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# Tunisia's Re-Configurations and Transitional Justice in Process: How Planned Processes of Social and Political Change Interplay with Unplanned Political Dynamics

Mariam Salehi

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## Introduction

This chapter sheds light on the dynamics of the Tunisian transitional justice process and its interplay with the political re-configurations after the fall of the authoritarian regime in 2011. Drawing on Norbert Elias's thoughts on social processes, this chapter argues that the dynamics of transitional justice processes cannot be understood solely in view of the international norms and the "justice industry" (Subotic 2012, p. 117) that shape institutionalized transitional justice projects, nor merely by considering the context and the political preferences of domestic actors. Rather, they are shaped by the interplay of planned processes with unplanned political and social dynamics, with a fluctuating political context, power shifts, frictions, and sometimes competing political efforts in other realms. The contribution also shows that a technocratic/institutionalized transitional justice project can develop dynamics that are somewhat, but not entirely, independent from (continuous) re-configurations, power shifts, and changing political preferences.

The chapter first provides some historical background on Tunisia's authoritarian rule. It then briefly situates itself within transitional justice research and introduces the heuristic framework for empirical analysis. Next, it presents selective empirical illustrations that are deemed suitable for understanding the dominant processual characteristics at play. It draws on almost half a year of field research

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conducted across a total timespan of two and a half years, during which the author interviewed politicians, members and staff of the Tunisian Truth Commission as well as representatives of civil society, the government, and international organizations and NGOs; and conducted (participant) observation at formal and informal events of the Truth and Dignity Commission and elsewhere.

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## **Background: What Past is Tunisia's Transitional Justice Process Confronting?**

To understand the nature of Tunisia's transitional justice process and the frictions surrounding it, it is useful to look at the sorts of repression and abuse Tunisians suffered under authoritarianism. Tunisia was under authoritarian rule from its independence from France in 1956 until the revolution in early 2011. Both authoritarian rulers—the country's first president Habib Bourguiba who was in power until 1987 and his successor Zine el-Abidine Ben Ali—had a “hard grip” on the country. Bourguiba's focus was on the institutionalization of personal power. His ruling style and efforts to link state and society can be described using Philippe Schmitter's notion of “authoritarian corporatism” (Chouikha and Gobe 2015, p. 20). This entailed the establishment of a single party and eradicating almost all official opposition. Ben Ali's period of rule was also marked by massive human rights violations and significant limitations of civil and personal liberties. The repressive repertoire of the Ben Ali regime ranged from “arbitrary economic barriers to jailing, disappearances and torture” (Chomiak 2011, p. 72). While the military has historically not played a strong role in Tunisia and was formally banned from politics and even from voting (Grewal 2016), authoritarian rule relied on a strong secret police to exert repression and secure control. Thus, the regime spread a “net of fear” (Hibou 2011, p. 81) over the country.

Both rulers pushed forward the systematic marginalization in the political and economic spheres of their political rivals' strongholds in the country's southern and interior regions. However, Bourguiba was perceived as an “honest ruler” and was (or perhaps still is) reputed to be unconcerned with personal enrichment and focused only on leading the country to “modernity” and serving the best interests of the Tunisian people (Willis 2014, p. 52). In contrast, Ben Ali and his extended family built a predatory “quasi-mafia” state (Ayeb 2011; Cavatorta and Haugbølle 2012). Nepotistic structures, together with a heavy reliance on interpersonal control, made almost everyone at least indirectly complicit, leading to an elusive perpetrator that is “the system” (Fraihat 2016). Thus, victimhood stems from the ruling periods of both Bourguiba and Ben Ali.

Moreover, the Tunisian security forces responded violently to the uprisings in 2010–11. The brutal crackdown on protesters may have startled many and further motivated people who had not initially been part of the protests to mobilize (see for example Allal 2012). At least 132 people died and 1,452 were wounded in the revolution (Human Rights Watch 2015, p. 5).<sup>1</sup> These people are commonly referred to as “martyrs and wounded of the revolution.”<sup>2</sup> Injured survivors, their families, and the bereaved since have been seeking justice and accountability. Thus, authoritarian rule in Tunisia produced victims of physical abuse, but also of socio-economic deprivation. Both violations demanded a response after the fall of the Ben Ali regime in 2011. Accordingly, in addition to initiating re-configurations of the political system, Tunisia quickly started introducing justice and accountability measures to address violence, repression, and economic crimes under the dictatorship.

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## Introducing the “Process Gap” in Transitional Justice and a Framework for Analysis

Transitional justice is essentially about processes. However, the focus in the transitional justice literature is mainly on the goals, outcomes, and effects of transitional justice efforts. The concept is accorded a strong goal orientation both in practice and in the scholarship. Efforts towards transitional justice, which are introduced after conflict or violent rule, usually have (explicit or implied) teleological ends, such as societal reconciliation, peace, and democracy (Andrieu 2010, p. 540 ff.). Thus, most of the research either explores, normatively, what transitional justice should deal with and how—or, empirically, assesses the extent to which certain goals have been reached. Examples of the former approach include Crocker’s (1999) normative framework for “reckoning with past wrongs,” in which he defines “eight goals that have emerged from worldwide moral deliberation” (Crocker 1999, p. 47); Orentlicher’s (2007) work that defines the goal of victims participation; and Miller’s (2008) assertion that transitional justice should address economic issues, inequality, and structural violence. Aside from this, there is also a wealth of scholarship that discusses outcomes and effects of transitional justice measures for peace, human rights records, democracy, and political institutions from both quantitative and qualitative perspectives. (For an overview of the literature, see Salehi and Williams 2016). However, the research has paid scant attention to how transitional justice interacts with the “transition,” the political processes it ought to complement and render more just. Thus, although the processes are as important to analyze as the substance (cf. Autesserre 2014, p. 9),

there is a much stronger focus on the *what* of transitional justice processes than on the *how* and *why* of their processual development (cf. Elias 1977, p. 128).

Against this backdrop, I propose a heuristic framework to analyze transitional justice in process and thus aim to help close the “process gap.” The framework is based on Norbert Elias’ process sociology, since it is particularly suitable for the analysis of dynamic processes of social and political change (Elias 1977, 2006a). It identifies four characteristics that help explain the development of the transitional justice process in relation to the transition, which is an in-between condition with an unclear endpoint (O’Donnell and Schmitter 1986). This dynamic process is shaped by changing figurations and thereby changing actor and power relations (Elias 2006a). In short, transitional justice processes are characterized by the interplay of planned/institutionalized processes and unplanned/spontaneous political and social dynamics (cf. Elias 1977); by non-linearity and (sometimes simultaneous) trends and counter-trends (cf. Elias 2006a); by international interconnectedness (cf. Elias 2006b); as well as by conflict and friction that drive and define the process (cf. Elias 1978).

Additionally, in order to analyze transitional justice in process, I distinguish between three stages: initiating (2011–12), designing (2012–14), and performing (2014–16) transitional justice. Although these stages are temporally defined, they are analytically informed and named according to the dominant logic identified for the respective stage. Drawing on the characteristics identified in the heuristic framework, the next section provides an empirical illustration of the political dynamics at play for each of these stages. Given the limited scope of this chapter, I will concentrate on a few instances that exemplify the processual developments in the respective stage.

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## **Tunisia’s Transitional Justice in Process: Empirical Illustration**

Transitional justice in Tunisia interplayed with the post-revolutionary political and social re-configurations in the country, the development of both a “new political architecture”<sup>3</sup> and new societal standards of behavior (cf. Elias 1977, p. 144) seeking to transcend the rule of violence and repression. In part, these affected changing power structures and helped determine who could play a part in post-revolutionary politics. At the same time, the continuous re-configurations—the fluctuating political context—influenced how the transitional justice process developed.

Measures for seeking justice and accountability in post-revolutionary Tunisia were initially introduced ad hoc and only later within the framework of an institutionalized transitional justice project. Examples of ad-hoc measures included trials in military courts for the crimes of killing and wounding protesters during the revolution and in civil courts for economic crimes; ad-hoc compensation measures; provisions for vetting/lustration; as well as the establishment of investigation commissions. For the development of the institutionalized transitional justice process, a “National Dialogue for Transitional Justice” was conducted, which was supported by international transitional justice professionals from both international governmental and non-governmental organizations.<sup>4</sup> The dialogue was led by a technical committee composed of civil society representatives and a representative of the Ministry for Human Rights and Transitional Justice.<sup>5</sup> It included nationwide consultations with victims and stakeholders, including more than 2000 participants in total (Ministry for Human Rights and Transitional Justice 2013, p. 18) who were asked about their understanding and expectations of transitional justice (Andrieu 2016, p. 282). A hundred of them received specific “training on transitional justice, on debate moderation, on writing reports,” etc., harmonizing their level of knowledge and equipping them with discursive resources.<sup>6</sup> The technical committee then led the drafting of the Tunisian transitional justice law. This was an unusually transparent and participatory process: “For the first time in Tunisia, we found ourselves with a law project that was not developed behind closed doors.”<sup>7</sup>

This participatory process with international support culminated in a quite far-reaching transitional justice project, covering almost sixty years, from the last stretches of the independence struggle in 1955 until the passing of the transitional justice law in 2013. It furthermore covers both physical human rights violations and socio-economic crimes. The transitional justice law provided for the establishment of a Truth and Dignity Commission, specialized chambers within the Tunisian judiciary, as well as a reparations fund. Introducing such a far-reaching transitional justice process was possible due to the specific political configuration after the fall of the regime. The newly introduced electoral laws functioned as a way to vet those seeking public office since “in Tunisia lustration has been aimed at altering the electoral landscape” (Lamont 2013). Members of the old regime were banned from participating in the 2011 elections to the National Constituent Assembly, which also functioned as a legislative body until the end of 2014. Thus, the Assembly was essentially vetted, shifting power to those who had previously been powerless (cf. Elias 1978, 2006a) and opening up opportunities for anchoring transitional justice (and thereby also accountability) in the constitution.

## Initiating Transitional Justice

The first stage, initiating transitional justice, mainly deals with the ad-hoc justice measures introduced quickly after the uprisings<sup>8</sup> as well as the first institutionalization efforts. Since these initial steps were introduced so soon after the ouster of Ben Ali, when a new legal and political order was not yet in place, they were mainly based on “old regime” legislation and institutions. For example, trials of members of the police and other components of the security forces (for human rights violations during the uprising) and of Ben Ali’s wider family (for economic crimes) were conducted by pre-existing military or civil courts, respectively. The investigatory commissions were technically also a remnant of the old regime, since their establishment was introduced by Ben Ali “as a late attempt to appease public outrage” (Lamont and Boujneh 2012, p. 39).

While this stage was marked by a general willingness to pursue justice and accountability, this trend was countered with a lack of willingness to dismantle some of the deeper structures of “the system.” For example, there was no genuine effort to vet the judiciary, although it had been a cornerstone of Ben Ali’s rule. This is well illustrated by the two following quotes. While a civil society representative commented that “Ben Ali was a dictator *because* of the judiciary. ... So, the judiciary is important. One needs to reform the judiciary”, an international advisor to the transitional justice process remarked that “they screwed some magistrates at some points, but there were no clear criteria. They had no clear idea whether they wanted to do a proper vetting.”<sup>9,10</sup>

This stage was furthermore dominated by a factionalist political logic that led to the perception that those newly in power were perpetuating the old regime’s practices of favoritism. For example, the ad-hoc compensation measures that were introduced were perceived as having mainly benefited the supporters of Ennahda, the moderate Islamist party that led the government after the 2011 elections, specifically those with access to people in power.<sup>11</sup> These perceptions did not provoke a sense of justice, but rather fostered a lack of trust in justice and accountability efforts. Also, the initial institutionalization efforts created friction around the question of how best to institutionalize transitional justice. Civil society in particular was very skeptical about the establishment of a transitional justice ministry, as they were afraid “[t]he minister could instrumentalize the ministry for his political or electoral agenda.”<sup>12</sup> In hindsight, a civil society representative concluded that this skepticism had borne out: “Listen, regarding the transitional justice ministry—that was just a façade ministry.”<sup>13</sup>

To summarize, this stage was marked by a general trend toward justice and accountability that was, however, undermined by a lack of willingness to disman-

the repressive structures at a deeper level. This interacted with political polarization as well as frictions between the political sphere and civil society that shaped the further development of the transitional justice process.

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## Designing Transitional Justice

The second stage consists of designing the planned, institutionalized transitional justice project. International actors played a crucial role in this. They provided the socio-technological offering” by providing guidance and training on what transitional justice should mean and entail. This led to a harmonization of rhetoric among the Tunisian actors involved: “and they all went through the same training on transitional justice, on moderation of debate, on writing reports, on all of this.”<sup>14</sup>

However, there were still divergent opinions on what transitional justice should signify and entail among Tunisian political and civil society actors.<sup>15</sup> And while international advice was welcomed, it was not always followed. One example is the exclusion of civil society from nominating truth commissioners: members of parliament decided to keep that prerogative to themselves. This led to cross-cutting frictions. Civil society felt “discarded” and the perception of a partisan bias emerged, including within the parliamentary selection commission, as one member remarked: “We have reached the nomination of the [Truth and Dignity Commission] members with pain. [...] There was one party that only wanted partisan members.”<sup>16</sup>

In this stage, one could furthermore observe an interplay between the planned, institutionalized transitional justice project and transitional political and social dynamics. In a volatile political situation, lawmakers did not prioritize transitional justice and the transitional justice law was shelved. Thus, the paradigm of dealing with the past was questioned again (or at least not prioritized anymore) and a counter-trend of elite deal making and political compromise emerged: “[T]here is a lack of will to really seek accountability in these areas. There’s a kind of deal.”<sup>17</sup> At times of conflict and unrest, the adversary political factions found themselves in a “balance of weakness”,<sup>18</sup> marked by an “ineptitude at waging war” and an “impotence to organize peace” (Krichen 2016, p. 264). In this situation, stability was prioritized at the expense of transitional justice. For example, justice and accountability did not play a role in the National Dialogue, a conflict resolution initiative to avert political violence and break the deadlock of the constitution-making process. The facilitating Tunisian civil society actors received the Nobel Peace Prize for this initiative in 2015.<sup>19</sup>

And when the National Dialogue started, the quartet, the four organizations ... that initiated the National Dialogue, did not make transitional justice one of the priorities. So ... all deputies we met said “not now.”<sup>20</sup>

Thus, in this stage, one could see a further institutionalization of transitional justice that was strongly shaped by international advice and interconnectedness, but one could also observe an interplay between the planned transitional justice process and unplanned political dynamics. In a volatile and violent political climate, acute conflict resolution through political deal making was prioritized over justice and accountability, countering the political will for pursuing transitional justice efforts.

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## Performing Transitional Justice

The third stage, “performing transitional justice,” relates to the operations of the transitional justice institutions, mainly the Truth and Dignity Commission, in practice. This stage was shaped by flattening cleavages, the closing of the “revolutionary window of opportunity” for accountability, and a “resurfacing” of “the system.” Political adversaries created external challenges, both subtle and direct, to the institutionalized project. The subtle obstacles included limited access to archives or delayed budget payments. These were used to create the impression that the truth commission was not working properly. As a civil society representative observed, “They will also continue to give the impression that the process continues, that the TDC continues. ‘Here, the TDC has problems, it is not us but the TDC that has problems ... So, we may let [the commission] work, but it is not doing anything.’”<sup>21</sup>

More direct challenges included the introduction of competing legislation, the so-called “reconciliation law,” by President Essebsi. The bill aimed to offer amnesty to corrupt businessmen and administrative staff, and in its original form would have significantly curtailed the competencies of the Truth and Dignity Commission.<sup>22</sup> Additionally, the transitional justice process was characterized by internal conflict and frictions among the commissioners as well as rumors surrounding them. The image of the commission was closely linked to its president, Sihem Ben Sedrine, who was often portrayed in research interviews as a polarizing rather than reconciling figure: “She is no Desmond Tutu,” a member of parliament remarked.<sup>23</sup> And a defector from the Truth and Dignity Commission criticized the president’s leadership style as authoritarian: “[The truth commission] is an authoritarian structure ... effectively in the hands of Sihem Ben Sedrine.”<sup>24</sup>



During this stage, political preferences were clearly shifting away from transitional justice, with a continuous trend of prioritizing political compromise and elite deal making. However, the transitional justice process visibly developed limited autonomy from these shifting preferences. The president's competing draft legislation, aimed at undermining the process, was not easy to pass, and nobody had planned the altered version that eventually passed (from "economic" to "administrative reconciliation law"). Moreover, the Truth and Dignity Commission conducted public hearings against the preferences of the country's political leadership. Thus, in this stage transitional justice was partially performed despite challenges. In this context, the testimony of prominent figures from the Tunisian political and cultural realm could lend some credibility to accountability/justice claims. One prominent example is the testimony of writer Gilbert Naccache, who recounted political imprisonment and torture during the Bourguiba years.<sup>25</sup> Another is Ben Ali's nephew Imed Trabelsi, who gave testimony from prison and alleged that the nepotistic structures were still in place: "There was a revolution, but nothing has changed to my knowledge. I have my sources and the same system [of corruption] is still operational."<sup>26</sup>

Frictions between the truth commission and the political sphere continued and some factions in parliament tried to deny the commission an extension of its mandate that was provided for by law through a controversial vote that was both contested in procedure and in substance. The responsible ministry then granted an extension until the end of 2018, which still meant that the commission had to terminate its operations before it could finish all its tasks. Eventually, the Tunisian Truth and Dignity Commission published its final report in March 2019, presenting results from over four years of work.

To sum up, in the third stage transitional justice was driven and defined by conflict and friction from both inside and outside the truth commission. The political trend went against the pursuit of justice and accountability measure. However, the transitional justice process could develop a certain degree of independence from political preferences and shifting power relations and perform their task despite the challenges.

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## Conclusion and Outlook

After the Truth and Dignity Commission ended its work at the end of 2018, the questions of whether and how the findings summarized in the report will be disseminated and the recommendations implemented by the government are crucial for transitional justice. However, frictions have continued to grow. A recently

circulated draft bill aimed at terminating all cases before the specialized chambers; this was widely perceived as an attempt at an amnesty law.<sup>27</sup> Discussions with various experts all invited the same assumption: any steps towards implementation are very unlikely to be taken before the parliamentary and presidential elections in autumn 2019. Even afterwards, barely any imaginable political configuration would empower someone willing to take on that task. Thus, while the planned Tunisian transitional justice process was very comprehensive by mandate and design, it interacted with continuous political re-configurations and changing power dynamics in the transition. Conflict and friction across different actor groups played a crucial role in transitional justice's development within the volatile political context. While the political will for pursuing justice and accountability has been neither linear nor non-reversible, the current trend points to an abandonment of transitional justice. Thus, it remains to be seen whether a counter-trend can develop that places transitional justice back on the political agenda.

### Endnotes

1. The number of deaths identified by the “Bouderbala Commission” (officially: Commission for the Investigation of Abuses Registered During the Period from 17 December 2010 until the Fulfilment of its Objective) is much higher at 338 because it also includes prisoners, police officers and members of the military (Bouderbala Commission 2012).
2. See for example the responsible parliamentary committee: <https://majles.marsad.tn/fr/assemblee/commissions/4f426d31b197de1a22000007>.
3. Personal interview with ministerial staff, Tunis, March 2015.
4. This is not to be confused with the “National Dialogue”, for the facilitation of which Tunisian civil society organisations won the Nobel Peace Prize in 2015.
5. The Ministry was dissolved in 2014. The transitional justice portfolio was then taken over by the Ministry of Justice. Later, it fell into the area of responsibility of the Ministry for relations with constitutional institutions and civil society.
6. Personal interview with civil society representative, member of the technical committee, Tunis, May 2014.
7. Personal interview with former government minister, Tunis, October 2015; own translation.
8. Other terms to describe them are “interim” (Lamont and Boujnef 2012, p. 37) or “revolutionary” (International Crisis Group 2016, p. 2) measures of justice.

9. Personal interview with civil society representative of NGO of former political prisoners; Tunis, April 2014; emphasis added.
10. Personal interview with UNDP official, Tunis, May 2014.
11. Personal interviews with politicians and international transitional justice professionals, Tunis, April–May 2014.
12. Personal interview (in group) with civil society representative, Tunis, May 2014.
13. Personal interview with civil society representative, Tunis, October 2015.
14. Personal interview with anonymous, Tunis, May 2014.
15. In this stage, one could observe a decoupling of the common understanding of “transitional justice” of my interview partners and justice efforts introduced in the early transition. The latter were not seen as transitional justice anymore, that label became connected to the institutionalised process.
16. Personal interview with member of the parliamentary selection commission, Tunis, May 2014.
17. Personal interview with civil society representative, Tunis, April 2014.
18. Personal interview with international transitional justice professional, New York, April 2015.
19. <https://www.nobelprize.org/prizes/peace/2015/prize-announcement/>.
20. Personal interview with representative of transitional justice NGO, Tunis, May 2015.
21. Personal interview with law professor and member of the technical committee, Tunis, October 2015; own translation.
22. The law eventually passed in a less far-reaching version.
23. Personal interview with ARP member, Tunis, November 2017.
24. Personal interview with former member of the truth commission, Tunis, March 2015.
25. Personal observation, Sidi Dhrif, November 2016.
26. Find a recording of the hearing here: [https://www.youtube.com/watch?time\\_continue=1&v=auboOE9Awtk](https://www.youtube.com/watch?time_continue=1&v=auboOE9Awtk) (in Arabic). Quote from Huffpost Maghreb 2017); own translation.
27. Personal conversations with transitional justice professionals, New York, May 2019. See also reports, for example on justice.info: <https://www.justiceinfo.net/en/reconciliation/41007-tunisia-the-threat-of-an-amnesty.html>.

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