

The Impact of the Truth and Dignity Commission on Peace in Tunisia

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Annotation: Coming to terms with a legacy of large scale past abuses are one of the ways in which a country can avoid reoccurrence of such abuses. Tunisia through the course of its authoritarian leadership and more remarkably during the Arab Spring witnessed large scaled gross human rights violations committed both by government forces and protesters. In an attempt to come to terms with these large scaled human rights violations and reinstate of sustainable Peace in Tunisia, the country passed in 2013 an organic law on Transitional Justice which led to the creation of the Truth and Dignity Commission. This paper aims at analyzing the impact of this commission on peace in Tunisia. This paper thus explains what a Truth and Reconciliation commission is all about, analyses the impact it has had on the peace situation in Tunisia and goes examine the challenges faced the commission which limits its impact sustainable peace in Tunisia. This paper is based on emerging body of qualitative research. Data was gotten from scholarly articles, newspaper articles, report of practitioners and internet sources with the case of Tunisia being a focal point as large scaled human rights violations have been committed the country which still needs to be redressed.

Keywords: Truth, Reconciliation, Justice, Transitional, Human Rights.

Introduction

Since independence, Tunisia has known serious and systematic violations of human rights, including torture, arbitrary arrests and executions, and sexual violence. A system of corruption (financial, administrative and political) that spawned regional and social disparities and serious violations of economic, social and cultural rights was also established.

Tunisia was the first Arab country in modern history to overthrow its government and hold independent, democratic elections (Gray & Coonan, 2013 p. 43). The revolution in 2011; the first of what became known as the 'Arab Spring', marked the end of over five decades of authoritarian rule, first, by post-colonial leader Habib Bourguiba (1957-1987) and then by Zine al-Abidine Ben Ali (1987-2011). Both authoritarian periods were characterised by secularist policies that placed restrictions on religious expression, including group prayer and the wearing of hijabs, combined with repression of Islamist groups and the imprisoning of many supporters and their families, as well as political opponents more generally (Cavatorta & Merone, 2013 p 22)

In the last quarter of 2010, series of demonstrations and protests began to rise in the Arab world. These protests are known as the "Arab Spring", or, as the —Arab Awakening. The general core aims of these protests revolved around deep-seated resentment of the aging Arab dictatorships (some glossed over with rigged elections), anger at the brutality of the security apparatus, unemployment, rising prices, and corruption that followed the privatization of state assets in some countries. It sparked with a Tunisian revolution and shook authoritarian leaders across the Arab world in areas such as Libya, Yemen, Bahrain and Egypt. The revolution which led to the fall of the Ben Ali regime in 2011 raised the question of dealing with the past and with legacies of violations, pursuing perpetrators, seeking truth, compensating victims, and ensuring non-repetition through the reform of the administration to allow eventual reconciliation.

The country began with temporary solutions like creating a commission of inquiry to investigate alleged human rights violations and also granting amnesty to political prisoners. It was with the coming of the 2013 organic law on Transitional Justice and the creation of the Truth and Dignity Commission that the transitional justice process in Tunisia began to take shape. The Mandate of the Truth and Dignity Commission was to investigate human rights violations committed in Tunisia since 1955, receive complaints from victims, identify state agencies responsible for such violations, and develop standards for reparation and redress. The tasks of promoting justice, compensation, and reconciliation after conflicts are challenging and can take many years to achieve. However, systematic abuses of human rights that are not adequately addressed are a source of social unrest and often contribute to renewed violence. It is therefore important to (re)establish the rule of law after periods of conflict or authoritarianism to build sustainable peace and well-functioning states.

A Truth and Reconciliation Commission is a mechanism of Transitional Justice which has worked well in countries such as Canada, East Timor, South Africa, Rwanda and most recently Tunisia. The United Nations Secretary General's Report of 2004 defines transitional justice as "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (and none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof."

A Truth and Reconciliation Commission is defined as a commission tasked with discovering and revealing past wrongdoing by a government (or, depending on the circumstances, non-state actors also), in the hope of resolving conflict left over from the past."(Onur, 2016) Mark Freeman, a legal analyst suggests detailed classification of what a truth commission should be which includes amongst others the fact that: a truth commission focuses on severe acts of violence; the acts occur during recent periods of abusive rule or armed conflict; these commissions describe the causes and consequences of the violation; the commissions themselves are based in the State and they investigate violations that occurred within the State; the bodies are victim centered and they are relatively independent from the state.

Establishment of the Truth and Dignity Commission in Tunisia

The Truth and Dignity Commission as known by its French appellation Instance de Vérité et Dignité (IVD) was established by virtue of Organic Law number 53 of the year 2013, dated on 24 December 2013 pertaining to the establishment and regulation of Transitional Justice that defined its composition, members' obligations, duties, its powers and its modus operandi and organization. IVD's operational term was set at four years, starting from appointment of its members and subject to extension by a single year by virtue of a reasoned decision to be submitted by the IVD to the assembly tasked with legislation. IVD actually handed down its reasoned decision to extend its proceedings whereby expiry date was extended to May 31, 2019. IVD's mandate covered the period extending from July 1, 1955 to December 31, 2013. IVD's members were elected during the General Assembly of the National Constituent Assembly on 19 May 2014 as they proceeded to take the oath before the President of the Republic on 6 June 2014. IVD held its first meeting on 17 June 2014 when IVD's President and Vice-President were elected. The creation of the Truth and Dignity Commission is a unique experience in the Arab world. Hopes are, it can serve as an example to other countries in the region with a painful past, says Sihem Ben Sedrine, president of the IVD, and a well-known dissident who spent several years in exile during the Ben Ali government.

Findings of the Truth and Dignity Commission

The IVD published its 1700-page long report which reveals the truth of the multi-layered and intricate system of oppression and corruption that was in place in Tunisia for 60 years. In some cases, the report exposes the chain of command behind grave human rights violations and how networks of corrupt individuals diverted public funds and lands for their benefit. According to the findings of the IVD, the regime controlled political life under former presidents Habib Bourguiba and Zine al-Abidine Ben Ali by entwining the ruling party with state institutions. The regime further controlled its citizens through censorship in the media and surveillance in school and university institutions, in local committees, and in professional associations. The interior ministry went so far as to create a taxi company in which drivers were used as informants. Prisons were used to oppress dissidents, often accompanied by ill treatment and torture. As stated in the report, investigations by the commission have proved that torture was systematic and planned by senior officials in security affairs who ordered, incited, accepted and kept silent on the torture of victims in the course of their duties. The IVD also received over 17,000 complaints regarding the misuse of public funds and corruption by Tunisian authorities. Violations committed against women and children both under Bourguiba and Ben Ali were documented as well. Publication in the Official Gazette is in itself a long overdue acknowledgment of the need to address human rights violations of the past in order to avoid their repetition in the future. This marks another hard win for transitional justice in Tunisia and represents another significant milestone. According to Article 70 of the Transitional Justice Law, the government has one year from the date of the report's publication to develop and adopt an action plan to implement the recommendations to the end of guaranteeing that the abuses do not happen again. The same 138 article stipulates that the action plan must be submitted to parliament to create a monitoring commission to follow up on the implementation plan. This report is a thrilling read by all means and is considered to be an invaluable historic document that sheds light on what school history books do not say about the last 60 years in Tunisia's history. The findings of the report are crucial to identifying the type of reforms needed for a country that is still finding its way to eradicate corruption and install an uncompromising rule of law. In closing, the report contained numerous recommendations implicating judicial independence, civilian oversight of security and intelligence bodies, reparations for victims, and acts of contrition by officials.

Recommendations of the Truth and Dignity Commission

General recommendations presented in the report start with a call for a symbolic apology by the Head of State to the Tunisian people for the grave human rights violations committed between 1956 and 2013. It tasks the Head of Government with ensuring reparations for the victims through the creation of a reparations fund, and also calls for collective reparation for historically marginalized regions. The institutional reforms laid out in the recommendations include, among other things, enhancing the independence of the judiciary, reforming the justice sector, enhancing transparency in governance, fighting discrimination on many levels, and fighting corruption. However, the value of the report will only be realized if its findings lead to achieving criminal accountability. Among the most important recommendations are those relating to the work of the specialized criminal chambers, created in 2018 to prosecute the cases of serious human rights violations. For these chambers to be able to prosecute perpetrators of the past, the government must ensure that security sector members cooperate with judicial authorities and that judges, victims and witnesses are protected from any act of intimidation or reprisal. The trials that have started, after referral from the IVD, include cases of enforced disappearance, extrajudicial execution, death under torture, unfair trials and arbitrary detention, excessive use of force against peaceful protestors and

killings of peaceful protestors during the 2010-2011 uprising. These trials are the last chance for victims to obtain justice and for their family members to know the truth about what happened and see those responsible held accountable. Over the past several years, the work of the IVD has faced strong resistance from previous governments and parliament who failed to comply with the transitional justice law on many levels. The trials before the specialized criminal chambers continue to face resistance from the security sector, as the main security force unions in Tunisia continue to refuse to cooperate, claiming in various statements that these trials are vindictive and aim to weaken security forces, and calling for legislative reform to stop them. The Ministry of the Interior has also been reluctant to implement requests by courts to summon alleged perpetrators to these trials. With the report's long-awaited publication finally realized, the new governing coalition seems to have shifted the government's official stance towards the transitional justice process, moving from outright hostility to a more positive outlook. However, mere political will from the government is not sufficient to achieve justice and reparation for victims of the past regime and ensure non-repetition. The reforms and accountability measures recommended by the IVD are an enormous undertaking and the executive, legislative and judicial branches all have to cooperate to make it happen. Another challenge is that parliament, which is required to monitor government's implementation of recommendations presented in the report, is itself highly fragmented and includes many members who speak vehemently against the IVD and its work. All these stakeholders must come together and step up to maintain the process and achieve justice and real human rights changes. By far, the IVD report is a milestone not only for the transitional justice process in Tunisia but in the entire region. In worst case scenarios where specialized institutions like the government and parliament fail to cooperate, the IVD report remains an absolutely necessary piece of history which documents more than sixty years of human rights abuses by a regime that used all of its tools not to provide citizens with the rights that they deserve, but instead, consolidated and abused control at their expense. The Transitional Justice process does not end with the IVD. Ending impunity is a fight that will be long and full of pitfalls. But the victims, their families and civil society organisations will not give up until the truth is known and those responsible for serious human rights violations are held to account for their actions, warns political scientist Olfa Lamlum.

The Role of the Truth and Dignity Commission in Promoting Sustainable Peace in Tunisia

Grievances often result from a lack of enjoyment or respect for human rights and, when left unaddressed, can deteriorate into violence and conflict with increasingly narrow, costly, uncertain or ineffectual options for their resolution. As violations of human rights are often both a precursor to and consequence of violence and conflict, human rights promotion and protection which is done through transitional justice and particularly through a truth and reconciliation commission can provide important solutions for addressing grievances peacefully and effectively. In the 2016 resolutions (S/RES/2282 and A/RES/70/262), the Security Council and the General Assembly advanced a comprehensive approach to sustaining peace that encompasses interventions along the peace-conflict continuum. Transitional justice was considered critical to the consolidation of peace and stability, alongside promoting poverty reduction, rule of law, access to justice and good governance, further extending legitimate state authority, and preventing countries from lapsing or relapsing into conflict. The Human Rights Council (HRC) similarly affirmed in its resolution 42/17 of September 2019 that combatting impunity and the implementation of transitional justice processes can prevent the recurrence of human rights violations and abuses, and contribute to sustainable peace and development.

How the Truth and Dignity Commission Increases the Potential for Sustainable Peace in Tunisia

In a briefing to the Security Council on 13 February 2020, the High Commissioner for Human Rights underscored how accountability for serious human rights violations, including through transitional justice initiatives such as a Truth and Reconciliation Commission, is not a backward-looking exercise for the sake of history or settling accounts. It is about securing peace and stability in the future, through the reaffirmation of and adherence to fundamental values and norms and the pursuit of prevention, protection, transformation, healing and reconciliation that a divided society needs to rebuild to move forward. In the aftermath of massive or serious human rights violations, sustainable peace can only be achieved if societies pursue comprehensive reform paths like addressing root causes and drivers of human rights abuses that also render justice for past violations. When victims and communities are marginalized and their grievances left unaddressed, bitter divisions risk deepening further, spoiling the formation of a shared vision for the future and undermining the prospects for sustaining peace. Transitional justice with its interrelated pillars of truth, justice, reparation and guarantees of non-recurrence makes an essential contribution in navigating complex spaces of transition, marked by rapid change, competing interests, pain and simmering grievances, and where narratives and memories are at risk of extreme polarization and instrumentalization. Transitional justice processes, when they are context-specific, nationally-owned and focused on the needs of victims like in Tunisia can connect, empower and transform societies. Through dialogue and confrontation of ideas and experiences which is done through a truth commission, transitional justice seeks to make connections between victims and perpetrators, political factions, communities, and across generations. Truth-seeking initiatives, provide a platform for identifying commonalities in experience, acknowledging multiple narratives about what occurred, and formulating recommendations for redress and reform. Inclusive transitional justice processes that are participatory and seek broad societal ownership can be deeply empowering for victims, particularly marginalized groups giving them voice and agency to shape their own future as rights-holders. Finally, through reparations and guarantees of non-recurrence, transitional justice has the ability to transform societies and set them on a new path for the future. The democratic transition in Tunisia after the 2011 revolution is considered a model for other countries to follow, as highlighted by the UN High Commissioner for Human Rights during her official visit in June 2019. Tunisia stands out in the region for its peaceful transition and commitment to human rights and a lasting peace. It engaged in a transitional justice process, which sought to address the legacy of mass human rights abuses, corruption and misuse of public funds, and thereby to ensure accountability, prevent future human rights violations, and ensure individual and regional equality and reconciliation. The Truth and Dignity Commission registered more than 62,000 cases of gross or systematic violations of human rights, conducted nearly 50,000 individual private hearings, 14 public hearings and issued more than 30,000 decisions on reparations for victims. The IVD has also filed hundreds of cases of gross human rights violations, mainly committed by security officials of former regimes, for adjudication by the Specialized Criminal Chambers created within the national judicial system. In its final report, the IVD recommended institutional reforms designed to consolidate democracy, uphold human rights, prevent future violations, including reforms of the security and judicial sectors, and pave the way towards national reconciliation. Notwithstanding serious challenges, these measures are a crucial part of Tunisia's efforts to build and strengthen sound institutions that respect, protect and realize human rights, thereby contributing to lasting peace and stability.

The Transformative Power of “Guarantees of Non-Recurrence”

The pursuit of reparations and guarantees of non-recurrence are the package of measures intended to prevent the recurrence of conflict and human rights abuses which can be transformative. Designing measures to prevent such recurrence as is with the case of transitional justice presupposes an understanding of the extent and nature of the human rights violations as well as their root causes, such as inequalities, systemic discrimination and exclusion, institutional deficiencies, power imbalances and corruption, and structural impunity. Traditionally, such measures have focused on institutional reforms (legal and judicial) and measures aimed at disabling abusive capacity and increasing the integrity of the security sector (e.g. disbanding abusive groups; disarmament, demobilization and reintegration (DDR); reinforcing internal accountability; building external oversight, etc.). In Tunisia, the national dialogues held in the country for the clarification of truth, coexistence, and non-repetition has resulted in hundreds of testimonies from victims and members of State and military institutions (IVD Final Report). These testimonies have clarified the root causes of conflict and identified areas for intervention in order to prevent recurrence. Other measures, including mechanisms to trace missing persons in the context of the long-running conflict, and the 2014 organic law on transitional justice which broadens the scope of victims have led to individual and collective reparations, including land restitution measures. These and other instruments which recognize victims' rights, tackle root causes of the conflict and its consequences, and promote positive social, economic and political transformation, constitute the pillars for a culture of non-repetition in Tunisia.

Tunisia's strategy on transitional justice which is marked by the IVD provides for the implementation of reforms aimed at ensuring the non-recurrence of rights violations and abuses, which includes security sector reform and strengthening the independence of the judiciary. The institutional reforms laid out in the recommendations by the IVD include, among other things, enhancing the independence of the judiciary, reforming the justice and the security sector. Transitions from authoritarianism or violent conflict to a peaceful democracy can only succeed if the legacy of the past, in particular serious or massive human rights violations, is addressed. Transitional justice is vital in helping societies and governments to appropriately address the past. It helps in rebuilding fragmented relationships, transforming and empowering affected societies, and thereby preventing the recurrence of violations. In doing so, it is essential to ensuring sustainable peace and preventing a relapse to authoritarianism and violent conflict in the country.

Challenges faced by the Truth and Dignity Commission

With the creation of the Truth and Dignity Commission (Instance Vérité et Dignité known by its French acronym IVD), and its power to refer cases investigated directly to criminal trial, victims found new hope and flocked in the thousands to testify. Since May 2018, at least 10 trials in relation to the violent repression of the revolution opened before the Specialized Criminal Chambers created by the Transitional Justice Law. These trials may be the last chance to achieve accountability for the crimes committed and deliver justice to the victims and their families. Yet, research has found that trials are being undermined by the lack of cooperation from the security sector and structural obstacles from within the justice system.

Over the past three years, many hearings sessions related to the events of the Revolution have taken place before the Specialized Chambers in different tribunals in cities including Tunis, Le Kef and Sidi Bouzid. Dozens of victims and witnesses were heard by the courts. But the hearings have been hampered by the fact that the accused, usually former police officers have mostly failed to attend

the hearings. No judgment or verdict has been handed down. And no case reached the pleading phase to date.

During its mandate, the work of the IVD faced strong resistance from successive governments and parliament, which failed to comply with the transitional justice law on many levels. The IVD completed its mandate in December 2018, published its final report and referred 200 cases of past crimes to trial before the Specialized Criminal Chambers in which 1426 persons were charged with violations of human rights involving 1120 victims.

The Specialized Criminal Chambers were formally established by Decree No. 2014-2887 of 8 August 2014 and were set up within the courts of first instance in those of Tunisia's governorates that have appeals courts. On 29th May 2018, the first hearing about an enforced disappearance case before the SCC was held in the Tribunal of First Instance in Gabès.

The IVD was mandated by the Transitional Justice law to carry out investigations in the cases of the "Martyrs and Wounded of the Revolution" and refer them for re-trial by the Specialized Criminal Chambers, creating another opportunity for a transparent accountability process to take place. The IVD received 163 files related to violations of the right to life in the context of the events of the Revolution (from 17th December 2010 to 28th February 2011) and 4,282 files concerning the violation of physical integrity and injury during protests as a result of excessive and disproportionate use of force by security forces (IVD Final Report 2020). The IVD organized a public hearing on 17th January 2017 in which some family members of people killed during the revolution testified.

Despite the refusal of the military justice system to guarantee the IVD access to their judicial files and cooperate with its investigations, the IVD completed the investigation into the files of the victims of the grave violations in the context of the revolution. The IVD then directly referred 12 indictments to the Specialized Criminal Chambers which led to 10 trials to date relating to 127 victims of unlawful killings or injuries.

Sihem Ben Sedrine, president of the IVD, told the research team that the IVD had faced several obstacles during its investigations particularly in relation to the cases of violations against protesters during the revolution: *"The IVD encountered many obstacles in order to investigate cases eligible for transfer to specialized chambers, in particular the refusal of the alleged perpetrators of violations to respond to the IVD's summons, the denial of access to police archives and especially the refusal of the military courts to communicate to us the files of the martyrs and wounded of the revolution that they had to judge."* (interview with Sihem Ben Sedrine on 22 December 2020) The trials before the Specialized Criminal Chambers continue to face resistance from the security sector, with the main security force unions in Tunisia refusing to cooperate, claiming in various statements that these trials are vindictive and aim to weaken security forces, and calling for legislative reform to stop them. In addition, Ministry of Interior officials continuously fail to implement arrest warrants or respond to summons issued by the Specialized Criminal Chambers.

All these obstacles have the potential to adversely impact the contributions of the IVD to peace in Tunisia.

Conclusion

Transitional justice is an urgent priority in post-revolutionary Arab states. At present, transitional settings make this undertaking more feasible in Tunisia. As long as a fundamental consensus among key political players is absent, justice and accountability measures can easily turn to

vengeance and destabilize the new political order. To the extent that the political context allows, pressing priorities of transitional justice include engaging in judicial and security sector reform, as well as the establishment of impartial investigation into abuses. Their fulfilment can eventually open space for more holistic transitional justice programs. A transparent and inclusive transitional justice would help build public confidence in the transition and heal the wounds caused by decades of repression.

The transitional justice mechanisms implemented by the Tunisian government and other partners particularly the work of the IVD presents an official acknowledgement of past human rights violations, which are widely considered to be an essential part of the healing process. These mechanisms provide satisfaction to victims, improve levels of mental health among victims, and recognize the individual victim thus having the strongest impact on the healing process (Roht – Arriaza 2004, p121).

The relapse to the conflict in Tunisia after the Arab spring brought the country to serious chaos and anarchy. The government which took over control after Ben Ali still enforced a series of mass human rights violations on protesters as the violence continued. The first democratically elected president who took power in 2012 made efforts towards transitional justice notably in creating the National Fact Finding Commission to investigate offences and it 175 was under him that a new constitution was voted in 2014 which paved the way for an effective transitional justice process in Tunisia.

The hurdles mentioned above do exist, and can be dealt with if Tunisians aggressively and deliberately reclaim and own the transitional justice processes and continue to hope that those vested with political and administrative authority will benevolently opt to change a system that has for decades served their exploitative ambitions so richly.

For Tunisia to achieve lasting and sustainable peace, end the culture of impunity and foster democratic governance, there is need for strategic partnership, between the public, Civil Society, the Media, the political class, and other stakeholders that is geared toward the successful execution of all the transitional justice initiatives

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