

Tunisia: Transitional Justice and the Fight Against Corruption

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Table of Contents

Executive Summary.....	i
I. Introduction	1
II. From “Revolutionary” to Transitional Justice	2
A. Rushed “Revolutionary Justice” (January-October 2011)	2
B. The Instrumentalisation of the Concept of Transitional Justice (2011-2013)	5
C. The Organic Law on Transitional Justice (December 2013).....	8
III. Turning the Page on the Revolution?.....	11
A. A New Political Landscape.....	11
B. The IVD, or the “Remains” of the Revolution and the Troika.....	13
C. Reviving the Transitional Justice Process	16
IV. The Thorny Issue of Fighting Corruption	19
A. Revolution under Threat?.....	19
B. Freeing Businessmen from Racketeering.....	24
C. An Uninclusive Economic and Political System.....	26
D. The Need for Compromise.....	27
V. Conclusion	30
APPENDICES	
A. Map of Tunisia.....	31
B. Timeline.....	32
C. List of Acronyms.....	34

Executive Summary

Political tensions between supporters and opponents of Tunisia's transitional justice process and of its application in the economic realm are delaying the implementation of policies necessary to stimulate the economy and tackle corruption. The process' supporters view it as essential to keeping the revolutionary flame alive, reestablishing citizens' trust in state institutions and promoting the rule of law, equitable development and reconciliation. From their side, its opponents see it as a remnant of a past political context and an obstacle to economic recovery. Compromises will be needed to reconcile these two camps as well as strengthen government efforts to root out corruption and economically integrate regions most neglected under the former regime.

After the fall of President Zine al-Abidine Ben Ali on 14 January 2011, Tunisia's new political actors implemented a politicised, often arbitrary and thus haphazard, form of justice; comprising a variety of ad hoc and extrajudicial measures, this process could be described as "revolutionary justice". The former regime's victims were able to receive material and symbolic reparations, while businessmen believed to have been implicated in corruption had assets seized, faced trials (many of which are still pending) or were blackmailed.

In December 2013, a Truth and Dignity Commission (Instance vérité et dignité, IVD) was established to implement a comprehensive transitional justice mechanism anchored in the law, informed by the evolution of transitional justice theory and its use in other countries, and enshrined in Tunisia's new constitution (enacted in January 2014). The Troika government in power at the time (composed of political forces in opposition or in exile during the Ben Ali era) supported the move.

After Tunisia's political landscape changed in December 2014, official support for the IVD began to crumble. The newly consecrated parliamentary and governmental alliance between Nida Tounes, a secular movement that has given a second political life to former regime members, and the Islamist party An-Nahda (a former Troika member) created a political balance that has favoured selective amnesia over remembrance.

During the second half of 2015, public debate about the transitional justice process became both more prominent as well as more polarised. In July, President Béji Caïd Essebsi proposed an economic reconciliation bill reducing the IVD's prerogatives. The most determined opponents of the bill, which has been shelved for now but could yet re-emerge in a new form, argue it would absolve those implicated in corruption and thus underscore victory by the "counter-revolution". Use of this latter term points to the revival of Tunisia's traditional socio-economic elite, mainly hailing from the capital and the east coast, which was weakened by the 2010-2011 revolution.

The bill's supporters – including An-Nahda, which is torn between its revolutionary ideals as a former opposition movement and its determination to preserve the fragile coalition with Nida Tounes – view the implementation of transitional justice measures as a threat to stability. They want the IVD to abandon its pursuit of corruption cases stemming from the 1955-2013 period and instead concentrate exclusively on human rights violations.

Both sides must make concessions if this struggle is to be overcome. First, it will be necessary to resolve the misunderstanding that derives from the association of transitional justice – and the legitimate role it can play in relation to justice and reconciliation – with the ad hoc measures adopted during the “revolutionary justice” period, which some groups deem a witch hunt against businessmen and senior civil servants.

Second, given the deteriorating economic situation, the country cannot afford to wait for the IVD’s final recommendations in 2018-2019. It would be better for the government to support a law regularising under certain conditions the status of Tunisians implicated in corruption and tax evasion. Instead of entering into conciliation procedures that could create new opportunities for cronyism and blackmail, these Tunisians would have to entrust the inventory of their assets to certified public accountants, who would be held responsible for any false declarations, as a basis for a tax assessment and back payment.

To restart the economy, businessmen must be able to free themselves from the “revolutionary justice” measures which they claim have victimised them for the past several years. State agents accused of embezzlement under the previous regime should also be able to regularise their status. In exchange, both the presidency and the government should actively support the collaboration of other public institutions with the IVD, and ensure its activities, in particular its public hearings, are disseminated.

In parallel, the government should quickly formulate and implement measures to fight cronyism, nepotism and corruption; prioritise dialogue between regions, specifically between entrepreneurs in border areas, the Sahel (northern part of the east coast) and the capital; and institute new transparency mechanisms for public tenders.

The aim should not be to modify the transitional justice mechanism rooted in the January 2014 constitution but to find a middle ground that increases political elites’ confidence in it, so that the IVD’s work can take place in a more auspicious environment. Contrary to a widespread preconception, encouraging the implementation of the transitional justice process is in the current political class’s interest. Renewing political support for it and accompanying it with immediate reforms to prevent the spread of corruption would reduce the risks of polarisation and help prevent Tunisians’ complete disillusionment with politics.

Tunis/Brussels, 3 May 2016

Tunisia: Transitional Justice and the Fight Against Corruption

I. Introduction

Since its official launch in December 2013, the transitional justice process has been at the centre of a heated controversy. If the debate has for the moment been overshadowed by security concerns, it was intense and polarised during the second half of 2015. These tensions could resurface and increase further in the context of growing disillusionment, if not outright distrust, with the political class.

To preserve the transitional justice process, it is necessary to consider its limitations and weaknesses, how Tunisians perceive it, and find ways for it to succeed in the current political context. This report explains how the concept of transitional justice, as defined by non-governmental organisations (NGOs) and other local and international bodies, has been appended to existing informal transition mechanisms that can be described as “revolutionary”.¹ It also shows the limitations of the current model, which should not be considered a *deus ex machina* able to respond to all the challenges the country has faced since 2011, and whose success depends above all on a new political consensus on its functioning and goals.

¹ We distinguish “transitional justice” – a set of legal mechanisms meant to restore citizens’ trust in the country’s institutions and to promote the rule of law, economic development and reconciliation – from what we call “revolutionary justice” – a series of improvised transitional measures taken mainly in the legal realm by interim governments in the year following Ben Ali’s departure in January 2011. See in particular Kora Andrieu, *La justice transitionnelle* (Paris, 2012).

II. From “Revolutionary” to Transitional Justice

In the months following the 2010-2011 uprising, in a context of urgency and under pressure from the street, interim governments implemented measures freely inspired by transitional justice mechanisms in place in other countries. A genuine transitional justice process, as advocated by NGOs and international bodies since the first half of 2011, began to take shape through an organic law in 2013 and was integrated in the January 2014 constitution.² The transitional justice process in Tunisia was thus born in a revolutionary context characterised by improvisation, and the concept of transitional justice itself has long been vulnerable to attempts at political instrumentalisation.

A. Rushed “Revolutionary Justice” (January-October 2011)

On 13 January 2011, the night before his fall, President Zine al-Abidine Ben Ali announced the creation of two independent commissions of inquiry, one on “corruption, wrongdoing and abuses”, the other on “excesses and deaths during the protests”.³ He was attempting to appease demonstrators angry with his family and that of his wife, Leila Trabelsi, both accused of running an embezzlement and racketeering system that had gangrened the authoritarian regime since the early 2000s.⁴

On 15 January 2011, the day after Ben Ali’s departure for Saudi Arabia, Prime Minister Mohamed Ghannouchi formed a provisional government and confirmed the establishment of the two commissions of inquiry.⁵ The first dealt with corruption and embezzlement under Ben Ali (1987-2011),⁶ and the second concerned human rights abuses during the uprising.⁷ They were tasked respectively with shedding light

² See Organic law n°2013-53 dated 24 December 2013, establishing and organising the transitional justice.

³ See “Discours intégral du président Zine al-Abidine Ben Ali du 13 janvier 2011”, Business News (businessnews.com.tn), 13 January 2011.

⁴ See Bob Rijkers, Caroline Freund and Antonio Nucifora, “All in the Family: State Capture in Tunisia”, Policy Research Working Paper 6810, World Bank, March 2014.

⁵ See Decree-law n°2011-7 dated 18 February 2011, creating the National Commission on Investigation into Corruption and Embezzlement; and Decree-law n°2011-8 dated 18 February 2011, creating the National Commission on Investigation into the Abuses Recorded During the Period from 17 December 2010 until the Achievement of its Subject. Crisis Group interviews, transitional justice experts, Tunis, September-November 2015.

⁶ This was the National Commission on Investigation into Corruption and Embezzlement, also called the “Ben Ammor Commission” after its first president. From February to November 2011, it recorded the complaints of nearly 10,000 people and processed 400 files, most of which linked economic matters to human rights violations (including racketeering, humiliation and police violence). It referred them to a permanent anti-corruption body established in October 2011. At the time of writing, no judgment had been reached. The commission’s last two presidents, Chawki Tabib and Samir Annabi (a former president of the Bar Association), have complained about the lack of means at their disposal and the lack of cooperation on the part of the judiciary. See “Chawki Tabib: l’ampleur de la corruption dépasse celle de l’ancien régime”, Mosaïque FM, 8 February 2016. See also “L’instance nationale de lutte contre la corruption ressemble à un avion sans kérosène (Samir Annabi)”, Tunis Afrique Presse (TAP), 9 December 2015; and “Chawki Tabib réclame plus de moyens pour l’Instance de lutte contre la corruption”, Business News (businessnews.com.tn), 1 February 2016.

⁷ This was the National Commission on Investigation into the Abuses Recorded During the Period from 17 December 2010 (the date of the beginning of the uprising) until the Achievement of its Subject, also called the “Bouderbala Commission” after its chairman Taoufik Bouderbala. From

on corruption under the former regime and repression during the events of 2010-2011 through the testimony of victims and interviews with the alleged perpetrators.

At the end of January 2011, the government announced the release of nearly 1,800 people as part of a general amnesty law for political prisoners – even before its promulgation. The released detainees had been arrested either under the Terrorism Act of 2003 or for their political or trade union activities prior to 14 January 2011.⁸ This amnesty was a historic demand of most of the groups that had stood in opposition to Ben Ali, notably the Progressive Democratic Party (Parti démocrate progressiste, PDP) whose President Najib Chebbi became the regional development minister in the second cabinet of Mohamed Ghannouchi (27 January-27 February 2011).

The amnesty allowed its beneficiaries to return to their jobs and receive financial reparations.⁹ In 2012 and 2013, several legislative and regulatory measures set the terms for compensation and retirement pension calculation in addition to establishing procedures for career reconstruction and direct recruitment in the public sector.¹⁰ They concerned beneficiaries of the amnesty but also those injured and the families of those killed during the revolution.

The moment was revolutionary and the political context was changing rapidly. On 30 January 2011, the leader of the Islamist An-Nahda party Rached Ghannouchi (no relation to the homonymous prime minister) returned to Tunis after twenty years in exile. His party, nearly 15,000 members and supporters of which had been arrested and tortured in the early 1990s, was legalised on 1 March 2011.¹¹ As Islamist movements were gaining momentum in the region, representing themselves as the main victims of the fallen regimes, An-Nahda members began to demand compensation for past abuses.

February 2011 to May 2012, it processed 489 files including 338 cases of death and 2,147 cases of injuries (each file potentially having multiple cases). See Kora Andrieu, “Confronter le passé de la dictature en Tunisie: la loi de ‘justice transitionnelle’ en question”, Observatory on the Analysis of the Political Mutations Taking Place in the Arab World, French Institute for International and Strategic Affairs (Institut de relations internationales et stratégiques, IRIS), May 2014.

⁸ See Decree-law n°2011-1 dated 19 February 2011, relating to the amnesty.

⁹ As of 2016, 18,850 citizens had reportedly obtained a certificate of amnesty. Crisis Group interview, member of a network of transitional justice organisations, Sousse, October 2015.

¹⁰ See Decree n°2013-2799 dated 9 July 2013, fixing the methods and procedures for the examination of urgent applications presented by the beneficiaries of the general amnesty; articles 32 and 33 of Law n°2012-27 dated 29 December 2012, relating to the appropriations law for the year 2013; Decree n°2013-3304 dated 12 August 2013, fixing the methods of the payment by the state of the contributions relating to the retirement regime, the old age allowance and the disability and survivors allowance and its basis of calculation in the scope of the regularisation of the situation of the beneficiaries of the general amnesty; the 7 January 2014 decree issued by the head of government, relating to the approval of an agreement with the social security funds, which implemented Decree n°2013-3304 dated 12 August 2013; Decree n°2012-3256 dated 13 December 2012, fixing the procedures of reintegrating the public staff benefiting from the general amnesty and the regularisation of their administrative situation; Law n°2012-4 dated 22 June 2012, relating to the derogating provisions for the recruitment in public sector; Circular n°24 from the Head of Government dated 1 August 2013, relating to the recruitment of family members of martyrs and wounded of the revolution and the beneficiaries from general legislative amnesty.

¹¹ Several thousand activists were also in exile at that time. But contrary to popular belief, when the 2010-2011 uprising began, An-Nahda was no longer public enemy number one of the security services. The last An-Nahda prisoners had been released in 2008. Instead, repression mainly targeted jihadists, who were released under the amnesty law of 19 February 2011.

During the same period, human rights organisations, groups of lawyers, victims of repression under Ben Ali, and those injured and the families of those killed during the 2010-2011 uprising were mobilising. They launched legal proceedings against current and former political and security officials as well as businessmen, all symbols of the corruption and police brutality that plagued the era of the ousted president. On 6 February 2011, the activities of the former ruling party Democratic Constitutional Rally (Rassemblement constitutionnel démocratique, RCD) were suspended; a month later, it was dissolved. The state seized its property, including its headquarters building in downtown Tunis. In the course of preparations for the election of a National Constituent Assembly (Assemblée nationale constituante, ANC), former RCD leaders were summarily declared ineligible.¹²

Some 550 corruption-related lawsuits were filed against about 50 people, including the deposed head of state and his family.¹³ On 14 March 2011, the newly created National Confiscation Commission took control of more than 285 companies and 320 properties belonging to Ben Ali and around a hundred people in his entourage.¹⁴ The finance ministry established the Commission for the Recovery of Assets Looted and Hidden Abroad and the Commission of Management of Funds and Confiscated Properties.¹⁵

Military courts were in charge of cases involving the security forces. El Kef permanent military tribunal in the north tried 23 people – including former President Ben Ali, who was then in exile, two former interior ministers, four general managers of the interior ministry and sixteen senior officers – for attempted homicide and complicity. Forty-three other individuals, all members of internal security forces, were accused of killing protesters and brought before the permanent military tribunal of Tunis. Most of the defendants were sentenced to several years in prison but the terms were reduced on appeal.¹⁶

By international standards of transitional justice, these first months were “chaotic”.¹⁷ Major trials against figures of the old regime were poorly publicised and not oriented toward seeking the truth. “Though the witch hunt was avoided, a certain victor’s ‘revolutionary justice’ was meted behind closed doors”, said a civil society activist.¹⁸ According to multiple experts, several steps of the transitional justice process were skipped. For example, the February 2011 amnesty decree addressed the

¹² See Decree-law n°2011-35 dated 10 May 2011, relating to the election of a National Constituent Assembly.

¹³ Wahid Ferchichi (ed), “Transitional Justice in Tunisia. Finally the law! October 2011-December 2013”, Al-Kawakibi Democracy Transition Center, United Nations Development Programme (UNDP) and Association for the Defense of Individual Freedoms, Tunis, May 2014, p. 49.

¹⁴ See Decree-law n°2011-13 dated 14 March 2011, relating to the confiscation of movable and real assets and properties.

¹⁵ Fifty-seven international letters rogatory were issued in order to recover assets located in several countries. An international letters rogatory is a remit given by a magistrate to a court authority falling under the jurisdiction of another state for the purpose of processing legal documents in the magistrate’s name. See “Récupération des biens spoliés”, *Arabies*, November 2015. See Decree-law n°2011-68 dated 14 July 2011, establishing a National Commission of Management of Assets and Funds Subject to Confiscation or Recovery in Favour of the State.

¹⁶ This deeply disappointed those wounded and the families of those killed during the uprising. See “Flawed Accountability, Shortcomings of Tunisia’s Trials for Killings during the Uprising”, Human Rights Watch, 12 January 2015.

¹⁷ Crisis Group interview, foreign expert on transitional justice, Tunis, October 2015.

¹⁸ Crisis Group interview, civil society activist, September 2015.

question of financial reparations before the nature and extent of abuse could be determined and the list of the victims established.¹⁹

B. *The Instrumentalisation of the Concept of Transitional Justice (2011-2013)*

During the two-year transitional period that started after the election of the ANC in October 2011, the concept of transitional justice began to take root. The Islamist party, An-Nahda, won the vote and formed a coalition government called the Troika with two secular centre-left groups: the Congress for the Republic (*Congrès pour la République*, CPR) and Ettakatol. An-Nahda identified itself with the 2010-2011 uprising and attempted to exploit the concept of transitional justice for political purposes. As the reparation measures conceived after January 2011 began to take effect, competition emerged among the diverse groups that had suffered under the dictatorship, each claiming to be more aggrieved than the other.²⁰

The new government dedicated a ministry to transitional justice, though most of the mechanisms created after January 2011 had not yet taken full effect and the concept remained abstract for most politicians.

Several local and international organisations contributed to the elaboration of a Tunisian model of transitional justice, the country constituting a unique laboratory in a region where the concept was relatively new. Active in the country since March 2011, the Office of the UN High Commissioner for Human Rights (OHCHR), the United Nations Development Programme (UNDP) and the International Center for Transitional Justice (ICTJ), as well as three Tunisian organisations and associations, redoubled efforts to raise awareness of the idea with the Troika.²¹

In early 2012, human rights and transitional justice Minister Samir Dilou, a member of An-Nahda, accepted technical and financial support from OHCHR, UNDP and ICTJ. In April 2012, his ministry launched a national dialogue on transitional justice in partnership with UNDP to draft an organic law that would govern this process.²² A campaign to “spread the word about transitional justice” was organised.

¹⁹ This decree was supplemented by Decree-law n°2011-97 dated 24 October 2011, which provided financial and symbolic reparations to the martyrs and wounded of the revolution, including naming streets, avenues and squares in their memory and declaring 14 January a national holiday. See Decree-law n°2011-97 dated 24 October 2011, relating to the indemnification of the wounded and martyred of the revolution of 14 January 2011. Crisis Group interviews, transitional justice experts, Tunis, September-December 2015.

²⁰ This was particularly the case between Islamists and far left activists and between families who had been the target of repression during the 2008 mining basin protests and during the 2010-2011 revolution. See “La participation des victimes au processus de justice transitionnelle en Tunisie: participer, c’est avoir de l’espoir”, Transitional Justice Barometer (Baromètre de la justice transitionnelle), October 2015.

²¹ These were the Al-Kawakibi Center, a Tunisian association led by Mohsen Marzouk, a far-left activist in the 1980s who would become the secretary general of Nida Tounes in 2015; the Independent National Coordination for Transitional Justice (Coordination nationale indépendante de la justice transitionnelle, CNIJT), a network of major Tunisian professional, trade and civil society organisations led by lawyer Omar Saфраoui, who was also a member of the group of 25 lawyers that initiated most criminal proceedings against members of the former regime and businessmen in 2011; and the Tunis Centre for Transitional Justice (Centre de Tunis pour la justice transitionnelle, CTJT).

²² This was provided for by the constitutional law relating to the temporary organisation of public powers (a kind of small interim constitution ratified by the ANC in December 2011). See Article 24 of the Constituent Law n°6-2011 dated 16 December 2011.

From 16 September to 7 October 2012, a National Commission for Dialogue on Transitional Justice led 24 public meetings across the country; the group, known as the Technical Committee, was composed of representatives from five networks of civil society organisations whose members belonged mostly to either the far left or the Islamist movement.²³

However, the priority of the ministry was to implement the reparations provided for by the February 2011 amnesty decree. By devoting a ministry to transitional justice, the Troika fuelled the idea that transitional justice was a way to defend Islamists' financial interests. The government promised large payouts to the victims of the former regime without clearly identifying who they were or giving the "commissions in charge of financial reparations a clear overview of the violations".²⁴

But this goal was quickly thwarted. For administrative, economic and political reasons, the government could not keep its promises.²⁵ Individuals provided fake medical certificates to get on the list of the "wounded and martyrs of the revolution" and benefit from compensations.²⁶ Claiming to have initiated the 2010-2011 uprising, families that had suffered repression by the police during the 2008 protests in the Gafsa mining basin in the centre-west of the country contested a decree that had designated 17 December 2010 as the beginning of the revolution.²⁷ Many victims of the old regime were disappointed, according to an expert:

They went through hell to get a job in the public sector or even just a small payout. Even those who got all that the law entitled them to were not satisfied.²⁸

From the summer of 2012, many – including the working-class constituency that had formed the party's base in the October 2011 elections – began accusing An-Nahda of using the general amnesty decree to favour its supporters, of engaging in cronyism and of distributing key positions to its members in order to take control of public administration.²⁹ Some members of the Troika parties, especially of An-Nahda, denied any wrongdoing and insisted that acts of sabotage on the part of the "deep

²³ These were the Al-Kawakibi Center; CNIJT; CTJT; Tunisian Centre for Human Rights and Transitional Justice (Centre de Tunisie pour les droits de l'homme et la justice transitionnelle, CTDHJT), a little known association chaired by a close relation of Noureddine Bhiri, the justice minister under the Troika; and the Tunisian Network for Transitional Justice (Réseau tunisien pour la justice transitionnelle, RTJT), a federation of associations linked to An-Nahda, coordinated by Kamel Gharbi. 1,800 people took part in the talks. Crisis Group interviews, members of the Technical Committee, Tunis, December 2015. See also Wahid Ferchichi (dir.), "Transitional justice in Tunisia. Finally the law! October 2011-December 2013", op. cit.

²⁴ Crisis Group interview, transitional justice specialist, Tunis, October 2015.

²⁵ See Decree-law n°2011-97 dated 24 October 2011, op. cit.

²⁶ See Law n°2012-26 dated 24 December 2012, amending and completing Decree-law n°2011-97 dated 24 October 2011, op. cit. The list of the "wounded and martyrs of the revolution" entitled to compensations was still not complete at the time of writing.

²⁷ See Decree-law n°2011-97 dated 24 October 2011, op. cit.

²⁸ Crisis Group interview, international expert on transitional justice, Tunis, September 2015.

²⁹ In July 2012, leftist figure and sitting finance minister Houcine Dimassi sparked a controversy on the considerable portion of the state budget used to pay wage arrears and for the professional promotion of Ben Ali's victims, a majority of whom were An-Nahda members. See "Tunisie. L'indemnisation des anciens détenus politiques fait débat", Kapitalis (kapitalis.com), 1 August 2012. See also Law n°2012-4 dated 22 June 2012, relating to the derogating provisions for the recruitment in public sector and Decree n°2012-3256 dated 13 December 2012, fixing the procedures of reintegrating the public staff benefitting from the general amnesty and the regularisation of their administrative situation.

state” had prevented victims from getting compensations. They held that “counter-revolutionaries” had been able to slow down the bureaucratic payout process – thanks to their presence in public administration, NGOs and international bodies – by multiplying formalities and spreading commissions out over several ministries.³⁰

At the same time, An-Nahda’s leadership was using the concept of transitional justice to negotiate with both former supporters of the fallen regime and with its own followers. To politicians and businessmen who feared having to account for their close ties to Ben Ali, Islamist leaders said they intended to close the door on the past while at the same time threatening with a little known transitional justice process; as an Islamist party supporter said:

An-Nahda held transitional justice over the heads of corrupt businessmen and torturers like a Sword of Damocles. The party told them, “Look, we did not take revenge with violence for what you did to us, but we could do so with transitional justice”. So this concept emerged at just the right time to intimidate.³¹

To their partisans, An-Nahda leaders presented transitional justice as a credible alternative to the draft law known as “immunisation of the revolution”. Submitted by the CPR to the ANC in April 2012, the bill was intended to exclude for ten years from political life individuals tied to the former regime, particularly those who had held positions in the government or the ruling party.³² The majority of An-Nahda deputies and many of its members, claiming loyalty to the uprising of 2010-2011, were very much in favour of the law, particularly those who were members of the Leagues for the Protection of the Revolution (Ligues de protection de la révolution, LPR).³³ The ANC voted on the law in April 2014 after several postponements due to political crises, including the assassination of deputy Mohamed Brahmi and the Bardo sit-in during the summer of 2013; the bill was rejected by a single vote.³⁴

Many Islamists and CPR members had hoped that the bill would help the country leave the dictatorship behind. “It ensures that any ‘remnants’ of the old regime (*azlam*) will not go back to work anytime soon”, one said.³⁵ But An-Nahda leaders

³⁰ Crisis Group interviews, Islamist activists, Tunis, 2012-2015.

³¹ Crisis Group interview, Islamist sympathiser, Kairouan region, March 2014.

³² The bill also targeted any citizen who had publicly supported Ben Ali’s candidacy for the 2014 presidential election before his fall. The exclusion would have covered more individuals and a much longer period than the one that was implemented for the October 2011 elections. See the Organic Draft Law n°85/2012, concerning the political immunisation of the revolution (presented by 71 deputies in accordance with Article 108 of the Internal Regulations of the National Constituent Assembly), Marchad (Marchad.tn), 30 November 2012.

³³ These leagues were heirs of the protection of the revolution committees spontaneously created following Ben Ali’s departure by young people without party affiliations, trade unionists and secular political actors. In 2012-2013, the leagues were made up of a majority of An-Nahda members and supporters as well as individuals either supporting the Troika or criticising it in the name of the revolution and Islam. They intimidated, sometimes violently, many members of civil society organisations and secular political parties. The government of Mehdi Jomaa (2014-2015) dissolved them in accordance with agreements reached during the National Dialogue in late 2013. The groups still exist and operate in 2016, but in a limited way. See Crisis Group Middle East and North Africa Report N°137, *Tunisia: Violence and the Salafi Challenge*, 13 February 2013, p. 48. See also Crisis Group Middle East and North Africa Briefing N°37, *The Tunisian Exception: Success and Limits of Consensus*, 5 June 2014 (full briefing available in French and Arabic).

³⁴ Monia Ben Hamidi, “Tunisie: L’exclusion des collaborateurs de l’ancien régime rejetée... à une voix près!”, Huffington Post Maghreb (huffpostmaghreb.com), 30 April 2014.

³⁵ Crisis Group interview, supporter of the former Troika, Tunis, 2013.

convinced their deputies as well as the majority of the pro-Troika members of parliament that transitional justice was just as revolutionary and should be given priority; pointing out that neighbouring Libya had experienced violence after a similar measure was put in place.³⁶ People targeted by this “immunisation” law, especially members of “Destourian” groups, considered the efforts made by the Islamist party leaders, and especially those of its leader Rached Ghannouchi, as a conciliatory measure, or even genuine reconciliation, between an-Nahda and former officials of the Ben Ali regime.³⁷

As a result, Tunisian citizens have come to associate transitional justice with the political amnesty measures and the financial and symbolic compensations given out by the interim governments and the Troika after Ben Ali’s departure, as well as with the criminal proceedings of that time. An-Nahda used the concept to negotiate with and appease members of the old regime while at the same time suggesting to its militants and supporters that transitional justice was intended to settle accounts with leaders of the dictatorship.

In fact, however far apart they are, the parallels between transitional justice and “revolutionary justice” helped placate those who supported a radical break with the old regime. They were led to consider transitional justice a *deus ex machina* that could fix all the economic, social and political issues that had arisen in the country since the 2010-2011 uprising. “Establishing a real transitional justice process amounts to secure the revolution”, a young activist close to a party in the Troika said in 2013.³⁸

C. *The Organic Law on Transitional Justice (December 2013)*

The transfer of the revolutionary hopes onto transitional justice, as well as the political exploitation of the concept, helped expand its scope but made its implementation more difficult. On the one hand, the poorest governorates’ demands for regional development during and after the 2010-2011 uprising led to the extension of the notion of victimhood to “regions that have suffered marginalisation or systematic exclusion”.³⁹ On the other hand, competition for victim status between Islamists and far-left activists within the Technical Committee, which was responsible for drafting the legal framework for transitional justice, led to the extension of the period of violations

³⁶ Crisis Group interviews, Islamist militants, Tunis, 2012-2015. In Libya, a “political isolation law” was adopted on 5 May 2013. It forced several major political figures to leave the political stage, despite their having supported the 2011 overthrow of Muammar Qadhafi’s regime. Many, including the UN, consider that this law has contributed to the country’s destabilisation and played a significant role in the conflict that started in 2014. See Crisis Group Middle East and North Africa Report N°157, *Libya: Getting Geneva Right*, 26 February 2015.

³⁷ The Destourian current, named after the historic independence party (Néo-Destour), claims to represent the legacy of Habib Bourguiba, the first president of independent Tunisia, and to a lesser extent that of Ben Ali. It includes the liberal party Nida Tounes but it is principally represented in today’s political sphere by the Destourian Movement (Mouvement destourien), whose leader Hamed Karoui was prime minister under Ben Ali. Former defence ministers Kamel Morjane and Mohamed Jgham are respectively the president and vice-president of the National Destourian Initiative (Initiative nationale destourienne), another party. The Destourian current comprises mostly activists from the Sahel (Tunisia’s east coast), which has been the breeding ground for political elites since independence including most of the old regime’s major leaders. Crisis Group interviews, leader of a Destourian party and Nida Tounes militants, Tunis, 2014.

³⁸ Crisis Group interview, youth activist close to the former Troika, Tunis, May 2013.

³⁹ See Organic law n°2013-53, op. cit.

covered by the law: rather than being limited to the Ben Ali regime, it begins from the mid-1950s.⁴⁰

Thus, the December 2013 Organic Law on Establishing and Organising Transitional Justice (known as Law 53), passed by the ANC a month before the end of its mandate, is broad and unclear.⁴¹ “The more we talked, the further we widened the scope of transitional justice; everyone wanted to see himself as a victim”, the head of a Technical Committee member association said.⁴²

Law 53 includes 70 articles defining the founding principles of transitional justice in Tunisia: truth, prosecution, reparations and institutional reform. It established the Truth and Dignity Commission (Instance vérité et dignité, IVD)⁴³ as an independent public body, financially and administratively autonomous and composed of fifteen members chosen by a special parliamentary committee. The IVD was given a four-year mandate with a possible one-year extension for writing recommendations. On paper, its prerogatives are extremely broad.⁴⁴ The IVD has at its disposal an arbitration panel, powers of criminal investigation and the authority to make use of courts and specialised legal chambers designated for the investigation of serious violations of human rights (torture, killings, sexual violence), political rights (like election fraud and political exile), and social and economic rights (such as corruption and embezzlement of public funds).⁴⁵

National and international experts agree: a transitional justice process addressing so many areas is a world first; no precedent allows to predict whether it will succeed or fail. “It is a complete innovation for a transitional justice process to deal at once with corruption, civil, political, economic and social rights”, one said.⁴⁶ As early as 2013, some experts, while expressing enthusiasm about turning Tunisia into

⁴⁰ This period was extended following discussions between members of the Technical Committee, most of which fell into three camps: far-left activists, advocates for Arab nationalism, and Islamists. The first group suggested that transitional justice be extended to the period of President Bourguiba (1957-1987) in order to take into account the human rights violations their activists had suffered during the 1970s. Crisis Group interviews, members of the Technical Committee, Tunis, October 2015.

⁴¹ See Organic law n°2013-53, op. cit. The National Commission for Dialogue on Transitional Justice (the Technical Committee), whose members had been appointed by the Troika and who had led the national consultations in September-October 2012, was tasked with drafting a first version of the law. This version was reviewed by the council of ministers, amended by ANC’s general legislation committee, further discussed and polished in a plenary session, and then adopted; constituents voting in favour of the law hailed mainly from the Troika parties.

⁴² Crisis Group interview, member of the Technical Committee, Tunis, November 2015.

⁴³ See Organic law n°2013-53, op. cit.

⁴⁴ They include power to enquire into violations of human, economic and social rights committed between 1 June 1955 and 24 December 2013, when Law 53 was enacted. The IVD is tasked with providing a list of victims and gathering their testimony; ascertaining public institutions’ responsibilities; taking an inventory of violations and identifying their causes; providing compensation to those victims whose cases are deemed urgent; making recommendations for individual and collective reparations, institutional reforms and the removal of those who have committed violations as well as their accomplices from administrative positions; reunifying the country; and safeguarding the national memory and archives.

⁴⁵ According to a study from the International Center for Transitional Justice (ICTJ), “Law stipulates that the specialized chambers will adjudicate cases referred to it by the TDC [Truth and Dignity Commission]. Article 42 of the same law, however, states that the [TDC] will refer cases to the public prosecutor in which gross human rights violations have been proven. The threshold of proof needed for the [Commission] to pass a case to the specialised chamber has not been clarified”. Rim El Gantri, “Tunisia in Transition”, ICTJ Briefing, September 2015.

⁴⁶ Crisis Group interview, UNDP expert, Tunis, October 2015.

laboratory for testing new theoretical developments on transitional justice, also feared, rightly, that the process would experience serious stumbling blocks.⁴⁷

Indeed, the IVD needs other public institutions' cooperation to function. Despite its binding legal framework, the form that transitional justice takes depends crucially on the political balance of power. As a young activist lamented:

Law 53 is smoke and mirrors. The IVD is its only real application, but everyone knows that the best way to bury a project is to task a panel or committee with carrying it out, whose powers are so broad that no one understands what is going on.⁴⁸

Given the scope of the IVD's field of competence and the polarised context in which the concept of transitional justice emerged in Tunisia, it is hardly surprising that its implementation has remained a major political issue, inspiring as much fear and reluctance as precarious hope. This dynamic became even more pronounced after the end of 2014 political reshuffle.

⁴⁷ See Kora Andrieu, *La justice transitionnelle* (Paris, 2012). See also Kirsten J. Fisher and Robert Stewart, *Transitional Justice and the Arab Spring* (London and New York, 2014). Crisis Group interviews, international experts on transitional justice, Tunis, September-December 2015.

⁴⁸ Crisis Group interview, civil society activist, Tunis, October 2015.

III. Turning the Page on the Revolution?

A. *A New Political Landscape*

Since the victory of Nida Tounes founder Béji Caïd Essebsi in the December 2014 presidential election and the formation of a new coalition government in early 2015 after the election of the Assembly of People's Representatives (Assemblée des représentants du peuple, ARP), the political scene has become more complex.⁴⁹ Nida Tounes, which had focused its campaign on the themes of anti-Islamism and ending the rule of the Troika, formed a coalition government with the Islamist party An-Nahda; since then, the two parties have worked hand in hand in the parliament.⁵⁰

Many An-Nahda supporters were in favour of building strong ties with Nida Tounes.⁵¹ Specifically, they claimed that this strategy was vital if a coup similar to the one that took place in Egypt was to be avoided.⁵²

Within Nida Tounes, former members of Ben Ali's RCD party were more in favour of allying with An-Nahda than the old regime's opponents. Most of the former belong to the entourage of Hamedh Caïd Essebsi, the son of the president, while the latter are ex-communists and other members of the far left, Arab nationalists, members of the Tunisian General Labour Union (Union générale tunisienne du travail,

⁴⁹ The coalition government, formed in February 2015 and reshuffled in January 2016 includes independent figures and members of four liberal and conservative parties: Nida Tounes, An-Nahda, Free Patriotic Union (Union patriotique libre, UPL) and Afek Tounes. The Popular Front (Front populaire), which is composed of far left and Arab nationalist movements, won 15 of 217 seats in the ARP, taking third place behind Nida Tounes and An-Nahda, and chose to remain in the parliamentary opposition, which has 38 deputies.

⁵⁰ In the months prior to the late-2014 elections, a Nida Tounes poster campaign called for the end of the provisional Troika government, which it blamed for the rubbish in the streets, the high cost of living and terrorism. During the campaign, Essebsi, the party's founder, vowed several times to rebuild the state's prestige, to restore diplomatic relations with Bashar al-Assad's regime, which had been broken under the Troika, and to strengthen ties with Abdelfattah el-Sisi and Egypt. He also claimed that the constituents of Moncef Marzouki, the CPR founder and then-president of the republic, comprised Islamists, Salafis, extremists and jihadists. See Crisis Group Middle East and North Africa Briefing N°44, *Tunisia's Elections: Old Wounds, New Fears*, 19 December 2014 (full briefing available in French). See also Thierry Brésillon, "Tunisie: la présidentielle réveille les vieilles fractures", Rue 89 (rue89.nouvelobs.com), 2 December 2014; and Yassine Bellamine, "Les discours fétides de Marzouki et de Caïd Essebsi ou comment faire tanguer une démocratie fragile", Nawaat (nawaat.org), 28 November 2014.

⁵¹ Most Nida Tounes and An-Nahda members seemed to be in favour of power sharing between the two parties. Looking forward to the 2016 municipal elections, militants of both parties reportedly proposed having common tickets in some constituencies. In parallel to this project, an "Islamist-Destourian" ideological convergence had gotten under way with Islamists becoming more and more nationalist and Destourians islamising. This phenomenon was most apparent when former-RCD supporters within Nida Tounes appealed to the figure of Abdelaziz Thaalbi – the conservative and Pan-Arabist politician who founded the national movement in 1920 and who would be marginalised by Bourguiba from 1934 on – as a common predecessor of both the Destourians and the Islamists. An-Nahda went on to refer to him in several statements. An-Nahda, ahead of its general congress in 2016, is believed to be distancing itself from its Islamist founding principles in order to become a party of government; following the Moroccan Justice and Development Party's example, it is considering separating preaching, or *dawa*, from policy and renouncing Islam as a global political project. Crisis Group interviews, expert in electoral training, former leader of the dissolved RCD, An-Nahda supporters, Tunis, 2015.

⁵² Crisis Group interviews, An-Nahda members and supporters, September-December 2015.

UGTT) and of the Tunisian Association of Democratic Women.⁵³ According to some ex-RCD members, most of whom had been second-rank militants, times had changed and An-Nahda was henceforth an indispensable ally, particularly in the fight against jihadist violence.⁵⁴

This new political landscape seemed to encourage political leaders, including Islamists, to turn the page on the revolution. An-Nahda, whose victory in the October 2011 election denoted “the guilt of many Tunisians who had refrained from standing up for the Islamists tortured and imprisoned by the old regime” now hardly refers to the 2010-2011 revolution in its official statements.⁵⁵ For some officials and former-RCD members close to Nida Tounes, transitional justice had already been achieved in 2011 and 2012. Forgetting had become a guarantee of stability.⁵⁶ As a former RCD leader put it:

Rached Ghannouchi came back from exile. Abu Iyadh was freed.⁵⁷ Mohamed Ali Ganzoui and Mohamed Ghariani did two years in prison.⁵⁸ That’s it, transitional justice has been achieved. What would we do now? Prosecute police officers? Businessmen? In the ANC, An-Nahda voted against the ‘immunisation of the revolution’ bill and today the party works closely with Nida Tounes, which counts a number of Ben Ali’s former followers. The two enemies have reached an understanding. It’s the judge who does not want to accept it. We cannot waste time with the past. There are more important issues at hand like the economy and security.⁵⁹

⁵³ Since Essebsi’s arrival at Carthage Palace, conflicts within Nida Tounes have increased, leading to a string of resignations in early 2016 and to the creation of al-Horra, a new parliamentary group of 22 deputies. There were multiple points of conflict: choosing a successor for Essebsi, age 89, as head of state; appointments within the party based on personal relationships; the position of the party regarding the presidential cabinet and its policy line; opportunistic ad hoc alliances between cliques within the party; competition between networks with various regional allegiances and indulging in cronyism; ideological splits over the party’s position regarding An-Nahda; etc. Crisis Group interviews, Nida Tounes members and supporters, Tunis, 2014-2015. See “Mohsen Marzouk annonce une consultation nationale concernant son nouveau parti”, Shems FM (shemsfm.net), 10 January 2016.

⁵⁴ The Islamist party’s position seemed to be closer to that of Algeria, especially regarding Libya, than that of “Nida Tounes’ leftists”. Given the influence of neighbouring Algeria, this reportedly was a strong argument in favour of the two parties coming closer together. Crisis Group interviews, senior public officials and ex-RCD members close to Nida Tounes, Tunis, Sousse, 2015.

⁵⁵ Crisis Group interview, member of the Independent High Authority for Elections, Tunis, November 2012. See also An-Nahda press releases on its website, ennahdha.tn, and in its party newsletter, *Fajr*.

⁵⁶ Crisis Group interviews, senior public officials and ex-RCD members close to Nida Tounes, Tunis, August-December 2015. Crisis Group interview, Sihem Bensedrine, IVD president, Tunis, November 2015.

⁵⁷ Abu Iyadh, whose real name is Seifallah Ben Hassine, was the leader of Ansar Sharia in Tunisia, a now-dissolved jihadist group. Abu Iyadh fought in Afghanistan and is closely tied to the al-Qaeda ideologue Abu Qatada al-Filistini. Abu Iyadh was arrested in Turkey in 2003 and extradited to Tunisia. Having been sentenced to 43 years in prison, he was released after the regime fell under the 19 February 2011 amnesty law. He is said to have been in Libya since mid-2013.

⁵⁸ Mohamed Ali Ganzoui was one of the figures of anti-Islamist repression under the old regime. He served as director general of national security and director general of specialised services between 1989 and 1991, then secretary of state in the interior ministry from 1995 to 2002. He was also the last secretary general of the RCD from 2008 to 2011.

⁵⁹ Crisis Group interview, former leader of Ben Ali’s dissolved party, Tunis, October 2015.

In terms of collective memory, the victims of the former regime and notably “the wounded and martyrs of the revolution” have been relegated to a position of secondary importance in favour of members of the security forces (army, national guard and police) killed during clashes with jihadist groups between 2012 and 2016 and the two leftist figures, Chokri Belaïd and Mohamed Brahmi, assassinated in February and July 2013, all of whom have been granted the “martyr” status.⁶⁰

Ordinary citizens have had trouble making sense of the new political landscape and many have lost interest in public life. Social and economic frustrations persist and resentment toward the police has grown with the tightening of security measures following recent attacks.⁶¹

Several factors appear to have renewed the legitimacy of authoritarian regimes in the region as the democratic hopes inspired by the “Arab Spring” falter: fear of state collapse as in Iraq, Syria and Libya; the gains of the Islamic State (IS); international hyper-terrorism and restrictions on freedom in democratic regimes. Many Tunisians have expressed longing for the time of Bourguiba (1957-1987) and even of Ben Ali (1987-2011), believing that their economic and social situations were better then.⁶² The question of whether a revolution actually took place in 2010-2011 has been debated in the public media.⁶³ Some have said the events were simply a matter of settling scores within the system and even gone on to defend Ben Ali and his entourage; people close to the family of the ousted president have even appeared on television talk shows.⁶⁴

B. *The IVD, or the “Remains” of the Revolution and the Troika*

In this new context, opposition to the IVD took numerous forms. Both defenders and detractors of the commission, which embodies transitional justice, agree that it constitutes the “remains” of the revolution and of the Troika.⁶⁵ Those working for the

⁶⁰ As a symbolic measure in January 2015, the new head of government appointed Majdoline Cherni to secretary of state in charge of martyrs and wounded of the revolution; Cherni was the sister of Socrates Cherni, a National Guard lieutenant killed in October 2013 during an anti-jihadist operation in the country’s centre. After the removal of the state secretariats during the 2016 cabinet reshuffle, Majdoline Cherni was named president of the newly created General Authority of Martyrs and Wounded of the Revolution and Terrorist Operations (Instance générale des martyrs et des blessés de la révolution et des opérations terroristes). See “La présidence du gouvernement nomme Majdoline Cherni”, *Tunisie Numérique* (tunisienumerique.com), 8 February 2016. Giant images of the assassinated leftist politicians cover facades of buildings in the Greater Tunis region; a primary school was renamed after Chokri Belaïd, one of the leftist figures killed in 2013; and portraits and monuments honouring security forces members who have fallen victim to terrorism have gone up in several regions. Crisis Group observations, Tunis, Beja, El Kef, 2015. See also “Jebel Jeloud: une école baptisée du nom de Chokri Belaïd”, *Kapitalis* (kapitalis.com), 20 November 2015.

⁶¹ Crisis Group interviews, residents of low-income neighbourhoods of the capital, Tunis, November-December 2015.

⁶² Crisis Group interviews, residents of working-class neighbourhoods, Tunis, Sfax, 2014-2015. See also Jérôme Heurtaux, “La ‘nostalgie Ben Ali’, un analyseur des frustrations post-révolutionnaires en Tunisie. A propos de 7 vies, documentaire de Lilia Blaise et Amine Boufaïed (2014)”, *Le Carnet de l’IRMC* (irmc.hypotheses.org), 1 July 2015.

⁶³ See in particular the debates and political programs on both public and private radio and television stations in 2015.

⁶⁴ Benoît Delmas, “Tunisie-Télévision: un Trabelsi en prime time”, *Le Point Afrique* (afrique.lepoint.fr), 25 February 2015.

⁶⁵ Crisis Group interviews, activists of various political persuasions, Tunis, 2015.

IVD represent a fairly accurate sample of the ideological groups that fought against Bourguiba and Ben Ali. An-Nahda has avoided openly aligning with the IVD, especially when it is under attack, although its supporters have been actively involved in collecting grievances regarding political rights violations in the country's interior regions.⁶⁶ Nida Tounes, meanwhile, has criticised the group, often harshly.⁶⁷

As an institution, the IVD remains symbolically associated with the period of the Troika, which An-Nahda and Nida Tounes now consider part of a bygone political era.⁶⁸ For most political groups, which have been trying to adapt to the new situation, IVD president Sihem Bensedrine embodies a rather outdated revolutionary spirit.⁶⁹ In addition, some members of security forces unions blame her for the dismissal of dozens of security officials in March 2011 when she was the informal adviser of the then Interior Minister Ferhat Rahji.⁷⁰ They harbour resentment toward her and encourage some in the media to attack her.⁷¹

Other public institutions have not done much to facilitate the IVD's task. On 26 December 2014, before the handover of presidential powers between Moncef Marzouki and Béji Caïd Essebsi, the IVD unsuccessfully tried to transfer part of the presidential archives to the national archives in accordance with Law 53 and an agreement with the departing president's cabinet.⁷² Although it has since gotten permission to access the archives and make copies of documents on site, more difficulties have

⁶⁶ Crisis Group interview, female civil society activist in the Kasserine area, Tunis, November 2015.

⁶⁷ See "S. Toubal: 'Bensedrine a applaudi à des propos terroristes!'", Kapitalis (kapitalis.com), 7 December 2015.

⁶⁸ Of the fifteen IVD members the ANC had chosen in late 2013, four who were anti-Troika resigned in 2014. The eleven remaining members belong to various political groups. About half are close to An-Nahda, but the rest are aligned elsewhere – including Arab nationalist movements (Baathism, Nasserism) and the so-called "leftist" civil society movement that was active against Ben Ali's regime – without being anti-Troika. Almost all of the 100 or so officers and agents working for the IVD are also said to be politically active. One of its most important executives is close to Nida Tounes and is said to have promoted the presidential candidacy of Béji Caïd Essebsi. These ideological differences have caused tension and drama within the Commission. As one of its executives said, "You would think we were at university in the 1970s or 1980s. There are leftists on this or that committee, which the Islamists do not like, and vice versa. It has caused a good deal of turmoil". Crisis Group interviews, IVD executives and civil society activists, Tunis, September-December 2015.

⁶⁹ A far-left activist during the 1970s and civil society activist for democracy and human rights in the 1990s and 2000s, Sihem Bensedrine has been the target of numerous smear campaigns. She was the bugbear of most of the media outlets close to the former regime long before she became the IVD president in early 2014. Ideologically, she is aligned with the Tunis-based liberal current coming out of Bourguibism but distinct from that embodied by the current president of the republic.

⁷⁰ See Eymen Gamha, "Sihem Bensedrine interviewed by Assabah Newspaper", Tunisia Live (Tunisialive.net), 12 July 2011. See also Crisis Group Middle East and North Africa Report N°161, *Reform and Security Strategy in Tunisia*, 23 July 2015.

⁷¹ Crisis Group interviews, senior government officials and security forces members, Tunis, 2015. Crisis Group Report, *Reform and Security Strategy in Tunisia*, op. cit.

⁷² According to security officials, the timing of the move and the decision to have the documents transferred through IVD premises raised suspicions about a possible political motivation (access to security-related documents before the transfer of power, desire to make certain parts of the archive disappear, etc). Presidential-guard officers, notably those who were members of unions, prevented the IVD vehicles tasked with transferring the documents from entering the presidential palace. See "Mise au point sur la question des archives de la Présidence", IVD, Tunis, 10 January 2015. Given the presidential nature of the Bourguiba and Ben Ali regimes, these archives are thought to be substantial. They could contain copies of various intelligence-service and RCD reports. Crisis Group interviews, civil society activist and interior ministry official, Tunis, 2014-2015.

emerged.⁷³ In the summer of 2015, 62 deputies signed a petition calling for the establishment of a commission of inquiry into alleged corruption on the part of the IVD president.⁷⁴ In November 2015, an IVD official said:

The Official Journal has still not published the IVD's account statements. Obtaining the body's public budget is a constant struggle. Finding a litigation specialist to represent the state during hearings took several months.⁷⁵

While the IVD has the right to summon officials from the interior, justice, and finance ministries, as well as the office of the head of government, to closed hearings; in practice, however, this process depends on the cooperation of judges as well as security officers (for example, to forcibly accompany citizens who refuse to testify). At the end of 2015, judges were appointed to the specialised chambers. But they have continued their former professional activities in parallel and risk running out of time to hear IVD cases. As from spring 2016, the IVD is meant to bring before these chambers several hundred cases of violations of political, economic and social rights, including disputes that its arbitration commission has not been able solve.⁷⁶

Focusing its message on "what it does" rather than "what it is", the IVD has shown determination in continuing its work despite obstacles.⁷⁷ Between 2014 and 2015, the commission received roughly 22 million dinars (\$11 million) of public budget for operating expenses, including 2 million dinars (\$1 million) that could be used for compensation in urgent cases.⁷⁸ Since it opened its permanent headquarters in December 2014, 30,000 files have been submitted. Nearly two thirds concern violations of civil and political rights.⁷⁹

The remaining third relates to violations of economic and social rights. Some 3,150 arbitration claims, mostly related to financial crimes, have been filed. Nearly 2,500 private hearings concerning all types of violations have taken place so far – an average of 30 per day. Public hearings are scheduled to be broadcast on national television as of spring 2016. According to IVD staff, former interior ministry officials have agreed to meet with victims.⁸⁰

A "dignity and rehabilitation fund for the victims of the dictatorship", dedicated to symbolic and financial reparations and whose amount will be based on a recom-

⁷³ Since May 2015, the IVD has been allowed to officially classify certain documents from the Carthage Palace archives and make copies on site. The Commission is still negotiating for access to the interior ministry archives, which are more sensitive and extensive.

⁷⁴ See "Suspicion de corruption de Sihem Ben Sedrine: l'ARP statuera lundi sur la création d'une commission d'enquête", Business News (businessnews.com.tn), 4 September 2015.

⁷⁵ Crisis Group interview, IVD official, Tunis, November 2015.

⁷⁶ Crisis Group interview, judge close to the IVD, Tunis, December 2015. See "Tunisie: examen des dossiers de la justice transitionnelle en Avril prochain par des magistrats spécialisés", Tunis Afrique Presse (TAP), 1 February 2016.

⁷⁷ Crisis Group interview, IVD official, Tunis, October 2015.

⁷⁸ It is set to receive an additional 10 million dinars (around \$5 million) in 2016.

⁷⁹ These include cases of repression against the supporters of Salah Ben Youssef (Habib Bourguiba's rival in Néo Destour, the principal political party of the national movement); far-left activists and An-Nahda Islamists from the 1960s to the 1990s; participants in the general strike of January 1978; participants in the bread riots of January 1984; those arrested under the anti-terrorism law of 2003; participants in the Gafsa mining basin movement of 2008; in the 2010-2011 uprising; and in the 2012 protests in Siliana in the country's north west. Crisis Group interviews, IVD president, IVD communication director, Tunis, November 2015.

⁸⁰ Crisis Group interviews, IVD officials, Tunis, December 2015.

mentation by the IVD, is slated to be put in place in 2016. Finally, the UNDP, the European Union (EU) and Germany, which have been major supporters of the transitional justice process, have invested several million euros for “operationalising transitional justice”, thus substantially reinforcing the IVD financially.⁸¹

C. *Reviving the Transitional Justice Process*

Despite a legal framework granting it broad powers, the IVD has been operating in an unfriendly political environment. Attempting to accomplish its mission despite the lack of cooperation from other public institutions, it has divided the political scene. Five years after the fall of Ben Ali, reconciliation between the leaders of the main parties has enabled the creation of a peaceful framework for coexistence. Based on the concept of political consensus, it offers a kind of power-sharing arrangement.⁸² The corollary, a kind of selective amnesia, is supposed to put an end to political conflicts or tensions and maintain stability.

But this has proven illusory. With every political or security shock, the ghosts of the past reappear.⁸³ Divisions between regions re-emerge, and most An-Nahda activists continue to fear eradication, as they experienced between 1989 and 1992 or like that suffered by Egyptian Muslim Brothers in 2013. The current political configuration is too fragile, ideological tensions too high and transitional justice too pregnant with hopes and fears for the process’s implementation to make use of the full potential of its legal framework and to achieve its advocates’ ambitions. As a senior official put it:

The presidency thinks that transitional justice is a threat to the existence of the state itself and does not want to go through with it. According to it, the state is weak and could not bear having to answer for acts committed under the old regime.⁸⁴

For its detractors, the application of the law on transitional justice is a permanent threat to stability.⁸⁵ They recommend at a minimum depriving the IVD of its arbitration and criminal investigation powers and dissolving its specialised judicial chambers. “Constantly delving into the past is going to end up causing a civil war”, said a former leader of Ben Ali’s dissolved party.⁸⁶ As IVD President Sihem Bensedrine said:

For politicians, from now on, if we stir up the past we pose a threat to the security of the state, which is fighting terrorism. If we try to hold police officers accountable for human rights violations, we are told that we are attacking those taking care of the country’s stability.⁸⁷

For advocates of the Tunisian transitional justice model, it is necessary to protect the process while waiting for better days. Some are hoping for a renewed uprising to

⁸¹ Crisis Group interview, IVD official, Tunis, October 2015.

⁸² Crisis Group Briefing, *The Tunisian Exception: Success and Limits of Consensus*, op. cit.

⁸³ Crisis Group Briefing, *Tunisia’s Elections: Old Wounds, New Fears*, op. cit.

⁸⁴ Crisis Group interview, senior public official, Tunis, December 2015.

⁸⁵ Crisis Group interviews, Nida Tounes supporters, trade unionists, senior public officials, Tunis, September-December 2015.

⁸⁶ Crisis Group interview, former leader of Ben Ali’s dissolved party, Tunis, October 2015.

⁸⁷ Crisis Group interview, Sihem Ben Sedrine, IVD president, Tunis, November 2015.

emerge from the IVD.⁸⁸ “The weaker the regime becomes, the more transitional justice strengthens”, one suggests. “The revolution will once again set in motion”.⁸⁹ From their point of view, any impingement on the IVD’s prerogatives would represent an unacceptable concession and foreshadow its demise. “Changing Law 53 would pave the way for the destruction of the IVD. We have to resist and prevent the opponents of transitional justice from harming the law in the name of improving it”, said a pro-IVD activist.⁹⁰

An agreement between the two camps hence seems unlikely. Without a transformation in both sides’ perception of the law on transitional justice – which, confused with “revolutionary justice”, is feared by some and a last best hope for others – and close collaboration between the IVD and other public institutions, the Commission risks being worn down. If it becomes a mere “grievance bureau” for victims of the former regime, the IVD will not be able to bring former torturers or those who indulged in embezzlement to trial or to publish a report on past violations that could serve as a real basis for future institutional reform, notably of the interior and justice ministries.⁹¹

Applying the law on transitional justice is desirable and in the authorities’ interest. Indeed, this process constitutes a bulwark against general disillusionment with politics. Its existence helps government officials and deputies to maintain some level of “revolutionary” legitimacy, enabling them to “speak to the people” whose 2010-2011 uprising has made their current political stature possible.

In a sense, the IVD is the last remaining institutional mechanism that can arouse hope and compete with the “anti-establishment” nature of Salafi jihadism, an ideology that some young Tunisians believe is more likely to put an end to the corruption and impunity of the security forces than the democratic process.⁹²

As a far-left figure imprisoned during the 1970s wrote following his IVD hearing:

During those hours of interviews ... I remembered the words of Milan Kundera: “The struggle of man against power is the struggle of memory against forgetting”. ... And in today’s fight we are lucky enough to have the IVD, which seems to be one of the last bastions of memory. It is up to us to ensure that it survives the intrusions of those who want to make us forget, to ensure that memory triumphs, always and everywhere, over forgetting.⁹³

In other words, the IVD’s recognition, on the state’s behalf, of the damage suffered by citizens whose hatred of power has been transmitted from generation to generation contributes to combatting youth radicalisation.⁹⁴ This recognition is a means of preventing potential violence driven by the deepening economic, social and identity divides between the country’s north and south; it is also an opportunity to reflect on

⁸⁸ Crisis Group interviews, civil society activists, Tunis, August-November 2015.

⁸⁹ Crisis Group interview, individual demonstrating against the economic reconciliation law, Tunis, 12 September 2015.

⁹⁰ Crisis Group interview, civil society activist, Tunis, November 2015.

⁹¹ Crisis Group interview, journalist, Tunis, August 2015.

⁹² Crisis Group interview, civil society activists, Tunis, August-November 2015.

⁹³ Gilbert Naccache, “Pour la mémoire et contre l’oubli, Gilbert Naccache raconte sa première audition à l’IVD”, *Tuniscope* (tuniscope.com), 18 December 2015.

⁹⁴ Crisis Group interview, Sihem Bensedrine, IVD president, Tunis, November 2015.

Tunisia's modern history in a more inclusive way.⁹⁵ Finally, it allows to help those individuals who have suffered abuse to rebuild their lives, both materially and psychologically.⁹⁶

⁹⁵ By first recognising this or that category of victims, transitional justice processes contribute to building the history of a nation. They put forward the following questions: What kind of state do we want to rebuild? How can bonds be recreated in light of past violence? How can this violence be integrated into the common narrative? See Kora Andrieu, *La justice transitionnelle*, op. cit.

⁹⁶ As a female activist fighting violence against women said: "When a woman has been raped by an officer of the security forces and the state recognises her as a victim, she can become a human being again". Crisis Group interview, civil society activist, Tunis, November 2015.

IV. The Thorny Issue of Fighting Corruption

A. *Revolution under Threat?*

From July to October 2015, a controversy over the implementation of transitional justice in Tunisia polarised the political sphere. Debates focused on questions of amnesty and arbitration with regard to corruption rather than on violations of human and political rights.⁹⁷

On 20 March 2015, Essebsi told a French journalist that the country had to “turn the page on prosecutions and ensure that Tunisians who have money start to invest again in Tunisia and help their country”.⁹⁸ In July, the presidency sent a draft organic law, referred to as an economic reconciliation initiative, to the council of ministers, which approved it and submitted it to parliament.⁹⁹

The bill was designed to repeal Law 53’s provisions regarding corruption and embezzlement of public funds, thus limiting the IVD’s authority. Its defenders described it as a way to improve the business climate and replenish state coffers. Pending files relating to corruption could be closed in exchange for a compensation paid to the state and the identity of those involved would remain concealed. An arbitration committee composed of four representatives of the executive and two members of the IVD would be established under the authority of the government to review the records within a timeframe of three months with the option for a one-time extension.¹⁰⁰

Party and civil society organisation coalitions quickly formed to denounce the bill. The parliamentary opposition, comprising 38 of 217 deputies, came together despite its internal disputes to fight against it.¹⁰¹ Young leftist activists, aligning

⁹⁷ The head of a German foundation in Tunisia expressed surprise: “Torture, secret police, informers during the Ben Ali era do not give rise to controversy; the IVD is not attacked on these issues. In Germany, after the reunification, these were the main points of disagreement. Here, everyone seems focused on the corruption problem”. Crisis Group interview, head of a German foundation in Tunisia, Tunis, September 2015.

⁹⁸ “Le président tunisien Béji Caïd Essebsi: ‘Les islamistes rêvent du VII^e siècle. Nous voulons le XXI^e’”, Paris Match (parismatch.com), 29 March 2015.

⁹⁹ See “Projet de loi organique relatif aux procédures spéciales concernant la réconciliation dans les domaines économiques et financiers”, unofficial translation, UNDP, 2015. The presidency is said to have consulted a dozen lawyers and senior public officials but none of the members or executives of the IVD. Crisis Group interviews, IVD executives, senior public officials, lawyers, civil society activists, Tunis, August–October 2015. The controversy intensified until early October when the issue was eclipsed by the attempted assassination of a deputy from Nidaa Tounes, the Nobel Peace Prize won by the National Dialogue Quartet and the postponement of review of the draft law until 2016. See “Tunisie: tentative d’assassinat contre Ridha Charfeddine, député de Nidaa Tounès”, France 24 (France24.com), 8 October 2015; “Mohamed Kamel Gharbi: L’examen du projet de réconciliation économique reporté”, Mosaïque FM, 15 October 2015.

¹⁰⁰ Under the draft law, individuals who had embezzled funds would get amnesty providing they repaid the full amount of the misappropriated funds plus a 5 per cent penalty per year that the funds were wrongly held. Civil servants having participated in similar dealings would be given amnesty without penalty unless they had benefited personally. Individuals with undeclared foreign currency would have the right to place them in special accounts as long as they paid a 5 per cent penalty. The money collected would be earmarked for regional development. See “Projet de loi organique relatif aux procédures spéciales concernant la réconciliation dans les domaines économiques et financiers”, op. cit.

¹⁰¹ The Republican Party (Parti républicain, formerly the Progressive Democratic Party, the main legal opposition party under Ben Ali; one deputy in the ARP), the Democratic Current (Courant démocrate, a party that came out of the Congress for the Republic; three deputies), the Democratic

themselves with the December 2010–2011 uprising, launched a mobilisation campaign called *Manich Msamah* (“I do not forgive”) in several governorates.¹⁰² Among what would become the 2015 Nobel Peace Prize laureates, only the Tunisian Confederation of Industry, Trade and Handicrafts (Union tunisienne du commerce, de l’industrie et de l’artisanat, UTICA) supported the draft law.¹⁰³ The UGTT, the Tunisian Human Rights League (Ligue tunisienne pour la défense des droits de l’homme, LTDH), and the Tunisian Bar Association (conseil de l’ordre national des avocats de Tunisie) demanded that the bill either be withdrawn or subject to a national consultation.¹⁰⁴ Several international NGOs strongly opposed it.¹⁰⁵

The European Commission for Democracy through Law (Commission européenne pour la démocratie par le droit), called upon by the IVD, said the bill was unconstitutional as it would create a two-tier transitional justice process, which would be incompatible with Article 148 of the constitution.¹⁰⁶ The Commission stated that nothing prohibited the adoption of a special law relating to economic and financial affairs and that amendments to the organic law on transitional justice were possible; but it added that there was no guarantee for the proposed arbitration committee’s independence and the transparency of its actions.

Most of those mobilised against the draft law considered it no less than “the counter-revolution’s final victory”.¹⁰⁷ An activist expressed indignation: “If this law passes, corruption will increase. Everyone will say, ‘these people stole billions and nothing happened to them. Democracy does nothing but grant an amnesty to thieves’”.¹⁰⁸ In their view, granting an amnesty to corrupt businessmen and government officials would be a strong signal of impunity and would discourage foreign

Alliance Party (Alliance démocratique, made up of defectors from the Republican Party; one deputy), the People’s Movement (Mouvement du peuple, an Arab nationalist party; one deputy) and Ettakatol (a former member of the Troika and a party without a parliamentary seat) have fought together against the draft law despite their ideological differences. CPR, which has four seats in the ARP, campaigned on its own but signed a joint press release with the other parties, which is unusual. For their part, Al Massar (a Leftist party without any seats) and the Popular Front (Front populaire, a far-left party with fifteen members in parliament) came together in a united political front. Several organisations have allied themselves and formed political organisations against the project. Crisis Group interviews, association leaders, opposition party members, Tunis, Sousse, September–October 2015. See also Olfa Belhassine, “Tunisie: Le Président contre la justice transitionnelle (3/3), la société civile contre-attaque”, Justice Info (justiceinfo.net), 31 August 2015.

¹⁰² Mohammed Samih Beji Okkez, “Manich msamah: Les mouvements de protestation entre le 27 août et le 8 septembre”, Nawaat (nawaat.org), 11 September 2015.

¹⁰³ “Tunisie: L’organisation patronale attachée à la loi de réconciliation économique et financière”, Directinfo (directinfo.webmanagercenter.com), 9 September 2015.

¹⁰⁴ “Tunisie: Un collectif d’intellectuels fustige la loi sur la réconciliation”, Gnet (gnet.tn), 26 August 2015; “Tunisie: une ‘loi de réconciliation économique’ qui divise”, Le Point Afrique (afrique.lepoint.fr), 4 September 2015; and “L’Ordre national des avocats appelle le président de la République à retirer le projet de réconciliation”, Business News (businessnews.com.tn), 10 September 2015.

¹⁰⁵ See especially Amna Guellali, “Tunisie: La justice transitionnelle dans la ligne de mire”, Human Rights Watch, 9 September 2015; and David Tolbert, “Tunisia’s ‘Reconciliation Bill’ Threatens Gains of the Revolution”, International Center for Transitional Justice (ICTJ), 17 August 2015.

¹⁰⁶ See European Commission for Democracy through Law (commonly known as the Venice Commission), “Avis intérimaire sur les aspects institutionnels du projet de loi sur les procédures spéciales concernant la réconciliation dans les domaines économique et financier de la Tunisie”, Opinion N°818/2015, 27 October 2015.

¹⁰⁷ Crisis Group interview, civil society activist, Tunis, September 2015.

¹⁰⁸ Crisis Group interview, activist fighting against the reconciliation draft law, Tunis, September 2015.

investors. They believed that if the IVD was no longer able to carry out investigations, light would never be shed on the corruption under the old regime and the necessary reforms to prevent the perpetuation of such practices would not be undertaken. If passed, the law would be nothing but a “collective reward” for some financial contributors to Nida Tounes’ election campaign.¹⁰⁹

On the other hand, the mainstream media praised the draft law and accused foreign NGOs of intrusion.¹¹⁰ They denounced the irresponsibility of political parties, which protested against the bill “out of a taste for discord”, creating unrest and risking weakening the state at war with terrorism.¹¹¹ Most Nida Tounes members supported the bill, albeit timidly, as an initiative of the presidency.¹¹² An-Nahda, meanwhile, proposed holding further dialogue before consideration by the ARP.¹¹³ Some of the party’s rising stars and grassroots activists expressed serious reservations.¹¹⁴ Nevertheless, most Islamists maintained a positive or indifferent tone as if, though incompatible with the revolutionary spirit of 2010-2011, the draft law was necessary to build consensus with Nida Tounes and especially with former RCD activists.¹¹⁵ On 12 September 2015, very few An-Nahda supporters took part in the main protest against the bill in the capital.¹¹⁶

The architects of the bill mainly used economic arguments: Tunisia could no longer afford to borrow money from international bodies; given the general decline in investment, the country needed to diversify its cash inflows.¹¹⁷ According to some

¹⁰⁹ Crisis Group interview, former ANC deputy, Sousse, October 2015. Crisis Group interviews, civil society activists, Tunis, September-October, 2015.

¹¹⁰ See especially Khaled Guezmir, “La Tunisie à nouveau sous ‘Protectorat’!” *Le Temps*, 29 October 2015.

¹¹¹ See radio and television broadcasts on public and private stations especially between 1 and 13 September 2015.

¹¹² Crisis Group interviews, Nida Tounes supporters, Tunis, September-October 2015.

¹¹³ “Tunisie: Ennahdha appelle à un dialogue plus approfondi sur le projet de loi de réconciliation économique”, Directinfo (directinfo.webmanagercenter.com), 12 September 2015.

¹¹⁴ This is the case for Abdellatif Mekki, health minister under the Troika (2011-2014), two deputies and a number of grassroots activists often of working-class backgrounds. See “Abdellatif Mekki: Si la loi de réconciliation nationale passe sous sa forme actuelle, on devra libérer tous les voleurs!”, Business News (businessnews.com.tn), 19 August 2015. Crisis Group interview, IVD official, Tunis, September 2015. Crisis Group interviews, An-Nahda supporters, Tunis, 2012-2015.

¹¹⁵ Crisis Group interviews, An-Nahda supporters, Tunis, 2012-2015.

¹¹⁶ This protest assembled between 1,500 and 2,000 people, the vast majority of which were members of political and advocacy organisations. Crisis Group observations, Tunis, 12 September 2015.

¹¹⁷ The country has been using a portion of its loans from international financial institutions to replenish its foreign currency holdings and to avoid the devaluation of the dinar. Thus, its foreign currency holdings have gone up, from 13 billion dinars (\$6.6 billion) in 2014 to 15 billion dinars (\$7.5 billion) in 2015. At the same time, public and private investment in Tunisia went down by more than 20 per cent between 2013 and 2014. Although public debt remains at levels sufficient to maintain the confidence of creditors, despite the fact that it has increased by almost 10 percentage points of GDP since 2010, debt service is steadily increasing and is expected to weigh significantly on the state budget beginning in 2017. According to several experts, the major problem is the growth of public sector payroll, which will reach 45 per cent of the state budget in 2016. The budget surplus caused by lower oil prices (and hence lower energy subsidies) is said to have been used to increase the public sector payroll, which could cause serious budgetary problems if oil prices go back up. Finally, annual GDP growth was 0.7 per cent in 2015 and -0.1 per cent in December 2015 compared to November 2015. In August 2015, after the Bardo and Sousse attacks, tourism revenue declined by over a third compared to August 2014. The tourism sector accounts for 7 per cent of GDP and provides about 400,000 jobs, directly and indirectly, or more than 10 per cent of the labour force. See “Tableau de bord économique, synthèse mensuelle des principaux indicateurs de la conjoncture

activists and senior public officials, billions of dollars have probably left the country since 1995 and been deposited in bank accounts abroad.¹¹⁸ Advocates of the draft law argued that the legal procedures to identify the account holders and prove that the money had been acquired fraudulently would be very time-consuming and that it was therefore advantageous to reach an agreement with these people (about 140 individuals) so they might repatriate the money voluntarily.¹¹⁹

Contact had already been made with the main persons concerned. “This is in their interest, a senior public official said, because one day the Commission for the Recovery of Assets Looted and Hidden Abroad could successfully trace them”.¹²⁰ An Islamist activist claimed that informal discussions between some of these businessmen and sitting political leaders led to the agreement that “those exiled would have the opportunity to return home and would again be able to borrow and invest money, provided however that they do not engage in politics”.¹²¹

For the measure to work, the anonymity of the people involved would have to be protected and no legal proceedings would be started against them. According to the bill’s supporters, the IVD should refrain from dealing with conciliation relating to economic affairs and process only cases relating to human rights violations. Its commission in charge of arbitrating corruption and embezzlement cases would be dissolved or placed directly under the authority of the executive. A main An-Nahda leader defending the official line of the party argued:

The economy has nothing to do with transitional justice. The law on transitional justice was passed hastily, and we have to change it. Transitional justice should only deal with human rights violations, police brutality, arbitrary detention, torture, etc.¹²²

Additionally, the draft law aimed to close thousands of corruption-related legal proceedings launched since Ben Ali’s departure against civil servants, that is to say representatives of the state in the broadest sense.¹²³ Several administration officials explained that these individuals were innocent, having done nothing more than applying directives given to them by the family of Leila Trabelsi, the deposed president’s wife (granting various permits and suspicious public procurement contracts, downgrading of agricultural land, counterfeiting official documents, etc).¹²⁴

The issue of the officials’ criminal liability gives rise to competing interpretations. According to one general director in the central government, judges do not understand how the administration functions: “It’s a machine at work: administrative

économique”, National Institute of Statistics (Institut national de la statistique, INA), October 2015; Financial Statistics N°192, Central Bank of Tunisia, October 2015. Crisis Group interviews, economists, Tunis, September 2015.

¹¹⁸ Some say 30 billion dollars, a sum that seems exaggerated. Crisis Group interviews, activists, senior public officials, Tunis, November 2015.

¹¹⁹ Crisis Group interviews, Islamist activist, senior public official, Tunis, November 2015.

¹²⁰ Crisis Group interview, senior public official, Tunis, November 2015.

¹²¹ Crisis Group interview, Islamist activist, Tunis, November 2015.

¹²² Crisis Group interview, member of the An-Nahda executive board, September 2015.

¹²³ This includes bailiffs; notaries; executives and employees of central, regional and local authorities; and directors, members or employees of public or semi-public institutions and companies or those in which the state holds a share of the capital. See section 96 (amended by Law N°85-85 dated 11 August 1985) of the Tunisian Penal Code.

¹²⁴ Crisis Group interviews, senior public officials, Tunis, November 2015. Crisis Group interview, Sihem Ben Sédrine, president of the IVD, Tunis, November 2015.

officials sign without knowing the cases and the judges imprison those who sign. The signature is just the outcome of a process".¹²⁵ The president of the IVD has argued the opposite:

The Trabelsis did not rob banks. They got money through a process that was completely legal. Administrators started this process. If they had not signed, corruption at the top of the state could not have taken place. The question today is whether or not to keep them at their posts so they can, or cannot, keep the same system going.

Since the uprising, between 7,000 and 9,000 civil servants have been prosecuted and 600 imprisoned, mostly under Article 96 of the Penal Code.¹²⁶ This has helped paralyse public administration, some competent administrators having been dismissed and others sidelined or demotivated by the risk of making potentially controversial decisions.¹²⁷

For the most fervent opponents of any form of amnesty, the reality is quite different. As a ministry director and supporter of one of the former-Troika political parties said:

Most of the officials who now hold management positions in public administration were close to the former regime, but from a certain point of view, not close enough. The entrepreneurs who were well established in the days of Ben Ali now apply political pressure so that "their loyal administrators", aware of their influence peddlings and in part pushed out of management positions, can get their posts back; granting an amnesty to these officials would allow these entrepreneurs to get back what I call the "cogs in the administration". When, under the Troika, we managed to fire some of these corrupt officials, we deprived these economic operators of cogs that are essential for their businesses. Now more than ever, in the new political context, they intend to get them running again.¹²⁸

In this way, the old regime's political and financial networks seem to want to reintegrate their men in the public sector. At the same time, Nida Tounes and to some extent An-Nahda circles are finding it difficult to boost the economy and to streamline the administrative process without collaborating more closely with their predecessors. "It's a gamble", a senior public official in favour of the reconciliation draft law admitted, "and that's why we need safeguards to prevent former powerbrokers from regaining authority".¹²⁹ From this point of view, conciliation under the aegis of the

¹²⁵ Crisis Group interview, director general in the central administration, Tunis, November 2015.

¹²⁶ "A penalty of ten years' imprisonment and a fine equal to the benefit received or damaged done to the administration shall be applied to any public official or the like... who uses his or her status to procure for him- or herself, or provide a third party with, an unfair advantage, causes harm to the administration or contravenes the regulations governing these operations in order to achieve the aforementioned benefit or damage". See section 96 (amended by Law n°85-85 dated 11 August 1985) of the Tunisian Penal Code.

¹²⁷ Some have even attempted to block the decision-making process within the central administration, delaying for example the implementation of local development projects. Crisis Group interviews, senior public officials, Tunis, November 2015.

¹²⁸ Crisis Group interview, senior public official and supporter of the former Troika, Tunis, December 2015.

¹²⁹ Crisis Group interview, senior public official and supporter of the former Troika, Tunis, December 2015.

executive is not desirable: many entrepreneurs fear that it would allow political figures close to the government and the presidency to blackmail them and subject them to racketeering.

B. *Freeing Businessmen from Racketeering*

Given its economic and political stakes and the resistance it has raised, it is likely that the economic reconciliation draft law will make a comeback in another form. In December 2015, the section of the bill relating to amnesty for violations of currency exchange laws was included in the 2016 finance bill and then declared unconstitutional by the Provisional Commission to Review of the Constitutionality of Draft Laws (Instance provisoire de contrôle de la constitutionnalité des lois, IPCC) following an appeal by the parliamentary opposition.¹³⁰ At the end of January 2016, the presidency mentioned the need to end legal proceedings against public officials in order to improve the efficiency of the administration.¹³¹ In mid-April 2016, Nida Tounes and An-Nahda announced that they wanted to draft a new bill that they called “comprehensive reconciliation”.¹³²

A number of businessmen argue that an amnesty law with regard to corruption and embezzlement cases during the era of the ousted president is urgently needed in order to free them from racketeering. According to them, since the departure of the ruling family in January 2011, a blackmail system has been set up in the name of revolution. Under Ben Ali, extorting money from a businessman was the ruling clan’s privilege, rarely granted outside that small circle. Since the revolution, this privilege has reportedly been extended and a new blackmail system has emerged, based on a scarce resource: dossiers.¹³³ It allegedly involves extorting money from entrepreneurs who were already active under the old regime; that is to say, current business leaders who, in one way or another, have taken advantage of special privileges and used illegal practices to succeed.¹³⁴

According to the same sources, members of the political parties that have entered government or civil servants acting on behalf of influential business leaders have partially destroyed and/or duplicated archives – from the interior ministry, the presidency, the prime ministry, the justice ministry, and regional and local authorities – documenting the corrupt activities of many economic operators.¹³⁵ These documents are said to be feeding a booming system of blackmail and corruption. The alleged blackmailers have enough contacts in the media to expose scandals and the necessary contacts in the justice system to push through prosecution if the person refuses to pay.¹³⁶

¹³⁰ A.B.M., “Loi de finances: Recours accepté pour 5 articles sur 10”, Kapitalis, 23 December 2015.

¹³¹ الباجي يدعو إلى إيقاف التتبعات القضائية ضد 9 آلاف إطار إداري مورطون في الفساد, Hasad News (elhasade.com), 31 January 2016.

¹³² “Un texte sur la réconciliation globale appuyé par Ennadha et Nidaa en vue”, Gnet (gnet.tn), 19 April 2016.

¹³³ Crisis Group interviews, businessmen, Tunis, September-December 2015.

¹³⁴ See Béatrice Hibou, *La force de l’obéissance* (Paris, 2006).

¹³⁵ Crisis Group interviews, businessmen, political activists, senior public officials, Tunis, 2013-2015. See also Wahid Ferchichi (dir.), “Transitional justice in Tunisia. Finally the law! October 2011-December 2013”, op. cit.

¹³⁶ Crisis Group interviews, businessmen, political activists, senior public officials, Tunis, 2013-2015.

Victims of this system are reportedly businessmen from the Ben Ali era who could be subjected to prosecution and “do not have the necessary contacts” in the central government.¹³⁷ Many entrepreneurs, including some whose cases were investigated in 2011 by the National Commission on Investigation into Corruption and Embezzlement and referred to courts, were not allowed to leave the country before judgement was passed and are thought to have paid bribes to avoid prosecution.¹³⁸ Given these precedents, some say the arbitration of the cases of corruption and embezzlement that occurred under the previous regime gives rise to extortion. Advocates of the reconciliation draft law argue that it will free major economic players from this racketeering while adding to the public budget. According to a former minister close to Nida Tounes:

Some want to extort money from these businessmen instead of freeing them. By refusing the reconciliation law, they are trying to hamper them and tell them “you will never be free”. You can, of course, find many good arguments against this law. But as a reasonable ruler, you need business leaders. You do not have the luxury of theorising policies. Why would this money go into the pockets of corrupt officials and not into the state coffers?¹³⁹

But many businessmen have said they have no faith in any conciliation or arbitration committee, be it placed under the authority of the government or of the IVD. According to them, officials there would extort money on behalf of their own political families and bury incriminating records in exchange for bribes, which would then be used to fill party coffers or finance electoral campaigns. To prevent this from happening, an entrepreneur proposed:

Matters of corruption and embezzlement cannot be sorted out by mutual agreement, particularly in the current context of frantic competition for money. Conciliation processes put more limitations on businessmen. What we need is a general amnesty along with strict procedures for monitoring the assets of economic and financial players.¹⁴⁰

Whatever the real extent of the crony and blackmail system that some have described, the desire of many to preserve it explains the reluctance of political parties to proclaim a general amnesty. This has contributed to paralysing the economy and the central government.¹⁴¹ According to many businessmen, concrete measures need to be taken to deal with the situation, which they say risks stalling the economy and debilitating the state.¹⁴² If such reform seems necessary, fighting corruption should also be a political priority. Indeed, the risk is not so much that the old ruling family will get back to business but that the system of blackmail and racketeering will become the norm.

¹³⁷ Crisis Group interview, business leader, Tunis, September 2015.

¹³⁸ See Ridha Lamar, “Une solution équitable s'impose”, *Réalités* (realites.com.tn), 26 June 2012. Crisis Group interviews, businessmen, senior public official, Tunis, 2014-2015.

¹³⁹ Crisis Group interview, former minister, Tunis, October 2015.

¹⁴⁰ Crisis Group interview, business leader, Tunis, September 2015.

¹⁴¹ According to a senior public official, “Digging into these matters is in no one’s interest. Everyone has a file on someone else. This is what has created a balance but at the same time paralysis. There is a precarious agreement and mutual suspicions exist. It is a zero sum game and there is no winner”. Crisis Group interview, senior public official, Tunis, October 2015.

¹⁴² Crisis Group interviews, senior public officials, businessmen, Tunis, September-December, 2015.

C. *An Uninclusive Economic and Political System*

The corruption issue was central to the 2010-2011 uprising – “get out, you gang of thieves” was the protesters’ main slogan – and still is five years later.¹⁴³ On the one hand, the various committees and bodies that have been set up since 2011 have not been able to reduce it.¹⁴⁴ On the other hand, the fight against corruption, which symbolises the desire for social justice and the struggle of the poor against the rich, has the power to mobilise politically.

The emphasis on embezzlement and financial and fiscal fraud, which was recently reinforced by the “Panama Papers” affair,¹⁴⁵ reflects a particularly worrying and widespread distrust of public institutions; it also reveals the non-inclusive nature of the political and economic systems. Indeed, behind the settling of scores and corruption allegations by policymakers and businessmen lurks the question of unequal and discretionary access to the central administration’s resources (public procurement contracts, public-private partnerships, various administrative authorisations, etc).¹⁴⁶ According to several senior public officials, 80 per cent of economic operators working in the formal sector have needed at one time or another to go through the central administration in order to conduct business.¹⁴⁷ As an entrepreneur noted:

The role of the state remains very important. As a businessman accumulating capital, if you have not made inroads into the state, you are going to lose ground. You have to have contacts.¹⁴⁸

In this context, the issue of regional cleavages takes on its full meaning. If the map of the 2014 legislative and presidential election results is any indication, the country has shown itself to be divided economically and socially.¹⁴⁹ The capital and the Sahel, which have been privileged regions since independence, are politically on the side of the old regime and Nida Tounes. With the exception of the north west, the interior of the country – including central and border regions and, to some extent, the island of Djerba – which have been disadvantaged historically, voted mostly for the Islamist party and former President Moncef Marzouki (2011-2014). The port city of Sfax, located to the south of the Sahel on the east coast, is economically and politically half-way through the country’s two sides and represents a kind of bridge between them.

From this perspective, the coalition government of Nida Tounes and An-Nahda has amounted to a dividing up of tasks, with the former winning the confidence of the middle class in Tunis and the Sahel, including senior public officials and established economic elites, and the latter reassuring emerging elites in Sfax and the country’s south. This is where the question of historical regional inequalities raised

¹⁴³ See Crisis Group Middle East and North Africa Report N°106, *Popular Protests in North Africa and the Middle East (IV): Tunisia’s Way*, 28 April 2011.

¹⁴⁴ See Olfa Belhassine, “Tunisie: Le traitement de la corruption reste en deçà des attentes”, Justiceinfo (Justiceinfo.net), 8 December 2015.

¹⁴⁵ See “Panama Papers: 8000 documents sur la Tunisie et jusqu’à 40 Tunisiens impliqués”, Webdo (Webdo.tn), 7 April 2016.

¹⁴⁶ Crisis Group interviews, businessmen, activists and sympathisers of various political persuasions, Tunis, September-December 2015.

¹⁴⁷ Crisis Group interviews, senior public officials, September-December 2015.

¹⁴⁸ Crisis Group interview, businessman, Tunis, October 2015.

¹⁴⁹ Crisis Group Briefing, *Tunisia’s Elections: Old Wounds, New Fears*, op. cit.

by Law 53 on transitional justice, which has granted region victim status, resurfaces.¹⁵⁰ The term “return of the old regime and counter-revolution” has been used by many activists to evoke the way in which the privileged segment of Tunisian society has withstood the shocks of the popular uprising of 2010-2011 and fought back to prevent the emergence of a new economic and political elite.

Yet, according to some Islamist sympathisers, the joining forces of Nida Tounes and An-Nahda, which was meant to allow for a compromise between these groups of elites, has struggled to perform its function. A source close to An-Nahda noted that the party leadership is working increasingly with the same business networks as Nida Tounes and that this, more than to a compromise between emerging and established elites, explains the parties’ political convergence.¹⁵¹

Some commentators, including a trade unionist from the country’s south, said the reconciliation bill stops far short of enabling the *nouveaux riches* in the Tunisia-Libya border areas, a group that has acquired wealth through parallel currency trading networks and cross-border contraband smuggling, to enter the official economy; amnesty would theoretically allow them to do so.¹⁵² The draft law is seen instead as an attempt by established elites from the Sahel, Tunis, and parts of Sfax, who control the state’s resources, to close ranks and prevent emerging elites from accessing them.¹⁵³

If this view reflects the feeling of longstanding abandonment on the part of the citizens from the poor regions that were the cradle of the 2010-2011 uprising, their negative perception of the capital and the Sahel appears to have been reinforced in the wake of the 2015 political reconfiguration. Many say they no longer feel represented.¹⁵⁴ Without sufficient access to the central administration and no longer relying on existing parties to defend their interests, a segment of the south’s entrepreneurs have organised independent pressure groups and some hope that a large-scale economic and political crisis will “sweep over the Sahel”.¹⁵⁵

D. *The Need for Compromise*

The delay with regard to transitional justice is fundamentally linked to three factors that are increasingly prevalent in the public debate: the economic crisis, corruption and the lack of a concrete strategy to fix historic inequalities between the country’s coastal areas and its western and southern interior regions – and the inhabitants thereof. It is not about revising the transitional justice process outlined in the constitution but rather finding a compromise that would renew the political elites and the population’s confidence in this process.

Clearing up the misconception that equates the transitional justice process with revolutionary hopes is urgent and imperative in order to reduce the intensity of the

¹⁵⁰ See Organic law n°2013-53, op. cit. In June 2015, some civil society organisations filed a complaint with the IVD in the name of the Kasserine governorate, presenting the region as a victim. See “Le dossier ‘région victime’ Kasserine: une ‘première’ en justice transitionnelle”, Tunisian Forum for Economic and Social Rights, 16 June 2015.

¹⁵¹ Crisis Group interview, An-Nahda supporter, Tunis, September 2015.

¹⁵² See Crisis Group Middle East and North Africa Report N°148, *Tunisia’s Borders: Jihadism and Contraband*, 28 November 2013.

¹⁵³ Crisis Group interviews, trade unionist from the country’s south, journalist, shopkeeper, Tunis, October-November 2015.

¹⁵⁴ Crisis Group interviews, trade unionists, entrepreneurs, civil society activists, CPR supporters from the country’s south, Tunis, Zarsis, Medenine, 2015.

¹⁵⁵ Crisis Group interview, civil society activist, Tunis, November 2015.

controversy regarding the IVD.¹⁵⁶ The scope of transitional justice in Tunisia is so broad that any reform affecting in any way the economy, security or human rights could encroach upon its field of application. However, given the current tensions, seeking to keep its prerogatives intact puts both transitional justice and reforms at risk. Getting out of this impasse should be a priority.

The government led by Habib Essid, which has been increasingly criticised for its lack of strategic vision, should be able to speed up the implementation of economic projects, especially in the country's interior. As the riots and social protests of January 2016 showed,¹⁵⁷ the exclusion produced by arbitrary access to public resources and the sense of regional discrimination can fan the fires of societal violence.¹⁵⁸ For instance, supporting the broadcasting of IVD public hearings on television would give issues of police brutality, cronyism and nepotism their proper place in the public debate. This would send a reassuring message to the most vulnerable segments of the society and show that the state intends to tackle these problems head-on.

In return for such an initiative, a political compromise leading to the adoption of a new economic reconciliation mechanism would allow for both the liberation of capital and the fight against corruption. The IVD does not have a monopoly on the fight against corruption and regional inequalities. While waiting for the commission to make its final recommendations in 2018-2019 and propose measures to prevent embezzlement and reform the security services, a general economic and financial law without conciliation or arbitration mechanisms needs to be drawn up quickly. As the Venice Commission has pointed out, nothing in the constitution prohibits the adoption of such legislation.¹⁵⁹ A general law regularising under certain conditions the statuses of businessmen and officials who either carried out or were complicit in embezzlement and tax evasion remains preferable to case-by-case transactions. The individuals concerned would, in certain cases, pay damages to the state after having allowed their assets to undergo an exhaustive inventory and review by certified public accountants who would be held responsible for false declarations.

Dialogue between regions – especially between entrepreneurs in border areas, the Sahel and the capital – should be encouraged and transparency mechanisms regarding public calls for tender should be developed. The economic reconciliation bill provided for a development fund to be financed by the recovered money that would assist businesses in neglected regions. Given the lack of trust in public institutions, the fund would benefit from being administered by the private sector; this would also prevent its exploitation for cronyism purposes. As Crisis Group wrote in December 2014, balance between regions is a priority that requires recognition of the diversity of regional interests, non-discrimination with regard to hiring people from the south

¹⁵⁶ If criminal prosecution takes place, it will be very limited and recommendations on the exclusion of certain public officials will not be binding. See Organic law n°2013-53, *op. cit.*

¹⁵⁷ In January 2016, social protests spread from Kasserine in the country's centre-west to most other regions. Although the majority of the protesters, notably the unemployed university graduates who were demanding the right to work, were peaceful, night-time clashes erupted in several cities between young rioters and security forces; many public properties were damaged and hundreds of acts of looting took place.

¹⁵⁸ See Henda Chennaoui, reporting on Kasserine, "Personne ne saura calmer la colère de la faim", *Nawaat* (nawaat.org), 21 January 2016.

¹⁵⁹ "Avis intérimaire sur les aspects institutionnels du projet de loi sur les procédures spéciales concernant la réconciliation dans les domaines économique et financier de la Tunisie", *op. cit.*

and west, and access for companies located in those areas to public procurement contracts and public-private partnerships.¹⁶⁰

More negotiations and exchanging of views are needed, especially at the local and regional level. It is important that the businessmen in the capital, the Sahel, Sfax, Djerba and the border regions – including members of the smuggling cartels that represent an informal economic power capable of obstructing or stimulating local development projects – reach a historic compromise.¹⁶¹ Such dialogue between local players with economic and social influence would allow them to defend their interests while assessing their contributions to the development of their communities and more generally to that of the country. It would also ensure more regional fairness regarding access to state resources, especially the various permits required to pursue economic projects, which in itself would be a way to fight against embezzlement, insider dealing and influence peddling by tackling one of their causes.¹⁶²

Similarly, international calls for public tenders would benefit from being more transparent. An international advisory body composed of independent figures from different countries could, for example, vouch for this transparency without harming Tunisia's sovereignty. This would be a positive sign for foreign investors who fear a resurgence of the crony capitalism widespread under Ben Ali due to old and new wheel-dealer business networks.¹⁶³

¹⁶⁰ Crisis Group Briefing, *Tunisia's Elections: Old Wounds, New Fears*, op. cit.

¹⁶¹ Crisis Group Report, *Reform and Security Strategy in Tunisia*, op. cit.

¹⁶² See especially Frédéric Bobin, "Khayam Turki: 'Il existe un racisme social et régional en Tunisie'", *Le Monde*, 6 February 2016.

¹⁶³ See Bob Rijkers, Caroline Freund and Antonio Nucifora, "All in the Family. State Capture in Tunisia", op. cit.; and Crisis Group interviews, foreign businessmen, Tunis, July 2015.

V. Conclusion

Transitional justice in Tunisia has not yet taken its final form. But, starting now, the government should support rather than impede the process. It should promote a compromise that would allow the Truth and Dignity Commission (IVD) to continue its work in a calmer atmosphere, enable the legislative reforms necessary to encourage investment – particularly in historically disadvantaged regions – and fight corruption. There is a unique opportunity for the current political elite to restore faith in the state and, short of reconciling all citizens, prevent new attacks or major political and economic crises from pitting one part of the population against another.

Tunis/Brussels, 3 May 2016

Appendix A: Map of Tunisia



Appendix B: Timeline

13 January 2011

President Ben Ali announces the creation of two independent commissions of inquiry, one on "corruption, wrongdoing and abuses", the other on "excesses and deaths during the protests".

14 January 2011

Departure of President Ben Ali to Saudi Arabia. Prime Minister Mohamed Ghannouchi appoints a provisional government, which announces the establishment of the National Commission on Investigation into the Abuses Recorded During the Period from 17 December 2010 until the Achievement of its Subject and the National Commission on Investigation into Corruption and Embezzlement.

21 January 2011

Release of 1,800 individuals imprisoned under the Terrorism Act of 2003 or for ordinary crimes as a result of their political or trade union activities.

30 January 2011

Rached Ghannouchi, leader of the Islamist party An-Nahda, returns to Tunis after twenty years in exile. The activities of the former ruling party Democratic Constitutional Rally (RCD) were suspended.

6 February 2011

Suspension of the activities of the former ruling party, the Democratic Constitutional Rally (RCD).

18 February 2011

Creation of two commissions of inquiry by Decree-law n°2011-8.

19 February 2011

Decree-law n°2011-1 relating to the amnesty.

9 March 2011

Dissolution of Ben Ali's RCD.

14 March 2011

A national confiscation commission seizes 285 companies and 320 properties from Ben Ali and roughly 100 individuals close to him.

27 April 2011

Decree-law n°2011-32 relating to the derogating provisions for the recruitment in public sector for the year 2011.

20 to 23 October 2011

Elections for a National Constituent Assembly (ANC).

28 November 2011

Trial of former President Ben Ali and twenty security officials before El Kef permanent military tribunal regarding the killing of protesters in the governorates of El Kef, Jendouba, Beja, Siliana, Kasserine and Kairouan from 17 December 2010 to 14 January 2011.

January 2012

Creation of a human rights and transitional justice ministry.

14 April 2012

Launch of the national dialogue on transitional justice. Introduction of the bill known as "immunisation of the revolution" in the ANC.

10-13 June 2012

Trial of former President Ben Ali and 43 security officials before the permanent military tribunal of Tunis regarding the killing of protesters in the governorates of Ariana, Manouba, Tunis, Ben Arous, Bizerte, Nabeul, Zaghuan, Sousse and Monastir between 17 December 2010 and 14 January 2011.

16 September to 7 October 2012

Twenty-four sessions of participatory dialogue on transitional justice are held throughout the country.

6 February 2013

Assassination of the leftist figure Chokri Belaïd.

25 July 2013

Assassination of Arab nationalist deputy Mohamed Brahmi.

July-August 2013

Occupation of Place du Bardo, also known as the "Bardo sit-in". This anti-Troika mobilisation, modelled on the Egyptian movement Tamarrod, takes place when the polarisation between Islamists and anti-Islamists is most acute.

24 December 2013

ANC vote on the Organic Law on Establishing and Organising Transitional Justice, known as Law 53.

30 April 2014

Rejection by the ANC of the draft law known as "immunisation of the revolution".

October 2014-February 2015

Presidential and legislative elections. Béji Caïd Essebsi elected President. Formation of a new coalition government including independent politicians and members of four parties: Nida Tounes, An-Nahda, Union patriotique libre (UPL) and Afek Tounes.

10 December 2014

Inauguration of the headquarters of the Truth and Dignity Commission (IVD) in Tunis.

8 June 2015

The administrative tribunal deems invalid the Decree-law n°2011-13 dated 14 March 2011, relating to the confiscation of the movable and real assets and properties.

July 2015

The presidency sends a draft organic law on reconciliation in the economic and financial sectors, also known as the economic reconciliation bill, to the council of ministers, which approves it and submits it to parliament.

12 September 2015

Demonstration in Tunis against the economic reconciliation bill.

Appendix C: List of Acronyms

ANC	Assemblée nationale constituante – National Constituent Assembly
CNIJT	Coordination nationale indépendante de la justice transitionnelle – Independent National Coordination for Transitional Justice
CPR	Congrès pour la République – Congress for the Republic
CTDHJT	Centre de Tunisie pour les droits de l'homme et la justice transitionnelle – Tunisian Centre for Human Rights and Transitional Justice
CTJT	Centre de Tunis pour la justice transitionnelle – Tunis Centre for Transitional Justice
EU	European Union
ICTJ	International Center for Transitional Justice
IPCC	Instance provisoire de contrôle de la constitutionnalité des lois – Provisional Commission to Review the Constitutionality of Draft Laws
IS	Islamic State
IVD	Instance vérité et dignité – Truth and Dignity Commission
LPR	Ligues de protection de la révolution – Leagues for the Protection of the Revolution
LTDH	Ligue tunisienne pour la défense des droits de l'homme – Tunisian Human Rights League
OHCHR	Office of the United Nations High Commissioner for Human Rights
PDP	Parti démocrate progressiste – Progressive Democratic Party
RCD	Rassemblement constitutionnel démocratique – Democratic Constitutional Rally
RTJT	Réseau tunisien pour la justice transitionnelle – Tunisian Network for Transitional Justice
UGTT	Union générale tunisienne du travail – Tunisian General Labour Union
UNDP	United Nations Development Programme
UTICA	Union tunisienne du commerce, de l'industrie et de l'artisanat – Tunisian Confederation of Industry, Trade and Handicrafts