to warn all women in the protests that this could happen to them as well. The fact that gender based violence stayed less widespread than in other countries that faced uprisings can probably be explained by the speedy downfall of Ben Ali's regime.¹⁴⁰ However, women also faced violence after his fall when they marched to claim their presence in the political

¹³⁷ Mulrine, 2011, pp. 15-16.

¹³⁸ FIDH, 2012.

¹³⁹ FIDH, 2012.

¹⁴⁰ Johansson-Nogués, 2013, p. 399.

transition process. In the rally for equality and freedom that took place in Tunis on January 29, a dozen women were assaulted, this time not by the police but by normal men.¹⁴¹

Apart from gender-based violence, the security forces also resorted to an excessive use of force by targeting the protesters with tear gas, rubber bullets and arbitrary arrests. According to witnesses, the security services intentionally killed demonstrators by aiming at the chest or the head.¹⁴² By the end of the revolution, 338 deaths had been claimed and 2489 people got wounded or assaulted. Three and a half percent of those who died and eleven percent of the wounded were women. However, their testimonies prove the specific forms of violence they faced because of their womanhood.¹⁴³

In the October elections women were present not only as voters, but also as candidates and observers. The new electoral code demanded parity of the sexes on the lists, but it said nothing about the order. Consequently, the reach of the code was limited and few women were on the top places of the electoral list. In the Assembly, women won 59 seats (52 of them were from Ennahda) and they represent around 27 percent of the ANC.¹⁴⁴ Even though the transitional process created chances for further emancipation, the new cabinet was not eager to tackle the assaults that occurred against women nor the incidents with Salafists at the university, on the contrary.

2.2.3. The Aftermath

Tunisia is currently in its fifth year since the revolution and even though it managed to avoid the debacles and chaos that other nations in the region faced afterwards, it still encountered its own challenges and confrontations in tackling the economy, the security in the country and the institutional reforms. The optimism after the elections faded when the Ennahda led troika government had to deal with tensions and polarisation in the newly pluralist transition state and increasing unhappiness among the public.¹⁴⁵ This

¹⁴¹ FIDH, 2012.

¹⁴² CIHRS, 2012, pp. 3-4.

¹⁴³ AFTD, 2011, p. 11.

¹⁴⁴ Tchaïcha and Arfaoui, 2012.

¹⁴⁵ Preysing, 2015, p. 77-78.

is in contrast to the period before the ANC elections, which were characterised by more harmony and impartiality instead of partisan methods and opportunism.¹⁴⁶

One of the main points of discussion for the draft constitution was the overall role of Islam in the new Tunisia and more specifically the possible influence of *sharia* law. This latter one was pushed by the Salafist, who demonstrated in March 2012 in favour of adopting *sharia* as a law source. Ennahda on the other hand, struggled to affirm its place as the middle way between secularists and Salafists and attempted to strengthen the unity in the government by rejecting *sharia* as a possible inclusion in the constitution.¹⁴⁷ However, delays and lack of progress on the creation of the new constitution fuelled conflict between the secular and religious parties in the Troika and the ANC. The fact that the ANC took up the tasks of a normal legislative assembly as well, apart from attempting to draft the constitution within a year, slowed down the process even more. The delay and unclear time frame for the new constitution and elections also increased public discontent and caused new protests. These demonstrations were caused as well by the overall performance of the government, which did not succeed in turning around the high unemployment rates nor ensuring the security in the country.¹⁴⁸ The culmination point of the safety concerns was reached when Islamist attacked the US embassy in September 2012, after the publication of an insulting video about the prophet Mohammed. The government labelling of the Salafist group behind the attack, Ansar al-Sharia, as a terrorist organisation was a tardy response and the lack of speedy law enforcement angered a big part of the Tunisian population.¹⁴⁹ In this political climate ex-prime minister Essebsi created his new secular political party Nidaa Tounes, which developed itself as the main contender of Ennahda and as a unifier of the modernists and Bourguiba followers. However, it also strengthened the Islamist – secularist divide and the opposition to the Ennahda administration.¹⁵⁰ The situation got even worse when in a range of only five months, both leftist politician and Islam critic Chokri Belaid and leftist Mohammed Brahmi were assassinated by Muslim extremists.

¹⁴⁶ Dale, 2012, p. 58.

¹⁴⁷ El-Khawas, 2012.

¹⁴⁸ Preysing, 2015, p. 77-78.

¹⁴⁹ Sheridan, 2014.

¹⁵⁰ Lamont and Pannwitz, 2016, p. 280-281.

Combined, Tunisia reached a boiling point and demonstrations and strikes took place throughout the country. It also led however, to a new phase in the transition process. The parties of Brahmi and Belaid formed together with Nidaa Tounes and other opposition parties and civil society organisations the National Salvation Front (NSF), which organised demonstrations to invigorate its demands, the main one being the replacement of the government by a cabinet of technocrats until the election, because of the weak response towards extremism and the delay in the constitution writing process. It was the powerful labour union, *Union Générale Tunisienne du Travail* (UGTT, 750 000 members), who eventually launched the national dialogue and negotiated with the Troika government and the opposition, together with the employers union (*Union Tunisienne de l'Industrie, du Commerce et de l'Artisanat*), the human rights league (LTDH), and the national order of lawyers (*Ordre National des Avocats de Tunisie*), together known as the so-called Quartet.¹⁵¹

The national dialogue eventually led to a compromise between the parties. In October a roadmap was signed by 21 parties, which included a timetable for the replacing of the government by a technocrat cabinet, the completion of the constitution drafting process and the elections planning. Even though Ennahda at first resisted, it accepted the roadmap as well and promised to transfer power to a government led by Mehdi Jomaa.¹⁵² This move was mainly motivated by self-preservation and not wanting to repeat the Egypt scenario where the Muslim Brotherhood was ousted by the military or return to the repression of the party during the Ben Ali era. Like this the Quartet managed to preserve the social cohesion of the country and to appease the Islamist - secularist clash. Shortly after, the ANC finally passed the law on Transitional Justice, which established the Truth and Dignity Commission. It moreover also finished the drafting of the Constitution, which was ratified on January 26, 2014 with 200 votes in favour, twelve against and four abstentions in the Assembly.¹⁵³ Against the background of all the political conflict and turmoil, this adoption is broadly viewed as a landmark achievement. Even though the text of the constitution states the Muslim identity of

¹⁵¹ El Khaouri, 2013.

¹⁵² Preysing, 2015, p. 77-78.

¹⁵³ Hamidi, 2015.

Tunisia, it shows the consensus by also articulating Tunisia as a civil state with articles concerning the civil liberties.¹⁵⁴

In the November parliamentary elections, Nidaa Tounes became the biggest party in the *Assemblée des Représentants du Peuple* (ARP) followed by Ennahda and one month later Nidaa Tounes leader Essebsi also won the presidential elections. According to Lamont and Pannwitz, his victory was mainly due to a campaign based on Tunisian statehood and nationalism and a stable and secure future.¹⁵⁵ Nidaa Tounes thus managed to rise to power despite having the drawback of including some old Ben Ali's RCD members (even though many of them took part in the protests of 2011) apart from leftists in the party. These elections which put a mainly non-Islamist government in power constitute another important step in the democratic transition of Tunisia.¹⁵⁶ Lefèvre interprets the 2014 elections mainly as a big defeat for the Troika government, who did not manage to provide the public's demand for stability, economic growth and political reforms. However, the secular members of Nidaa Tounes have to tackle their differences on most subjects apart from their aversion for political Islam.¹⁵⁷

Since 2015 there have been two major developments in Tunisia. On the one hand the country faced multiple terrorist attacks, one in March in the Tunis Bardo museum, one in June on the beach in Sousse, both targeting tourists, and one in November on a bus with national security guards. Following these events President Essebsi declared the state of emergency, which is currently in place until June 22, 2016.¹⁵⁸ On the other hand, Nidaa Tounes lost its parliamentary majority to Ennahda after 22 parliamentarians quit the party and formed a new block *Al-Horra*. On top of that, Ennahda announced in May 2016 following its party congress that it would renounce political Islam and will in the future separate religion from politics.¹⁵⁹ Victories for women's rights in these last years include the official lifting of the reservations on CEDAW and the adoption of a

¹⁵⁴ Arieff and Humud, 2014, p. 500.

¹⁵⁵ Lamont and Pannwitz, 2016, p. 280-281.

¹⁵⁶ Preysing, 2015, p. 77-78.

¹⁵⁷ Lefèvre, 2015, p. 309.

¹⁵⁸ Stephen, 2015.

¹⁵⁹ Sadiki, 2016.

law that allows women to travel with minor children without their fathers' permission.¹⁶⁰

Timeline key events
2010 <ul style="list-style-type: none">• <u>December 17</u>: Mohammed Bouazizi sets himself on fire in Sidi Bouzid, start of demonstrations• <u>December 22-27</u>: Second suicide, protests spread throughout the country and reach the capital
2011 <ul style="list-style-type: none">• <u>Early January</u>: protests are met with a strategy of repression and violence by the regimes but with little effect• <u>January 13</u>: Ben Ali announces reforms, dismisses the Minister of Interior Kacem and promises not to run for re-election in 2014• <u>January 14</u>: Ben Ali announces the discharge of the government and early legislative elections, he declares a state of emergency, a night curfew and forbids gatherings of more than three people. He runs off to Saudi Arabia• <u>January 17</u>: Formation of the transitional government by Mohammed Ghannouchi• <u>January 29</u>: A rally for equality and freedom in Tunis by civil society organisations, a dozen women are assaulted.• <u>January 30</u>: Return of Rached Al-Ghannouchi, leader of the Ennahda party• <u>February 27</u>: Ghannouchi resigns, Essebsi takes over• <u>March 9</u>: Dissolution of the former ruling party RCD and confiscation of its goods• <u>April 11</u>: Adoption new electoral code with parity law• <u>August 16</u>: The interim government abandons the CEDAW reservations• <u>October 23</u>: First free democratic elections for the ANC, Ennahda wins 89 of the

¹⁶⁰ Human Rights Watch, 2015.

<p>217 seats</p> <ul style="list-style-type: none"> • <u>December 24</u>: Swearing in of the new government
<p>2012</p> <ul style="list-style-type: none"> • <u>March 27</u>: Ennahda will not support <i>sharia</i> as the primary source of legislation and wants to preserve Tunisia's secular character • <u>April 20</u>: Creation of Nidaa Tounes
<p>2013</p> <ul style="list-style-type: none"> • <u>February 6</u>: Assassination of Chokri Belaid • <u>July 25</u>: Assassination of Mohamed Brahmi • <u>September 17</u>: Start National Dialogue led by Tunisian Quartet: UGTT, UTICA, LTDH and the National Order of Lawyers • <u>December 17</u>: Transitional Justice Law adopted which establishes the Truth and Dignity Commission
<p>2014</p> <ul style="list-style-type: none"> • <u>January 26</u>: New Constitution adopted in NCA, technocrat government replaces the Troika government • <u>April 23</u>: Official lifting of CEDAW reservations • <u>October 26</u>: Legislative elections, Nidaa Tounes and Ennahda become the biggest parties with 86 and 69 seats respectively • <u>November 23</u>: First round of the presidential elections • <u>December 21</u>: Second round of the presidential elections, Essebsi of Nidaa Tounes becomes the new President and wins of Marzouki CPR
<p>2015</p> <ul style="list-style-type: none"> • <u>March 18</u>: Terrorist attack in Bardo Museum, Tunis • <u>June 26</u>: Terrorist attack in Sousse • <u>November 24</u>: Terrorist on a bus with Presidential Guard • <u>November 24</u>: State of emergency declared throughout the country: allows to suspend key rights and demonstrations

- November 10: Law adopted that allows women to travel with minor children without fathers permission

2016

- May 24: Ennahda becomes a secular party and renounces political Islam

3. Gendering Transitional Justice in Tunisia

*Article 1: In this law, Transitional Justice shall mean an integrated process of mechanisms and methods used to understand and deal with past human rights violations by revealing their truths, and holding those responsible accountable, providing reparations for the victims and restituting them in order to achieve national reconciliation, preserve and document the collective memory, guarantee the non-recurrence of such violations and transition from an authoritarian state to a democratic system which contributes to consolidating the system of human rights.*¹⁶¹

While the transition period creates an opportunity to make women's rights a central issue and improve their social roles, it is not only about what they can gain, but also about what they should not lose. This became clear in the discussion during the Constitution drafting process on complementarity versus equality of the sexes and the various incidents with Salafists at the university.¹⁶²

The Tunisian transitional justice process is a non-negotiated transition and has been managed by the domestic political elite from the beginning. This made clear the opposing visions of different political factions and showed transitional justice as a field of power struggle and instrumentalisation among them, which resulted in ad hoc efforts to address the past and failed attempts to help the marginalised so far.¹⁶³ On the other hand however, the process is also characterised by advocacy, monitoring and projects by a variety of civil society associations and observation by several international organisations.¹⁶⁴

This chapter will examine if and to what extent a gendered approach was integrated into the transitional justice system in Tunisia and its different components. It will analyse starting from the ad hoc measures in reparations and prosecutions straight after the uprising to the recently established truth commission (Instance de Vérité et Dignité: IVD) with extensive powers. Instead of chronologically, the measures are studied

¹⁶¹ Article 1, Organic Law on Establishing and Organising Transitional Justice.

¹⁶² Johansson-Nogués, 2013, p. 398.

¹⁶³ Preysing, 2015, p. 79.

¹⁶⁴ Justice Transitionnelle en Tunisie, 2014.

according to their field in transitional justice: institutional reform, truth seeking, prosecutions and reparations.

3.1. Political and Institutional Reform

Article 14: Institutional reform aims at dismantling and rectifying the system of corruption, oppression and tyranny so as to guarantee the non-repetition of the violations, the respect of human rights as well as the establishment of a State of Law.

Institutional reform namely includes revising the legislations, vetting State institutions and utilities where responsibility for corruption and violations has been proven as well as updating and restructuring their methodologies and rehabilitating their staffs [...].¹⁶⁵

As described before and as stated in the Transitional Justice Law article, institutional reforms can comprise a whole range of actions, from vetting to law reforms. Due to a limited amount of time and space, this dissertation will however only analyse the biggest reforms: the new Constitution of 2014 and the 2013 Organic Law on Establishing and Organising Transitional Justice. It will furthermore also look into the representation of women in the new government, the parliament and the political parties before and after the revolution.

3.1.1. Political Representation of Women

This section will not only examine the representation of women in the government and the ARP, but also at their presence in the political parties and the ANC during the drafting of the Constitution.

Overall, the female representation in the public and political life in Tunisia remains low. After the revolution they were appointed to only 7% of the decision-making positions. Even though the Constitution and the electoral laws prescribe parity of the sexes in the current elected assemblies they only make up 34% of the members of ARP, or 73 out of 217 representatives.¹⁶⁶ This is slightly better however than the 59 out of 217 seats, or 27% of the seats in the ANC which is the same amount as the 2009 Parliament under

¹⁶⁵ Art. 14, Organic Law on Establishing and Organising Transitional Justice.

¹⁶⁶ CREDIF, Ministry of Women, Family and Children, UN Women and OHCHR, 2016.

Ben Ali.¹⁶⁷ Men dominate the political parties as well as the syndicates and occupy the high-ranks. Only one leader of the parties that existed before the revolution (el Jouhouri) was a woman and among the newly created parties this number is a meagre two. None of the parties, whether progressive or conservative, had an equal amount of men and women on its list during the elections and 97% of the lists had men in the first position, which is an important spot due to the privileged voting system.

Furthermore, on the regional and local level, no woman was appointed as governor or mayor and only a few as head of district.¹⁶⁸ These numbers leave the impression that the equality of men and women in elected assemblies stated in the laws is interpreted merely as an obligation of means (a responsibility to do its best efforts).

Men also continue to outnumber women in the government. The first 41-member transition cabinet in 2011 under Ghannouchi and later Essebsi, only comprised two female ministers, responsible for public health and women, family and children affairs. Ghannouchi's government also included one female secretary of state for housing. The subsequent Troika cabinet consisted of three women as well, in the position of minister of women, family and children affairs, minister of environment and secretary of state for housing. Three women were also part of the two governments (under Laraiedh and technocrat Jomaa) before the 2014 elections. The first Essid cabinet after the elections includes a total of eight women, of which three ministers (tourism, women's, family and children affairs, commerce and industry) and five secretaries of state. However, after the function of secretary of state is abolished, Essid's second government only comprises three female ministers.¹⁶⁹ Before the revolution, Ben Ali's government included four women out of 45, of which three ministers and one secretary of state. This number thus clearly did not improve following the uprising.¹⁷⁰ Moreover, women are put in posts like tourism or women's affaires and never in one of the 'bigger' positions like interior or economy.

The affirmative action prescribed in the constitution and electoral laws thus seems to have had little effect in practice. Even though Tunisia is known as the frontrunner in

¹⁶⁷ FIDH, 2012.

¹⁶⁸ Jelalia, 2015.

¹⁶⁹ CREDIF, Ministry of Women, Family and Children, UN Women and OHCHR, 2016.

¹⁷⁰ FIDH, 2012.

women's rights and has the mechanisms in place but when the situation gets serious those mechanisms are either simply not activated or women candidates are not found. This latter one can be explained by their marginalisation and the masochism of the political world, but also by the stigmatisation and the fact that including women is just not the main point on the agenda.^{171 172} According to the report of CREDIF, OHCHR, UN Women and the Ministry of Women, Family and Children the promotion of female participation should not be limited to politics, although important, but should be extended to all fields, including the media, to tackle the problem more structurally.¹⁷³

3.1.2. The 2014 Constitution

The adoption of the new Tunisian Constitution on January 26, 2014, after almost two years of debates and drafting in the ANC, was a major achievement for the country. The document emerged from a difficult consent between the secular and Islamist side and comprises many progressive and secular articles.¹⁷⁴ The role of women in the nation building of Tunisia is recognised in the preamble, which states that the NCA representatives are devoted “to the sacrifices of Tunisian men and women over the course of generations”.

Article one states that Tunisia is a Republic with the Islamic religion, while article two declares the country a “civil state based on citizenship, the will of the people and the rule of law”.^{175 176} Six provisions specifically deal with women. Article 21 ensures gender equality, non-discrimination on the base of sex and equal rights and duties, while article 34 states the effort of the state to always strive to include women in elected assemblies.^{177 178} The equality in article 21 is thus applicable on all rights and freedoms in the Constitution, which can be found under title two and includes e.g. freedom of belief and freedom of expression. Furthermore, there was no specific discrimination article in the 1959 Constitution. In one of the early draft Constitutions the clause

¹⁷¹ El Gantri, 2016.

¹⁷² Bouziri, 2016.

¹⁷³ CREDIF, Ministry of Women, Family and Children, UN Women and OHCHR, 2016.

¹⁷⁴ Human Rights Watch, 2014.

¹⁷⁵ Art. 1, § 1, Tunisian Constitution.

¹⁷⁶ Art. 2, § 1, Tunisian Constitution.

¹⁷⁷ Art. 21, § 1, Tunisian Constitution.

¹⁷⁸ Art. 34, Tunisian Constitution.

credited women and men to be complementary instead of equal, which caused protests and debates, which led to the revoke of the article. Articles 40 and 74 guarantee the right to work to both men and women and the right to run for President respectively.¹⁷⁹

¹⁸⁰ This latter one was not a possibility under the previous Constitution and during the 2014 elections and Kennou Kalthoum was the first woman to stand for election for this position.¹⁸¹

The security of women is also ensured in article 23, which prohibits mental and physical torture and article 46, which enshrines a commitment to protect and further women's rights, as well as a guarantee to work on equal opportunities, parity of the sexes in elected bodies and methods to wipe out violence against women.^{182 183} The fact that that the state has the obligation to implement procedures to eliminate this violence recognises that this is a problem women face more than men, as is concluded by multiple surveys. An example of this is the 2010 national survey, which confirmed that 47.6% of women between 18 and 64 experience at least once in their life a form of violence. There were however no numbers on the violence experienced by men and thus no way to make a comparison between the sexes. Earlier drafts proposed 'all forms of violence' instead of 'violence', since violence has different forms (physical, economical, sexual or psychological) and victims often face more than one form. The wording in the Constitution should not be an excuse to not impose measures that focus on tackling all forms of violence. Another important element in this article is the fact that it only mentions women's participation in elected bodies and not e.g. in political parties, even though they are also known for their underrepresentation of females.¹⁸⁴

The Constitution seems mostly in line with the recommendations of the report of the Working Group on the issue of discrimination against women in law and in practice, published after their country visit in 2013. Its advice included provisions on the primacy of international treaties, explicit equality between sexes and positive acts to encourage

¹⁷⁹ Art. 40, § 1, Tunisian Constitution.

¹⁸⁰ Art. 74, § 1, Tunisian Constitution.

¹⁸¹ CREDIF, Ministry of Women, Family and Children, UN Women and OHCHR, 2016.

¹⁸² Art. 23, Tunisian Constitution.

¹⁸³ Art. 46, § 1-4, Tunisian Constitution.

¹⁸⁴ CREDIF, Ministry of Women, Family and Children, UN Women and OHCHR, 2016.

gender equality, all of which can be found in the 2014 Tunisian Constitution.¹⁸⁵ Moreover, by declaring articles on non-discrimination and equality in combination with dropping the CEDAW reservations, the Tunisian state showed a commitment to erase discriminatory articles against women in the laws.¹⁸⁶

However, even though the Constitution comprises multiple articles on equality and promises to further women's rights, the carrying out of those women's rights articles remains a challenge.¹⁸⁷ Discriminatory clauses also remain in the penal legislation and in the CPS. Even though rape is a crime, punishment can be evaded by marrying the victim.¹⁸⁸ On top of this, sexual violence and rape are badly defined and marital rape is not mentioned. The same goes for domestic violence, which is penalised, but the procedure will be stops when the victim retreats the complaint.¹⁸⁹ Discriminatory articles in the CPS include the need for a dowry to have a valid marriage, the possibility to marry as a minor with the permission of the mother and the guardian and a waiting period for women before they can remarry (three to four months).^{190 191 192} Women also cannot remarry if they want to retain the custody over their children, while men can if they marry a woman who "takes responsibility".¹⁹³ As mentioned before, women inherit only half the amount of men, although recently there has been an initiative to try to change this.¹⁹⁴

3.1.3. Ministry of Human Rights and Transitional Justice and the Organic Law on Establishing and Organising Transitional Justice

The Ministry of Human Rights and Transitional Justice was established in January 2012 under Samir Dilou and is the first of its kind in the transitional field. No country in transition has ever had a complete ministry committed to this cause.¹⁹⁵ The creation of

¹⁸⁵ UN Working Group on the problem of discrimination against women in law and in practice, 2013.

¹⁸⁶ CREDIF, Ministry of Women, Family and Children, UN Women and OHCHR, 2016.

¹⁸⁷ Human Rights Watch, 2014.

¹⁸⁸ Art. 227, Tunisian Penal Code.

¹⁸⁹ Art. 218, Tunisian Penal Code.

¹⁹⁰ Art. 3, Tunisian Code of Personal Status.

¹⁹¹ Art. 6, Tunisian Code of Personal Status.

¹⁹² Art. 20, Tunisian Code of Personal Status.

¹⁹³ Art. 58, Tunisian Code of Personal Status.

¹⁹⁴ Amnesty International France, 2016.

¹⁹⁵ Preysing, 2015, p. 79.

the Ministry however was met with a lot of disapproval from the side of the civil society, who mainly criticised the politicisation of the transitional justice. They feared it would be vulnerable to partisanism, pose a threat to the impartiality and legitimacy and even 'steal' the process from the victims.¹⁹⁶ The formation of a Ministry nevertheless undeniably underlines the worrying strong position of the state in the transitional justice procedures, at that time led by the Ennahda party. The Ministry's mission is to "develop a set of strategies to address human rights committed in the past, based on the search for truth, judgment and reconciliation in accordance with the principles of transitional justice as adopted at the national level, to strengthen the democratic transition and to contribute to the goal of national reconciliation."¹⁹⁷ The high level of government involvement was not the only point of critique; also the Ministry's failure to refer to the international human rights standards or to a gender sensitive approach was commented upon. Apart from being in charge of research on transitional justice and the proposal and implementation of regulations concerning rehabilitation and reparations among others, it was also responsible for the creation and facilitating of a national dialogue leading to a fundamental law on transitional justice.¹⁹⁸

The national dialogue was initiated in April 2012 and followed by the creation of a technical committee one month later that would be responsible for the overseeing the discussions and drafting the new law. This technical committee was manoeuvred by the state and completed by civil society representants of five associations (National Independent Coordination for Transitional Justice, Centre of Tunis for Transitional Justice, Al-Kawakibi Centre for Democratic Transition, Tunisian Network for Transitional Justice and the Centre of Tunisia for Human Rights and Transitional Justice) and international organisations observers (UNDP, ICTJ and OHCHR).¹⁹⁹ The involvement of these international witnesses facilitated confirmation with international (women's) standards and helped in the capacity building of the local civil society.²⁰⁰ However, according to Samia Ltaief they are also too focused on the mechanisms (the

¹⁹⁶ KADEM, Impunity Watch and University of York, 2015, p. 4.

¹⁹⁷ AFTD, 2011, p. 18.

¹⁹⁸ Preysing, 2015, p. 79.

¹⁹⁹ Preysing, 2015, p. 80.

²⁰⁰ El Gantri, 2016.

laws and the IVD), and too little on a viable process.²⁰¹ Two out of twelve members of the committee were women who represented the civil society.²⁰² The consultation sessions on the regional level took place in all 24 governorates of the county with the help of six regional sub-committees, made up of more than 100 members from all different backgrounds. During these meetings, participants and victims associations were invited to share their expectations in terms of transitional justice.²⁰³ Both the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence as the Working Group on the problem of discrimination against women in law and in practice noted in their reports that the regional consultation seemed to fail in including and adequately representing women's voices.²⁰⁴ Difficulty to find women in the regions due to a lack of encouragement, social stigmatisation and fear of a lack of knowledge might offer some explanations for this female representation problem.²⁰⁵

The draft law was accepted by the Government and sent to the ANC in January 2013. The Draft Organic Law on Transitional Justice was eventually adopted nearly unanimous in the ANC on December 15, 2013, with a 125 votes out of a 126 in favour. It included the different aspects of transitional justice, namely reparations, institutional reforms, accountability and truth seeking, this latter one including the creation of a Truth and Dignity Commission (Instance de Vérité et Dignité: IVD).²⁰⁶ A large part of the law is focused on the establishment of this Commission, at the expense of elaborating on the other transitional justice areas like prosecutions and reform of institutions. It also focuses more on definitions than on a general strategy and was therefore called by the Special Rapporteur "more a law establishing a truth commission than a law on transitional justice expressing a truly comprehensive approach".²⁰⁷

Women's representation in the Truth Commission is addressed in article 19 of the Law, which states that of the fifteen members of the IVD, each gender should be represented

²⁰¹ Ltaief, 2016.

²⁰² Justice Transitionnelle en Tunisie, 2014.

²⁰³ KADEM, Impunity Watch and University of York, 2015, p. 4.

²⁰⁴ UN Working Group on the problem of discrimination against women in law and in practice, 2013.

²⁰⁵ El Gantri, 2016.

²⁰⁶ ICTJ, 2013.

²⁰⁷ Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, 2013.

by at least one third of them.²⁰⁸ The Working Group on the issue of discrimination however expressed its concern about a lack of specific references to women's experiences even though the law mentions a few times the need to consider the specificity of women's experiences.²⁰⁹

3.2. Truth Seeking

*Article 2: Revealing the truth about the violations is a right guaranteed by law to every citizen taking into consideration the respect of the victims' interest and dignity and the protection of private information.*²¹⁰

The truth seeking component in Tunisia comprised two components: at first two committees, the National Commission to Investigate the Facts Related to the Abuses Recorded During the Period from 17 December 2010 until the End of Its Cause and the National Commission of Truth on Bribery and Corruption, were created on February 18, 2011. This was followed by a full-blown Truth and Dignity Commission (IVD), which was established by the Transitional Justice Law on December 24, 2013.²¹¹ In the following paragraphs these institutions will be analysed more in depth.

3.2.1. February 18th 2011 Commissions

The first two truth seeking committees were ad hoc transitional justice measures created right after the uprising in February 2011, as an attempt to appease the public demand. The National Commission to Investigate the Facts Related to the Abuses Recorded During the Period from 17 December 2010 until the End of Its Cause was charged with the task to investigate human rights violations since the beginning of the revolution, but not for the period of dictatorship before that. The National Commission of Truth on Bribery and Corruption on the other hand was established in order to investigate the

²⁰⁸ Art. 19, Organic Law on Establishing and Organising Transitional Justice.

²⁰⁹ UN Working Group on the problem of discrimination against women in law and in practice, 2013.

²¹⁰ Art. 2, Organic Law on Establishing and Organising Transitional Justice.

²¹¹ Ferchichi, 2012.

corruption and embezzlement under Ben Ali's regime, as this was one of the major challenges for the transition.²¹²

The former commission was also known as the Bouderbala Commission, after its President and former head of LTDH, submitted a 1041 pages final report to the President in May 2012. It had recorded 2489 cases in this period, by conducting visits and hearings throughout the country, of which 338 deaths and more than 2000 wounded. In this report the Commission articulates that it received less dossiers of women than of men, but they however underline the high number of indirect female victims testimonies. Especially when it came to cases of sexual violence, women struggle hard to provide evidence and statements. The Commission moreover received dossiers of miscarriages after breathing in tear gas, which has left some women with trauma and depression.²¹³

The Commission on Corruption examined around 5000 cases and proposed draft laws on whistle blower protection among others and an inclusion of an economic division in the justice system. It moreover transferred 320 dossiers to the judiciary however to date there have been zero judgments. In October 2011, a Permanent Forum on the Fight Against Corruption was created as a successor to the Commission. Both Commissions thus managed to accomplish their mandate, even though the fragile political situation posed difficulties.²¹⁴

In terms of female representation, men chaired both Commissions. But while the Commission on Truth and Bribery and Corruption was only composed of 18% women, the Commission to Investigate the Facts on the uprising included 60% women and forms therefore an exception in the Tunisian public life.²¹⁵

3.2.2. Truth and Dignity Commission/ Instance de Vérité et Dignité

The Tunisian Truth and Dignity Commission, or Instance de Vérité et Dignité (IVD) was thus created as a comprehensive transitional justice and truth seeking institution with legal personality and financial and administrative autonomy by the Organic Law

²¹² Ferchichi, 2012.

²¹³ National Commission to Investigate the Facts Related to the Abuses Recorded During the Period from 17 December 2010 until the End of Its Cause, 2012.

²¹⁴ Preysing, 2015, p. 80.

²¹⁵ CREDIF, Ministry of Women, Family and Children, UN Women and OHCHR, 2016.

on Establishing and Organising Transitional Justice in December 2013, following up a range of previously taken ad hoc measures. It is the 42nd Truth Commission in the world and was supported by the then in power Troika cabinet and included in the new 2014 Constitution. However, following the 2014 elections and change in power the most powerful political parties, Nidaa Tounes and Ennahda, seem to favour selective amnesty and amnesia over truth seeking and remembrance.²¹⁶ An example of this is their Reconciliation Law, designed to give amnesty to public servants guilty of embezzlement and businessmen profiting from this, which received a lot of opposition nationally and internationally. Nevertheless, truth seeking about past human rights violations was one of the most important claims of victims, which is not surprisingly after almost 60 years of authoritarian regime and an uprising. Uncovering the truth about the past is the only way to move forward and to reconciliation and rehabilitation.²¹⁷

The Transitional Justice Law states in article 19 that the Commission will consist of fifteen members and both sexes should be represented by at least one third. The selection process and cohesion between the Commissioners faced many obstacles. A selection committee was established by the NCA to shortlist candidates who would then be approved by a plenary vote. This list was already subject to criticism due to alleged lack of independence of certain members (e.g. links with the previous regime) but was nevertheless accepted by the NCA. Since the swearing into office in June 2014 however, four Commissioners resigned already and another one was removed, which deteriorated the internal dynamics and the credibility of the body.²¹⁸ The Commission started out with precisely one third female members and a female president, Sihem Bensedrine. The criticism surrounding the background and ideology of those selected diverted the attention from the actual work of the IVD. At present, the Commission has eleven members, of which five women.²¹⁹

The transitional justice law has attributed an extensive list of responsibilities to the IVD, the primary one being the examination and revealing of the human rights violations that

²¹⁶ International Crisis Group, 2016.

²¹⁷ El Gantri R., 2015, pp. 2-3.

²¹⁸ El Gantri R., 2015, p. 3.

²¹⁹ IVD, 2016.

occurred since the independence until December 31, 2013. This should come about by collecting testimonies of victims and subsequently create a database of violations and victims and determine the responsibility of the state organs and other violators.²²⁰ The tasks of the IVD go beyond this however, since the body is not only in charge of making recommendations on reparations but also of establishing a programme for reparations to victims.²²¹ As foreseen in the transitional justice law, a fund for reparations and rehabilitation for victims of oppression should be created by the IVD to facilitate payments. The Commission is also responsible for setting up a Committee of Functional Review and Reform of Institutions, which has the task to make recommendations on vetting in any of the state sectors and to provide advise on how to deal with violators in high government positions.²²² Finally, the IVD is expected to give recommendations in all areas, ranging from political reforms to reforms in media, education and the judiciary in order to prevent future human rights violations and a repetition of the past events. The extensive mandate of the IVD is limited to four years, with a possible extension of one year. With two years already passed, a limited timeframe of two (perhaps three) years remain for the Commission to complete these tasks.²²³ This was also one of the concerns in the report of the Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, which pointed out that the many responsibilities of the IVD were likely to overburden it and consequently prevent it from performing its core functions properly. It moreover underlined that these varied responsibilities require different technical capabilities, ways of management and assessment criteria that would lead to internal tensions and major challenges.²²⁴

The internal organisational structure of the IVD consists of six committees, each led by one member. These are the Research and Investigation Committee, the Women's Committee, the Committee for Preserving National Memory, the Conciliation and Arbitration Committee, the Rehabilitation Committee and the already mentioned

²²⁰ Justice Transitionnelle en Tunisie, 2014.

²²¹ Article 39, § 5, Organic Law on Establishing and Organising Transitional Justice.

²²² Preysing, 2015, p. 80.

²²³ Justice Transitionnelle en Tunisie, 2014.

²²⁴ Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, 2013.

Committee of Functional Review and Reform of Institutions. The former two are presided by women, Oulaa Ben Nejma and Ibtihel Abdellatif respectively.²²⁵ A lengthy internal debate preceded the establishment of the Women's Committee, which will be responsible for mainstreaming a gender approach into all of the Commissions tasks, responding to female victims and creating proper conditions based on their specific experience. The gendered approach to transitional justice is important specifically for the Tunisian case because of its image as emancipated homogenous society, while in reality hiding divergence in culture and religion. It is therefore of utmost importance that the IVD manages to clarify the gender-based violations that took place under the previous regimes and their impact on those women. According to ICTJ however, the fact that the committee was not named the Gender Committee may establish some limitations in regard to analysing other kinds of gender-based abuses like those against men or boys and advised the IVD to take into account all kinds of gender-based violations.²²⁶ Furthermore, regional offices were established across the country to assist the IVD, especially in terms of communication and outreach. Their creation was especially important to guarantee accessibility to victims from remote and marginalised areas. Even though an ambitious 24 regional offices were foreseen at first, one for each governorate, nine offices are currently in place since they require a substantial amount of time and resources.²²⁷

Between December 2014 and June 15, 2016, the final date to file a complaint, around 65000 dossiers were received by the IVD, most of them relating to individual violations. This high number of claims demonstrates that there is a trust in the IVD as an official institution and the truth seeking procedure in general. However, this also means that there are steep expectations of the IVD's work. In the early stage of the Commission, only five percent of the complaints they were receiving were derived from women. It is thanks to mobilisation, awareness raising and projects by different civil society organisations that the percentage of claims by women was raised to 23 percent. An example of one of those initiatives by the civil society is the creation of the network "Transitional Justice is also for Women" by ICTJ and eleven Tunisian human rights

²²⁵ IVD, 2016.

²²⁶ El Gantri R., 2015, p. 5.

²²⁷ El Gantri R., 2015, p. 6.

organisations. Its goal was to guarantee that women's testimonies were brought forward to the IVD and engage them in the transitional justice process by creating an encouraging environment. Furthermore, the network aspired to expose the violations specifically committed against women e.g. connected to sexual violence and economic rights. This led to the presentation of a collective dossier, containing 140 claims, to the IVD in May 2016, which is a first for a female advocacy association.²²⁸ The Network identified socio-economic infringements next to sexual violence as the most prevalent violations women faced during the dictatorship. Since very few women were prepared to testify on sexual violence due to fright of social stigma, the collective dossiers focused instead on the consequences of Circular 108; the law enacted by Bourguiba in 1981, targeting veiled women who were seen as adversaries of the secular government. Together with this collective dossier, the women who gave their testimonies demand also the annulment of the Circular 108, which is still in place today, apart from symbolic reparations, an apology of the government and a public hearing at the IVD. ICTJ underlines the importance to look beyond the Islamist – secular divide and instead focus on the human rights violations. Whether women wear veils or not, it is essential that their rights are protected and guaranteed, especially if the country wants to continue its transition to democracy.²²⁹

During their work, several causes for the low number of female participation were identified as well. Apart from the risk of social stigma, a big reason was also unclarity about the specific role of the IVD, e.g. that the Commission is not only limited to direct victims but also indirect victims (which a lot of women are), what a violation precisely entailed and confusion on the confidentiality. Bad communication on the part of the IVD and negative media on the institution had an influence as well.²³⁰ Finally, the social and cultural heritage of Tunisia's patriarchal society, especially in rural areas, halt women from testifying due to conservative families or a fear of dishonour.²³¹ This is why an assurance of confidentiality is so important and why women can file their dossiers in all offices of the IVD, not just the geographically closest one (so they will

²²⁸ ICTJ, 2016d.

²²⁹ ICTJ, 2016d.

²³⁰ ICTJ, 2016d.

²³¹ Belhassine, 2016.

not encounter someone familiar).²³² The sort of violations women had to endure, both directly as part of the opposition or indirectly as a family member include police harassment, sexual violence, torture, arbitrary arrest, being deprived of their right to work and of their access to public services and other systematic violations particularly under Ben Ali's regime.²³³

Nevertheless, if the IVD wants to have a positive impact on the lives of the victims by the time its mandate ends it needs to face and solve its flaws first. First of all, good communication and outreach towards the victims and to the rest of the population on the Commission's work and goals is essential to advance the public's understanding of the IVD and to improve its visibility. This is however not the case at the moment, which is why several NGO's have undertaken projects with the goal to sensibilise the population.^{234 235} For reasons of legitimacy, it would be more effective would the IVD adopt a comprehensive communication strategy in order to improve its image, spread information about the transitional justice process. Apart from this, the IVD needs to end its internal conflicts in order to move forward and the Tunisian civil society should continue to monitor and criticise the Commissions work to make sure women's issues are included.^{236 237} With only two years of the mandate left and the deadline for filing complaints behind us, it is important that the IVD manages to process and analyse the claims and statements properly. This should give the opportunity to produce a report with valuable recommendations, which should be feasible and binding for the state. The presence of the Women's Committee gives it moreover the chance to include a chapter dedicated to the dossiers of women victims and the violations they endured, which should not be perceived as 'collateral damage'. Despite the limited time frame it would probably be advisable to attempt to finish the IVD's work in two years, since 2019 brings new elections and a possibility of a different political climate that could influence the transitional justice system.²³⁸ Most of all, it is important to show respect to the

²³² El Gantri, 2016.

²³³ Belhassine, 2016.

²³⁴ El Gantri, 2016.

²³⁵ Bouziri, 2016.

²³⁶ Ltaief, 2016.

²³⁷ ICTJ, 2015.

²³⁸ El Gantri, 2016.

women victims and try to provide them with rehabilitation. In order to regain confidence, the state should take them seriously and cooperate with the IVD in order to ensure change and non-repetition.²³⁹

3.3. Prosecutions

*Article 6: Accountability encompasses these of mechanisms, which prevent impunity and escaping responsibility.*²⁴⁰

The prosecutions of Ben Ali and other high-ranked officials of the former regime suspected of corruption and human rights violations were characterized again by ad hoc measures and a lack of a comprehensive strategy. These prosecutions furthermore occurred before the work of the IVD, which is considered as a first stage in the transitional justice process.²⁴¹ The trials concerning human rights violations during the 2010-2011 revolution were referred to military tribunals by the judges of first instance on the basis of article 22 of the law on the general status on internal security forces, which allows the former one jurisdiction in case of one of the parties belonging to those security forces.²⁴² Cases were grouped geographically and group trials occurred in Kef, Sfax and Tunis. In total 53 former ministers and security forces officers were judged end 2011. 13 more were convicted in June 2012, including ex-President Ben Ali in absentia, the former Minister of Interior Kacem and five ex-officials of his Ministry. None of the judgments were concerning women's rights specifically. Many were even based on relatively insignificant accusations, like economic crimes, not human rights violations.²⁴³ However, while the Military Court of Appeal confirmed the life sentence of Ben Ali, it significantly reduced several sentences to only criminal negligence (overseeing the seriousness of the crimes), which led to the release of certain high ex-officials of the previous regimes, including Kacem.²⁴⁴ Many families of victims were angered by this decision and demanded the transfer of the trials to the civil courts, even

²³⁹ Bouziri, 2016.

²⁴⁰ Article 6, Organic Law on Establishing and Organising Transitional Justice.

²⁴¹ Ferchichi, 2012.

²⁴² Andrieu, 2014.

²⁴³ Preysing, 2015, p. 82.

²⁴⁴ Human Rights Watch, 2015b.

though initially the use of the military tribunals was approved of due to the respectable status of the army and the corruption in the civil justice system under Ben Ali.²⁴⁵ Also the media coverage on the trials, especially the one concerning Ben Ali, criticised the incapability and independence of the tribunals to ensure accountability. It moreover made use of many theatre metaphors and called the process ‘staged’ and ‘a farce’, meant to pacify the public opinion and compared to the ‘smoke and mirror tactics’ of ex-President Ben Ali.²⁴⁶

According to a Human Rights Watch report the military trials suffered some severe deficiencies that hampered to attain full accountability for the committed human rights violations. First of all, the transfer to the military tribunals caused significant delays. The civil judiciary started the investigation of the cases before deciding to refer the cases when certain suspects turned out to be from the security services. The military court then relaunched another investigation before the cases finally reached the accusation chamber.²⁴⁷ Secondly, the institutional independence of these military tribunals is controversial since the Minister of Defence presides the High Council of Military Judges and has through this body influence on the selection and discharge of the judges. Moreover, the civilian judges are assigned by the President on the basis of recommendations by the Minister of Defence and of Justice. This is not in line with the international standards that oblige that a process against the security services is not performed by someone of the same force.²⁴⁸ Thirdly, the Code of Military Justice does not permit civil parties, like the relatives of the victims, to join the proceedings or the investigations. The 2011 reforms to the system did change this but they were not yet entered into force at the time of these cases. Fourthly, the Tunisian law does not include articles dealing with command responsibility, which makes it impossible to hold a person responsible for violations committed by a subordinate. In addition, the state did not make compelling attempts to achieve the extradition of ex-President Ben Ali from Saudi Arabia, which weakened the judicial process since it took away the chance to

²⁴⁵ Andrieu, 2014.

²⁴⁶ Preysing, 2015, p. 82.

²⁴⁷ Human Rights Watch, 2015b.

²⁴⁸ Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, 2013.

investigate and question the chief defendant. On the other hand, Tunisia's accession to the Rome Statute of the International Criminal Court was seen as a pledge against impunity and regarded as well as a warning to Ben Ali.²⁴⁹

The 2013 Organic Law on Establishing and Organising Transitional Justice gives the IVD the power to evaluate the cases related to the revolution and transfer them to specialised chambers created by article 8. These chambers will be responsible for human rights violations like “deliberate killing, rape and any form of sexual violence, torture, enforced disappearance and execution without fair trial guarantees”.²⁵⁰ They are furthermore also assigned with cases submitted to it by the IVD related to “election fraud, financial corruption, misuse of public funds, and pushing individuals to forced migration for political reasons”.²⁵¹ This was followed with a more clarifying law in June 2014 by the ANC concerning human rights breaches during the revolution. It classifies the abuses during the uprising as gross human rights violations that fall under the jurisdiction of the Organic Law on Establishing and Organising Transitional Justice and confirms the primary jurisdiction of the chambers over the public prosecutor in those cases referred from the IVD.²⁵² Currently, those specialised chambers are not yet established and judges have not been appointed. They could however make a valuable contribution to the transitional justice process, but only if they manage to guarantee their independence, effectiveness and fairness.²⁵³ They can offer reopening and retrial of the cases to address the failures of the military tribunals and finally bring justice to the victims and all those affected. Retrials must however ensure respect to international standards and are thus only allowed when new evidence surfaces or when former trials are proven not to be independent or impartial. Flawed trials and impunity are not an option, since fair prosecutions are one of the most valuable deterrents to future violators. The Tunisian transitional justice mechanisms should therefore pursue this, aim to close the now existing accountability gap and take in a gendered approach in the whole process.²⁵⁴

²⁴⁹ Preysing, 2015, p. 82.

²⁵⁰ Article 8, § 2, Organic Law on Establishing and Organising Transitional Justice.

²⁵¹ Article 8, § 3, Organic Law on Establishing and Organising Transitional Justice.

²⁵² Human Rights Watch, 2015b.

²⁵³ ICTJ, 2015.

²⁵⁴ Human Rights Watch, 2015b.

3.4. Reparations

*Article 11: Reparation for victims of violations constitutes a right guaranteed by law and the State shall take sufficient and efficient reparations measures in line with the seriousness of the violation and the situation of every victim. The State's available capacities should be taken into consideration when implementing reparations.*²⁵⁵

Right after the 2011 uprising, various ad hoc measures were adopted concerning compensations for the victims of the revolution and the previous regime. The multitude of initiatives combined with the different bodies implementing them brought along confusion and unclarity, which created frustrations and misconceptions. This dissertation will limit itself to discuss the main reparation initiatives. First of all, there is the Decree Law 1 of February 19, 2011, which foresees amnesty to everyone who was convicted for political reasons before January 14. It furthermore gave to the 12 000 political prisoners the possibility to request for damages and the right to employment. In June, another decree was adopted which gave them preferential recruitment in the public sector as well. This turned out to be very controversial since the opposition believed it to be an objective of the Islamists to station their supporters in public sector and administrative positions.²⁵⁶ Secondly, there is the Decree Law 97 of October 24, 2011, which foresees financial and symbolic compensations for the victims of the revolution. It creates a Commission for the Martyrs and Injured of the Revolution, a body responsible of the process and the list of victims. These are defined as those who have “risked their lives to realise it and ensure its success and who, as a result have been martyred or suffer impairment” during the 2010-2011 uprising.²⁵⁷ By using this definition many collateral victims are excluded, like the family of the protesters, those who tried to help victims or those who were harmed simply by mistake. It is therefore unclear whether the Decree aims to compensate activists or just victims of severe human rights breaches. Harmonisation of texts and instruments for all victims is thus

²⁵⁵ Art. 11, Organic Law on Establishing and Organising Transitional Justice.

²⁵⁶ KADEM, Impunity Watch and University of York, 2015.

²⁵⁷ Preysing, 2015, p. 81.

important.²⁵⁸ The law furthermore instructs to commemorate the events through the building of a museum, renaming streets and squares, turning January 14 into a national holiday and integrating the events in the educational curriculum.²⁵⁹ In order to benefit from the financial reparations however, a medical certificate had to be presented which guaranteed the ‘victim’ status. This led to a lot of unfairness and abuse, since some of the people eligible to compensation could not afford the money to acquire such a certificate, while wealthier individuals could present one with the help of corrupt doctors. The general lack of transparency in the precise definition and making up of the database of victims harmed the legitimacy of the reparations process.²⁶⁰ The financial reparation constituted 6000 dinars to the 2749 injured and 40 000 dinars to families of 347 martyrs. It moreover provided a monthly pension to the surviving spouse, children, parents and reimbursement of medical and transport costs. The wounds of certain victims however required utensils or treatment not available in the public hospitals that offered the medical care. Moreover, psychosocial treatment was also not included. Other reasons for frustration were the fact that the severity of the injury was not taken into account when calculating the reparations and the unclarity that ruled the claiming procedure. This in combination with the various ad hoc measures on reparations led to the fragmentation of victims into different groups competing against each other and the politisation of the problem.²⁶¹ An example of this is that by focusing on periods instead of types of human rights breaches excludes those who faced violations before the set dates, like the 2008 revolt in the mining area. As a consequence, this area strongly opposed the Decree Law and argued to change the origin date to January 2008.²⁶² Another gap in the legislation concerning women specifically was that nothing was planned in rehabilitating the dignity of women’s victims and that originally the allocation of compensations was performed through the inheritance law, which gives women only halve of what men receive. This has been changed since to make it equal between the sexes, because the right to reparations should be given based on the

²⁵⁸ Andrieu, 2014.

²⁵⁹ Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, 2013.

²⁶⁰ Andrieu, 2014.

²⁶¹ Preysing, 2015, p. 81.

²⁶² Andrieu, 2014.

damages of the victims, not on the Tunisian CSP.²⁶³ ²⁶⁴ In short, this first range of laws failed to effectively deal with the needs of the victims, which was also clear in the 2014 study of the Tunisian Network of Transitional Justice that showed that around 87 percent of those who received reparations in Gafsa were unsatisfied. The diverse reasons given included the slow handling of dossiers and the lack of outreach.²⁶⁵ Some families even refused reparations, instead demanding justice and truth measures. As said as well by the Special Rapporteur, financial reparations without the other transitional justice components and assurances of non-recurrence, may not be seen as an instrument for justice, but as a means to acquire compliance of the victims. This shows again how important an integrated strategy is that includes the interrelated parts of transitional justice.²⁶⁶ In addition to this, repairs do not just pose a physical problem, but also one of identity and are connected to disputes of remembrance and history.²⁶⁷

In an effort to construct a more comprehensive reparations policy complementary to the truth-seeking process, the Transitional Justice Law of 2013 gives the IVD the responsibility to “develop a comprehensive individual and collective program for reparations for victims of violations [...] taking into account all the previous administrative and judicial decisions and measures taken”.²⁶⁸ Apart from giving a new opportunity for an inclusive reparations policy, the law also opens up an opportunity for collective reparations for the socio-economically marginalised parts of the country. The IVD is charged with identifying such areas and proposing reparations for the structural damage they experienced. Currently, the process of classifying marginalised regions is ongoing but the uplifting of these areas will also depend on a revitalisation of the economy. Collective reparations for marginalised areas would definitely be positive for the women in those regions, because as is often the case, women are the first to be the victim of unemployment and poverty. On the one hand, they were principally affected by the closing of several factories and many of them work in unorganised areas that

²⁶³ Ltaief, 2016.

²⁶⁴ AFTD, 2011, p. 19.

²⁶⁵ ICTJ, 2015.

²⁶⁶ Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, 2013.

²⁶⁷ Andrieu, 2014.

²⁶⁸ Article 39, § 5, Organic Law on Establishing and Organising Transitional Justice.

facilitate exploitation. On the other hand, conservatism and social customs aggravate their exclusion. Reparations that target the whole region and not just one person can thus only benefit the women living in these marginalised regions.²⁶⁹

Conclusion

This dissertation has attempted to analyse the gender inclusiveness of the transitional justice process in Tunisia, mainly the participation and influence of women in those new structures. This because the country is seen externally as a champion in women's rights and the 2010-2011 revolution included a high involvement of women. Transitional justice was defined as "a set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses. These measures include criminal prosecutions, truth commissions, reparations programs, and various kinds of institutional reforms". This thesis however attempted to take in a gendered approach to transitional justice, which is the "determination, acknowledgement and addressing of unequal gender perspectives". In our research the focus lay on ensuring women participation in the procedures and instruments and at whether their interests are included in the Tunisian transitional justice mechanisms, to examine whether there is a case of under-inclusion of women.

After a historical analysis from the year of independence until the revolution and the end of the Ben Ali regime, we concluded that both former Tunisian presidents have instrumentalised the feminist theme by letting the state control the actions of the women movements. While Bourguiba aim was to break the power of the tribal society, which had a lot of influence before the independence, Ben Ali mainly aspired to distract the attention from other human rights infringements in Tunisia. There were thus no genuine feminist concerns playing, but modernist and diplomatic matters instead. Under Bourguiba this led to a swift acquirement of advanced rights for women, like the right to vote and the universalisation of primary education enrolment. The most important one for the expansion of women's rights being the Code of Personal Status of 1956, which bans polygamy and increases the protection of women in divorce, marriage and other areas. This piece of legislation however should not be perceived as a triumph for

²⁶⁹ KADEM, Impunity Watch and University of York, 2015.

feminism, but as a triumph of strong leadership aiming at implementing a top-down reformist understanding of Islam, which consequently failed to tackle the fundamental underlying structures. The state-led feminism in Tunisia has therefore also been called 'masculine feminism', since it does not aim to truly advance women's rights and change their social roles but to simply compose a more efficient role for them within the patriarchal structures.

Bourguiba's successor Ben Ali further instrumentalised his legacy but did little to substantially improve the status of women. Without tackling underlying inequalities and patriarchal stereotypes, women kept on facing discrimination in areas like employment, domestic violence and law practices up to the revolution.

This was followed by an examination of the participation of women and the importance of their concerns during the revolution. Female engagement in protests occurred in Tunisia long before the revolution, since women were already involved in the national independence movement in the 1920s. The start of the uprising had nothing to do specifically with the status of women and initially not even with a demand for democracy, but was a claim for employment and for an improved socio-economic situation. Nevertheless, the revolution did present an opportunity to further women's rights, demanding universal freedoms. Tunisian women were massively participating in the demonstrations and were equally present and devoted to the revolution and to change. They came from all levels of society and various backgrounds and were a major contribution to the grassroots actions but also in advocating and mobilising through social media and blogs. During the revolution, men and women were deemed equal. More than anything, the protests turned around decades of top-down developments to a bottom-up approach, in which the people took up their political and democratic role. However, during the protests there were also reports of sexual harassment and rape by the security forces. Currently in its fifth year since the uprising, Tunisia managed to avoid the debacles and chaos that other nations in the region faced afterwards. Nevertheless, it still encountered its own challenges and confrontations in tackling the economy, the security in the country and the institutional reforms.

Following, we analysed the development and framework of the transitional justice system, with a special emphasis on the political and institutional reform, including the

new constitution and the transitional justice law, and the work of the recently established Truth and Dignity Commission. More specifically, it was focused on the participation of women in these mechanisms and the inclusion of their interests. The Tunisian transitional justice process has been elitist, politicised and instrumentalised from the beginning, resulting in ad hoc efforts to address the past and failed attempts to help the marginalised so far. In terms of female political representation, this remains very low, with little difference in the amount of women in the assemblies and the government compared to before the revolution, and no women in the 'big' positions in the latter. Men continue to dominate the political parties as well as the syndicates and occupy the high-ranks. The affirmative action prescribed in the constitution and electoral laws thus seems to have had little effect in practice. Even though Tunisia is known as the frontrunner in women's rights and has the mechanisms in place, when the situation gets serious those mechanisms are either simply not activated or women candidates are not found due to marginalisation, masochism and stigmatisation. Including women is simply not the main point on the agenda.

The study of the 2014 Constitution showed the inclusion of the role of women in the nation-building process in the preamble along with six provisions specifically concerning gender. These articles ensured gender equality and non-discrimination, the ambition to include women in elected assemblies, the guarantee of the right to work to both men and women, the newly won right to run for President and the commitment to protect and further women's rights, the guarantee to work on equal opportunities, and methods to wipe out violence against women. However, even though the Constitution comprises multiple articles on equality and promises to further women's rights, the carrying out of those women's rights articles remains a challenge. Discriminatory clauses also remain in the penal legislation and in the CPS on subjects like rape, sexual violence and domestic violence, but also marriage, inheritance and custody.

Tunisia was furthermore the first country in transition that ever created a whole ministry committed to the cause: the Ministry of Human Rights and Transitional Justice. It met with a lot of disapproval from the side of the civil society, who mainly criticised the politicisation of the process and the vulnerability to partisanism, which might pose a threat to the impartiality and legitimacy and even 'steal' the process from the victims.

The formation of a Ministry undeniably underlines the worrying strong position of the state in the transitional justice procedures. The Ministry furthermore failed to refer to the international human rights standards or to a gender sensitive approach. The technical committee established by the Ministry only included two women out of twelve members. The regional consultation failed as well in including and adequately representing women's voices, mainly due to a lack of encouragement, social stigmatisation and fear of a lack of knowledge. The Draft Organic Law on Transitional Justice adopted in December 2013 dedicated a large part to the establishment of the IVD, instead of focusing on a general strategy. Specific references to women's experiences lack, even though the law mentions a few times the need to consider the specificity of women's experiences.

By analysing the truth seeking component of the transitional justice system we found that even though the Commission on Truth, Bribery and Corruption was only composed of 18% women, the Commission to Investigate the Facts on the Uprising included 60% women and forms therefore an exception in the Tunisian public life. The IVD, the 42nd truth commission in the world, started out with precisely one third female members as prescribed in the Transitional Justice Law and a female president, Sihem Bensedrine. Due to internal problems, the Commission is currently composed of eleven members of whom five women. The IVD was created as a comprehensive transitional justice and truth seeking institution, with extensive responsibilities. It is feared however that this long list of task will overburden the IVD and prevent it from performing its core functions properly. Even though only five percent of the complaints were by women initially, initiatives like the 'Transitional Justice is also for Women' network and the submission of its collective dossiers on the Circular 108 helped this rise to 23 percent. The network also identified several causes for the low number of female participation: the risk of social stigma, the unclarity on the specific role of the IVD (e.g. not limited to direct victims), confusion on the policy of confidentiality, bad communication by the IVD in combination with negative media attention and the social and cultural heritage of Tunisia's patriarchal society, especially in rural areas. Nevertheless, if the IVD wants to have a positive impact on the lives of the victims by the time its mandate ends it needs to face and solve its flaws first. First of all, good communication and outreach

towards the victims and to the rest of the population on the Commission's work and goals is essential to advance the public's understanding of the IVD and to improve its visibility. The IVD also needs to end its internal conflicts in order to move forward and the Tunisian civil society should continue to monitor and criticise the Commissions work to make sure women's issues are included. With only two years of the mandate left and the deadline for filing complaints behind us, it is important that the IVD manages to process and analyse the claims and statements properly. This should give the opportunity to produce a report with valuable recommendations, which should be feasible and binding for the state. The presence of the women's committee gives it moreover the chance to include a chapter dedicated to the dossiers of women victims and the violations they endured, which should not be perceived as 'collateral damage'. Most of all, it is important to show respect to the women victims and try to provide them with rehabilitation. In order to regain confidence, the state should take them seriously and cooperate with the IVD in order to ensure change and non-repetition.

Both the prosecutions and reparations component were so far characterised by ad hoc measures and might find a second chance through the IVD, which has the responsibility to develop a comprehensive program for reparations, including collective ones, and can refer cases to Specialised Chambers created by the Transitional Justice Law, even though these chambers are not yet created. The accountability constituent was referred to the military tribunals, who apart from reducing several sentences from high-level officials, also suffered from delays, a lack of independence and impartiality of the state and excluded the civil parties. It was furthermore hampered by the lack of legislation on command responsibility. None of the trials were concerning women's rights specifically and many were even based on relatively insignificant accusations and consequently opposed by the victims and called a farce. However, fair prosecutions are one of the most valuable deterrents to future violators and flawed trials and impunity cannot be an option for Tunisia; the closure of the accountability gap needs to be pursued. Also the reparations programme can get a new chance through the IVD, including collective reparations for the socio-economically marginalised parts of the country. The identification of these areas is currently ongoing and would definitely be a positive step for the women in those regions, because as is often the case, women are the first to be

the victim of unemployment and poverty. Reparations that target the whole region and not just one person can thus only benefit the women living in these marginalised regions. The first ad-hoc measures on the other hand were characterised by confusion, a lack of transparency, politisation and the fragmentation of the victims into competing groups and in general failed to deal effectively with the needs of victims. This made clear that financial reparations without the other transitional justice components and assurances of non-recurrence, may not be seen as an instrument for justice, but as a means to acquire compliance of the victims and shows again how important an integrated strategy is including all the interrelated components of transitional justice.

To conclude, in the fifth year since the revolution that called for jobs, freedom and dignity for everyone, increased freedom and the first steps in transitional justice have been taken, however, a lot remains to be done in gender issues, whether this is on political representation, opportunity or violence. Even though the high involvement of women in the protests, there is in general an underinclusion of women in the transitional justice system and women representation is currently just not an issue that is high on the agenda. Progressive legislations and a history of state feminism failed to ensure women's equality in practice due to the remaining underlying patriarchal structures. For now, hope lies with the work of the IVD and its handling of the received claims and statements, which will hopefully lead to a strong report with specific attention to the violations to women and binding recommendations to the government. This in combination with a cooperative state can ensure change, non-repetition and rehabilitation.

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Annex 1: Political Map of Tunisia



Source: Maps of the World. (2016). *Tunisia*. Retrieved from <https://www.mapsofworld.com>

Annex 2: Questionnaire interviews

- 1) Do you consent to recording this conversation?
- 2) Can I use your name as my source or do you prefer to remain anonymous?
- 3) Can you tell me a little bit more about the specific role of your organization in the transitional justice process?
- 4) Representation
 - a. How was the inclusion of women during the institutional reforms?
 - i. During the preparation of the new Constitution
 - ii. During the preparation of the law on transitional justice?
 - b. What do you think are the main challenges for including women in all aspects and institutions of transitional justice process?
 - i. Do you think their current participation is satisfactory?
- 5) Truth component
 - a. The complaints made by women rose by 5% to 21% and the final date for filing complaints is 15 July, what are the next steps?
 - b. How do you assess the participation of women in the instance of truth and dignity?
 - c. Only 2 years (or 3 if its mandate is extended) remain of the mandate of the Truth and Dignity Commission, do you think that will be enough to complete their work and make a valuable contribution?
 - i. For the Women's Committee: What have been the main topics of the complaints that have been deposited by women?
 - d. Can the Truth and Dignity Commission have an influence regarding e.g. decreasing violence against women?
- 6) Reparations component
 - a. What is your opinion on the proposal for collective reparations for marginalized areas? Do you think this will have a positive impact on the concerns of women in particular?
 - b. There has been critique that the categories of victims eligible for reparations in the first ad hoc measures after the revolution are too

limited and do not include all victims, such as indirect victims. What is your opinion on that?

- i. And if not, how can this be improved?
 - ii. The barometer on transitional justice speaks of the fragmentation of the victims and competition between victims, which would also be a reason for victims not to file complaints, what is your opinion on that?
- c. I also read that some repairs were distributed according to the inheritance rules, which disadvantage women, is that correct?
 - d. Do you think the context has been sufficiently taken into account in the reparations process? Do the reparations have the potential to be transformative, not only to restore the situation to the one before the revolution?

7) Prosecutions component

- a. Were there any judgments that are important for women's rights in particular? E.g. on sexual assault or specific forms of torture?

8) General questions

- a. The transitional justice barometer called the transitional justice process too bureaucratic and politicized, what is your opinion on that?
 - i. Marginalised victims also called it an elite process, what is your opinion on this?
- b. How do you see the transitional justice process evolve and what are the most important points of attention now according to you?
 - i. In order to ensure an inclusive process that also has an impact?
 - ii. In order to ensure a process that can protect and advance the rights of women?
- c. Do you think that the participation of international organizations has been useful to meet international women's rights standards?

