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**The Institutions of Transitional Justice in Tunisia and the  
Threat of Secularism-Islamism Polarization**

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## **Abstract**

A decade ago, Tunisia experienced what is known as “the Jasmine revolution” when millions of Tunisians went out in the street all over the country protesting and calling for “work, dignity and liberty”. The demonstrations resulted in the fall of the government and the departure of Zine El Abidine Ben Ali, the 23-year standing dictator, on 14 January 2011. Consequently, on the 23rd of December 2011, 217 members of the National Constituent Assembly (NCA) were freely and fairly elected. The elections resulted in an assembly holding different political and ideological orientations, trends, and visions. Predominantly, the 217 members represented a notable bipolarity between two political camps; Islamism and secularism. The NCA had the mission of governing the society in a transitional period that was best characterized by the need to implement a transitional justice process.

Transitional justice is considered a relatively recent field in Human Rights studies. It can be described as the process of addressing the unpunished human rights violations and paving the way for reconciliation to rebuild a society that recognizes its past, and learns from it so that it prevents its repetition. The concept further spread in the 80s and 90s when it was implemented in various states all over the world.

This thesis studies the implementation of transitional justice in Tunisia through the analysis of the institutions concerned in designing the process. The institutional analysis does not cease at a structural level but rather goes back to what has been written academically as well as the experience of the landmark case of South Africa, in an attempt to link the Tunisian case to existing literature and previous practices of transitional justice.

A major part of the analysis is dedicated to the dichotomy of secularism-Islamism in Tunisia. This polarization is presented as a key factor that accompanies the analysis of the institutional work. Hence, this thesis touches on the history and roots of such dichotomy in order to provide a context to the central hypothesis about its impacts on the role of each concerned institution in particular and the whole process of transitional justice in general.

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***List of abbreviations***

<i>TJ</i>	<i>Transitional Justice</i>
<i>ICTJ</i>	<i>International Centre for Transitional Justice</i>
<i>NCA</i>	<i>National Constituent Assembly</i>
<i>TRC</i>	<i>Truth and Reconciliation Commission</i>
<i>TDC</i>	<i>Truth and Dignity Commission</i>
<i>CPS</i>	<i>Code of Personal Status</i>
<i>ITM</i>	<i>Islamic Tendency Movement</i>
<i>UGTT</i>	<i>Tunisian General Labor Union</i>

# I. Introduction

Transitional justice is considered a contemporary field that has been gaining gradual importance theoretically and practically over the past decades. The resort to transitional justice has increased since the late 80s. Some scholars would even argue that the implementation of transitional justice is a fundamental step for states seeking democratic consolidation. This thesis aims at outlining the importance of Transitional Justice as a growing practice that has demonstrated efficacy in many states, especially the key case of South Africa, which is subsequently studied and considered a landmark case for this thesis's main case study: Tunisia.

The present thesis identifies the Tunisian institutions on transitional justice and illustrates their structures and how each contributed to the implementation of the process, with a focus on how the secularism-Islamism dichotomy affected their work. Thus, the research question of this thesis is about how the institutions on TJ carried out the process throughout the secularism-Islamism polarization. *The hypothesis that this paper tries to assess is that the tension between the two political factions affected the work of the institutions designing the transitional justice process.* The impact is tested mainly through each faction's attitude towards the TJ process and its concerned institutions and the different legal and political means each faction employed to intervene in the institutional work.

Indeed, this topic is very personal to me as I lived through the revolution, and I witnessed all political changes in my country since the 2011 demonstrations. However, I decided to focus specifically on transitional justice because I believe it is a milestone period in our history. It was a turning point for those who survived the dictatorship. It is important to address the process so that future generations know what some people underwent and how democracy was established. The whole process was a very critical period, nothing was granted. The fear of a civil war or regress to dictatorship was floating. Hence, every step of the process was decisive, especially considering what was happening in parallel in the other Arab Spring countries; the state coup in Egypt, the war next door in Libya as well as in Syria, and the civil war in Yemen. Looking back at that period, I can only be grateful that the TJ process prevented us from a backslide scenario. Yet, I believe it is important to study the impact of polarization, first as an important rising characteristic of the Tunisian politics and society, and second, it is

fundamental to address its role in not only shaping the TJ process but also what has been happening ever since.

This thesis is a systematic review done with an interpretive descriptive qualitative methodology. Information is mainly taken from academic literature, articles, and reports published by the concerned institutions.

The first chapter seeks to shed a light on the growing status of the analytic concept of TJ by outlining its development throughout different historical stages, recalling the objectives it set, identifying the various mechanisms applied to achieve it, and the significance of the concept within the UN framework. The second chapter delves into the Tunisian institutional implementation of transitional justice with a focus on the impact of the secularism-Islamism polarization on the institutions' work as well as it goes back to the roots of such dichotomy.

After the revolution, Tunisian politics was mainly characterized by a bilateral competition between secularists and Islamists. This competition resulted in a political arena dominated by a dual and contradictory dynamic represented by ideological rivalry and strategic differences. Each of them claims the real representation of the Tunisian society in an attempt to exclude the other. Consequently, this political-ideological tension had a major impact on the role of institutions carrying out the TJ process.

To prove the impact of the political tension, this thesis analyzes the work of the two concerned institutions; the ministry of Human Rights and Transitional Justice, and the truth and dignity commission. Both institutions played a major role in designing the transitional justice process, yet their roles have been prone to the ideological-political tension in different ways. Thus, in a first part, each institution is introduced including its structure, the mission it had, and how it played a role in carrying out the TJ process. Then in a second part, the analysis goes to the impact of the polarization on the institutional work by recalling the different means and strategies that each of the two factions employed to influence the process.

## II. Literature Review

### A. Definition of Transitional Justice

The International Center for Transitional Justice defines TJ as *"a response to systematic or widespread violations of human rights. It seeks recognition for the victims and to promote possibilities for peace, reconciliation, and democracy. Transitional Justice is not a special kind of justice, but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly, in others they may take place over decades."* (ICTJ, 2009).

Kora Andrieu in her article, about transitional justice being a new discipline in the field of Human Rights, cites Ruti G. Teitel, one of the founding scholars, who defines TJ as *"a concept of justice, intervening in a period of political change, characterized by a juridical answer to the wrongs of past repressive regimes."* (Teitel, 2003: 69, as cited in Andrieu, 2010).

With those two definitions presented, we can outline transitional justice as a set of policies that seek to restore justice in a state that has experienced serious human rights violations through the means of finding lasting solutions to the crimes that have been committed and that have gone without a fair trial.

When studying the concept of transitional justice, scholars tend to connect it to another relevant paradigm known as "restorative justice". Restorative justice can share some of the same objectives as Transitional Justice, therefore, the implementation of the restorative justice paradigm is considered frequent in the process of transitional justice.

### B. Restorative Justice

In their article "the conceptual theory of restorative justice", Paul McCold and Ted Wachtel (2003) consider restorative justice a type of justice in which the focus is set on healing the harm done to the victims. The process is rather collaborative as it includes even the relatives and the social circle of the victims. The authors identify two types of actors. First, there are the "primary stakeholders" who are the ones directly related to the crime. Second, there are the "secondary stakeholders" who are the people belonging to the circle of the primary



stakeholders without being directly affected by the incident. The authors outline three distinct conceptual structures of the theory: “the social discipline window”, “the stakeholder roles” and “the restorative practices typology”.

The first structure; “the social discipline window” is about the means that people apply to maintain social discipline. Indeed, the scholars highlight two strategies to achieve social discipline; one through enforcing "control" and the other one through granting "support". However, they emphasize that by expressing different degrees (high or low) for each strategy, the results vary. Hence by combining these two strategies with different levels, the scholars identify four distinct approaches to the regulation of behavior: punitive, permissive, neglectful, and finally restorative.

The restorative approach is done by merging a high level of support for the victims with a high level of control for the offenders. This approach is more of a collaborative and synergistic perspective as it includes both; assistance for those who got affected by the crime as well as it gives chance for the offenders to admit their wrongdoing and reintegrate into the society. This approach was successfully experienced in South Africa and also adopted in Tunisia; our case study.

The second structure of the theory is “the role of stakeholders”. As mentioned above, McCold and Wachtel recognize two types of stakeholders; the primary stakeholders and the secondary stakeholders. Primary stakeholders are usually the victims, the offenders, and their families and friends or what the authors call “their communities of care”. Because of their central position in the issue, primary stakeholders need to have active participation in the process so that their harm can be healed. Their active and direct participation stands as a public acknowledgment of the wrongfulness they underwent. The authors highlight that such acknowledgment is highly needed for the victims to feel empowered and for them to reintegrate into the society, *"This empowerment is what transforms victims into survivors"* (McCold & Wachtel, 2012, p. 3). On the other hand, the offenders as well should take part in the direct participation as they should take responsibility for the damage they caused for the society to accept them again. The authors stress that both victims and offenders should be reintegrated into their communities.

When it comes to the secondary stakeholders, the authors identify them as the neighbors, the officials, and even the whole society as the bigger social circle. For the secondary stakeholders, the harm was impersonal, it did not affect them directly. Therefore, their role should be supportive. Their participation consists in showing support to the primary stakeholders and not stealing the issue from them, meaning they should not be the center of the conflict. Instead, they should facilitate the process of healing and social reintegration for both victims and offenders.

The third and last structure of the theory is "the restorative practices typology". The typology includes the practices related to the three different primary stakeholders;

- (i) the victims**
- (ii) the offenders**
- (iii) communities of care.**

In this typology, the victims must gain reparation, the offenders have to take responsibility, and their communities of care ought to achieve reconciliation. The three sets of primary stakeholders should take part and engage in the process. McCold and Wachtel (2003) theorize that transitional justice is considered fully restorative justice just in the case of the inclusion of all three types of primary stakeholders.

Restorative justice is a very important paradigm as it represents a primarily structured response to the infringements. A response that does not come to pay off the victims' grievance and heal their wounds only, but to also hold the offenders accountable while arranging a way for their reintegration instead of sketching their eternal isolation and exclusion plan. In this regard, McCold and Wachtel state that "*A restorative criminal justice system aims not just to reduce crime, but to reduce the impact of crime as well.*" (McCold and Wachtel, 2003, p. 5)

Restorative justice was indeed applied in South Africa after the tragic past of apartheid. The South African experience represents an early empirical practice of the restorative justice paradigm and a key case in the history of transitional justice. It is also specifically a milestone

in our study as Tunisia tried to follow the steps of the South African experience. But before we delve into it, we believe it is crucial to first recall the history of transitional justice.

### C. Historical background of transitional justice

It is hard to trace back the history of transitional justice from the very beginning. There is no consensus about the exact birth date of the concept. Jon Elster (2004) in his book *"Closing the Books: Transitional Justice in Historical Perspective"* goes even back to trials done after the 507-508 BCE Athenian revolution. Whereas, Ruti Teitel (2002) considers the Nuremberg Trials, which were held in the wake of the Second World War, a landmark in the first phase of transitional justice history.

Paige Arthur (2009), the Deputy Director of Research at the International Center for Transnational Justice, in her article about *"the conceptual history of transitional justice"*, outlines that the first time the notion was found in an academic official record was *"in a Boston Herald article about the Charter 77 Foundation's 1992 conference in Salzburg, 'Justice in Times of Transition'"*. (Arthur, 2009, p. 329). Ever after the Salzburg conference, the concept of justice in a transitional period was highly applied among some key scholars. Despite her assumption regarding Ruti Teitel being the founder of the notion "transitional justice", Arthur does not specifically identify the exact scholar who came up with the term. Nevertheless, she emphasizes that the term further spread within the academic field in the mid-1990 when Neil J. Kritz, who attended the Salzburg conference, published his book *"Transitional Justice: How Emerging Democracies Reckon with Former Regimes"*.

Ruti Teitel (2002), who is considered one of, if not the founding scholars of the term, sets forth a different historical outline. Teitel believes that when looking back at the history of transitional justice, one should focus on the development of the concept throughout the different international political and social changes. Teitel distinguishes two historical phases of transitional justice. The first phase starts from the aftermath of the Second World War to the end of the Cold War, and the second phase is the "post-Cold War phase".

The first phase, is, on the one hand, marked by a notable shift in the international standpoint for the importance of accountability and justice specifically after the horrifying inhumane outrages of the Second World War. On the other hand, this first phase was also characterized

by the proliferation of restorative justice which has been adopted in several countries since the 1980s, starting from the waves of democratization in South America to South Africa and post-communist Europe. As a consequence of such political circumstances, the conception of transitional justice was implemented as a means to establish democracy and the rule of law. Teitel points out that in this first phase, TJ was highly connected to the field of human rights and freedoms and was considered a way to fulfill nation-building.

However, in its second phase, the concept of TJ shifted to a broader and more flexible concept of rule of law where political, social, and cultural circumstances are thoroughly taken into account. Teitel touches on the fact that the objectives of transitional justice in the second phase are rather humble and limited to sustaining peace and achieving stability. Furthermore, post-Cold War transitional justice is more of an inclusive conception as it focuses on different actors coming together to reach peace, and that is due to globalization. Indeed, Teitel argues that globalization highly affected the conception of transitional justice and it is the main reason behind the shift in its goals. Due to globalization, there has been a rising wave of interconnectedness that touched upon different fields, including transitional justice. In our globalized world, different sets of non-state actors have been more and more active and playing important roles, locally, nationally, and internationally. Hence, transitional justice had to adapt to these changes by switching the essence of its subject from a legally narrow perception of the rule of law to a more flexible interdisciplinary one, as Teitel (2002, p. 901) asserts *“the direction in the recent decade is one of compromise and resignation”*. This shift will also be noticed and further perceived in the Tunisian case study.

## D. Goals of Transitional Justice

Similarly, there is no typical fixed list of the objectives of transitional justice. Goals differ from the context. Nevertheless, the International Center for Transitional Justice (ICTJ, 2009) identifies three goals that are essential to any TJ process:

- *“The recognition of the dignity of individuals.*
- *The redress and acknowledgment of violations.*
- *The aim to prevent them from happening again.”*

Additionally, the ICTJ adds on other aims that can be supplementary to those goals mentioned above, such as facilitating the access to justice for victims, according a pivotal role for women and minorities in the establishment of a fair society, proceeding with the process of reconciliation, strengthening accountability within state institutions... etc.

Kora Andrieu (2010, p. 3) in an ironic approach, when addressing the goals of TJ, presents a long list of various judicial, political, social, economic, and even cultural objectives and then proceeds to profess that *“the goals of TJ are rather ambitious” and that “TJ remains a rather optimistic answer to mass violence.”*

## **E. Mechanisms of Transitional Justice**

Analogously, there is also no consensus about a standard list of the different pillars and mechanisms of transitional justice. Scholars tend to agree that there is no such thing as an ideal process. Instead, they concur that each state makes its own experience and creates its own process depending on its particular history and political circumstances. Paige Arthur (2009, p. 326) states *“Part of the distinctive character of the field is that its knowledge-base has always been comparative. It has attempted to devise typologies of experiences and systematic knowledge of (often disparate) country contexts. This fact can be seen in the early conferences: each of them was structured around the principle of comparing national experiences among a diverse group of international participants, rather than the principle of identifying (and exporting) an ideal type.”*

Nonetheless, one of the main pieces of literature on the mechanisms of TJ is Alexander L. Boraine’s holistic approach. Boraine, the founder and the former President of the International Center for Transitional Justice, argues that there are five main pillars together form a holistic approach to transitional justice, which are: accountability, truth recovery, reconciliation, institutional reforms, and reparations.

### **1. Accountability**

Boraine (2006) highlights that accountability is a key element in the pursuit of justice. Accountability refers to the capability of holding someone responsible and liable for their actions. The concept of accountability is highly tied to retributive justice as it usually leads to

legal prosecutions. In the context of retributive justice, Boraine emphasizes the benefits of legal prosecution in reimposing the rule of law as a key pattern of society, preventing the guilty officials from returning to office, and averting what is known as “summary justice” meaning trials that do not meet the internationally recognized standards of a fair trial.

However, accountability, when only held in the frame of trials and only considered a means for retributive justice, is subject to various criticisms. Kora Andrieu (2010) rejects this restricted practice of accountability where merely a very limited number of perpetrators are held accountable due to the expensive cost of trials. Besides, Andrieu points out the dilemma that the legal perception of accountability is about holding someone liable for an unlawful action they committed, whereas, in some cases, perpetrators were prosecuted for actions that were not prohibited by the time of their execution. This issue of retroactivity was the center of a prime debate among scholars ever since the Nuremberg Trials.

Thus, Boraine (2006) upholds that accountability, in the broader sense of the notion, goes beyond this mere conceptualization of legal prosecution, to reach a wider frame where the responsible understand the negative impact of their behavior, apologize, amend their actions, and change their attitude so that the harm does not occur again.

## **2. Truth recovery**

Truth recovery refers to the journey of looking for the truth about past human rights violations. Knowing the truth is a right itself, as well as it is an implementation of a fundamental principle of TJ, which is according a central role to the victims. Factually, conflicts are most unlikely to stop if the truth does not prevail. Thus, experts came up with a wide range of strategies and methods that can be adopted for truth recovery. By far, the most predominant method is the creation of truth commissions. However, there have been critiques about the subjectivity of the truth. Some scholars were referring to the school of relativism about the idea that “truth is relative”.

In response to these assessments, Boraine (2006) recalls the characterization of truth by the South African Truth and Reconciliation Commission (TRC). The TRC differentiated four distinct types of truth. The first type is “objective or factual or forensic truth”, which is the truth gathered from information coming with factual evidence. The second type is the “personal or

narrative truth” represented in the stories told by the victims, the perpetrators, or their relatives. The collection of this information is usually done through a very common practice among truth commissions which is hosting public hearings, mostly for victims to tell their stories. However, as Boraine stresses, this type of truth is never used in official settings like court trials. It is mostly destined for the mere purpose of restoring the dignity of the victims and setting a record for the public as a way to shape the collective memory. The third type of truth is the “social or dialogical truth”, which is the information gathered through hosting dialogues between different actors such as political parties, NGOs, media...etc. This kind of truth is highly tied to the principles of participation and transparency as it is based on collaborative means. Finally, there is the “healing and restorative truth”. It is a reparation-oriented truth, meaning it is about the information collected through the offenders’ acknowledgment of wrongdoing. It is conditioned with the admission of tort and accountability, which makes it an essential step toward building a future where victims move from the phase of victimization to empowerment.

### **3. Reconciliation**

Reconciliation is about coming to terms with the past. It is about restoring a peaceful environment among victims and offenders in an effort to build a conflict-free future. Previous TJ experiences have proved that reconciliation is a complex process. Boraine (2006) argues that one of the main reasons behind this is the negative affiliation of the concept with religion. Religiously, when speaking about reconciliation, it is usually connected to sacrifice. Historically, some religious spokespeople, in the name of reconciliation, stood with powerful figures who oppressed the majority instead of defending the victims, such as when the Catholic church in Argentina advocated the military junta (Boraine, 2006). Incidents like that have promoted a pejorative understanding of reconciliation where it signifies forgetting and moving on as if nothing happened. Therefore, Boraine advocates for a very careful approach to the issue, *“the process of reconciliation is never cheap ... the process is never comfortable and often dangerous.”* (Boraine, 2006, p. 22). He suggests some strategic yet delicate methods such as demilitarization by convincing the dissenting armed group to give up their weapons in exchange for a peaceful reintegration into the society or forming a popular

memory, where the past injustice is recognized and accepted by the society including the perpetrators.

However, Andrieu (2010) recalls some critiques about the act of creating a collective memory considering that it is a very powerful and difficult move as it instructs how the people would remember their past and consequently guide their future attitudes. Yet, it is impossible to reach a common consensus about what should be remembered. There will always be a chance of oppressing some voices. In this regard, Michel Foucault in "film and popular memory" illustrates that *"It is a very important factor in struggle & if one controls people's memory, one controls their dynamism & it is vital to have possession of this memory, to control it, administer it, tell it what it must contain."* (Foucault, 1969 as cited in Andrieu, 2010, p. 12)

Furthermore, Boraine emphasizes that the key factor for a successful reconciliation is that *"it must have an impact on the life chances of ordinary people."* (Boraine, 2006, p. 22)

However, this social impact cannot take place overnight. First, the people should trust the new system. But trust should never be demanded, it is earned. And for people to have trust in their government, they need to feel heard and the truth should be out. Thus, reconciliation is not only a means for TJ but also a long process that includes different patterns such as reparations, public hearings of the victims, trials...etc. It all depends on what the victims' need to be able to forgive.

#### **4. Institutional reforms**

Institutional reforms are important because they will help restore a system in which all institutions acting on behalf of the state obey the existing legal order and act according to the legal norms. Institutional reforms are needed to regenerate the idea that all state institutions are framed by the law. Thus, there is no room for human rights violations especially conducted in the name of the state. Institutional reforms are a necessary step to regain people's trust in state institutions since these latter were used as tools to either commit the crimes or escape the punishment. The ICTJ emphasizes that institutional reforms can be done through diverse means such as increasing representation of different segments of society, promoting independence, replacing the guilty officials, embracing accountability, improving legal education through providing Human Rights training...etc. Taking Serbia as an example,



Boraine argues that the failure of implementing structural and strategic institutional reforms is one of the main reasons why Serbia still struggles to reach democratic consolidation “...it was clear that unless and until institutions are radically restructured, there will be little opportunity for growth, for development and for peace in Serbia.” (Boraine, 2006, p. 24)

## **5. Reparations**

Reparations are considered one of the essential means to ensure justice and provide a sense of fairness to victims. Reparations represent the concrete perceptible way for a state to prove its empathy towards the victims, recognize their suffering, and provide a form of compensation. Reparations are a commitment by the state to respond to past abuses. The importance of reparations in the TJ process lies in their directness to the victims. Reparations are a victim-oriented mechanism, “reparations play an important role for victims and are one of the few efforts undertaken directly on their behalf” (Boraine, 2006, p. 25).

Andrieu (2010) underlines two main types of reparations; symbolic and material. Examples of symbolic reparations can be naming a monument after the victim, making a public apology, or for those who were killed and secretly buried, reparations can be done through reburying the body in a dignified way. Whereas, material reparations usually take the form of a sum of money, or any form of material arrangement that would help socially reintegrate the victims, such as hiring or giving back a job position. However, for reparations to be effective, Andrieu (2010) affirms that they must be applied together with the other TJ mechanisms mentioned above. Such a combination ensures that reparations are not used as temporary measures or as attempts to buy the victims’ silence.

## **F. Transitional Justice within the UN**

Transitional justice has been of remarkable importance within the UN framework for the reinforcement of the rule of law. The first time the conception of TJ was highly emphasized was in 2004 in a report by the UN Secretary-General Kofi Annan. Leena Grover (2019), in her article about the relation between transitional justice, international law, and the UN, highlights that in the 2004 report, Annan focused on framing the UN work on TJ by setting up the boundaries between the context of transitional justice in international law and the practice of transitional justice by national actors. The report underlines the idea that national

actors are the main actors in carrying out the TJ process in comparison with a weak involvement from international actors. In addition to that, the report stresses that the UN tribunals will never, under any circumstances, authorize capital punishment and that the UN will never support amnesty agreements about crimes like genocide, war crimes, torture, and crimes against humanity (Grover, 2019).

However, the UN's work on transitional justice ever since the 2004 report has changed. The shift is lucid and easy to spot through the 2010 UN Secretary-General Ban Ki-Moon's Guidance Note on transitional justice. Grover (2019) underlines that the main change is that the UN no longer restricts its conduct but rather it tries to restrict the conduct of states. For example, whereas the 2004 report mentioned that the UN tribunals will not allow capital punishment, the 2010 report stated that the UN will not establish or give any kind of help to tribunals that allow capital punishment. Another important shift was that *"states are no longer bound only by international legal obligations but also by international legal 'standards', which is presumably a reference to norms and policies established by the UN in this field through soft law instruments."* (Grover, 2019, p. 375). This represents another proof of the change in the UN role from a passive to an active role. Indeed, the 2010 report, as its name suggests, includes various guiding principles for states to consider. Our case study, Tunisia, is indeed an example of a state that follows the UN recommendations on TJ.

## G. South Africa: a key case study of transitional justice

After almost 50 years of apartheid, South Africa began its journey toward establishing the rule of law taking the path of transitional justice. A journey that was sort of imposed due to international isolation measures applied in the late 1980s by the international community as a response to the former South African government remaining in power and the liberation movement's inability to defy it. Gradually, the former government ended up understanding that it cannot continue with such domestic and international pressure. Meanwhile, the liberation movements understood that they were most unlikely to overthrow the former government. Therefore, both parties decided to compromise, meaning granting amnesty to perpetrators of human rights infringements (Van Zyl, 1999). This need for a compromise proves Paul Van Zyl's hypothesis that the way a current government chose how to deal with

past violations, committed by a former government, is subjectively determined by the balance of the power between the current and former ruler at the time of transition.

Accordingly, in 1996, the Truth and Reconciliation Commission (TRC) was founded. It consisted of 17 members and it had the mission of addressing the gross human rights violations that happened between 1 March 1960 and 10 May 1994, providing the appropriate reparations to the victims, hearing them out, offering amnesty to the offenders who make full disclosure about their actions, and finally writing a report and submitting it to the President.

The commission includes three committees in addition to an investigative unit and a witness protection program. The first committee was the Committee on Human Rights Violations. It had the task of collecting information about the past infringements, identifying those who are legally considered victims based on the TRC act to forward their information to the other committee; the Committee on Reparation and Rehabilitation. When it came to the mission of pursuing the truth, the Committee on Human Rights Violations held more than 120 hearings in different cities all over the country. The committee worked on collecting evidence and it recorded over 22,000 statements from victims. Plus, it worked on addressing the role of different parties and professions in enabling the past violations as a way to raise awareness.

The second committee was the Committee on Amnesty. Its mission was to view the amnesty applications. There were various criteria for any person to be qualified for amnesty. The main two conditions were: the crime should legally correspond to the TRC act and the offenders should grant full disclosure in a public hearing.

The third committee was the Committee on Reparation and Rehabilitation. Its members were mainly medical doctors and mental healthcare professionals. They worked on providing recommendations on how to heal the victims and repair the damage they underwent. TRC applied a therapeutic paradigm by ensuring psychological assistance to victims during their testimonies. Besides, TRC recommended the government provide the victims with financial assistance.

In fact, Paul Van Zyl stated in his article that "*the government allocated 600 million rand (\$100 million) to pay reparation to victims over three years*" (1999, p. 659). Indeed, the victims were

offered financial assistance even despite being unable to provide physical evidence. Victims were not required to identify their offenders. Even when a victim died in detention and no offender was found, the TRC was required to acknowledge the victim and provide reparation to their family. Plus, a victim of an offender who received amnesty automatically gained reparation. TRC also offered symbolic reparations, such as offering to rebury activists who were assassinated and buried in secrecy and building a monument to keep the victim alive in the public memory and give them back a sense of dignity

### ***Some points of Reflection***

Overall, we can infer that TJ is a process that a state engages in when going through a political transition, mostly toward democracy. TJ is an attempt to deal with the past mass human rights violations while ensuring that they do not occur again in the future. Despite the disagreement about the chronological development of the concept, scholars tend to agree that in the late 80s and early 90s the concept of TJ progressed internationally specifically in South America, Eastern Europe, and South Africa. Such progress was followed by the acquisition of important status in international law and especially within the UN. Progressively, the UN changed its approach to TJ, and in 2010 the Secretary-General published a note in which he outlined the framework for the UN's approach to transitional justice through the presentation of guiding principles. Nonetheless, these principles do not surpass the status of recommendation. Factually, scholars tend to agree that there is no perfect model of a TJ process that all states should follow. Instead, they illustrate that the goals of TJ and its mechanisms depend on the particularity and the unique context of each state. In the case of Tunisia, even though it tried to follow the steps of the South African experience in implementing the restorative justice paradigm, some particular political factors highly influenced the process. In this thesis, the focus is on the impact of the polarization between secularism and Islamism on the work of the institutions conducting the TJ in Tunisia. Hence, before delving into the work of the concerned institutions, this thesis research will address the history of the secularist-Islamist polarization before further discussion.

### III. Case study: Transitional Justice in Tunisia

#### A. History of secularism-Islamism polarization

##### 1. The foundation of a modern secularist Tunisia

Tunisia is internationally considered the most secular Arab country. Tunisia's first president after independence, the former lawyer Habib Bourguiba and then his successor, the former president Zine El Abidine Ben Ali chose to take a secular modernist path for the governance of state institutions. Their policies succeeded in producing intellectual secularist elites who worked on constructing a liberal society and entrenching modernization within the people.

Bourguiba, being the leader of the independence, employed a very unique approach in founding the Republic. He tried to build a modern society where liberal values prevail while conserving Islam as the religion of the majority. Bourguibism as an ideology was based on the idea of the reconciling modernization and Islam. This duality of a modern Muslim-majority society is evident through the correlative existence of the first article of the 1959 constitution, which states that *"Tunisia is a free, independent and sovereign state. Its religion is Islam..."* (Constitution of the Republic of Tunisia, 1959, art. 1) along with a bunch of legal provisions that might, for some, seem opposite to Islamic values. Indeed, Bourguiba's policies on women's rights are a prominent example of these provisions.

In these provisions, Bourguiba was substantially influenced by Tahar Haddad. Haddad is a Tunisian Islamist scholar who strongly advocated for the emancipation of women in Islam. In 1930 he wrote his iconic book *"Our Women in the Shari'a and Society"* in which he argued that the predominant Islamic interpretations of the Quran about women's rights are regressive. As an alternative, Haddad worked on providing advanced substitute interpretations. Inspired by Haddad, in 1956, a few months after the independence, Bourguiba initiated the process of drafting the Code of Personal Status of Tunisia (CPS) which prohibited polygamy (art. 18), gave women the equal right to initiate divorce (art.31), further boosted the right of mothers for child custody (art. 62)... etc. Furthermore, in 1973, abortion became legal (Criminal Code, art. 214). The legalization of abortion in the first three months of pregnancy was indeed based on a modern interpretation of the Quran. This focus on

women's rights comes from Bourguiba's belief that equality between men and women is the basis of modern society.

When it comes to the establishment of secularism in Tunisia, it is visible through the contradiction between what some legal provisions allow and what is considered prohibited in Islam. For instance, according to article 231 of the Tunisian Penal Code, prostitution is a state-regulated sector, it is a legal profession when a license is obtained from the state (Penal Code of the Republic of Tunisia, art. 231). Besides, it is noteworthy that Sharia is not a source of law in Tunisia. In some neighboring countries like Egypt, Islamic law and Sharia have been explicitly considered a source of law, as the first article of the Egyptian Civil Law states that in case of absence of a provision of law, judges should consider principles of Muslim law a third source of law (The Civil Code of The Arab Republic of Egypt, art. 1). Meanwhile, in Tunisia, there is no explicit article about the arrangement of the sources of law. Yet, the Tunisian code of obligations and contracts, in its article 535, specifies that in case it is not possible to rule by a clear legal provision, then analogy shall be considered, and in case there is still doubt, then resort to the general principles of law (The Code of Obligations and Contracts of the Republic of Tunisia, art. 535). This article precisely emphasizes the rule of positive law in Tunisia. Hence, it implicitly eliminates any other source of law, including Sharia.

Overall, secularism in Tunisia can be summarized through what Bourguiba said in an interview when he was asked about the standing of laicity in Tunisia: *"It -Tunisia- is a state that is at once Muslim and progressive, this is what constitutes its originality."* (Ben Ismail, 2017, p. 2).

## **2. The rise of Islamism**

At the beginning of the 60s, a youth-led Islamist movement emerged within universities. It is believed that this movement was imported from some Middle Eastern countries and Egypt (Wolf, 2017). This belief comes from the fact that Rached Ghannouchi, the founder of the movement along with many of his fellows, pursued his higher education in Egypt and Syria. Ghannouchi was highly influenced by Syrian Islamist scholars specifically the Brethren's ideology (Boulby, 1988) and leaders from the Egyptian Muslim Brotherhood (Yildirim, 2017). The movement focused on proselytizing. Members sought to implement their thinking into the Tunisian society. In 1981 some members, led by Ghannouchi, came together and founded

an official political movement called the "Islamic Tendency Movement" (ITM). They worked on spreading their ideas and mobilizing more people into joining their movement, mainly through the distributing of flyers secretly. Gradually, their actions escalated into more violent acts such as delivering threatening letters to coffeeshops that remained open during Ramadan (Boulby, 1988). As a consequence, the Bourguiba's government started an operation against them; dozens of members were arrested and sentenced to jail and the series of repression against the Islamists continued. It especially intensified in 1987 when Zine El Abidine Ben Ali was appointed as Interior Minister as he sought to arrest most of the ITM members.

On 7 November 1987, Ben Ali executed a bloodless coup d'état that ousted Bourguiba in justification of his incapability to lead the country due to his elderliness and deteriorating health conditions. Afterward, Ben Ali promised to follow a liberal democratic reform. Hence, in the 1989 parliamentary elections, he allowed the participation of the ITM, which has been called "Ennahda" political party since 1989 (Arabic word for renaissance). Ennahda succeeded in gaining 17% of the votes. As a result, Ben Ali banned the party, and many of its members were prosecuted for attempting to overthrow the government (Yildirim, 2017). Consequently, leaders of the Ennahda chose to flee the country.

Ben Ali aimed at eliminating any form of Islamist political ideology and he considered universities the home of Islamism. Therefore, he further relied on circular 108 which was issued in 1981 to ban wearing Hijab in universities and most public institutions (Hawkins, 2011). From that point, Ben Ali's policies against Islamist movements further strengthened. Police raids increased resulting in more arrests, torture, and mass human rights violations to any movement opposing his regime.

Although Ben Ali's dictatorship succeeded in creating a one-party system, it definitely did not end the secularism-Islamism polarization. As soon as Ben Ali's regime fell, the ideological dichotomy prevailed again and it highly affected or even characterized the post-revolution political transition, including the transitional justice process.

## B. Institutions of Transitional Justice

On 14 January 2011, after many pro-democracy street demonstrations that lasted a month, President Zine El Abidine Ben Ali left the country leading to the fall of his government. Consequently, on the 23rd of October 2011, 217 members of the National Constituent Assembly (NCA) were freely and fairly elected. The elections resulted in an assembly holding different political and ideological orientations, trends, and visions. Predominantly, the 217 members represented a notable bipolarity between the Islamists and the secularists, with the Islamists, mainly represented in Ennahda, having won the most votes.

Nevertheless, Ennahda did not gain enough parliamentary seats to compose its government. Thus, it was required to form an alliance known as “Troika” with two other parties; “The Congress for the Republic” (center) and the “Democratic Forum for Labor and Liberties” (center-left). The “Troika” government, coming in power in such a critical period, had to face a lot of challenges; one of them being the question of the past mass Human Rights violations and the need for a transitional justice process. Consequently, there was a necessity to assure a certain institutional development that is meant to carry out the TJ process. However, these institutions were pursued with the politicization of their work having the deep-rooted polarization playing a significant factor in the TJ process.

### 1. The Ministry of Human Rights and Transitional Justice and the issue of politicization

It is one of the ministries of the Troika government. It was created as an answer to demands for truth and justice about decades of Human Rights infringements. The ministry was headed by Samir Dilou, a senior member of Ennahda and a former political prisoner (Chomiak, 2018). The ministry began the TJ process by launching a National Dialogue on 14 April 2012. The dialogue mainly involved conducting surveys and questionnaires about different matters related to TJ such as reparations for the victims and their concerns... etc. Participants in the dialogues were diverse from *“Tunisian citizens, civil society organizations, political parties, branches of the main labor union UGTT, judges, lawyers and legal professionals”* (Chomiak, 2018, p. 27). Responses were to be considered for the draft of the Law on Transitional Justice. Accordingly, it can be derived that the Tunisian TJ process started appropriately as the



arrangement of national consultations and the facilitation of public participation is one of the five TJ components declared in the 2010 UN Secretary-General Guidance Note.

The appointment of Dilou as head of the ministry was subject to a lot of criticism. It was seen as an attempt by Ennahda to politicize the TJ process and take ownership over restoring justice to favor victims belonging to their camps and increase their popularity (Cats-Baril, 2019). As a response to these critiques, the ministry resorted to creating an independent commission called “the Technical Commission” which aimed at overseeing the dialogue process and drafting the TJ law. Besides, Dilou made a statement assuring that the ministry's mere role is to help with “*logistical support*”. (Urech, 2014, p. 7) Nevertheless, reality proved that most of the victims who took part in the dialogue were Islamists. (Kazemi, 2018)

Nevertheless, Ennahda's attempt in politicizing the TJ process and intensifying the political-ideological conflict with the secularists did not end there. While the Technical Commission was organizing consultations to help shape the TJ law, Ennahda, with four other political parties, suggested a bill called “Law on the Immunization of the Revolution” which basically aimed at banning people, who used to belong to the ruling party during Ben Ali's era, from running for elections or occupying some elected position for seven years (Chomiak, 2018). The bill was extremely criticized for being eliminative, particularly directed toward the exclusion of members of “Nidaa Tounes” which is the secularist opponent party founded in June 2012 by Beji Caid Essebsi (Chomiak, 2013). This latter formed his party through the unification of different anti-Islamist politicians, mainly from the ancien régime, as a counterpower against Ennahda (Ben Ismail, 2017). Also, the bill was criticized for supporting the division in the society, especially since the concerned category is not just a segment of the population but rather thousands of Tunisian families would be affected (Chomiak, 2018). Moreover, the bill did not meet the Human Rights standards since it called for the violations of some internationally recognized civil and political rights. Thus, it was denounced by Human Rights Watch, and numerous voices were raised calling for the Troika government to resign (Chomiak, 2018). Eventually, the bill was not adopted.

Regardless, in January 2013, the draft bill of the Transitional Justice Law was submitted to the National Constituent Assembly. Yet it was rejected and was only adopted in its fourth draft. The first three drafts were rejected mainly because of disagreement on who should be

considered a victim, what types of crime should be included, and the criteria of candidates for the commission membership... etc (Chomiak, 2018). Finally, the bill was adopted on 15 December 2013 after two days of successive parliamentary discussion.

Yet, it is noteworthy that the bill was prone to several external and internal factors that led Ennahda to stop dragging out the process and instead swiftly pass the bill. Externally, the year 2013 witnessed the fall of the Muslim Brotherhood in Egypt after the coup d'état by chief General Abdel Fattah al-Sisi. Internally, Tunisia under the Troika ruling underwent two political assassinations, the first time on the Tunisian territory since the independence, of two leftist leaders; the assassination of Chokri Belaid in February 2013 and then Mohamed Brahmi on 25 July 2013. Adding to that the country suffered from a general security collapse due to terrorist attacks launched by Al Qaeda. As a result, The Tunisian General Labor Union (UGTT) called for a national strike and advocated for the takedown of the Troika government. The strike was followed by a long series of public anti-Ennahda protests all over the country, calling even for the dissolution of the assembly (Chomiak, 2018).

Nevertheless, the law on Transitional Justice, officially known as "The Organic Law on Establishing and Organizing Transitional Justice", was deemed sort of unique as it adopted very special definitions for victims and crimes. The particularity of these definitions lies in their broad scopes (Jamal Hajar, 2019).

On the one hand, the definition of the victim given out in article 10 of the TJ law is very inclusive. It not only includes physical persons like an individual or a group of people, but it also includes legal/moral persons, meaning entities that were also subject to violations. Together they form "direct victims". Moreover, article 10 involves relatives and family members of the victim as well as *"any person who was harmed while intervening to help the victim or to prevent the violation"*, meaning "indirect victims". Even though the law does not make such a distinction but rather employs the word "victim" for all. Indeed, this inclusiveness in the definition of victim fits McCold and Wachtel's description of "primary stakeholders".

Additionally, what makes the definition of victims more unique and inclusive is that it also covers *"every region which was marginalized or which suffered systematic exclusion"* (art.10).

This characteristic can be justified by the historical marginalization that many regions underwent since independence (Urech, 2014). Particularly, the problem goes back to the 1970s with Bourguiba and continued later with Ben Ali, when governments were aligned with the interests of the more favored coastal regions, ignoring the interior regions. Thus, it can be deduced that the legal consideration of marginalized regions as victims is an initiatory attempt to nationally acknowledge their legacy of deprivation, especially since the spark of the revolution was inaugurated from the interior regions. Besides, it can be seen as a means to start dealing with the inveterate past of regional inferiority that has led to mass violations of economic rights, mainly with the problem of unemployment. This perspective corresponds to the UN 2010 report which encouraged states to adopt policies that consider the root causes of the past violations.

On the other hand, the law on TJ is built on a broad understanding of violations. It implicates different types of crimes as well as covers a long period starting from *"1 July 1955 up to the issuance of this law"* meaning December 2013 (art. 17). The time frame goes even before the presidency of Bourguiba. Through such a broad temporal scope, we can conclude that Human Rights violations are a heritage even before the birth of the Republic.

Article 3 of the organic law defines a human right violation as *"any gross or systematic infringement of any human right committed by the State's apparatuses or by groups or individuals who acted in State's name or under its protection, even if they do not have the capacity or authority to do so. Violation shall also cover any gross or systematic infringement of any human right committed by organized groups"*. This broad definition might implicate different sets of crimes like torture, rape, murder...etc as well as it can involve cases of people who, because of their political or religious affiliations -the example of circular 108-, were deprived of pursuing their education or from applying to a job in the public sector (Jamal Hajar, 2019). Indeed, article 8 suggests, to name but a few, violations such as *"deliberate killing, rape and any form of sexual violence, torture, enforced disappearance, execution without fair trial guarantees"*. Interestingly, the same article also refers to a broader concept of violations that is related to political but also economic and social rights such as *"election fraud, financial corruption, misuse of public funds, and pushing individuals to forced migration for political reasons"*.

This broadness in the legal definitions of victimhood and violations can be interpreted as a way to prevent the politicization of the TJ process and to push away the allegations about Ennahda's domination over it (Jamal Hajar, 2019). However, it can also be interpreted through the lenses of the 2013 internal and external crisis which extremely damaged the popularity of Ennahda and caused its backslide from a position of strength to a weaker position where it had to compromise; starting from having to withdraw the "Law on the Immunization of the Revolution" and adapting to the new conditions where it no longer commands the TJ process (Chomiak, 2018). This second interpretation can be backed by the fact that, as already mentioned, the law on TJ was only passed in its fourth draft, having a year-long period from the submission of the first draft to the adoption of the fourth one. The final law was adopted after two-day continuous parliamentary discussions. This disparity between a phase where Ennahda was strongly negotiating the draft and elongating the process and a phase of compromise and rushing into adopting the law, might serve as a proof of how the popular pressure coming from various actors and parties, with the rise of Nidaa Tounes, affected the adoption of the "Organic Law on Establishing and Organizing Transitional Justice".

## **2. The Truth and Dignity Commission (TDC)**

### **a) Structure**

The aforementioned law on TJ, in its article 16, demanded the establishment of an independent commission called the "Truth and Dignity Commission". The commission was composed of 15 members chosen by a special parliamentary selection committee chaired by Ennahda, being the party with the most seats in the NCA (Urech, 2014). Article 21 of the law indicates several criteria that potential commissioners should enjoy, including independence and neutrality. Yet, Ennahda managed to have the biggest influence in the process of member selections, and overall, the process was challenging due to the attempts of some members of the selection committee to appoint their people (Salehi, 2018).

Article 18 specifies that the mandate of the TDC is up to four years from the nomination of the commissioners with the possibility of an extension of an extra one year only. Article 18 also states that in case the TDC wants to extend its mandate, a request should be submitted

to the parliament three months before the end date of the initial term at the latest so that a vote be held on whether to accept or refuse the request.

The commission consists of six committees/commissions which are "The technical committee on arbitration and conciliation" (art. 45), "the Victim's Commission", "Investigation and Research," "Reparation and rehabilitation," "Preservation of Memory," and the "Women's Commission." (Chomiak, 2018). Furthermore, according to article 43 of the law on TJ, the commission ought to create a committee named "the Committee for Vetting Public Servants and Institutional Reform" whose main task would be to make recommendations on how to achieve institutional reforms, which is, in fact, one of the five pillars in Boraine's holistic approach on TJ. Aside from that, the committee also seems to have nearly the same missions as the South African "Committee on Reparation and Rehabilitation". This similarity represents quite another demonstration of how the Tunisian TDC tried to follow the steps of the South African Truth and Reconciliation Commission.

## **b) Objectives and mechanisms**

The commission had to gather information about the past infringements, and to do so, they opened regional offices where they started receiving files from potential victims from all over Tunisia (Salehi, 2018). The Final Comprehensive Report of the TDC specifies that aside from the central hearing offices in Tunis City, there were 9 regional offices. The report also indicates that in total the commission received 6510 files (The Final Comprehensive Report of the TDC, 2019). The collection of files from victims is indeed the main and the first stage of truth recovery, which is another pillar of Boraine's holistic approach. It is also the very first step in recognizing the dignity of individuals, which factually is one of the three fundamental goals of TJ identified by the ICTJ.

After studying the files and verifying the data, the TDC had to organize hearing sessions, public and private, with the victims, as well as it had to associate each offender with the crime they enacted whether the offender was a state institution, an individual or any other party (The Final Comprehensive Report of the TDC, 2019). The determination of offenders serves the aforementioned second goal of TJ set by the ICTJ which is "the redress and acknowledgment of violations". It also corresponds with two of Boraine's TJ pillars: truth recovery and

accountability. We can even assert that public hearings of the victims and the perpetrators might be the best way to achieve truth recovery and to genuinely hold offenders liable as they are publicly diffused meaning that testimonies would reach out to as many people as possible. Consequently, the more people know, the more the truth is known and the more liable perpetrators are held.

Overall, there were 14 public hearings, held between November 2016 and December 2018, which were indeed broadcasted on national TV as well as diffused on the radio (The Final Comprehensive Report of the TDC, 2019). The first hearing was about victims of the Jasmine revolution. The second and third were about "human rights violations against targeted groups". The next ones were about victims of state violence, victims of 16 January 1978 popularly known as "Black Thursday", victims of the 1983 "bread riots", female victims of the 108 circular, victims of censorship and infringements of freedom of expression as well as a public hearing for victims of the regimes of Bourguiba and Ben Ali. Finally, the last two public hearings were about corruption and electoral fraud in which senior politicians from Ben Ali's regime testified (Chomiak, 2018).

With that being said, we can recall the typology of truth done by the South African TRC which can also apply to the Tunisian case. Indeed, the "objective or factual or forensic truth" can be detected through the files gathered from the state's institutions, whereas the "personal or narrative truth" can be identified in the testimonies given by victims and offenders. The "social or dialogical truth" is represented in the dialogues and consultations done by the TDC with different types of actors, especially from the civil society. Finally, the "healing and restorative truth" can be recognized through the admissions of guilt done by perpetrators seeking reconciliation.

Moreover, the commission had to ensure the rehabilitation of the victims and their access to appropriate compensation (art.39). Similar to the South African financial assistance, article 41 of the Tunisian law on TJ calls for the creation of the "Fund for the Dignity and Rehabilitation for Victims of Tyranny" through which victims will be allowed a certain amount of money as a way for the state to remunerate them for the painful past. This fund is an instance of the implementation of the fifth pillar in Boraine's approach: reparations. As mentioned already, scholars, such as Andrieu (2010), illustrate that reparations can be symbolic or/and material.

Aside from the above-noted fund which is obviously an example of material reparations, the commission also worked on providing symbolic reparations. Equivalently to the South African TRC gestures in building memorial monuments, the Tunisian TDC issued what Chomiak refers to as *"memorialization measures" such as "designating January 14th as a national holiday, erecting a statue in Sidi Bouzid to commemorate the self-immolation of Mohamed Bouazizi..."* (Chomiak, 2018, p. 45)

Adding to that, the commission had to submit an annual report and a final comprehensive report in which it indicated recommendations to prevent the repetition of the past atrocity. These recommendations are essential for the fulfillment of the third goal of TJ declared by the ICTJ, which is the prevention of the repetition of the violations. The law on TJ gave the TDC a wide scope for recommendations. According to article 43, recommendations shall be *"related to the political, administrative, economic, security, judicial, media, educational and cultural reforms"*. Indeed, these recommendations fall into the important pillar of institutional reforms in Boraine's holistic approach.

Besides, article 43 emphasizes in particular *"women and children's rights as well as the rights of those with special needs and vulnerable groups"* which reminds us of the 2010 guidance note of the UN Secretary-General on TJ which greatly underlines the important role of women and children in the TJ process.

Article 43 also points out the commission's duty to promote national reconciliation while also further fostering individual rights. When it comes to reconciliation, which is also one of the five pillars of Boraine's holistic approach, it was the *"technical committee for arbitration and reconciliation"* which was in charge of viewing reconciliation requests. It is worth noting that the TJ law stresses the necessity of the victim's approval along with the perpetrator's duty to acknowledge their guilt in writing and provide an honest and clear apology (Organic Law on Establishing and Organizing Transitional Justice, art. 46). Indeed, this emphasis on the offender's duty to admit wrongdoing not only correlates with another pillar of Boraine's approach, that is accountability, but it also reminds us of the South African experience where a full disclosure from the perpetrators was needed for amnesty. Besides, as the law empowers the committee with the mission of examining financial corruption cases, the possibility was also given to requests for reconciliation in cases of financial corruption. However, article 46

indicates that the committee can only consider them after receiving the state's permission. Indeed, the inclusion of such "economic" crime falls in line with the broad definition of violations as well as makes the Tunisian model of TJ unique compared to the rest of the experiences that the world has known (Chomiak, 2018).

### **c) TDC; an attempt of restorative justice**

The work of the TDC is a landmark in Tunisian history as it revealed a good part of the untold truth. It enabled the Tunisian people to open their eyes to the truth and hear not only the tragic stories of victims but also the versions of perpetrators that once were powerful politicians feared by the majority. Watching these people admitting guilt and providing a public apology on national TV definitely feeds into consolidating the revolution. Indeed, this thorough combination of public testimonies from both victims and perpetrators along with the compensation fund makes the Tunisian case further fits into McCold and Wachtel's theory of restorative justice as it includes the three different sets of actors in the theory. First, the TDC's work allows a central position for victims. Second, it gives space for perpetrators to admit their evil while at the same time embracing policies to ensure their social reintegration. Third and lastly, through the national consultations and the publicly diffused hearings, the commission tried to involve the society or what McCold and Wachtel call "communities of care". In effect, Chomiak affirms that in interviews with some of the TDC commissioners - quoting- *"Commissioners stressed that the process in Tunisia is less retributive and more restorative."* (Chomiak, 2018, p. 22)

Factually, the public hearings, in particular, had a strong impact on perpetuating the different violations by setting its records, shaping the collective memory, and helping the people to come to terms with a dark repressive past, which all go with the guiding principles proclaimed in the UN 2010 report. An example of these devastating testimonies can be found in a video titled *"Hearings public summary"* from the TDC's official YouTube Channel where Brigadier General Salem Kardon was tortured due to accusations in May 1991 of planning a military coup with fellow soldiers along with civilians belonging to the Islamist movement. Kardon testified:



*“They hung me from my legs on the roof and they put my head in a pail of excrement and water. Because of the continuous torture, to be honest, at that time, I wished to be a martyr. The result was a hole in the stomach almost 10 millimeters, acute renal failure, a hold in the ear, almost all the muscles were cut, and the testicular was torn, and since that day I have become sterile.”* (هيئة الحقيقة والكرامة Instance Vérité & Dignité, 2018)

Another testimony about police brutality and torture comes from the leftist activist and the former political prisoner Najwa Al-Rezki, found in the same aforementioned video:

*“He pulled my hair and he dragged me along almost 10 meters from the university yard to the police office. After that a policeman arrived with a truncheon in his hand; he took it with a lot of hatred and he let me know that he will rape me using it. They were racing who could hit me first, I remember there was one person he couldn't hit me, so he was throwing the truncheon to reach me.”* (هيئة الحقيقة والكرامة Instance Vérité & Dignité, 2018)

Numerous sore and horrifying public testimonies were told by several parties. These public hearings, given their great significance, were attended by various important national and international figures, representing different countries and organizations. However, a major national personality was absent: Tunisian President Beji Caid Essebsi.

#### **d) The politicization of the TDC and the impact of the polarization on its work**

Undoubtedly, the absence of Caid Essebsi was not arbitrary. It is rather an act of boycotting serving as a manifestation of his objection to the TDC and its work. Indeed, this is not the first time the president and his party Nidaa Tounes, the biggest party in the country since the 2014 elections, show their resistance to the TDC's work. Given the fact that the party includes senior politicians from the ancien régime, Nidaa Tounes viewed the whole process of TJ as a threat to its existence (Jamal Hajar, 2019). Hence, they never passed up an opportunity to express their aversion toward the TDC. On top of that, Caid Essebsi was personally called liable, in one of the TDC's reports, for Human Rights violations committed during his term as a minister within the Bourguiba regime (Michaelson, 2019).

From the beginning, Nidaa Tounes was against the election of Sihem Ben Sedrine as President of the commission as she was labeled as a *“servant of Ennahda”* (Jamal Hajar, 2019). In

addition to that, 70 MPs from Nidaa Tounes signed a petition calling for the investigation of Ben Sedrine for allegations of corruption in an attempt to obstruct the work of the commission and to replace Ben Sedrine with perhaps a more pro-Nidaa Tounes President (Chomiak, 2018). Furthermore, the commission was denied access to some files from the Presidential archives, and when Ben Sedrine wanted to go herself and claim the files, the presidential security blocked her caravan (Chomiak, 2018). Despite article 40 of the law on TJ clearly stating that the commission should enjoy *“access to public and private archives, regardless of all restrictions contained in the applicable legislation”*, some state agencies and institutions showed unwillingness in cooperating with the TDC. The Tunisian branch of Amnesty International in their public statement issued on 17 April 2018, spoke about the refusal of the Ministry of Interior to allow the TDC access to some police records as well as the refusal of the Ministry of Defense to forward the commission records of military trials linked to human rights infringements (Amnesty International Tunisia, 2018).

Nidaa Tounes' attempts to hamper the TDC work do not stop here. In his speech on 20 March 2015 in celebration of the Country's independence, President Caïd Essebsi suggested a reconciliation law that would grant amnesty to former regime officials and businesspeople who would return money to the state (Chomiak, 2018). The bill came as no surprise considering that Caïd Essebsi has always adopted a discourse that encourages *“turning the page”* and saw no benefit in *“reopening old wounds”*. The president's speech provoked a hot debate in the country. Voices were raised against any sort of amnesty and the civil society was mobilized with an eye toward the abortion of such law. Indeed, a huge national youth-driven movement known as *“Manish Msemah”* (meaning *“I will not forgive”*) campaigned against the suggested law as they considered it a miscarriage of the TJ process, especially since corruption crimes represent a great portion of the cases brought to the TDC (Chomiak, 2018). After a series of protests, demonstrations, and a couple of amendments to reduce the category of the beneficiaries from amnesty, the bill was eventually changed into an *“administrative reconciliation bill”* limited to *“rank and file civil servants”* (Chomiak, 2018, p. 21). The parliament passed the bill in October 2017 with 117 votes in favor and only 3 against it.

Ennahda was highly criticized for supporting the bill, even though they tried to justify it by the national need for peace and reconciliation. Many of Ennahda supporters expressed their resentment as they portrayed the vote for the bill as a sign of weakness and subordination to the interests of the secularist Nidaa Tounes. Such resentment further intensified in March 2018 when the commission expressed its intention in extending its mandate for another 7 months, as the law allows. However, the TDC request was met with strict rejection from Nidaa Tounes, and no sufficient support from Ennahda (Saral, 2019). Eventually, in May 2018, the commission was able to conclude an agreement with the parliament to accord the continuation of their work until the end of that year (Chomiak, 2018). More explicitly, the passiveness in Ennahda's stand on the TDC was shown through Ghannouchi's utterance when he *"in a speech in November 2018 ... revealed his intention to surpass the phase of criminal prosecutions and truth-seeking."* (Jamal Hajar, 2019, p.6)

Indeed, Ennahda's continuous failure in defending the TDC proves how the party's attitude towards the commission shifted from ultimate support during their mandate in the NCA, being the party with most seats at that time, to a less supportive or even an abandonment policy during their coalition with Nidaa Tounes, the party that surpassed them in the 2014 elections. This last claim fits into the aforementioned reflection of Paul Van Zyl (1999) about how amnesty agreements and policies conducted to deal with past infringements extremely depend on whether there is a balance or an imbalance of power between the new governors and the former ones.

## IV. Conclusion

This thesis has demonstrated that the transitional justice process was a necessity in Tunisia after decades of human rights infringements. It has also revealed the structures and mechanisms adopted by the two main institutions concerned in the design of the process: the ministry of human rights and transitional justice and the truth and dignity commission. Both institutions worked on implementing a process corresponding to germane literature and the successful past experiences, particularly the South African one. However, the process was not an easy journey. The tension between the secularists and the Islamists that prevailed after the revolution highly impacted the work of the concerned institutions. On the one hand, the Islamists, presented in the political party Ennahda, were, on many occasions, accused of taking over the process of transitional justice to increase their popularity, promote their popular image, capture compensation and try to pass a law to exclude some political opponents. On the other hand, the secularists, represented in the political party Nidaa Tounes, once in power tried their best to obstruct the transitional justice process as they viewed it as a threat to their existence considering that many of their senior politicians took part in the state's governance before the revolution. Therefore, Nidaa Tounes tried to remove and change the President of the Truth and Dignity Commission, blocked the commission's request to extend its mandate, prevented the commission's access to some files and documents, and even passed an amnesty law to prevent the investigations on crimes committed by some state officials in the past...etc.

In addition, this thesis has provided valuable insights into how throughout the transitional justice process, the tension between the secularists and the Islamists shifted. At first, Ennahda demonstrated high interest and domination over the institutional work on transitional justice. However, later with the internal and external political changes that Tunisia underwent, Ennahda's popularity decreased which resulted in the change of their attitude towards the institutions on TJ from dominance to compromise and adaptation to the new order where the secularists have a word; a word that resists the whole transitional justice process. Yet, with the new shift in power and even with the Islamists being on board, the secularists did not succeed in completely halting the work of the commission as other forces and actors,

especially the civil society, was active in supporting and upholding the transitional justice process.

From such change, we can deduce that even though this thesis demonstrated the hypothesis that the conflict between the two ideological and political camps highly affected the institutional work on transitional justice, the truth is that the process itself also impacted their dichotomy. In the end, we can infer that neither of the two factions dominated or took over the institutions. Considering the history of such polarization and the particularity of the Tunisian society, we can conclude that the transitional justice process has further proved Bourguiba's foundation of an original Tunisia that cannot fully fit in one ideology, but is rather in between; Tunisia can never be a home to Islamism, there is a rooted sense of liberalism in the Tunisian identity that cannot be denied. At the same time, Islam is the religion of the great majority, hence, secularism or laicity, as the French concept suggests, is far from being realistic.

As mentioned in the analysis, Ruti Teitel (2002) argues that when the concept of transitional justice first started spreading, states were adopting it to establish democracy and the rule of law, but recently because of globalization and its different implications, democracy is no longer the goal, but rather peace. States nowadays resort to transitional justice as a means to embed peace. This was exactly the situation in Tunisia where the tension between the two different political camps affected the work of the transitional institutions, hence sometimes these institutions were obliged to adopt decisions they were not intended to in the first place, to compromise their mission, or even in some cases their work was blocked and left obstructed. However, at the end of the day, none of the two factions could prevail over the other, and the TJ institutions ended up adapting to the tension in a way that their goal changed from establishing democracy, as it initially was, to the main goal of maintaining peace between the two factions, just as Teitel upholds.

Nevertheless, it is noteworthy that in the Tunisian case, the concept of peace should rather be interpreted as coexistence. The political tension throughout the TJ process did not really further peace, in the very optimistic sense of the word, but rather it resulted in the development of a sense of political coexistence within the polarization as well as it boosted democracy, especially regarding the principles of pluralism and representation. However, the

outcome of this coexistence on the people was mainly negative: distrust and the rise of populism in the 2019 presidential elections with the two final candidates being populists.

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