

Practitioner Perspectives on Transitional Justice: TUNISIA

The Centre for the Study of Violence and Reconciliation shares practitioners' perspectives on transitional justice efforts in their local contexts and civil society's role in shaping transitions. This brief presents reflections on the Tunisian experience offered by Amine Ghali, programme director of Al Kawakibi Democracy Transition Center, during a March 2015 talk in South Africa.

Introduction

The Tunisian experience has served as a point of reference for the uprisings in North Africa and the Middle East characterised as the 'Arab Spring.' This is largely due to the involvement of many ordinary citizens in the popular protests and the fact that they attempted to make their voices heard in a police state where activism had been repressed. Tunisia's transition is also seen as relatively more successful than others in the region, mainly because it had sustained momentum, remained largely peaceful and involved civil society mobilising for substantive change in the country.

Tunisia's efforts to move beyond a narrow emphasis on political rights towards fundamental economic reform has also set a precedent, particularly for countries grappling with legacies of socioeconomic oppression. As such, Tunisia offers the first example of a transitional justice process that has consciously prioritised economic justice. While experiencing serious challenges in this regard, if successful Tunisia's experience could provide valuable lessons for other countries in transition.

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Although it is too early to evaluate the Tunisian transition, some preliminary conclusions are possible. This brief

provides an outline of the key transitional mechanisms and institutions that were established, while highlighting factors that enabled the transition as well as the challenges that face the newly democratic Tunisia.

The Uprising

Towards the end of 2010, a public act of self-immolation by produce vendor Mohamed Bouazizi served as the literal spark for what became a national movement. The domino effect reached citizens in urban areas where access to information had formerly been blocked by the country's long-standing dictatorship. Citizens became mobilised around a delineated agenda that addressed corruption and nepotism, and the concentration of economic opportunities in the hands of a few. Political issues such as free and fair elections were also given important, albeit secondary, weight.

The uprising tapped into collective grievances concerning the economic injustices that were entrenched under the 23-year dictatorship of Zine el-Abidine Ben Ali. For example, Tunisia's southern and western regions were for decades economically and socially marginalised in a deliberate attempt to punish the perceived strongholds of the political opposition.

By January 2011, the police force which had traditionally suppressed resistance to the regime was compelled to give in to popular pressure. It was at this point that Ben Ali fled the country, which provided the thrust for a bloodless political transition. The uncertainty that followed

the ousting, reinforced by changes in government, could have stalled the process. Fortunately, citizens largely embraced the transition.

Transitional Institutions

The Interim Government, headed by Prime Minister Mohamed Ghannouchi, was formed to manage the transition and begin confronting the past. During this complicated phase of the transition, various local actors advocated for a wide spectrum of issues and policies to be addressed. Some argued for formally breaking with the legacies of the past, others focused on pacifying social friction and still others presented ideas for the realisation of justice.

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These debates initially led to certain ad hoc legislative reforms, the first of which was the fairly contentious General Amnesty Decree issued on February 19, 2011. A more formalised approach to transitional justice came through the establishment of three transitional commissions within 10 months of Ben Ali’s flight: the High Commission for Political Reform, the National Commission to Investigate Human Rights Violations and the National Commission to Investigate Corruption and Embezzlement. Along with insufficient resources, these commissions were plagued by controversy regarding member selection and questions regarding their representativeness and their mandates. Nonetheless, they achieved a number of key objectives.

The High Commission for Political Reform, which was subsequently expanded into

the High Commission for the Realisation of the Goals of the Revolution, Political Reform and Democratic Transition, drew prominent legal scholars, members of political parties and civil society representatives into fulfilling its mandate to reform the legislation governing public life and to draft a new electoral code. The commission created the Independent High Authority for Elections. It also promoted free and fair multiparty elections in the context of freedom of assembly and freedom of the press.

The National Commission to Investigate Human Rights Violations was mandated to investigate abuses that occurred from December 2010 to October 2011, including the actions of security forces during the protests. The commission produced a report that detailed the deaths and injuries that occurred, including the name, age and gender of each victim. It confirmed that past violations were primarily the result of state-sponsored repression by the police. It also recommended human rights protections in the Constitution, victim and witness protection, and media reforms, as well as reforms in the justice, security and prison systems. Furthermore, the commission made suggestions for transitional justice measures.

The National Commission to Investigate Corruption and Embezzlement was tasked with investigating corruption in the former regime. Despite its setbacks, of the more than 10,000 submissions it received, it was able to investigate over half the cases and transfer about 400 to the public prosecutor. Importantly, it published a report that provided empirical confirmation that corruption was an engrained and systematic problem.

The National Constituent Assembly elections in October 2011 built on the procedural groundwork laid by these institutions. The elections symbolised a milestone in Tunisia’s democratic transition as they ended the period of

uncertainty and offered the first opportunity for the majority of Tunisians to freely express themselves at the ballot box. The victory of the Tunisian Islamist Ennahda Party was therefore realised through transparent processes. Undoubtedly, this was not only ethical but also pragmatic, as it prevented sectors opposed to the outcome from rejecting outright the election results and possibly turning to violence.

Polarisation and the National Dialogue

The principle of inclusivity was not extended to the discussions on lustration and vetting that followed. The 2013 draft Law on the Immunisation of the Revolution aimed to prevent officials in the Ben Ali regime from holding office for seven years under the new dispensation. This broad legislation was to have repercussions for many.

Perceived as a bid to arbitrarily exclude some and bolster others, this law contributed to a sense of political polarisation and distrust, primarily between Islamist-leaning and secular forces. The atmosphere of instability was exacerbated by two political assassinations of leftist opposition leaders, Chokri Belaid in February 2013 and Mohamed Brahmi in July 2013, at which point parliament was suspended.

While the security situation in Tunisia could have deteriorated, Ennahda began to reconsider its approach and make a concerted effort to tackle the Constitution. From this very tense context emerged a broad National Dialogue among representatives of the main political parties. The Dialogue was hosted by the Tunisian General Labour Union, the Tunisian employers' organisation, the Bar Association and the Tunisian Human Rights League, and came to be known as the 'quartet' initiative.

The specifics of a forthcoming transitional justice process were debated, particularly

pertaining to institutional reform, prosecutions, reparations and truth seeking. It was evident that while the commissions that had been created were encouraging, they only provided piecemeal solutions that were not sufficiently wide-ranging or appropriate.

The Truth and Dignity Commission

One of the most complex challenges during the transition was the emergence of, and ability to manage and incorporate, polarised views. While the Constitution-writing process lasted longer than anticipated, the National Dialogue offered the opportunity for many stakeholders to participate in broad discussions on fundamental transitional issues. At the end of 2013, a Transitional Justice Bill that outlined a more holistic strategy was ratified. It identified the judicial, legal and police sectors as needing urgent reform because of their inbuilt associations with the previous regime.

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The Bill successfully launched the Truth and Dignity Commission, mandated to investigate and offer solutions for abuses since 1955, including not only political and civil but also socioeconomic rights violations. A critical structure within the commission is the Arbitration and Reconciliation Committee, which is mandated to arbitrate corruption cases and use the recovered funds to finance reparations for victims, invest in anti-corruption initiatives and advance institutional reforms.

The National Dialogue also drew up plans for a 'caretaker' government composed of

non-partisan technocrats, which took over the remainder of the transition. Under Acting Prime Minister Mehdi Jomaa, this government handled the peaceful parliamentary elections in late 2014, which signalled the formal conclusion of the political transition and brought in a centre-right government. Ultimately, the adoption of the new Constitution in January 2014 was largely accepted, both locally and globally, for its inclusive and consensus-based nature.

Enabling Features

Several features eased Tunisia's transition. Firstly, the country is 99 percent Sunni Muslim from the Maliki school of thought. This seems to have minimised the threat of politically driven sectarian and ethnic conflict. Secondly, in contrast to neighbouring countries, the Tunisian military is small and has played a marginal role in the country's modern history. It was not in a position to undermine the transition. Thus, while the security sector requires reform, the military has less of a chance of destabilising the process.

Thirdly, the protests in Tunisia caught Ben Ali unaware, whereas the dictators in neighbouring countries anticipated the actions of the protesters and were able to crack down on them accordingly, spurring the kind of violence evident in Syria. The exception in this regard is Morocco, whose King Mohammed IV succeeded in pre-empting an uprising by addressing issues rather than resorting to violence.

Lastly, Tunisia's lack of natural resources gave western countries less incentive to interfere the way they did in Libya. While Tunisia has far from a straightforward relationship with the West, countries such as Germany and the United States have supported the rise of Tunisia's democracy. International donors such as the Swiss Embassy and Freedom House as well as the United Nations Development Programme have supported grassroots organisations working on transitional justice.

Furthermore, partnerships with international organisations such as the International Center for Transitional Justice have been constructive.

Persistent Challenges

Despite its successes, Tunisia faces undeniable hurdles that threaten to derail its transitional justice process. Both its bureaucracy and its elite remain entrenched. Corruption appears to be worsening, as are unemployment levels and abject poverty in the marginalised regions of the country. In particular, the interior of Tunisia faces a 30 percent unemployment rate. This pattern is unfolding at the expense of genuine economic transformation that could tangibly improve the lives of Tunisians. It also appears to be the result of a focus on political objectives over socioeconomic ones, despite a previous commitment to addressing socioeconomic abuses.

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Certain regional factors have exacerbated the internal challenges in Tunisia. Wealthier countries in the region, including Algeria and those in the Gulf, have been clamouring for influence. Furthermore, it appears that Tunisia's position as a refuge for those fleeing war, particularly from Libya, draws the country into regional conflicts against its will.

In order to tackle the massive task ahead, numerous Tunisian organisations have been studying and exchanging information with countries that have experience in transitional justice.

Nevertheless, the fact that no country has previously focused on and successfully achieved economic reform to the same extent in its transitional justice process means that Tunisia has no helpful means of comparison.

Adding a layer of complexity, the recommendations put forward by its new institutions are ambitious and the finer details of the Transitional Justice Bill remain under deliberation.

Conclusion

There is hope that Tunisia's transitional justice process can overcome internal challenges and succeed in its socioeconomic innovations. This is especially important for Tunisia, as the primary concern has been to avoid the

persistence of economic subordination and inequality as experienced in other transitional contexts, such as South Africa. Alongside this hope is the anticipation of a future in which Tunisia can collaborate

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with, and assist in strengthening, democratic countries in North Africa and the Middle East.

This brief was authored by Maya Schkolne. The brief is based on a March 2015 public talk by Amine Ghali organised in Cape Town, South Africa, by the Centre for the Study of Violence and Reconciliation and the Goedgeacht Forum for Social Reflection.

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