



Truth & Dignity Commission

The Final Comprehensive Report

Executive Summary



May 2019

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Tribute to Lina Ben Mhenni

The Truth and Dignity Commission (IVD) and Avocats Sans Frontières would like to pay tribute to the late Lina Ben Mhenni who passed away in the prime of life. She contributed to this translation. Lina has been a fervent defender of transitional justice in Tunisia and has made a significant contribution to it through her active commitment in the fight against impunity.

The commission's speech ---

The Truth and Dignity Commission: Mission accomplished and stick handed over.

What the Truth and Dignity Commission (TDC) accomplished is a defining cycle on the path of transition to democracy and to safe shore. Actually, betting on transitional justice has proved to be conclusive as TDC is now laying down the foundation upon which Tunisia is building the pillars of its endeavor for the recovery of the components of its sovereignty and command over its future.

This is the course of transitional justice chosen by the Tunisian citizens, men and women, on the eve of the Revolution, and consecrated by the Constitution of the Second Republic in an effort to tackle past violations in a peaceful fashion.

In this report, the Truth and Dignity Commission presents the output of its proceedings, which feature a diagnosis of the shortcomings that had rigged the State's institutions over 58 and a half years. These failures were behind gross human rights violations, financial corruption and embezzlement of public funds. They also resulted in the swindling of the State's resources and wealth, plunging the country in indebtedness, depriving the utilities of health and education of essential resources and squandering development opportunities. Such indebtedness has had its toll on the economic, social and cultural rights of Tunisian citizens for a long time.

This report also displays recommendations designed to support efforts at dismantling the system of corruption and despotism, cutting ties with the system of permits granted in return for allegiances and introducing transparency in the management of the public sector in addition to establishing a fair taxation system. Such efforts are likely to ensure non-recurrence of the violations and protect the State's safety and integrity from the cancer of administrative and financial corruption which had pervaded its agencies, getting hold of key and sensitive positions within its structures, affecting its sovereign decision, diminishing its authority and compromising the transition to democracy.

This report is meant to have a profound impact on the success of the transitional stage provided that those entrusted with the task of running the State exhibit enough audacity, resolve and endeavor to accomplish the reforms that are likely to rescue the country from the grip of back-paddling forces, which are covertly and overtly striving to restore dictatorship in the country. Only with those daring leaders can the State ensure social, political and economic stability and rise to the great challenges that the country is facing and which keep the country from embarking on the process of sustainable development that preserves the dignity of all citizens, not just those benefiting from privileges at the detriment of the people.

We have expected the perpetrators of human rights violations, and those implicated in financial corruption and embezzlement of public funds to come forward to TDC with their confessions about what had happened, asking for forgiveness from their victims as per the legal provisions pertaining to Transitional Justice in vain.

In fact, we do not expect those accustomed to stealing public funds, uncontrolled and unpunished, to give up their privileges easily, nor do we expect them to face accountability that requires acknowledgement of the crimes and return of the stolen assets with bravery and integrity. The State remains, however, under the obligation of submitting evidence to show that it had taken appropriate measures designed to combat the corruption that had been rigging its agencies and did not merely stick to slogans.

Article 70 of the Transitional Justice Law provided the Government with a one-year deadline to devise an action plan for the implementation of the recommendations of the Truth and Dignity Commission, with the Legislative Council being tasked to oversee the program's level of enforcement.

The Commission, on its part, has honored the obligations incumbent upon it, succeeding in accomplishing the missions stipulated in Article 67 of the Transitional Justice Law that consist in:

- Publishing its findings after verification and investigation
- Determining responsibilities
- Unveiling the reasons behind the violations covered by the Transitional Justice Law and the recommendations ensuring their non-recurrence in the future
- Proposing the measures that need to be taken to prompt national reconciliation and protect the rights of individuals, in particular, the rights of women, children and vulnerable groups
- Proposing the recommendations pertaining to “political, administrative, economic, security, judicial, media, educational and cultural reforms along with other reforms designed to prevent return to tyranny, oppression, violation of human rights and mismanagement of public funds.”

Since its inception, TDC has managed to gain public trust with 63000 files being deposited by men and women from different families, people from all walks of life and minorities. By doing so, these people wanted nothing but the truth about the past violations through a transparent accountability process or through arbitration and reconciliation. TDC also managed to pick a process that discards vindictive options, paving the way for settlement by means of public hearing sessions that unveiled the gaps that divided the Tunisian society, dissevering Tunisians and causing injuries and pains that piled up over decades.

High governmental officials wanted to achieve reconciliation at the detriment of victims' rights. They encouraged perpetrators of gross violations to go unpunished, which prompted lobbies from corruption networks to advocate the culture of denial (denying the violations that had happened or playing down their importance) while trying to disrupt the process of Transitional Justice through their media supporters and partisans on the cultural arena. The latter staged smear campaigns, disseminating hate speech, spreading resentment and grudge against victims, demonizing and insulting them using inappropriate language. All of these attempts failed miserably.

TDC has sustained immense internal political pressure, embarking on real battles pertaining to the preservation of its independence, keeping equal distance from all stakeholders, be it State structures or political parties. The politicians were keen on controlling independent Constitutional Bodies, attempting to influence their decisions in order to impose their agendas and private interests. Throughout the entire period of its mission, TDC had to face many obstacles that kept it from discharging its duties in optimal fashion. Among these obstacles was the inadequate allocations since the State provided only 58 million dinars of the 75 million dinars initially requested from the State's budget, 48% of which went to the settlement of the dues paid to staff and experts whose number attained 676. In return, TDC provided the General Treasury with 745 million dinars through the Arbitration and Reconciliation mechanism. In its first chapter, the report refers to these hurdles in more details.

The Legislative Authority, on its part, refrained from establishing an institution specialized in national memorialization as per Article 68. By doing so, the Legislative Authority treated the victims of tyranny as documents that are stored in rows of the National Archive to be used for academic surveys. The issue of memorialization should have been dealt with in a more appropriate way that is consistent with Tunisia's achievement in the area of Transitional Justice. Memorialization should have been published on a larger scale in the public space in school manuals and innovative and creative field to ensure non-recurrence.

It is noteworthy to refer to the crucial role played by the judicial institution in advocating the process of Transitional Justice, rendering it a process that paves the way for a cohesive society based on the rule of law. To this effect, it is necessary to consecrate judicial independence, establish an independent constitutional court, and keep the law enforcement agency away from political feud.

The officials in charge of the State's legislative and administrative institutions are now provided with a historical opportunity to adjust their positions and embark on the endeavor to ensure the success of the post-Commission period. This is a precious opportunity to restore public trust in their State with all of its landmarks and historical events whose foundation has been laid.

Today, we solemnly announce to each and every one that the caravan of Transitional Justice has made it to destination point, and safely so. Consequently, national reconciliation is now within reach more than at any other time. Now that the truth is told, the road to impunity is barred, and dictatorship is done with irreversibly.

An apology to the victims of despotism for the crimes committed on behalf of the State, and that the President of the Republic is required by law to make, is the first qualitative step towards the achievement of national reconciliation, appeasing the spirits, healing the wounds and easing the pain. Such accomplishment will undoubtedly have a commendable effect, endowing credibility to the State's institutions, which, instead of protecting the rights and liberties, they violated them in the past. Such endeavor will be synonymous of restoration of the rule of law, which is going to pave the way for Tunisia to build an atmosphere of cohesive and sustainable social peace, ensuring its stability for the sake of fulfilling the required reforms enshrined in this report.

The contribution of the Tunisian experience in Transitional Justice consists in the organic connection established by the law between tyranny and corruption. This finding has been substantiated by TDC's investigation, and it clearly shows that despotism was serving corruption. Unless this system of corruption is dismantled, it will not be long before tyranny is reproduced and dictatorship restored.

TDC's message was not so much about addressing the legacy of the past but rather about construction and planning for the future during which our country shall be transitioning from the state of tyranny to a democratic system that contributes in the consecration of the human rights system with all of its legal, humanitarian and social dimensions.

**On behalf of TDC's Council
President
Sihem Bensedrine**

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Volume I

The Mandate

Volume I: The Mandate

The Tunisian approach of Transitional Justice _____

In 2011, Tunisia witnessed a major shift in the course of its contemporary history with the advent of the Revolution of Liberty and Dignity, cutting ties with the despotic regime that had ruled the country for more than twenty-two years. Under this dictatorship, fundamental liberties had been stifled, the State had been dismantled and corruption had spread out, with fear setting through inhumane practices such as arbitrary detention, torture and enforced disappearance.

The Tunisian people made their choice, deciding to tackle past human rights violations in a peaceful fashion. Indeed, by means of Organic Law 2013-53, the lawmaker entrusted the Truth and Dignity Commission with the task of implementing the process of Transitional Justice.

This chosen course consists of a set of complementary mechanisms and tools designed to grasp and address past human rights violations through truth seeking and unveiling of these violations, holding the perpetrators to account, and by providing reparation and rehabilitation for the victims.

The Tunisian experience of Transitional Justice is characterized by the unprecedented exhaustiveness that distinguishes it from other comparative experiences. The Tunisian model includes:

A lengthy period of time as the proceedings of TDC extend from July 1, 1955 to December 24, 2013.

The diversity of violations as the focus was not solely confined to gross violations such as willful killing, rape, torture, enforced disappearance or summary execution without any guarantee of fair trial. The scope of action also addressed systematic violations such as electoral rigging and even police procedures (administrative and security control) designed by the authorities as a way of punishing part of the population.

Probing into violations pertaining to financial corruption and embezzlement of public funds, which ultimately results in the dismantlement of the system of corruption as gross human rights violations remain inalienably connected to financial corruption and embezzlement of public funds.

Providing leeway for arbitration and reconciliation in the areas of human rights violations and financial corruption and embezzlement of public funds: This tool paved the way for those having perpetrated such violation to appear before TDC and face their victim before confessing to the wrongdoing perpetrated and asking forgiveness and pardon. Unfortunately,

this important mechanism has not been harnessed by most of the alleged perpetrators, intentionally or unintentionally. Strangely, the State (represented by the General Commissioner of State Litigation), the prime victim of financial corruption and embezzlement of public funds, abstained from making recourse to this mechanism, thus depriving those requesting arbitration and reconciliation from seizing this precious opportunity and reaching settlement with it.

Granting due importance and consideration to liability and accountability before the courts, a clear acknowledgment of the pre-eminence of the law and a move designed to counter impunity and ensure non-recurrence.

Broadening the concept of “victim”: victims can be individuals, groups of individuals, a legal entity or a region.

This course of action is aimed at achieving national reconciliation, drafting and documenting collective memorialization, establishing guarantees of non-recurrence of violation and transition from the state of totalitarianism to a democratic system consecrating the human rights system.

The gravity of human rights violations is likely to affect national unity among the different people and between the people and the State.

Chapter One

Transitional Justice prior to the establishment of TDC_____

The process of Transitional Justice kick started in Tunisia immediately after the outbreak of the Revolution of Liberty and Dignity, ushering in the establishment of the Truth and Dignity Commission. This process has been through historic landmarks that play out as follows:

I. Promulgation of a set of decrees:

The schemes of reparation and compensations have been devised by virtue of a series of decrees as follows:

- Decree number 1 of the year 2011, dated on 19 February 2011 on General Amnesty,
- Decree number 40 of the year 2011, dated on 19 May 2011 on the reparation of the prejudice resulting from the turmoil and popular commotion that the country had witnessed,
- Decree number 97 of the year 2011 pertaining to the redress for the martyrs and wounded of the 17th of December 2010, 14th of January 2011 Revolution of Liberty and Dignity, subsequently amended to cover the victims of the Mining Basin. These decrees provide for pecuniary compensation for the benefit of the victims, along with free medical treatment and transportation.

II. The establishment of two fact-finding committees

Two fact-finding committees were established after January 14 designed to go to the bottom of the violations and abuses perpetrated during the 2011 Revolution and to unveil the system of corruption under the rule of Zine El Abidine Ben Ali.

1. The National Fact-Finding Committee into Corruption and Bribery Files

The National Fact-Finding Committee into Corruption and Bribery Files was set up in February 2011, tasked to tackle intake of complaints and probe into cases of corruption that had occurred since 1987. The National Fact-Finding Committee into Corruption and Bribery Files has referred a number of files to justice while setting out future guidelines to counter corruption.

The Committee presided by Abdelfattah Amor submitted its report¹ on November 11, 2011 which included an overview regarding the methods of illicit enrichment and the main areas where corruption and bribery pervaded tremendously. Such endeavor was based on documents that substantiated the implication of a number of ministers under the former regime, politicians, journalists, businesspersons and some foreigners who have benefited from proximity ties with the former President for the sake of achieving illicit gains and profits. The National Fact-Finding Committee into Corruption and Bribery Files had also drawn up an anti-corruption draft decree. It was issued by virtue of Framework Decree number 120 of the year 2011, dated on November 14, 2011 governing anti-corrupting, and designed to combat corruption in both public and private sectors by promoting prevention efforts thereof, facilitating its detection, ensuring prosecution and deterrence of its perpetrators, supporting international community's efforts to mitigate its impact and endeavoring to recover its proceeds.

Once the National Fact-Finding Committee into Corruption and Bribery Files concluded its proceedings in November 2011, the National Anti-Corruption Committee² was established by virtue of Framework Decree number 120 of the year 2011, but it stopped short of being enforced until March 29, 2012, the date on which Mr. Samir Ennabi was nominated President thereof. In January 2016, Dean Chawki Tibi was appointed President. The Truth and Dignity Commission then managed to communicate with it, gaining access to its archives while working proactively with the National Anti-Corruption Committee, referring the files in keeping with the provisions of the law.

2. The National Fact-finding Committee probing into Abuses and Violations Reported during the Period Extending from 17 December 2010 until Expiry of its Mandate

The National Fact-finding Committee probing into Abuses and Violations reported during the period extending from 17 December 2010 until Expiry of its mandate was set up by virtue of Decree number 8 of the year 2011, dated on 18 February 2011. Said Decree provides for the Fact-finding Committee to probe into violations and abuses that occurred since December 17, 2010 until submission of its report to the President of the Republic in April 2013.

This Committee concluded its liquidation proceedings in December 2014, documenting the violations that occurred, drawing up the list of the victims having sustained violations during the period extending from 17 December 2010 and 23 October 2011. The report held law enforcement officers responsible for 60% of the killing and 99% of the wounding under the Ben Ali regime, recommending the establishment of "the Truth Committee" tasked to cover a longer period of past violations.

1 http://www.inlucc.tn/fileadmin/user1/doc/0_rapport_cicm.pdf

2 <http://www.inlucc.tn>

3. Establishment of the Ministry of Human Rights and Transitional Justice

Tunisia is characterized by the establishment of a ministry tasked with Transitional Justice, with human rights activist Samir Dilou appointed as its Minister. The latter's main accomplishment consisted in the preparation of an organic law for Transitional Justice that he personally attended to in terms of its drafting in association with the civil society following a national dialogue that had extended over more than one year. The Ministry was established by virtue of Decree number 22 of the year 2012, dated on 19 January 2012, governing the establishment and designation of its areas of expertise.

The Ministry of Human rights and Transitional Justice was entrusted with the task of fleshing out a strategic perspective designed to address human rights violations that had occurred in the past.

To that effect, the Ministry set up a technical committee composed of representatives from human rights civil society activists. The Committee's proceedings culminated in the draft Transitional justice Bill. In order to pursue the bill, the Ministry, in association with the Committee, staged a national dialogue over a period of six months, with regional committees being established nationwide under the supervision of the Ministry and tasked to gather ideas and perspectives involving a large number of victim associations and civil society components.

Moreover, the Ministry of Human Rights and Transitional Justice attended to enforcing procedures regarding provisional compensations as per Decree number 1 of the year 2011 on General Amnesty and Decree number 97 of the year 2011, dated on 24 October 2011 on compensation for the benefit of 17 December 2010-14 January 2011 Liberty and Dignity Revolution's Martyrs and Wounded.

The Transitional Justice Draft Bill was submitted to the National Constituent Assembly by the Minister of Human rights and Transitional Justice on 22 January 2013. The Bill had been debated over for a period of six months within the Parliamentary Committees, resulting in a Joint Report³ drafted by the General Legislation Committee and the Committee for Rights and Liberties. It meticulously depicted deliberations of 23 meetings during which discussions and hearings sessions were held among representatives of the Ministry of Human rights and Transitional Justice and international experts. The Bill was **voted in unanimously** during the General Assembly held on 15 December 2013.

After the dissolution of the Ministry of Human Rights and Transitional Justice in January 2015, the Truth and Dignity Commission failed to find archives pertaining to victims' files deposited at the Ministry despite numerous requests lodged at the Prime Ministry, which hindered TDC efforts to pursue its duty on the request of file depositors.

³ https://majles.marsad.tn/uploads/documents/rap_comm_12_27_2013.pdf

4. Transitional Justice Organic Law

Organic Law N°2013-53⁴, dated on 24 December 2013 on the establishment and regulation of Transitional Justice defined Transitional Justice in its First Article as “a comprehensive process made up of the mechanisms and means adopted in order to understand and address past human rights violations. This process focuses on truth seeking, holding to account and prosecuting perpetrators, providing reparation, and rehabilitation for the victims so as to achieve national reconciliation and preserve national collective memory, documenting it and providing for assurances of non-recurrence of these violations, transitioning from the status of dictatorship to a democratic system that consecrates the system of human rights.”

In addition to dismantling past violations, their impact and redrafting of history, the process of Transitional Justice is entrusted with a proactive role through the establishment of guarantees that prevent recurrence of previous despotic practices.

The Draft Bill also strived to constitutionalize Transitional Justice and the law governing it in view of the derogations to the general law. It stipulates in Article 148 of the Constitution⁵ in its Ninth Paragraph that: “*the State shall undertake to enforce the system of Transitional Justice in all of its areas in keeping with the period of time defined in the relevant legislation. In this regard, advocating ex-post-facto, previous amnesty, double jeopardy or statutes of limitation shall be inadmissible.*”

⁴http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX_31624-3-hfvKJfozcG/RechercheTexte/SYNC_-2115158556

⁵http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX_9456-258-EKzUrZANVR/Principal/SYNC_1114294250

Chapter Two

Establishment of the Truth and Dignity Commission_____

The Truth and Dignity Commission has been established by virtue of Organic Law N° 2013-53, dated on 24 December 2013 pertaining to the establishment and regulation of Transitional Justice that defined its composition, members' obligations, duties, its powers and its operating modes and organization. TDC's operational term has been set at four years, starting from appointment of its members and subject to extension by a single year by virtue of a reasoned decision to be submitted by TDC to the assembly tasked with legislation. TDC actually handed down its reasoned decision to extend its proceedings whereby expiry date was extended to May 31, 2019.

TDC's mandate covers the period extending from July 1, 1955 to December 31, 2013.

TDC's members were elected during the General Assembly of the National Constituent Assembly on 19 May 2014 as they proceeded to take the oath before the President of the Republic on 6 June 2014. An official ceremony was then held for the establishment of TDC attended by the President of the Republic, Prime Minister and the Speaker of National Constituent Assembly on 9 June 2014.

All Commission's members then proceeded to the solemn declaration of their assets and holdings along with those of their spouses and children before the Chief Justice of the Court of Auditors before taking office within TDC in keeping with the provisions of Law number 17 of the year 1987, dated on 10 April 1987 governing sworn statement on the assets and property of government officials and some categories of civil servants as per Article 32 of the Transitional Justice Organic Law.

TDC held its first meeting on 17 June 2014 when TDC's President and Vice-President were elected.

1. The Commission's Council

The Commission's Council is composed of fifteen commissioners elected by the National Constituent Assembly among personalities renowned for their impartiality, integrity and competence during the General Assembly dated on 19 May 2014. On 30 May 2014, Decree number 1872 of the year 2014 governing appointment of the Commissioners of the Truth and Dignity Commission and summoning them to convene was issued.

The Commission's Council is the highest authority thereof, rendering its decisions by virtue of consensus, failure of which by absolute majority of attending commissioners (Article 60). The sessions of the Commission's Council shall not be lawful unless two thirds of commissioners attended (Article 59). It shall discharge its duties impartially and independently and "no one

shall be authorized to interfere with its proceedings or to influence its decisions.” (Article 38 of the Law).

Since the nomination of its commissioners until expiry of its mandate, the Commission’s composition has been strained by numerous changes, with four resignations, three cases of dismissal with no vacancy filled except on one occasion. The Commission’s Council, therefore, became composed of nine members while the vacancies went unfilled despite the repeated correspondence dispatched to the People’s Representatives’ Assembly.⁶

In view of the provisions of Article 37 of Transitional Justice Organic Law, which expressly provide for instances of membership loss, consisting of death, dismissal or resignation, there can be no other conclusion than to consider that the characterization of membership does not apply to the three mentioned cases. Ultimately, the notion of membership necessarily applies solely to attending commissioners.

And whereas jurisprudence established that legal quorum within institutions in council is reckoned on the basis of actual attending members, the Commission’s Council proceeded to the amendment of Article 9 of the Bylaws by virtue of a decision issued on 9 September 2016. The amended article stipulates that **“TDC’s Council shall convene on the request of TDC’s President or that of one third of its members and that the Council’s sessions shall not be lawful unless two thirds of actual serving members attended.”**

It is noteworthy that all the decisions of the Truth and Dignity Commission had been rendered under the councilor system whereby its Council had held 415 **general assemblies**, which represents four times as many as legally required. Indeed, the Law governing Transitional Justice provided that the Council shall hold its sessions twice a month whereas the Truth and Dignity Commission had held an average 8 general assemblies a month throughout its entire mandate.

2. The Commission’s Presidency

In the first meeting of the Council of the Truth and Dignity Commission, held on 17 June 2014, the Commission’s President and her two Deputies were elected. The President of the Truth and Dignity Commission is its legal representative, Council’s President, and Budget Ordering Officer.

It is noteworthy that the departments of the Prime Ministry abstained from publishing the appointment decision of the Commission’s President on the Official Gazette of the Republic of Tunisia. The Commission then made recourse to publishing the nomination decision in the Legal Announcement Section in the National Printing Office to be able to discharge its duties as Budget ordering Officer.

⁶ See part dedicated to obstacles

3. Establishment of the Executive Body

TDC's Executive Body is made up of central entities, regional offices and specialized committees. The Executive Officer is tasked to run the Executive Body under the authority of TDC's Council and the supervision of its President who attends to the due progress of TDC's administration in the administrative, financial and technical areas centrally and regionally. The Executive Officer is equally in charge of ensuring coordination among its structures, submitting periodic reports to TDC's President and to its Council about administrative, financial and technical management.

The central administrative entities of the Executive Body include eight departments:

1. The Department of Administrative and Financial Affairs
2. The Department of Information and Communication Technology
3. The Documentation and Archive Department
4. The Research and Survey Department
5. The Communication Department
6. The Department of Legal Affairs
7. The Department of Internal Auditing and Organization
8. The Department for Coordination with Regional Offices (9 regional offices: Sfax, Sousse, Gabes, Medenine, Gafsa, Kasserine, Sidi Bouzid, El Kef, Jendouba).

Chapter Three

The Commission's Structural Organization and Modus Operandi

Pursuant to the requirements of Article 56 of the Transitional Justice Organic Law, the Truth and Dignity Commission had, in the first six months of its mandate, carried out preliminary activities paving the way for the kick-start of its proceedings. During this period, it attended to:

- Drafting Bylaws that were published in the Official gazette of the Republic of Tunisia on 25 November 2014
- Setting up an Executive Department
- Devising a five-year strategic plan
- Devising an action plan for the entire period of its mandate with an action plan for no less than one year
- Setting out simplified procedural manuals for the progress of its proceedings in all areas of expertise, including technical and administrative ones
- Devising a comprehensive media plan, relying on the assistance of national media

I. Establishment of good governance mechanisms for the Commission's management

In its efforts to rationalize its expenditure and ensure good governance in its areas of management, the Truth and Dignity Commission resorted to a set of good governance mechanisms in order to contribute to the consecration of transparency and consolidation of accountability. Some of the mechanisms established are as follows:

1. Drawing up TDC's Bylaws

The Bylaws defined the rules for the progress of TDC's proceedings administratively, financially and technically, along with decision-making methodologies. The Bylaws⁷ was published in the Official Gazette on 22 November 2014 by virtue of Resolution number 1 issued by the Council of the Truth and dignity Commission

⁷ <http://www.ivd.tn/e-bibliotheque/textes-juridiques/http-ivdtnawcys-cluster023-hosting-ovh-net-wp-content-uploads-2018-01-الداخلي-النظام-2-pdf> (bylaw)

2. Setting out simplified procedural manuals for the progress of its technical proceedings

TDC adopted procedural manuals designed to manage its technical proceedings by drafting TDC's General Manual of Procedures⁸ (8), along with the Manuals of Procedure for the Fact-finding and Investigating Committee⁹, the Arbitration and Reconciliation Committee¹⁰, the Reparation and Rehabilitation Committee¹¹, and Women's Committee¹².

Furthermore, TDC's Council adopted the 2015-2018 Strategic Plan¹³, TDC's Media Plan¹⁴, the Statement Taking Manual of Procedure¹⁵ and the Manual of Procedure for Public hearing Sessions.

3. Establishment of an Internal Oversight System

Organic Law N° 2013-53, dated on 24 December 2013 pertaining to the establishment and regulation of Transitional Justice provided for TDC's accountancy and financial statements to be held in keeping with corporate accounting rules pursuant to Law number 112 of the year 1996, dated on 30 December 1996 governing corporate accounting system.

Consequently, the Truth and Dignity Commission's book-keeping and record of budget expenditure are not subject to the Code of Public Accounting. The same law also provided for TDC's procurement not to be subject to the procedural provisions governing public procurement. TDC's Council proceeds to drafting a manual of procedure especially designed for TDC's procurement that rests on the principles of competition, equality and transparency.

Since its inception, TDC strived to establish an **Internal Oversight System** designed for administrative, financial and accounting procedures ensuring the safety, soundness, transparency of financial statements, as well as its compliance with the laws in force. This internal oversight system has basically rested on:

- **The establishment of an Internal Auditing Administration** tasked with Organization and Drafting an Internal Auditing Charter¹⁶:

8 <http://www.ivd.tn/telechargements/الوحدة-الحقيقية-لجنة-العام-الاجراءات-دليل/> (Commission's General Manual of Procedures)

9 <http://www.ivd.tn/telechargements/الوتقصي-البحث-لجنة-اجراءات-دليل/> (Manual of Procedure for the Fact-finding and Investigation Committee)

10 <http://www.ivd.tn/telechargements/http-www-ivd-tn-wp-content-uploads-2017-12> (Manual of Procedure for the Arbitration and Reconciliation Committee)

11 <http://www.ivd.tn/telechargements/ال-وردة-الضرب-الجبر-لجنة-اجراءات-دليل/> (Manual of Procedure for the Reparation and Rehabilitation Committee)

12 <http://www.ivd.tn/telechargements/المرأة-لجنة-اجراءات-دليل/> (Manual of Procedure for Women's Committee)

13 <http://www.ivd.tn/telechargements/المخطط-الاستراتيجي-2015-2018/> (The 2015-2018 Strategic Plan)

14 <http://www.ivd.tn/telechargements/للجنة-الإعلامية-الخطة/> (The Commission's Media Plan)

15 <http://www.ivd.tn/telechargements/الإفادة-متملى-دليل/> (Statement Taking Manual of Procedure)

16 <http://www.ivd.tn/telechargements/الداخلي-التنقيح-ميثاق/>

In doing so, TDC was one-step ahead of the Organic Law for Constitutional Bodies that required the establishment of an internal auditing unit connected to the council of each committee subject to the Internal Auditing Charter for its proceedings in all areas of expertise.

- **Drafting manuals of procedures** in all areas of activities
- **Manual of Procedures for Recruitment:** For the record, the Transitional Justice Organic Law did not subject the Commission's recruitment procedures to the law governing public office, providing in its Article 36 that the Commission's staff shall be hired by means of contracting or secondment.
- **Manual of Procedures for Procurement:** The entirety of the Commission TDC's procurement is contracted and implemented in keeping with the principles of competition, equality and transparency. The Manual of Procedure determined procurement threshold at 50 thousand dinars whereas the Decree governing public procurement is set at the threshold of 300 thousand dinars. As for purchases outside the realm of procurement, it was set at 5 thousand dinars but rises to 100 thousand dinars when governed by procurement decree. For the record, all Commission's purchases exceeding the amount of five thousand dinars are subject to the prior approval of TDC's Council.
- **Other manuals of procedure:** Some of these manuals are the Disciplinary Manual of Procedures¹⁷, the Electoral System for Parity (Equi-representational) Advisory Councils, the Manual for Social Security Procedures, the Manual of Procedures Treasury Management, the Charter of Internal Auditing, the Charter for the use of Media Equipment¹⁸, the Manual of Procedures for Assignments to Duties and Mobility within the Country, the Memorandum Governing Assignments to Duties Abroad, the Manual of Procedures for Financial Allocation, the Inventory Manual of Procedures Monitoring Assets and the Manual of Procedures for Liquidation¹⁹.
- **holding periodic meetings:** It is a mechanism designed to exhibit the activities performed by the departments, monitoring all administrative operations, assessing the extent of their progress, thus evaluating the activities' progress and discussing the issues thereof in order to come up with the appropriate solutions to them.
- **Program-based budgeting:** The Objective-based Budgeting has been designed to make more transparent and effective use of human and financial resources according to programs and objectives under the framework of medium-term programming, after which outcome is evaluated based on objective indicators (performance indicators) to measure performance. This shall make it possible to determine responsibility and liability with regard to the use of resources and fulfillment of the pre-set goals.

17 <http://www.ivd.tn/telechargements/التأديب-إجراءات-دليل/>

18 <http://www.ivd.tn/telechargements/بالإع-المتعلقة-الموارد-استعمال-ميثاق/>

19 <http://www.ivd.tn/التصفية-إجراءات-حول-12-عدد-قرار/>

Although the area of implementation of objective-based budgeting does not cover independent public bodies, the Truth and Dignity Commission chose the program-based budgeting in parallel with budgeting based on the classical breakdown.

- The system for the management of fuel and car fleet:

The Truth and Dignity Commission set up a comprehensive system designed to manage car fleet by subscribing to “Agilis” card provided by AGIL Company as an alternative to the use of fuel vouchers for official vehicles.

“Agilis” is a pre-paid card whose financial worth is determined in advance and subject to reload for an unspecified fashion. This card is essentially designed to track the office vehicle fleet through the accurate determination of the quantity of fuel burnt and evaluation of the driver’s way of driving the vehicle.

“Agilis Card” made it possible to rationalize fuel consumption, effectively contributing in supplying cars at the regional offices unlike the past situation when the department was struggling to deliver fuel vouchers to regional offices. Now and through this system reloading is carried out automatically online.

4. Establishment of a complementary ICT system and a wholly-digitized administration

The Truth and Dignity Commission relies on a complementary ICT system aimed at consolidating transparency in technical works. It is designed to turn administrative work and that of Technical Committees to an activity based on ICT systems able to exchange information and take decisions in the shortest of times and at the lowest cost, rendering the Truth and Dignity Commission a digitized administration by the highest of standards. That is why the specialized administration made recourse to a number of technologies and techniques, the most important of which are as follows:

- The application for Electronic Management of Documents for victims’ files (GED).
- The Professional Mail Manager application, which establishes a participatory working environment, ensures speedy administrative operations, improving cost-effectiveness and the decision-making process.
- Developing the Registry Office Application that makes it possible to create the victim’s file by taking notes of all the essential information about the victim and all the documents deposited by the victim upon the first hearing with the victims with delivery of receipt vouchers in three copies.
- Developing the triage application TRI that makes it possible to sort files according to the type of violation, ruling out the files that do not fall within the scope of TDC’s expertise.
- Developing IFADA application that contains detailed questions on victims’ hearing session.

- Developing the application directly exhibiting the victims' audio-visual documents.
- Developing the application for the management of the appointments of individual hearings so as to ensure their due processing.
- Developing the application of legal assessment of files that has been designed on the request of the team of seconded judges. The application makes it possible to ensure due legal processing of incoming files.
- Developing the application for the management of internal archives.

On a different level, a number of applications ensuring effective and expeditious administrative work have been designed. These applications come as follows:

- The application of book-keeping management
- The application for disbursement management
- The application for the management of storage
- The application for the management of movables
- Employment application
- Application for the management of leaves and permits to leave
- Budget-monitoring application
- Attendance-monitoring application

TDC pursued its endeavor to develop its ICT system through the promotion and updating of the applications and software in use previously and through the adoption of new applications such as:

The application for the management of car fleet: This application is designed to provide the capacity to manage the fleet (insurance, road fees, registration card, spare parts, etc...), improve the management of cost and drivers' schedules in addition to controlling and supervising fuel consumption. Moreover, this application provides statistics that enable the supervisor to take the appropriate decisions in a timely fashion.

The application for the management of immediate care and urgent response: This application makes it possible to manage all kinds of urgent responses be it social, medical or administrative. It records information on urgent response since application for response is made until its implementation. This application also provides statistics that make it possible to present an inventory of all responses provided to victims.

The application for the management of rejected files: This application has been programmed in order to monitor rejected files, that is, registering the dispatching of an official rejection correspondence and the motions to challenge rejection submitted by the person concerned in an attempt to review the decision.

The application for the management of Social Fund Administration: This application makes it possible to manage all kinds of financial assistance provided for TDC's staff be it in the form of loans or grants.

The application for the management of external archive: This application makes it possible to manage all kinds of archives coming from outside TDC, fulfilling all tasks of digital archiving.

The application for the management of victims' records online: This application makes it possible to monitor progress of victims' file processing, their outcome through the introduction of the number of the National Identity Card or that of the file. This application has been mainly used by the registry office, the call center, specialized sections and regional offices.

Fact-finding application: This application is used by fact-finding team in their endeavor to establish the veracity or falsity of the alleged violations so as to grant the status of victim, or reject the file in keeping with the standards as per the Transitional Justice Law. The Fact-finding team may deny by dismissing the file for insufficiency of probative evidence or for withdrawal of petitioner.

Through this application, it is possible to integrate the files deposited at the Truth and Dignity Commission and which have been divided into 17 fact-finding topics according to surveying output. Moreover, the team proceeds to the study and analysis of the files and their content, their historical, social and legal contexts. In this regard, the investigator shall rely on the sealed supporting documents found in the application of electronic management of documents, in addition to the statements given by the file depositors at the confidential hearing downloaded in IFADA application.

Reparation Application: It is an application used by the reparation teams in order to calculate the percentage of material and moral prejudice in keeping with the Reparation Framework Agreement which is connected to another application.

5. ICT safety

In view of the extreme importance of the data reported and registered at the Truth and Dignity Commission and with due regard to their ensuing consequences and to the stakes associated with TDC's tasks, several ICT safety mechanisms have been set up. Their effectiveness was highlighted during the establishment of TDC's ICT architecture whereby the issue of ICT safety was highly emphasized at the various stages of TDC's establishment in general and the ICT system in particular. As regards both network safety and the safety of applications or data storage.

As regards servers, all precautions have been taken in order to secure smooth progress of activities in the event of any emergency. With regard to communication and telecommunication, this application has been made available to visitors with a view to

helping them communicate online in a way that is different from the one provided to TDC's staff.

As to the safety of the upgraded applications, the latter's specifications have been encrypted in addition to the adoption of a set of effective techniques such as securing data, immunizing data, managing encoding system and updating of web servers and applications. As regards data storage, the ICT administration provided for effective daily, monthly and yearly storage in addition to spare storage.

Furthermore, TDC carried out the task of external auditing on IFADA system in December 2015, and in December 2016 proceeded in association with international experts specialized in databases pertaining to human rights, Huridocs, **to double check the safety of the database over two stages, with experts reiterating the quality of IFADA database, its credibility and its accurate statistical exploitability.**

Moreover, TDC carried out an external auditing of its ICT system in May 2017, signing a contract with Reys Consultants that performed the task in accordance with international ISO 27001 standards. Subsequently, TDC's Council decided, based on an observation in the auditor's report pinpointing some shortcomings such as the absence of a data **externalized safeguard**, to conduct a bid for assistance from an external storage center. However, this campaign had not seen the light of day due to a hostile campaign staged against TDC by the CEO of the National Archive, Hedi Jellab²⁰, in association with the Tunis Transitional Justice Office. The latter considered that the data externalized safeguard was an attempt to hand over victims' personal data to foreign authorities whereas the specifications expressly require that the provider be located in Tunisia. This campaign scared bidders away as none of them accepted to bid although the bid was published twice.

6. TDC's budget

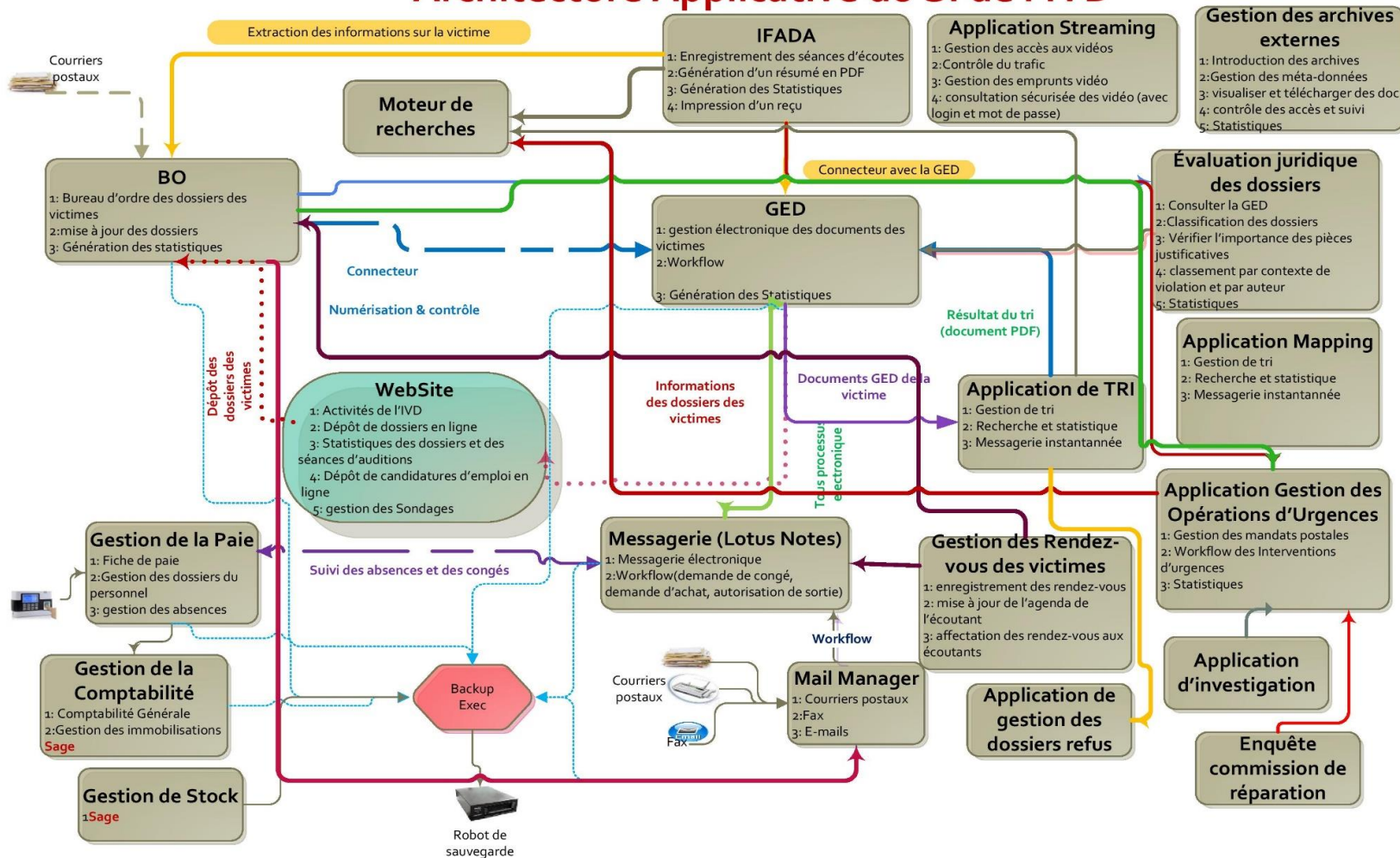
The funds allocated in the State's budget for the benefit of the Truth and Dignity Commission amounted to fifty-eight million and three hundred and twenty-two thousand dinars (58 322 000 dinars) for the entire period of TDC's mandate extending between June 2014 and May 2019. These funds have been used to cover TDC's expenditure, mainly dedicated to the payroll of 652 staff members, to social funds expenses, tax fees, holding of public hearing sessions in addition to securing health and social responses for the victims under the framework of urgent response and immediate care.

It is noteworthy that the Truth and Dignity Commission has not received any funds from the State's budget since May 2018 over the controversial debate staged on the extension of TDC's mandate during the period between June 1, 2018 and May 31, 2019.

The following table provides an overview of the overall funds allocated to TDC along with the expenses made up to December 31, 2018 (the other page)

²⁰ <https://www.huffpostmaghreb.com/2018/02/28/archives-instance-verite- n 19338920.html>

Architecture Appliquative du SI de l'IVD



7. Monitoring the Budget of TDC throughout its Five-year Mandate

DATA	TOTAL	Percentage of expenditure from allocated budget
Funds allocated to the Truth and Dignity Commission from June 17, 2014 until May 31, 2018+		
Title One Budget + Title Two Budget	54 822 000,000	
Budget for Immediate Care and Urgent Response	3 500 000,000	
Total Budget	58 322 000,000	
Expenditure carried out by the Truth and Dignity Commission from June 17, 2014 until December 31, 2018		
Taxes	6 275 128,154	11%
The National Security Fund + The National Fund for Pension and Welfare + The National Health Insurance Fund	6 027 737,153	10%
Aggregate expenses on tax and social funds	12 203 865, 307	21%
Expenses for net staff payroll	23 566 421, 046	
Expenses for net lawyers' fees	3 683 156, 088	
Expenses for net experts' fees	500 000,000	
Total payroll expenses	27 749 577, 134	48%
Public hearings expenses	1 700 000,000	3%
Expenses for Immediate Care and Urgent Response	3 300 000,000	6%
Rental costs (Headquarters, and related offices in Capital City Tunis, regional offices)	3 500 000,000	6%
Operating costs (electricity, water, telephone communication)	1 500 000,000	3%

Purchase of equipment and tools	5 391 608, 055	9%
Insurance costs and maintenance expenses	700 000,000	
Office equipment	500 000,000	
Office equipment	800 000,000	
Expenses for cleaning and securing premises	44 000,000	0,08%
Conference expenses	200 000,000	0.34%
Total expenses	57 688 050,496	
Outstanding budget for liquidation acts	633 949, 504	
Revenues of arbitration and reconciliation Decisions (32 million dinars of which transferred to the State Treasury)	745 000 000,000	

Chapter Four

Accomplished tasks

I. Intake of 62720 files and involvement of victims' associations in the registration process

During the period extending between December 15, 2014, the date on which file deposit was opened and June 15, 2016, registration closing date, the Truth and Dignity Commission reported having received 62 720 complaints filed by individuals and groups (associations, political parties, national organizations, trade unions and minorities). These files also included victim regions with TDC receiving more than 205 files along with files from the National Anti-Corruption Commission.

I. Awareness-raising campaigns

TDC launched awareness-raising campaigns nationwide prompting people to deposit their files before the legal deadlines. This move included the distribution of folders in the cities, villages and rural areas in addition to direct contact with citizens by assigning teams to this effect. In doing so, TDC obtained help from civil society organizations, especially victims' associations so as to reach out to inland regions.

Moreover, TDC concocted an awareness-raising spot²¹ that was broadcast on public and private radio stations (564 broadcasts) and on public and private television channels (400 broadcasts). TDC wishes to commend the positive role played by the media in supporting the process of Transitional Justice as the broadcasts on the various radio and television channels free of charge. TDC also signed contract with an advertising agency in order to stage a media campaign in the cities, consisting in exhibiting 81 posters scattered nationwide over an overall area exceeding 1500 square meters.

File Registration based on the quality of the depositor

Quality of file depositor	Number of files deposited
Victims	33139
Representative of victims or of a group of victims	28356
General Commissioner in charge of State Litigation	686
National Anti-Corruption Commission	299

²¹ <http://www.ivd.tn/communication/spots/>

Witnesses	231
Violation perpetrators	9
Total number of files	62720

2. Filing Methodology

Fully cognizant of the specificity of the process of file submission, TDC's Council had taken a series of decisions designed to simplify procedures pertaining to all registration steps mainly consisting in:

- **Filing directly at TDC:** It is possible to file directly at TDC through its registry office in TDC's headquarters or at its regional offices. The other option consists in depositing files by means of registered mail.
- **Online filing :** The online filing mechanism, launched in March 2016, has been designed for Tunisians living abroad. The files are deposited through a software application that enables file depositors to upload documents attached to the file. This application also enables online file depositors to set the appropriate timing to hold confidential hearing.
- **Filing via mobile units and offices:** The Truth and Dignity Commission's Bylaws provided for the establishment of a regional office in each of the governorates of the Republic. However, due to lack of funds, TDC was unable to set up its regional offices in all states. Upon entry into effect of public file submission, and in the absence of regional offices, TDC was ensuring reception of all arrivals nationwide at its central headquarters, putting immense pressure on the administration that in-took an average of 250 file depositors within the first fifteen days from the date on which file submission was opened.

TDC has attached great importance to the process of victims' reception by holding urgent training sessions for reception, registry office and call center staff. The reception process for file depositors at the Truth and Dignity Commission is regarded as a rehabilitation and a form of reconciliation with State institutions.

Accordingly, TDC adopted a number of measures in order to achieve its objectives.

3. Involving victims' representatives and associations to address inadequate resources

The magnitude of TDC's tasks was compounded by growing objection by a number of opponents to the process who came at TDC unreservedly.

The huge tasks incumbent upon TDC bumped into the issue of inadequate resources, well below its needs with only **57 million dinars** allocated over a period of five years, the bulk of which earmarked for payroll of its staff members whose number attained 676. The limited funds allocated to TDC did not help it kick start operations in earnest, especially with regard

to accepting complaints from the whole territory of the Republic and the staging of confidential hearings.

Faced with this financial situation, TDC was only able to open 9 Regional offices instead of 24 regional offices (as per its Bylaws). This also pushed TDC to cut down expenses as the costs of using mobile offices did not exceed 50 thousand dinars annually, while the cost of one regional office amounts to 400 thousand dinars annually.

In order to meet these challenges, ensure compliance with the principle of equality of all citizens, and not to deprive some of them of the right to submit their files, TDC resorted to the establishment of **mobile offices**. The latter came in trucks equipped as an office moving to cities not having a regional office to intake files in various towns, villages and rural areas, thus covering various regions of the country. The mobile offices were scattered around the regions devoid of regional offices.

Moreover, **mobile units were set up**, consisting of equipped vehicles that travelled to the dwellings of the vulnerable categories.

And to reach out to the victims scattered nationwide, TDC resorted to brokering **official partnership agreements with victims' representatives and associations**. This move was designed to intake the complaints of citizens residing in inland areas of the country, facilitate the duty of mobile units in the regions, advertise TDC's tasks, prompting victims to deposit their files.

The official partnership brokered by TDC with the victims and the components of civil society is one of the specificities that characterizes the Tunisian experience.

This mechanism has considerably reduced expenditure, with the overall value of these contracts amounting to **190 thousand dinars**. TDC reported having in-taken 10 000 files thanks to the involvement of victims' associations in the registration process. Moreover, the mechanism contributed to the rehabilitation of victims, their restitution, ensuring their reconciliation with the State in addition to controlling budget.

File registration

Registration Offices	Number of Files
Kasserine	3443
El Kef	944
Book Exhibition	107
Tunis	30572
Jendouba	1447
Siliana	71
Sousse	3436
Sidi Bouzid	1956
Sfax	4781

Gabses	2024
Gafsa	4690
Medenine	2339
Mobile Unit	5399
Online Registration	1511
Total number of files	62720

TDC has noted an increase in the pace of file submission during the last two weeks preceding the expiry of the legal deadlines. Indeed, the number of complaints reached about a quarter of the total files received by TDC since file submission started on 15 December 2014. And in order to address this situation, TDC has provided registry offices with additional human resources pulled from its various departments. TDC's Council subsequently paid a special grant to employees for overtime hours according to the working arrangements. The number of files filed on the last day, i.e. 15 June 2016, amounted to 9797 files.

In an effort to ensure the rights of file depositors and protect their files, TDC monitored the closure of the files by means of notary evaluation who served minutes for that purpose in all offices.

4. File Sorting

TDC adopted three stages in its triage process. Preliminary file sorting based on the attached documents that contain enough data to establish violations related to them. Non-disqualified applicants are invited to a hearing as they remain entitled to apply for urgent response. A second triage is carried out through confidential hearings, during which TDC has opportunity where it may deem the case inadmissible for lack of evidence substantiating the violation. At the final stage of the investigation, TDC proceeds to the rejection of files that do not contain sufficient evidence.

The Investigation and File Analysis Department proceeds to the examination of the incoming files for the purpose of analyzing their contents and explaining their historical, social and legal contexts. It then proceeds to check the veracity of the data contained therein after conducting the necessary investigations to take the appropriate decision in their regard.

The investigation and fact-finding process extends over to a series of surveys. TDC can reach different conclusions based on new data that may alter the classification of the file owner according to the progress of the investigation. The Unit of Urgent Response and immediate Care shall be notified about that change. As to the change of status from victim to that of a file requiring further investigation, it was designed to double check the status and was mainly justified by the Council's decision to reconsider certain files.

Before inviting file depositors to conduct confidential hearings, TDC has conducted a preliminary triage of incoming files. The sorting process is based on the following criteria:

Time criterion: The deposited file shall pertain to a violation that occurred between July 1, 1955 and December 31, 2013.

The perpetrator criterion: The alleged perpetrator shall consist of the State, or whoever acting on its behalf or under its protection, or organized groups.

The criterion of violation type: The violation shall be characterized to be serious or systematic when perpetrated by the State or whoever acts on its behalf, or under its protection. It is equally characterized to be serious and systematic when committed by organized groups.

Files bases on their admission upon initial sort	
Rejected	Admitted
4366	57593

The file-sorting process led to the rejection of **4366 files** for failure to fulfill the above criteria and to the admission of the rest of the files.

Inadmissible files shall be entered into the information system under the box of "**the initially-rejected**" files. The proposals regarding inadmissible files, together with the reasons for their rejection, shall be dispatched to TDC's Council for approval. TDC shall notify the persons concerned of the substance of the rejection decisions by means of secure and registered mail or any other means to ensure the confidentiality of the proceedings and capable of producing written record.

Rejection decisions may be appealed by means of "**review motion**" within fifteen days from the date of receipt of the personal notification of the file depositor.

This period shall be raised to thirty days in case the person concerned with the rejection decision happens to reside abroad. Upon failure to meet these deadlines, the file shall be considered to be definitively rejected. Appeals shall be examined by a committee with a composition other than the one having rendered the rejection decision.

5. File updating

File updating shall be conducted in continuous fashion within TDC from the date at which the file was submitted by its depositor until the last working day of TDC. TDC accepted any document submitted by the depositor at any stage of file processing in view of its incidence on the substantiation of the violations and prejudice and on the establishment of truth. The file shall be updated either at the request of the file depositors or by means of their notification by the competent departments of TDC in order to carry out the necessary procedures pertaining to the file.

In order to guarantee the rights of file depositors, TDC has taken several measures that allows due examination of the files. Pursuant to this move, it has been made possible to:

- Send correspondence to all concerned departments and institutions in order to enable TDC to gain access to archive and supporting documents that are likely to facilitate examination of the files submitted to TDC. Invite all file depositors to provide all supporting documents that are likely to help TDC examine files. Such notifications were made either by phone or by correspondence with the file depositors directly or by means of several awareness-raising campaigns through the media and through TDC's website and social networks.

II. Confidential Hearing Sessions: 49 654 victims have been auditioned and 80,000 gigabytes recorded

Most of them are individual hearings in addition to victims' collective sessions which were held at its central headquarters, regional offices and victims' homes. Confidential hearings were held through regional offices. In order to expedite the completion of confidential hearings, TDC supported regional offices with the provision of mobile offices.

Human and logistic resources have been reinforced, resulting in **81 audition offices and 190 statement takers**. The latter qualified for various specializations in law, psychology, sociology and social service. Such resources were dispatched throughout the audition offices located at the central headquarters and those located in the regional offices, in addition to the mobile offices, which contributed to accelerating the pace of confidential hearing sessions.

Audition offices have been set up for women and for the team in charge of women's auditions, specialized in law, psychology or sociology in view of the specificity of women's cases.

1. Statement Taking Procedures

TDC's Council decided that the audition team should take the oath to confirm their commitment to the confidentiality requirements regarding victims' privacy.

Staff tasked to take statements were sworn in before the Chief Justice of the Tunis Appeal Court prior to taking office²².

The staff of the registry office, triage and analysis, archives and ICT, along with rapporteurs of all specialized committees within TDC were sworn in to ensure compliance with the obligation of professional secrecy.

²² The oath transcript pursuant to Chapter One of Resolution number 2 issued by the Truth and Dignity Commission and dated on 29 May 2015, reads as follows: I swear by the Almighty God to discharge my duties with due care and diligence, integrity and honor, without discrimination on the basis of gender, color, language, religion, opinion, origin or region. I shall hereby abide by professional confidentiality with due regard to victims' dignity and to the goals and objectives for which the Commission has been established.

TDC drafted a **Manual of Procedures designed for statement takers**²³ which includes the objectives of the hearing and the Code of Conduct of statement takers to ensure compliance with professional standards and impartiality. For the record, a single hearing session lasts several hours, and sometimes several days, resulting in the satisfaction of the statement givers.

The Confidential Hearing Department shall invite depositors of accepted files to hearing sessions to give their statements at a pre-set date to be determined in agreement with file depositors. The hearing schedule is made over the telephone, by e-mail and any other means of communication, provided that the concerned persons receive a written summon whose receipt is signed on audition day.

The Audition Team shall ask statement givers to submit a written authorization for a recorded session. The Audition Team shall fill out the statement-taking form in accordance with the template approved by TDC's Council. This form shall include the account of the statement givers referring to facts, testimonies and demands that they sign along with the statement takers. The statement givers shall also receive a receipt regarding the statements given bearing their signature, TDC's seal and the signature of the audition team.

The Confidential Hearing Department shall match the contents of the files submitted, along with the supporting documents referred to in the statements before dispatching them to the Digitization Department. The latter shall enclose them in the basic digitized files then send back to the Confidential Hearing Department that proceeds to double check the file content before dispatching them to the Archive Department to be added to the basic file.

Should statement givers express their need for immediate care and urgent response, and in case such need has been sensed by one of the two statement takers, the latter shall immediately proceed to the notification of the Reparation and Rehabilitation Committee. In case that request has been substantiated, the statement giver shall be immediately dispatched to TDC's Health Unit for immediate response.

The Confidential Hearing Department shall forward a detailed list of the completed files to the Research and Investigation Committee which forwards it to the Investigations and Analysis Department.

2. A Call Center for Communication with victims

The Truth and Dignity Commission Call Center was established in 2014, which coincided with the inauguration of TDC's official headquarters on 10 December 2014 and opened the door for the intake of complaints and their registration. This Call Center, starting operations on December 15, 2014, was designed to receive all calls from those interested in the work of TDC. The Call Center may be reached through the toll-free hot line 80106050 or by dialing the number 70020464.

²³<http://www.ivd.tn/telechargements/الإفادة-متلقى-دليل/>

The Call Center is designed to receive incoming calls to the Truth and Dignity Commission and handle all callers' queries according to the topics raised. It can be used to enable file depositors to follow up on the progress of their cases or to intake calls from citizens inquiring how to set up and deposit a file at the central headquarters or at one of the regional offices.

Furthermore, the Call Center may be used to schedule hearing and statement-taking sessions from file depositors in coordination with the Department of Research and Studies.

The Call Center is tasked to liaise with mobile teams and regional offices at most stages of file-taking or mobile hearings.

A Toll-free line has also been designed for women who prefer to communicate with a female call recipient at the Call Center.

3. Hearings via mobile offices

Hearing sessions were not limited to the established offices of TDC and its headquarters, as they reached out to file depositors who are unable to move to the offices, either because of illness or old age or because their location is far from TDC or due to their poor economic and social conditions.

Visits to the victims' homes were scheduled after breaking down files into delegations and governorates. These sessions were essential on the psychological level, a kind of rehabilitation for file depositors, especially in inland governorates that have sustained marginalization and systematic exclusion.

The same procedure has been adopted for the recording of the statements at the closed offices, and given by those having sustained violations via a laptop to which statements and audio-visual recordings have been entered with the authorization of the aggrieved persons.

Mobile hearings were of paramount importance as they brought audition teams closer to victims, with the humanitarian aspect prevailing over the functional dimension.

Office-based mobile hearing sessions

Hearing Offices	Number of Files
Central hearing offices in Tunis City	2951
The Sfax regional office	438
The Kasserine regional office	370
The Gabes regional office	349
El Kef regional office	19
The Sidi Bouzid regional office	138
The Sousse regional office	985

The Gafsa regional office	307
The Jendouba regional office	179
The Medenine regional office	774
Total number	6510

4. Online hearings

In order to hear the testimonies of file depositors residing abroad, unable to make it in person in Tunisia, the Truth and Dignity Commission staged remote hearings, facilitating the process to them and preserving their rights. All hearings have been documented by audio-visual recording with the victim's permission.

5. Establishment of Statistical Unit

The Statistical Unit was established within the Truth and Dignity Commission in order to achieve TDC's strategic objective, i.e., submitting full and accurate information, results and output of the proceedings and surveys that TDC has strived to accomplish. This was made possible through the establishment of a comprehensive database of statistical quality in compliance with best statistical standards and methodologies prone to produce and publish official statistics. The statistical team consists of 4 technicians and 1 engineer specialized in statistics under the supervision of a university professor specialized in statistics as well. This composition is designed to ensure that statement content is consistent with the requirements of statistical use.

The configuration of the **IFADA** database is designed to allow extraction of data and receipt of quantitative assessment of violations, their victims, and their perpetrators, including:

Violations, history and region-based distribution.

Age and gender-based distribution of victims of different violations by year and place.

Distribution of violations based on perpetrators or liable institutions

Geographical distribution of victims.

Moreover, TDC concluded an agreement on August 1, 2018 with Research Unit, "Heritage, Transfers, Mobility UR17ES03), affiliated to Tunisia's Faculty of Humanities and Social Sciences in order to use the database to carry out academic research and conduct studies in the field of Transitional Justice.

6. Statement taking : Developing a database designed for victims' audition

Since the start of file registration, TDC has provided a database designed for statement, an entry gate to identify the victim and static information in the period during which the violation occurred, as per articles 39 and 56 of the Organic Law on Transitional Justice. The statement form has been designed to be filled out during audition. All data entered in a certain way is categorized in the database for subsequent use by TDC.

IFADA (statement taking software) has been designed to accept all kinds of statements given by victims and witnesses regarding all types of gross and systematic violations of human rights, during the period between July 1955 and December 31, 2013. IFADA has, therefore, become the main database in which information, data, and personal and confidential data pertaining to the victims are collected as a main reference for the inquiry and investigation team. IFADA comprises 32 categories of violations as follows:

Gross or systematic violations of political and civil rights

1. Willful killing
2. Executions without fair trial guarantees
3. Rape and forms of sexual violence
4. Torture
5. Enforced disappearance
6. Enforced hiding for fear of prosecution and persecution
7. Enforced migration for political reasons
8. Arbitrary arrest
9. Violation of the right to litigation and fair trial
10. Cruel, inhuman and degrading treatment in prison
11. Administrative and security control
12. House arrest and violation of freedom of movement within the country
13. Violation of freedom of movement abroad and the right to a passport
14. Enforced divorce
15. Violation of freedom of expression, information and publishing
16. Violation of the right to freedom of peaceful assembly
17. Violation of the right to form associations, parties and trade unions
18. Violation of the right to practice one's religion and worship and the right to freedom of dress and appearance

19. Enforced enrolment in the army
20. Non-acknowledgement of the status of "Colonizers' combatant"
21. Aggression or injury during protests and demonstrations or on their occasion

Serious or systematic violations of economic, social and cultural rights

22. Violation of the right to housing and home privacy
23. Deprivation of livelihood and forms of abuse of the right to work
24. Violation of the right to health
25. Violation of the right to education
26. Violation of academic freedom
27. Violation of the right to culture
28. Violation of the right to property

Other violations under Transitional Justice Law

29. Electoral fraud
30. Financial corruption and embezzlement of public funds
31. Systematic marginalization and exclusion of specific regions or groups
32. Other violations

TDC provided for the possibility to add any kind of abuses not mentioned above that may have been endured by victims (Like the violations sustained by 306 freedom fighters, opposed to the Bourguibian faction in 1962, and who sustained enforced displacement in **Ennar village** in the governorate of Sidi Bouzid and in their assembly in a camp under military guard).

Then, Fact-finding and investigating Committee proceeded with its probe into the facts and documents, seeking to compile necessary evidence entrusted to TDC through correspondence with the departments concerned with the violation.

Chapter Five

Probing and investigating files _____

The Truth and Dignity Commission has been entrusted with the task of truth seeking by probing, analyzing, fact-finding and investigating the violations committed. In doing so, TDC sought to identify the causes and context of the violations. It surveyed the most important events in the country during which violations were committed.

I. Violations mapping

In the course of its duty, collecting data and monitoring the violations stipulated in Article 39, TDC conducted a mapping of the violations that occurred during the period covered by its mandate from 1955 to 2013. It consists of a detailed inventory of the events that have occurred, leaving behind victims. The inventory was chronologically arranged by historical epochs, identifying potential sources of information, testimonies or documents that can provide the evidence required to establish the truth. Then, it proceeds to identify the chronology in a narrative form that identifies violations for each research column.

This mapping allows the development of a search strategy and survey plan for truth-seeking work. It also makes it possible to provide the Investigating Unit with useful data and elements on the contexts surrounding the violations to consolidate the files to be referred to the Specialized Criminal Chambers. This process culminated in the drawing up of a preliminary list of **18 events**:

1. Abuses against old regimes during political transformations: The 1957 Beylical Rule, the 1987 Habib Bourguiba Rule, the 2011 Ben Ali Rule.
2. Violations pertaining to the Yusfi-Bourguibian Clash (1955-1963)
3. The 1961 Bizerte Battle, Hammam-Chott, the 1980 Gafsa Group and 1992 Barrakit Essahel events
4. Coup Attempts (1962 and 1987)
5. Prosecutions against Islamists.
6. Prosecutions against left-leaning activists
7. Prosecutions against Pan-arab nationalists
8. Prosecutions against trade unionists (January 1978 ...).

9. Prosecutions against student groups and organizations (1955-2010)
10. 1984 Bread Riots
11. Violations related to the fight against terrorism 2003.
12. 2008 Mining Basin Riots.
13. Circular 108 victims.
14. The (December 17, 2010 - January 14, 2011) Revolution Events
15. Post-Revolution events until 31 December 2013.
16. Electoral fraud
17. Abuses targeting human rights activists.
18. Financial corruption

General Statistics regarding Violations

Violation	Number of violations
Violations pertaining to civil and political rights	122760
Violations pertaining to economic and social rights	47772
Other violations as per Transitional Justice Law	7193
Total number	177725

Violations pertaining to Civil and Political Rights

Violations	Number of violations
Willful killing	485
Execution without guarantees of fair trial	46
Enforced disappearance	49
Injury sustained during protests or demonstrations or on their occasion	4129
Rape	795
Forms of sexual violence	3274
Torture	6398
Cruel or inhumane or degrading treatment	15713

House arrest and violation of the freedom of movement within the country	393
Enforced hiding for fear of prosecution and persecution	2352
Arbitrary arrest	23772
Enforced enrollment in the army	330
Enforced divorce	277
Enforced migration for political reasons	1239
Administrative and police control	15754
Violation of the right to litigation and fair trial	15953
Violation of the right to form associations, political parties or trade unions	1689
Violation of the right to peaceful assembly	3257
Violation of the right to freedom of dress and appearance	4109
Violation of the right to practice one's religion and worship	1436
Violation of freedom of expression, information and publishing	155
Violation of the freedom of movement abroad and the right to passport	7735

Violations pertaining to economic, social and cultural rights

Violation	Number of Violations
Violation of the right to education	4125
Violation of the right to culture	107
Violation of the right to health	1559
violation of academic freedom	330
Deprivation of livelihood and forms of violation of the right to work	20475
Violation of academic freedom	330
Violation of the right to property	3100
Violation of the right to housing and to home privacy	18076

Other violations specified at the core of Transitional Justice

Violation	Number of Violations
General elections fraud	919
Violations pertaining to financial corruption and embezzlement of public funds	4075
Systematic Marginalization and / or Exclusion of regions or groups	891
Other violations	1308

II. File investigations

The Fact-finding and Investigation Committee shall be tasked to:

- Search, investigate and probe into files, petitions, complaints and testimonies.
- Conduct all inquiries and investigations into serious and / or systematic human rights violations, whether perpetrated by State agencies or individuals acting on its behalf or under its protection or by organized groups.
- Conduct all inquiries and investigations on the means and procedures that led to the system of corruption and tyranny by identifying and listing down violations, determining the fate and whereabouts of the victims and identifying the perpetrators of death, loss and enforced disappearance

Analyzing and investigating the file entails one of the following decisions:

- Admit the petition and propose a decision thereof
- Admit the petition, draw up its outputs and refer the file to the relevant committees within TDC if necessary.
- Admit the petition, proposing its referral to the Investigation Unit for the files that are likely to fall under the jurisdiction of the Specialized Criminal Chambers.
- Reasoned dismissal of the petition based on the legal terms specified in the manual herein
- Fact-finding and investigation work shall be concluded by a disposition decision rendered by the Fact-finding and Investigating Committee and referred to TDC's Council for final decision.

Chapter Six

Reparation and Urgent health care for Victims_____

I. Processing 13586 applications for immediate response

According to the Transitional Justice Law, the State shall undertake to provide immediate care and temporary compensation to victims in need, especially the elderly, women, children, persons with special needs, the sick, and vulnerable groups not withstanding reparation decisions or rulings.

To this effect, the Immediate Care and Temporary Compensation Unit has been set up pursuant to the decision of TDC's Council issued on 27 May 2016 in order to deal with the urgent applications submitted by those whose victim status has been established.

The Unit is specialized in:

- Providing immediate care to victims by managing their physical and psychological health condition along with treatment, ensuring their treatment expenses are taken care of, if necessary, and facilitating their access to various hospital services.
- Providing temporary and urgent financial assistance to victims, if necessary, after studying their social situation, ensuring that they meet the necessary conditions.
- Pursuant to the Transitional Justice Law, the Unit is also specialized in the management of the elderly, women, children, the disabled, people with special needs, patients and vulnerable groups, providing them with health, social and psychological care.
- Liaising with the Ministry of Social Affairs to enable victims, not entitled to social coverage, to receive free treatment cards and benefit from the social services provided by the Ministry.
- In order to meet the expenses pertaining to immediate care and urgent response, the Truth and Dignity Commission allocated the amount of 3.5 million dinars from the State's 2015-2016 budget, earmarked to immediate care and urgent compensation for victims.
- The claims whose applicants fulfilled victim status are examined according to the type of demands made.

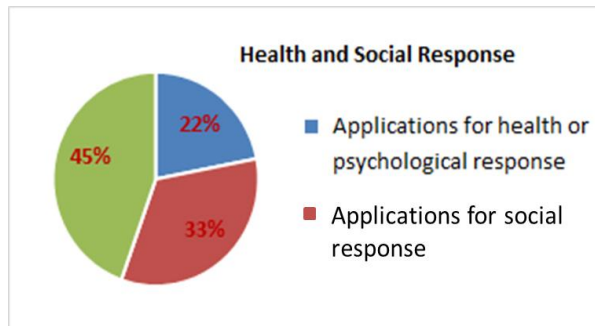
1. Health and psychological demands

Victims' health and psychological demands are submitted to the doctors and psychologists working in the Immediate Care and Urgent Response Unit to express their opinion and ascertain the urgency of such cases. Prior to that, cases are examined and victims are contacted by the specialists in charge while all medical supporting documents are compiled. The decision is then taken to dispatch the applicant to the appropriate clinics or hospital centers.

2. Social demands

The type of response to social situations is determined according to the data obtained by the Unit from field visits conducted by the relevant teams or collected from direct interviews and supporting documents handed over.

The Truth and Dignity Commission had received 13586 applications for response under the framework of Immediate Care and Urgent Response broken down as follows:



During the entire operational period of the Immediate Care and Urgent Response Unit, TDC had issued 5537 response decisions for the benefit of the victims worth a total amount of 3.3 million dinars. TDC has paid special attention to victims with urgent health and social needs, taking into account the specificities of the groups as provided for in chapter 12 of the Organic Law on Transitional Justice and in accordance with TDC's manual of procedures. (Namely the elderly, women, children, the disabled, persons with special needs and the sick, as well as vulnerable groups).

II. Examination of applications for urgent response

In order to assess the health and social condition of the victims and their families, TDC examined the applications submitted by those seeking urgent response from Immediate Care

and Temporary Compensation Unit which amounted to 5744, 79.71% (or 4579) of which are victims.²⁴

With regard to victims, the majority are between the ages of 50 and 59 (37.43%), both women and men. As for the academic level, the percentage of those who have a high school level tops the list with (45.71%). As to professional status, it ranged between those currently employed (45.80%) and the unemployed (31.34%).

1. On the physical level

A study of the health status of the victims and their families revealed that 75.47% (4335) of them are suffering from diseases and health problems (75.6% victims, 14.02% victims' spouses, 7.5% victims' children and 2.7% one of the victims' parents).

With regard to the 3279 victims who have health problems, the most important diseases are classified as follows:

First: Diseases of the skeletal system affecting 1172 victims (35.71% of all victims found to suffer from diseases. Arthritis accounts for 40.73% (38.90% males and 48.69% females) of the total diseases of the skeletal system, followed by spinal dysfunction by 20.15% (20.57% males and 18.35% females).

Second: Diseases of the circulatory system found in 914 victims (28.67%), the most important of which are high blood pressure by 59.61% (58% males and 65.15% females).

Third: Gland diseases in 770 victims (23.46%). Diabetes accounted for (77.19%), the highest percentage (80% males and 67.18% females).

The percentage of victims sustaining eye diseases was 17.64% (579). It was established that poor eyesight ranked first in the rates of eye diseases by 73.77% (73.80% males and 73.63% females). Hernia stands among the most important diseases affecting the digestive system by 30.56% (32.13% males and 22.22% females), followed by gastric ulcers by 29.80% (30.03% males and 28.57% females).

As for the injuries reported by the victims to be consecutive to the violations, it was found that 311 victims reported physical damage, accounting for 6.79% of the total victims who have diseases. Extremities were the hardest-hit among most physical organs with 28.61% of the total organs affected (28.70% males and 27.59% females) followed by eyes with 16.58% (16.81% males and 13.79% females).

For serious diseases, 108 victims were found to be suffering from tumors (3.29%). Tumor of the digestive system ranked first with 32.41% (44.29% males and 10.53% females).

²⁴ See surveys chapter

As for victims' spouses who have health problems, totaling 664, it was found that the most common diseases are related to the circulatory system, affecting 34.10% of them, the most important of which are high blood pressure by 69.92% (61.54% males and 70.40% females).

A study of the health status of the victims' children who have health problems, totalling 376, showed that the most widespread diseases are eye diseases, found in 19.89% of them. Poor eyesight is the most important eye diseases by 89.23% (96.77% males and 82.53% females).

A study of the health status of the victims' parents having health issues, a total of 125, revealed that the most common diseases are circulatory system diseases (52.10%) and endocrine diseases (34.45%). High blood pressure stands among the most important diseases affecting the circulatory system by 68.42% (50% males and 73.33% females). Diabetes is the most important gland disease by 84.44% (100% males and 81.08% females).

2. At the psychological level

This study found that 10.14% (583) of the victims and their families suffer from mental disorders.

With regard to the 514 victims, it was found that most of the mental disorders they suffer from are classified as follows:

Depression was at the forefront of the mental disorders suffered by victims by 43.56% (41.09% males and 51.54% females). Depression was manifested in various symptoms: loss of desire to exercise normal daily activities, sleep disturbances, mood disorders, anxiety and fatigue, frailness or weakness, loss of self-confidence, a feeling of excessive guilt, suicidal thoughts or attempts to commit suicide, loss of sexual urge, propensity to anger and mood changes, propensity to boredom and irritability during discussions, and prevalent nervousness.

Anxiety disorders follow with a percentage of 21.78% (20.67% males and 25.38% females). The manifested symptoms varied from stress, distraction, difficulty in concentrating, troubled relationships with others, disturbances in sleep, fatigue and exhaustion, weakness and laziness, to fear controlling their lives.

Post-Traumatic Stress Disorder comes in third place with 12.34% (13.54% males and 8.46% females). Its symptoms are sleep disorders (especially nightmares), acute anxiety, flashback into traumatic events, inclination to avoid thinking or talking about the traumatic events suffered. Victims avoid places, activities or people who remind them of the traumatic accidents, memory disturbances, tantrums, breakdowns and crying, fear and panic, and excessive guilt.

Additionally, these victims showed other psychiatric disorders to a lesser extent and isolated episodes such as eating, sleep and sexual disorders.

As for the spouses of the victims with mental disorders, totaling 31, depression ranked first by 73.68% (83.33% males and 71.88% females) out of the overall number of the mentally-

disturbed victims. Likewise, for children, totaling 37, with depression accounting for 52.63% of the cases (57.14% males and 47.06% females).

3. The social situation

The study also established that 28.17% (27.35% males and 32.47% females) of the victims who applied for urgent response did not have any health coverage and that 36.43% (31.85% males and 60.44% females) did not belong to any social security scheme. The percentage of the unemployed is 34.22% (29.29% males and 56.89% females) while that of the homeless amounted to 58.09% (57.25% males and 62.48% females).

Regarding the social situation of the spouse, TDC reported that 23.8% of the applicants for urgent response did not have any health coverage and that 67.47% did not belong to any social security scheme. The percentage of the unemployed reached 56.02%.

With regard to the social situation of the victims' parents, TDC reported that 32% of them did not have health coverage and that 70.4% did not belong to any social security scheme.

In connection with some variables, it has been established that 12.38% (11.83% males and 15.27% females) of the victims sustained chronic diseases and were deprived of treatment card. It is noteworthy that a significant number (42.68%) are over the age of 60.

As for demands, the bulk pertained to financial assistance for victims as well as for their families. These demands are broken down as follows: 88.82% (88.73% males and 89.31% females) victims demands, 92.14% (96.14% males and 91.91% females) demands of the victims' spouses, 93.70 % (92.90% males and 94.78% females) demands of the victims' children, and 88.79% (94.59% males and 86.08% females) demands of victims' parents'.

III. Findings

What can be drawn from the results of this survey is that the health situation (physical, psychological) and social condition of the victims who have submitted applications for urgent response are consistent with the demands made from the Immediate Care and Temporary Compensation Unit. It was found that 9.10% (8% males and 14.87% females) of the victims have physical illnesses and psychological disorders in addition to enduring a difficult social situation.

The economic and social conditions experienced by the victims and their families (deprivation of income, denial of treatment card, lack of health facilities or psychological counseling) contributed to the deterioration of their health, affecting all areas of their lives (marital, family, professional and social). For these reasons, their demands were basically material and health-oriented. This makes medical care, psychosocial counseling and rehabilitation basic necessities so that victims of human rights violations can restore their physical and psychological integrity and natural abilities, to live their normal lives and be reintegrated into society and their ordinary environment.

Chapter Seven

Public Hearing Sessions

Public hearing sessions are designed to inform the public about the scale of the violations, instill preservation of national memory and non-repetition by documenting the various violations and their historical context. These auditions also help rehabilitate victims and restore their dignity by conveying their voices and requiring apology to them.

Holding 14 public hearing sessions

The Truth and Dignity Commission presented 14 public auditions. These testimonies covered the violations that had occurred during the events of the Revolution, violations targeting Islamists, leftists, nationalists, trade unionists, women and students, violations that occurred on the occasion of the departure of colonial forces, bread events, mining basin events, financial corruption, Internet censorship, election fraud, and media disinformation.

Public hearing sessions staged under TDC's mandate

Topic of the Hearing Session	Date
1. First public hearing session: Gross human rights violations ²⁵	17 November 2016
2. Second public hearing session: Gross human rights violations ²⁶	18 November 2016
3. Third public hearing session: Gross human rights violations ²⁷	16 December 2016
4. Fourth public hearing session: Gross human rights violations ²⁸	17 December 2016
5. Fifth public hearing session: Revolution's events ²⁹	14 January 2017
6. Sixth public hearing session: Black Thursday events ³⁰	26 January 2017
7. Seventh public hearing session: Violations targeting women ³¹	10 March 2017

25 <http://www.ivd.tn/timeline/نوفمبر-17-الاولى-العلنية-الاستماع-جلسة/>

26 <http://www.ivd.tn/timeline/الثانية-العلنية-الاستماع-جلسة/>

27 <http://www.ivd.tn/timeline/الثالثة-العلنية-الاستماع-جلسة/>

28 <http://www.ivd.tn/timeline/الرابعة-العلنية-الاستماع-جلسة/>

29 <http://www.ivd.tn/timeline/الخاص-الخامسة-العلنية-الاستماع-جلسة/>

30 <http://www.ivd.tn/timeline/الخاص-السادسة-العلنية-الاستماع-جلسة/>

31 <http://www.ivd.tn/timeline/الخاص-السابعة-العلنية-الاستماع-جلسة/>

8. Eighth public hearing session: Violations targeting internet freedom ³²	11 March 2017
9. Ninth public hearing session: Violations during departure of occupation forces ³³	24 March 2017
10. Tenth public hearing session: Financial corruption ³⁴	19 May 2017
11. Eleventh public hearing session: Electoral fraud ³⁵	21 July 2017
12. Twelfth public hearing session: The Siliana Buckshot Events ³⁶	24 November 2017
13. Thirteenth public hearing session ³⁷): The Bread Events	04 January 2017
14. Fourteenth public hearing session ³⁸ : Media disinformation	15 January 2018

These sessions included 108 testimonies from victims and witnesses. In this regard, TDC decided to give priority to gross and systematic violations of human rights, including murder, torture, enforced disappearance, violation of the right to a fair trial, sexual abuse, arbitrary arrest, deprivation of livelihood and abuse of the right to work, violation of the right to health and education, administrative control, and violation of the right to practice religious beliefs.

TDC was also able to present testimonies depicting financial corruption, especially those provided by the brother-in-law of former President, Imed Trabelsi, in which he outlined details of corruption networks and their operational modes.

Moreover, TDC drafted a Manual of Procedures for the public hearing session³⁹.

1. Preparations, witness and victim protection program

Article 40 of the Transitional Justice Law holds TDC responsible for "taking all appropriate measures to protect witnesses, victims, experts and all persons heard by them, regardless of their status regarding violations covered by the provisions of this law."⁴⁰

Accordingly, TDC has devised a comprehensive program for the protection of witnesses and victims based on a number of measures designed to ensure their health and psychological well-being and the confidentiality of personal data. Moreover, a specialized protection unit was set up tasked to analyze information available, monitor and assess actual threats, and take appropriate preventive measures to protect victims and witnesses from any threats

32 <http://www.ivd.tn/timeline/الخاص-التامنة-العلنية-الاستماع-جلسة/>

33 <http://www.ivd.tn/timeline/الخاص-التاسعة-العلنية-الاستماع-جلسة/>

34 <http://www.ivd.tn/timeline/الخاص-العاشر-العلنية-الاستماع-جلسة/>

35 <http://www.ivd.tn/timeline/ال-عشرة-الحادية-العلنية-الاستماع-جلسة/>

36 <https://www.youtube.com/watch?v=2gAsLFqjFis&feature=youtu.be>

37 <http://www.ivd.tn/timeline/الخب-أحداث-حول-العمومية-الاستماع-جلسة/>

38 <http://www.ivd.tn/timeline/الخب-أحداث-حول-العمومية-الاستماع-جلسة/>

39 <http://www.ivd.tn/wp-content/uploads/2019/05/العلنية-الاستماع-جلسات-إجراءات-دليل.pdf>

40 See Manual of Procedures for witness and victims protection program

resulting from their appearance in public prior, during and after giving their testimony. To this effect, TDC drafted a Manual of Procedures for the protection of victims and witnesses.

2. Terms and criteria for the selection of public hearing cases

TDC devised a special methodology for public hearings⁴¹ on the basis of which the terms and conditions for the selection of victims, witnesses and alleged perpetrators were spelled out as follows:

- Attaining majority age and enjoying legal capacity
- The obvious relevance of the situation in exposing the system of corruption and tyranny along with its modus operandi.
- The written consent of the victim to testify in the public audition.
- Psychological counseling and health supervision by specialists to ensure victims and witnesses' ability to withstand the show and the confrontation.
- Diversity of representation (gender, geographical factor, historical factor, events based on historical stages, popular and social uprisings, diversity of violations etc.)

3. Outreach Campaign

TDC contracted with a communication agency to conduct an outreach campaign advertising its tasks and proceedings. A call for proposals has been devised to submit a perspective for the outreach campaign and ways of implementing it.

The campaign was comprehensive, including television and radio channels, banners and posters along with social media campaigns. It relied on adverts depicting the various competencies within the Truth and Dignity Commission and signs bearing figures reflecting the progress of its work and the human resources dedicated to fulfilling its mandate.

The audio-visual adverts were broadcast on two television channels, while voice adverts were broadcast on 14 national and regional radio stations.

As for the display banners, there were 158 banners scattered over an area of 2143 square meters and covering the country's entire territory.

As part of an extensive digital campaign, the same adverts were used on social media before being consolidated later with an advert announcing the date of the first public hearing and the recourse to live broadcast of these sessions.

This digital campaign was followed by over 1 million viewers of adverts and over 1.4 million viewers for the first public hearing session on 17 and 18 November 2016. The campaign also triggered some 58 000 interactions on live web links.

⁴¹ <https://www.youtube.com/watch?v=5PVhO3kOiBM&feature=youtu.be>

4. Charters governing progress of public hearing sessions

TDC, in partnership with civil society, drafted a charter through which stakeholders pledged to respect the witness and victim protection program during public auditions.

On 21 October 2016, and in association with the Higher Authority for Audiovisual Communication, TDC held a week-long training workshop for journalists on covering the public hearings and the protection of victims and witnesses. The workshop was supervised by national and international experts focusing on the specific role of the media covering public hearings and the parameters thereof. They also presented comparative experiences of media coverage of these auditions. During these workshops, a draft communication charter on public auditions was discussed with participating journalists from various national media.

Furthermore, TDC and the media drafted a charter covering the public hearings jointly with the National Union of Tunisian Journalists, the Union of Media Managers and the National University of Newspaper Managers. All partners have signed the Charter following training sessions staged by TDC in association with its United Nations partners.

TDC has also signed agreements with several Tunisian and foreign media designed to cover public hearings. These agreements have enshrined the Charter's respect for the specificity of these hearings.

5. Logistical preparations

The first public hearings held in 2016 on 17 and 18 November and 16 and 17 December stood as a major challenge for TDC which granted them particular care and attention as regards organizational aspects.

Faced with the refusal of the Director of the Conference Palace to rent the hall to TDC, invoking "works in progress", TDC resorted to Elissa premises in Sidi Dhrif in the northern suburb of the capital, one of the properties confiscated from Leila Ben Ali. However, the judicial administrator required an exorbitant fee amounting to 30 000 dinars whereas the fee charged to wedding ceremonies did not exceed 5000 dinars.

In the logistical aspect, the concern was on providing the necessary technical requirements to ensure due progress and broadcast of the hearing sessions.

The Cost of Public Hearing Sessions

	Management of public event and media campaign	Headquarters rental	Witness and Victim Protection	Transfer and Accommodation of Foreign Guests	Aggregate Costs of Public Hearings
Public hearings dated on 17, 18 November 2016	450 437,280	35 400,000	19 936,000	50 279,720	556 053,000
Public hearings dated on 16, 17 December 2016	230 836,000	5 000,000	14 743,000	0,000	250 579,000
Public hearing dated on 14 January 2017	82 543,000	5 000,000	7 084,000	0,000	94 627,000
Public hearing dated on 26 January 2017	84 905,000	5 000,000	8 435,000	0,000	98 340,000
Public hearings dated on 10, 11 March 2017	120 577,000	11 764,000	11 767,000	0,000	144 108,000
Public hearings dated on 24 March 2017	87 179,000	5 882,000	11 359,000	0,000	104 420,000
Public hearing dated on 19 May 2017	78 052,000	8 235,000	4 969,000	0,000	91 256,000
Public hearing dated on 21 July 2017	97 110,000	8 235,000	4 326,000	0,000	109 671,000
Public hearing dated on 24 November 2017	98 000,000	8 235,000	5 600,000	0,000	111 835,000
Public hearing dated on 04 January 2018	28 600,000	0,000	0,000	0,000	28 600,000
Public hearing dated on 15 December 2018	92 765,000	8 235,000	0,000	0,000	101 000,000
Total					1 690 489,000

6. Tenders for the first hearing sessions and cost rationalization for the next ones

The contract signed with the provider during the public session resulted from a call for tenders concluded with the selection of the best bidder that fulfilled the specifications.

In view of the importance of the first hearing session in the course of Transitional Justice and due to TDC's inexperience with such events, the latter designed a call for tenders covering

all components of the public hearing session, a single package. Staging this hearing session required the provision of several services.

The high cost of the first and second public hearing sessions, compared to the rest of the sessions, is due to several factors. Apart from the importance of the event and the need to stage a preliminary awareness-raising campaign, expenses were stretched in view of the high-profile guests invited (national and international personalities and related expenses: air transport + accommodation) and cancellation of the reservation scheduled at the Conference Palace. Additional expenses were incurred pertaining to the establishment of tents accommodating guests, media, heating supplies, and other additional technical requirements. Special emphasis was put on the security aspect as the session was in part held in open space.

With regard to the third and fourth sessions, reduced expenses, compared to the first and second sessions, are accounted for by TDC's recourse to extensive consultancy through which it tried to divide the required services into components in addition to changing the venue of the public hearings. This move enabled TDC to save additional expenses for the reception of guests. It also made it possible for TDC to drop many services that were the subject of separate consultancies such as insurance, guarding, food and drinking, cleaning services, etc. In doing so, TDC eventually managed to obtain the best rates.

As for the sessions held in 2017 and 2018, TDC had strived to reduce their costs compared to previous sessions. Indeed, TDC's departments endeavored to devise a framework call for tenders divided into components whereby the services related to all public hearings scheduled for 2017 were identified. Moreover, TDC's departments have, during these short periods of time, acquired sufficient experience in the organization of public hearings, the drafting of calls for tender and rationalization of related services, thus enabling them to deliver the required services at a lower cost. Furthermore, TDC's policy characterized by the recourse to framework contracts for the whole of 2017 contributed to the reduction in the rates offered due to the seasonality of these services.

For the record, TDC has endeavored, by taking the initiative to divide the call for tenders into components and by having its staff accomplish part of the services required by public hearings, to pursue a policy aimed at saving expenses. In doing so, it chose to give up single call for tender that includes all components at a higher cost as is the case with periodic cultural events staged by State and some other institutions whose costs are constantly rising.

As per framework contracts concluded to this effect, and on the occasion of each public hearing session, TDC issues supply order which specifies in minute details the services to be performed and subject to original contracts. Supply orders legally supersede agreements for each operation and supplement the framework contracts.

Chapter Eight

Accountability and Liability ---

The Transitional Justice system pursued by the Tunisian legislator under Organic Law N° 2013-53 (which preceded the Constitution) is unique in its choices, standing out from the rest of the experiences by setting high threshold to its objectives with a time frame extending from July 1, 1955 to December 24, 2013. Moreover, its mandate covered several and various areas including human rights violations, killings, sexual assaults, torture, enforced disappearances, financial corruption, embezzlement of public funds, electoral fraud, and other violations listed in Chapter 8 of Law 53, and which TDC raised to include 32 violations mentioned on an open list updated by TDC reaching 32 violations.

In order to address these violations, the legislator chose a dual system granting the truth and Dignity Commission powers to probe into gross or systematic violations and the Specialized Criminal Chambers at the Trial Courts established at Appellate Court House to adjudicate the cases referred to them by TDC.

I. Prosecution strategy

The adoption of a strategy designed to prosecute violations falls within the framework of good organization of TDC's proceedings, enabling it to implement its objectives with the required effectiveness. Recourse to this strategy entailed fulfillment of several requirements including the following:

Article 42 of the Organic Law on Transitional Justice requires that TDC refer to the Public Prosecution Office only files where it is established that gross human rights violations were committed. This requires selection of files with sufficient evidence substantiating occurrence of the violations.

The total number of files received by TDC regarding gross human rights violations that occurred from 1 July 1955 to the end of 2013 amounted to 62 720. This raised eyebrows as of the ability to deal with them in the limited time period of TDC's mandate set at four years, subject to extension by Commission's decision for an additional year and pursuant to Chapter 18 of Organic Law N° 2013-53.

Specialized Criminal Chambers are also materially and practically unable to adjudicate all the violations submitted by TDC for failure to provide full-time secondment for their members. These chambers are also required to adjudicate cases related to gross human rights violations pursuant to international treaties (Chapter 8 of Organic Law on Transitional Justice) such as

electoral fraud, enforced disappearances, forced migration for political reasons and financial corruption...

Prosecution strategy, endowed with objectivity and transparency, allows adoption of criteria establishing the most substantiated cases, which include the most serious human rights violations, which in turn have caused the most serious crimes to be committed by the most liable actors. This entails implication of various actors and determination of time periods within TDC's mandate along with categories of perpetrators.

These standards and criteria include:

1. Evidentiary foundation or standard of proof

The establishment of sufficient inculpatory evidence (Chapter 42 of Organic Law on Transitional Justice). Priority is, therefore, granted to files with sufficient inculpatory evidence. Consequently, files not substantiated by sufficient inculpatory evidence shall not be referred even if the accused thereof are senior State officials.

2. The criterion of violation seriousness

TDC refers only gross human rights violations as defined above, and the gravity of any human rights violation is determined by recourse to the following criteria:

- Nature of the right violated (such as the right to life - most serious violation).
- Scope of the aggression (e.g. number of victims, extension over time, wide geographical scope)
- The impact of the violation on society
- How the violation was committed (e.g. the level of atrocity of the violence committed)

These standards make it possible to establish a scale of gravity measuring which human rights violations are most serious.

3. Chain of command criterion

It refers to the category of those responsible during commission of the violation whereby TDC grants priority in referring the files, targeting officials of the highest degree of responsibility:

- Categories of liability (accountability) that prioritize the liability of leaders over acts committed by their subordinates (criminal liability of the line superior)
- Most responsible persons, organizers, funders, and Managers (minister, director, leader)
- Persons implicated in numerous violations, in many crimes,
- People who can all be prosecuted for the same crime in a joint trial,

4. The criterion of most serious crimes

The most serious crimes are characterized by the organized and systematic nature of the criminal acts committed during the dictatorship. In this case, priority is granted:

- To crimes that depict the organized and systematic nature of criminal acts
- International crimes: crimes against humanity
- Dual indictment: For international crimes and crimes under Tunisian law
- Crimes against vulnerable groups (eg crimes against women, children)

TDC also refers files that reflect an impartial and representative approach to the various aspects of Tunisian reality since 1955. This means that TDC endeavors to ensure that the files referred to the Specialized Chambers depict different historical periods and different contexts, thus contributing to the achievement of national reconciliation:

- Various victim group representations, a just and fair process
- Representative groups of different actors and apparatuses implicated
- Representation of various violations / crimes committed during the specified periods
- Covering various areas and the entire mandate period
- The file can be mounted on a particular event, for example, 1978 Black Thursday events, 1984 Bread Events, 2011 Revolution Events, 2008 Mining Basin events, thus turning these events into a single strategic case.

II. Probing into Files Subject to Referral the Specialized Criminal Chambers

The proceedings of the Prime Bureau of Investigation started since September 2016, after being gradually reinforced by two assistant investigators, raising the team composition to seven investigative assistants in addition to two clerks.

The Bureau of Investigation undertook files relating to murder, execution without guarantees of fair trial, rape, sexual violence, torture, and enforced disappearance.

In the interest of due inquiry and probe into the files likely to be referred to the Specialized Criminal Chambers regarding deaths under torture in detention centers and enforced disappearances, the Bureau of Investigation conducted field inspections in keeping with the provisions of Chapter 40 of the Transitional Justice Law. This move consisted in hearing witnesses and interrogating the alleged perpetrators among security officers, senior security officials and medical practitioners in the presence of their lawyers, thus consecrating the principle of confrontation and defense rights.

In addition to investigating work, the Bureau undertook to investigate the files displayed during the public hearings, with cases selected for public hearings taking a sizable portion of the action program of the Bureau of Investigation within the Fact-finding and Investigation Committee, for in-depth examination of victim status, hearing witnesses, interrogating perpetrators of violation and conducting field inspections. Investigation work proceeded with due regard to the historical context of each file. The Bureau of Investigation also drafted lengthy or concise reports into each of the files intended for public hearings.

III. Gross violations at the level of International Humanitarian Law and Domestic Law

International conventions and covenants did not contain any definition to gross human right violation. Some acts are inherently characterized to be serious human rights violations, including criminal acts that infringe the right to life, the right to bodily integrity, the right to security and the right to liberty.

In addition to violations that are considered grave in nature, and in view of the jurisprudence of human rights bodies (the UN system, African systems of human and peoples' rights), fact-finding and investigation commissions and truth commissions, a serious human rights violation can be characterized based on the following criteria:

- Nature of the right
- Size / extent of violation
- Victim status
- Impact of the violation on the victim
- State intention to cause damage

The aforementioned criteria are applied in whole or in part according to the context and circumstances surrounding the violations.

The legislator did not define the term “gross violation” in the Organic Law N° 2013-53, but just settled with the enumeration in Chapter 8 of a number of acts that constitute gross violation: murder, rape, any form of sexual violence, torture, enforced disappearance and execution without fair trial guarantees.

Furthermore, pursuant to Chapter 2 of Organic Law N°17-2014 of 12 June 2014 on provisions relating to Transitional Justice and cases related to the period between December 17, 2010 and February 28, 2011, the legislator considered that “attacks leading to the injury or death of the Revolution's martyrs shall stand as gross violations within the meaning of Articles 3 and 8 of Organic Law N° 2013-53.”

IV. Definition of crime against humanity

The term crime against humanity is a characterization of gross human rights violations set out in the Charter of the Nuremberg Tribunal annexed to the 1945 London Convention, which established the concept of crime against humanity in international criminal law. Article 6, paragraph C, of the Charter characterizes a crime against humanity as part of the following violations: willful killing, extermination, deportation, inhumane acts perpetrated against any group of civilians before and during wars, persecution for political, ethnic, or religious reasons, and perpetration of any of the crimes that shall fall within the jurisdiction of the Court or in connection with such crimes, whether or not they constitute a violation of the national law of the State in which they were committed. "

The concept of crimes against humanity then evolved in Law No. 10 of the Censorship Board on Germany in 1945, issued by the Allies on December 20, 1945 to prosecute World War II criminals among German leaders.

This broadened definition was adopted in the 1993 ICTY Statute in the provision of Article Five as follows: "The ICTY shall exercise jurisdiction to prosecute persons responsible for the following crimes when they are committed in armed conflicts, whether they are of an international or internal nature, or directed against any civilian population: willful killing / extermination / enslavement / deportation / imprisonment / torture / rape / persecution for political, ethnic or religious reasons / other inhumane acts." Aforementioned Article Five added crimes of imprisonment, torture and rape, which were not mentioned in the "Nuremberg" military court system and approved in article (6 / c) of Law No. (10) of the Censorship Board on Germany.

The concept of crimes against humanity then evolved in Law No. 10 of the Censorship Board on Germany in 1945, issued by the Allies on December 20, 1945 to prosecute World War II criminals among German leaders. This law contains several articles, the most important of which is Article 6 (c), which broadened the list of crimes against humanity in comparison with the Statute of the International Military Nuremberg Tribunal and defined them as atrocities and crimes that include, inter alia, willful killing, enslavement, deportation, imprisonment, torture, rape, or any inhumane acts committed against any civilian population, or persecution for political, racial or religious reasons, whether or not these crimes constitute violation of the domestic laws of the countries where they were committed."

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In 1994, the Security Council passed the Statute of the International Criminal Tribunal for Rwanda for the prosecution of crimes against humanity. In its article 3, the ICC Statute contains a definition of crimes against humanity: "The International Criminal Tribunal for Rwanda shall have jurisdiction to prosecute persons responsible for the following crimes when they are committed as part of a widespread or systematic attack against any civilian population for national, political, ethnic, racial or religious reasons: willful killing / extermination / enslavement / deportation / imprisonment / torture / rape / persecution for political / racial or religious reasons / other inhumane acts".

The definition of crimes against humanity referred to in article 3 of the ICTR system differs from that of the ICTY in not referring to armed conflict in article 3 which merely requires

violations in the context of a widespread attack, a characterization that has not been clearly defined.

The concept of crimes against humanity was further consecrated within the Rome Statute of the International Criminal Court, which was ratified by the Republic of Tunisia by Decree of 18 February 2011 and by Decree No. 549/2011 of 14 May 2011. Article 7.1 thereof stipulates that: "For the purpose of the Statute", any of the following acts shall constitute "a crime against humanity" when committed as part of a widespread or systematic attack knowingly directed against any civilian population: (a) Willful killing; (e) Imprisonment or any other severe deprivation of physical liberty in violation of Basic rules of international law (f) Torture (g) Rape or any other form of sexual violence...Enforced disappearance, other inhumane acts of similar character which intentionally causes extreme suffering or hazardous harm to the body, mental or physical health. Article 7 (2 / a) defines "an attack directed against any civilian population" as: "a behavioral approach involving the repeated commission of the acts referred to in paragraph 1 against any civilian population pursuant to or in support of the State's or organization's Policy".

V. The Concepts of State Apparatuses and Organized Groups

I. State Apparatuses

State Apparatuses are the structures used by the State to exercise its powers. Obviously, there is a direct correlation between both the executive and judicial branches and the gross, systematic violations of human rights. On the other hand, the legislative power, by virtue of its law-making and oversight function, has an indirect bearing on such violations.

- **The Executive Apparatuses in Relation to the Gross Human Rights Violations**

Under the 1959 Constitution, adopted on June 1, 1959 and later amended on several occasions, the executive power is exercised by the President of the Republic, assisted by a Government headed by a Prime Minister and composed of Ministers and Secretaries of State that he himself appoints.⁴²

Because they are vested with the power to use public force, both Ministries of the Interior and Defense, with the various agencies, as well as the security and military forces under their authority, are considered among the major State apparatuses that were prone to perpetrate

⁴² Under Article 71 of the 2014 Constitution, the executive authority is exercised by the President of the Republic and by a government that is presided over by the head of the government. Pursuant to Article 77 of the 2014 Constitution, the President of the Republic is responsible for determining the general State orientations in the domains of defence, foreign relations and national security in relation to protecting the State and the national territory from all internal and external threats, after consultation with the Head of Government. He/she also chairs the National Security Council, to which the Head of Government and Speaker of the Assembly of the Representatives of the People are invited, and exerts the function of Commander-in-Chief of the armed forces. Under Article 80, the President of the Republic may take any measures necessitated by the exceptional circumstances, and shall announce the measures in a statement to the people.

gross and systematic violations of human rights. (In addition to The General Directorate of Prisons and Rehabilitation, under the Ministry of Justice).

At the central level, the law enforcement apparatuses and agencies under the Ministry of the Interior include all the general directorates of Police Departments, National Guard and Civil Protection, in addition to the General Directorate of National Security, the General Directorate of Public Security, the General Directorate of Specialized Divisions (State Security Department), the General Directorate of Technical Departments, the Department of Information, Intelligence and Investigation Units, the General Directorate of National Guard, Inspection and Investigation Units, and the General Directorate of Response Units. At the local level, these apparatuses include the Police and National Guard districts as well as their respective Police and National Guard stations: the violations are committed by the officials and officers who are officially working inside or outside the headquarters of these structures, and in the declared and undeclared detention centers.

Article 2 of Law N°70 of 1982, dated August 6, 1982, on the regulation of the Internal Security Forces General Organic Law, revised by Law N°58, dated June 13, 2000, assigned to the President of the Republic the authority to directly supervise the Internal Security Forces.⁴³

The State apparatuses under the Ministry of Defense include ^{all} the military formations that are involved, under special circumstances, in conducting security operations and addressing social movements that law enforcement agencies are unable to manage and control. Also included are the various departments of the General Directorate of Military Security, which carry out, via officials working in these departments, detention procedures, and investigate defendants indicted in cases related to military affairs.

As regards the State apparatuses, currently under the Ministry of Justice and formerly under the Ministry of the Interior (up to November 2000), mention may be made of The General Directorate of Prisons and Rehabilitation (DGPR), which is mainly tasked with enforcing court decisions that impose custodial sentences on individuals. The DGPR is committed to providing decent housing conditions for the inmates while serving their sentences, undertaking to treat prisoners humanely and to preserve their dignity. Therefore, any abuse committed by the DGPR officers during the exercise of their duties is considered a violation perpetrated by the State apparatuses.

- **The Judicial Apparatuses (civilian, administrative, financial and military courts) in Relation to the Gross Violations of Human Rights**

The judiciary is an independent authority ensuring the administration of justice, pre-eminence of the Constitution, the sovereignty of the law, and the protection of rights and

⁴³ The Internal Security Forces report to the Minister of the Interior, under the high authority of the President of the Republic who authorizes and commands them directly, or through the Prime Minister or the Minister of the Interior, bearing in mind the provisions of Article 10 of Law N°60 of 1988, dated June 2, 1988, regarding the Additional Finance Law of 1988.

freedoms. Judges are required to discharge their functions exhibiting full independence, impartiality and integrity. They shall be held accountable for any substandard performance.

Violations committed by official bodies include any wrongdoing by a judge with the intention to cover up gross and systematic violations of human rights, whether by refusing to consider them without just cause, by dropping or refraining from adjudicating, without undue delay, on the cases filed by the persons having sustained human rights violations, by acquitting perpetrators in flagrant disregard of the evidence and arguments presented, or by rendering sham decisions in disproportion to the gravity of violations. They also include the conviction of defendants based on unsubstantiated evidence, or in the absence of conditions for a fair trial where due process has been breached.

The legislator expanded the scope of violations, and stipulated in Article 3 of the Organic Law N°2013-53 that the conduct adopted by groups or individuals who acted in the name of State Apparatuses or under their protection, even if they do not have the capacity or authority to do so, is considered an infringement of human rights. The groups and individuals who are not part of State apparatuses, and who committed or were involved in violations of human rights under whatever form, whether by abetting, facilitating or concealing them at the instigation of these apparatuses and under their protection or for any other reasons, should be held liable and accountable.

2. Organized Groups

These are groups working in an organized and structured framework, with a view to planning and preparing to commit gross violations and abuses against human rights, which requires the establishment of a certain organization among their members. An organized group is usually overseen by a commander who regulates the activities, sets the objectives and allocates the roles among the affiliated members who would endeavor to provide all the resources required for the successful execution of their operations.

The concept of organized groups as stipulated in the Organic Law on the establishment and regulation of Transitional Justice is distinct from the concept provided for in Article 32 of the Organic Law N° 26 of 2015 related to the fight against terrorism and suppression of money laundering. The latter defines a terrorist group as “a group with organized structure, composed of three persons or more, formed for any length of time, and working together for the purpose of committing any of the infringements provided for in this law, whether on national or foreign territory”.

The concept of organized groups also differs from the notion of organized crime groups (gangs) addressed by Article 131 of the Criminal Code. The Code provided that “any association formed or agreement reached, irrespective of its duration or the number of its members, with a view to preparing or committing crimes or misdemeanors on persons or property, constitutes a crime against public order”. Article 132 provided for the prescribed sentences for anyone who is affiliated, participated or assumed the position of leadership in organized crime groups. Furthermore, Article 133 of the Criminal Code laid out the sentences facing the persons who deliberately prepared a dwelling for the members of such groups to

meet, assisted them financially, aided them to commit their wrongdoings, or offered them a place to dwell or to hide in. The sentence shall be a term of up to twelve years' imprisonment for the commanders of the said associations.

The difference among the three adjacent concepts lies in the attitude in the State's name or under its protection of such organized groups, concerned by the Organic Law on the establishment and regulation of Transitional Justice.

However, at the theoretical level, an organized group can also be a terrorist group under the State's protection or acting in its name. It can also be in the form of a crime group, as comparable experiences showed the existence of such terrorist crime associations.

VI. Evidentiary foundation (elements of proof)

The Criminal Law is based on the principle of freedom of evidence. The Truth and Dignity Commission is, therefore, seeking, getting to the bottom of the violations committed, and leaving no stone unturned. However, the specific nature of the infringements under examination, which are often times perpetrated behind closed doors and in the presence of law enforcement officers who cover each other up, requires the level of evidentiary foundation to be lowered to the statements of the aggrieved parties, even if they are not bolstered by other elements of proof, particularly in the case of sexual assaults and torture. The following are the elements of proof adopted by the bills of indictment brought before the specialized criminal chambers:

- Statements of the aggrieved parties or their families, whether filed directly to TDC, or obtained by investigators at the injured party's residence or through modern means of communication. The statements filed before the court or the judicial police officers are also adopted.
- Witness testimonies received by TDC or recorded by the court or the judicial police.
- Statements of the alleged perpetrators to whom the violations are attributed, and confessions obtained by TDC, the judiciary or judicial police.
- Medical and autopsy reports, as well as medical examinations that are available or authorized by TDC.
- Inspections undertaken in the context of judicial investigations, or conducted by TDC through investigators.
- Written reports on the facts by international organizations and civil society, such as the Committee against Torture and the Human Rights Committee.
- Classified reports, memoranda and official documents obtained by TDC or disclosed during investigation.
- Immediate notification cards issued by the various police stations, in addition to the daily briefings of facts.
- Printouts (transcripts) of the presidential palace recording device (ATIS).
- Confidential whistleblowing reports to police stations and to the Presidency of the Republic.
- Audio-visual records of senior officials and security personnel.

VII. The Rules Considered for Accountability Along with Criminal, Political and Institutional Liability

Although the identification of physical perpetrators of gross violations of human rights is a significant link to uncover the truth and to prevent impunity, the investigation strategy specifically aims at detecting the commanders implicated in these violations. Such officials have surely played a pivotal role, for their mere explicit or implicit incitement, the complicit silence they maintained in respect of the abhorrent practices conducted by the officers under their supervision and authority, and their reluctance to exercise their preventive role to counter abuses, constitute the main causes leading to the occurrence of such violations.

The aim of investigations is to refer the perpetrators to the competent criminal chambers based on their individual criminal responsibility, whether they are physical perpetrators or instigating commanders. Their criminal responsibility in the Transitional Justice process rests upon the rules and mechanisms recognized by international and national laws. It is also based on the ‘negative act’ (inaction) and on the commanders’ liability and the criminal responsibility on the basis of participation.

1. Criminal Liability for Inaction

With respect to international criminal law and the Transitional Justice process, criminal responsibility is based upon a positive or negative act. On the contrary, the general international law stipulates, in principle, criminal liability for the positive act, in accordance with Article 37 of the Criminal Code, which provided that “no one shall be punished unless for an intentionally committed act, except for the cases that are specifically provided for by law”.

One of the specific cases regarding the offence of torture, in which the Tunisian legislator acknowledged criminal responsibility for the negative act, is the case of Article 101a of the Criminal Code which stipulates that “civil servants or their likes, having ordered, incited, consented or turned a blind eye on acts of torture during or in connection with the discharge of their duties, shall be held accountable for the crime of torture.”

International agreements⁴⁴ ratified by the Tunisian State, on the protection of human rights, ascertained that one of the pressing duties of any incumbent political authority is to protect its citizens and every person on its territories from any violation of his right to life and bodily integrity. Article 3 of the Universal Declaration of Human Rights stipulates that “everyone has the right to life, liberty and security of person”. In the same vein, Article 6 (1) of the International Covenant on Civil and Political Rights provided that “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. The Convention against Torture, ratified pursuant to Law N°79, dated July 11, 1988, stipulated in Article 2 (1) that “each State Party shall take effective legislative,

⁴⁴ International agreements supersede domestic laws, pursuant to Article 48 of the 1959 Constitution and Article 23 of the 2014 Constitution.

administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction". Article 12 also stated that "each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction." Besides, Articles 13 and 14 provided that each State party shall ensure that any individual has the right to complain to competent authorities, that the complainant is protected and that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation.

The Rome Statute of the International Criminal Court acknowledged the individual responsibility of civilian superiors for their negative act, and stipulated in Article 28 paragraph (b) that: "with respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates". Paragraph (b) (iii) of the same Article stipulated that the superior is also criminally responsible if he: "failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution".

2. Commanders' Responsibility

Article 8 paragraph 2 of the Organic Law N°2013-53 stipulated that ratified international agreements shall provide, with respect to the Transitional Justice system, a legislative framework for liability and accountability.

In the absence of provisions in the Tunisian criminal legislation expressly stating the responsibility of commanders for one of the violations of human rights, the ratified international agreements should be implemented, pursuant to the above-mentioned Article 8, in order to bring into force that mechanism adopted by international criminal law.

The concept of commanders' responsibility for the gross violations of human rights and for crimes against humanity is enshrined in the charters and conventions related to international criminal law. Proving this responsibility requires three primary elements:

- Existence of a superior⁴⁵-subordinate relationship
- The superior should know or has the reasons to know that one of his subordinates or all of them committed, or prepared to commit, criminal acts and gross violations.
- Negligence of the superior, as a commander and security official, in taking the necessary and reasonable measures to prevent the perpetration of gross infringements.

According to the provisions of Article 25 of International Criminal Justice Statute, the superior or the commander, being a primary perpetrator, is individually responsible and liable for punishment if that person issued orders resulting in TDC of gross violations.

⁴⁵ The word 'superior' means in this context a person who is higher in rank or position, who exercises authority on his subordinates.

3. Liability for Accessory to the Crime

The Tunisian legislator recognized, in the Article 32 of the Criminal Code, the criminal responsibility for accessory to crimes committed by primary perpetrators, which allows for holding the commanders accountable when one of the criteria for accessory to crime contained in the said Article might apply. The violations examined during the investigations conducted by the Truth and Dignity Commission have proven to be part of an organized and systematic large-scale plan that was adopted and implemented during the various historical eras since 1955. They have been committed on most of the detainees because of their dissenting opinions or for exercising their fundamental political and religious freedoms. Those violations have targeted several regions, and as such, they cannot be deemed isolated acts, and cannot be perpetrated unless the appropriate equipment and human resources have been mobilized, and planned commands have been given by security officials under the Ministry of the Interior.

4. Political Responsibility

Political liability is associated with the role played by Tunisian political officials during their mandates. Besides, institutional liability aims to identify how the acts or negligence of institutions contributed to TDC of violations against citizens. In terms of democratic transition, it becomes necessary to identify institutional responsibility towards elaborating institutional reforms that would prevent TDC of such violations in the future.

5. Institutional Responsibility

It specifically refers to inaction or omission on part of the officials in charge and police departments under the Ministry of the Interior. Institutional responsibility is manifested in the disregard for the obligations incumbent on the security apparatuses, whether intentionally or due to the ignorance of the provisions of the international conventions and charters and what the laws have provided in terms of measures aiming at respecting bodily integrity of arrested or detained persons. It is incumbent on these bodies to take the necessary preventive measures to thwart the despicable practices in breach of human rights, and to preserve the physical safety of the detained persons. It is therefore imperative to further train officers and develop the working methods of security apparatuses. An efficient monitoring system, which allows for identifying and remedying the security units where violations of human rights were committed, should be established with a view to preventing their recurrence in the future. The perpetrators should also be punished and redress should be provided for the aggrieved parties.

The official stakeholders usually resort to denying the violations in order to cover them up, protect the offenders, and prevent the victims and their families from having access to justice or forwarding complaints to national and international human rights organizations and associations. They also resort to interference with the judiciary, with the aim of obstructing the course of judicial investigations and leading cases to dismissal.

Some judicial bodies were found involved in covering up violations by abstaining from adjudicating grievances related to TDC of gross violations of bodily integrity or by lengthening detention beyond the statutory period, or by failing to exercise their oversight role over statutory detention deadlines and conditions.

Some physicians, particularly medical examiners, were also found implicated in covering up violations including ill-treatment of and committing torture against arrested persons in custody and detention centers.

6. Referrals

6.1. Bills of Indictments

TDC referred 69 indictments, including 1120 cases in which 1426 persons were charged with violations of human rights. It has completed investigating a number of files addressing the following contexts, periods and subjects:

- Violations committed on the Husainid family (1956-1960)
- Trials of the Supreme Court of Judicature (1957-1959)
- Group 68: State Security Court (Baathists, Arab Nationalists, nonpartisans)
- 1973 and 1974 trials in the State Security Court (the Tunisian Worker Group and Arab Nationalists)
- Violations committed against leftists
- Violations committed against Arab Nationalists
- Violations committed against Islamists
- The Black Thursday riots (January 26, 1978)
- Bread riots (1984) across the Tunisian governorates
- Events of the Freedom and Dignity Revolution across the Tunisian governorates
- The Tunisians prisons riots in the context of the Freedom and Dignity Revolution
- Buckshot Events in Siliana
- Financial crimes and offences of embezzlement of public funds: Zine Elabidine Ben Ali, his family and his close friends
- Financial crimes and offences of embezzlement of public funds in the banking sector
- Financial crimes and offences of embezzlement of public funds: Recruitment fraud (fictitious jobs) in Tunisair (1996-2011)

The indictments include the following violations:

- Murder and attempted murder
- Rape and sexual assault
- Torture
- Enforced disappearance
- Arbitrary arrest
- Trafficking in persons
- Financial crimes and offences of embezzlement of public funds

The cases referred to the specialized criminal chambers included 1120 victims:

- Victims of violation of the right to life: 169

- Victims of rape and sexual assaults: 99
- Victims of torture: 650
- Victims of enforced disappearance: 3
- Victims of arbitrary arrest: 650
- Victims of injuries during or on the occasion of demonstrations, protests and uprisings: 236

For the referred indictments, all inquiry and investigation proceedings were completed in compliance with defense rights and with due regard to the confrontation principle and the presumption of innocence. As provided for in Article 4 of the Organic Law on the establishment and regulation of Transitional Justice, these indictments included “all the violations as well as their causes, conditions, sources, surrounding circumstances and repercussions”. The violations were also doubly adapted, on the basis of the International Humanitarian Law (IHL) and the Tunisian Criminal Law.

The indictments offered a new model that lays the foundation for a new jurisprudence, and that should be addressed and analyzed by experts in law, especially that TDC incorporated in this model the approach of "strategic litigation". The latter seeks to create a progressive jurisprudence that contributes to adjusting the application of standards and legal principles so as to ensure full respect of human rights.

The investigations revealed the physical perpetrators' identity, suspected of gross violations of human rights, despite their disguise under aliases, such as Bocassa, ElHadj, Dahrouj, Rambo, Hallas, Elkass and Boukersha. The offenders, who are mainly law enforcement officers under the Ministry of the Interior and particularly under the State Security Department, were referred to the specialized criminal chambers for gross violations attributed to them.

Furthermore, the chain of command abetting, inciting and covering up these violations was identified, based on archival information obtained by TDC and other varied sources including the information provided by the victims and to whom the violations were attributed. The referrals involved senior security officials, including the Minister of the Interior, general directors, military commanders and senior political officials and advisors who abet, plan and cover up the violations against victims. In addition, they included prison officers and wardens in many correctional units, who are implicated in violations of the inmates' bodily integrity. The referrals also contained the names of physicians, medical examiners, judges and public prosecutors, who were implicated in the cover-up of violations, and charged with failure to discharge their functions.

Pursuant to Article 39 of the Organic Law N° 2013-53 on the establishment and regulation of Transitional Justice, which provided for “determining the responsibility of the organs of the State” for these violations, TDC observed that the Ministries of the Interior and Defense, in view of possessing the right to use public force, were among the most important organs of the State, whose various branches as well as the security and military agencies under their authorities, were involved in TDC of gross and systematic human rights violations. (In

addition to The General Directorate of Prisons and Rehabilitation, under the Ministry of Justice).

In this respect, it is worth noting that TDC brought charges against 1426 persons who all enjoyed their right to legal counsel and to the confrontation principle, except the accused who, notwithstanding the numerous summons they received, refused to appear before the investigation unit. Besides, the referrals incensed the figures of the old regime, involved in crimes against humanity, and pushed them to hide behind law enforcement unions. These unions, after having called on their members to reject the summons issued by the Truth and Dignity Commission⁴⁶, threatened, on January 7, 2019, to boycott the security of the hearings⁴⁷ due to be held before the chambers specialized in transitional justice, in trial courts.

The unionist officers even went so far as to threaten the judges. Moreover, some “intellectuals”, who were nostalgic to the despotic former regime, supported these abuses against TDC and the Transitional Justice process. They also found allies in some politicians defending dictatorship who supported them in submitting a legislative initiative to abrogate Article 8 of the Organic Law and to dissolve the chambers specialized in Transitional Justice.

Bills of Indictment Referred to Criminal Chambers Specialized in Transitional Justice

▪ **Bills of Indictment Related to Violations of the Right to Life**

Number	Victim/ Case	Nature of Violation	Specialized Chamber	Date of Referral	Number of Victims	Number of Alleged Violators
1	Kamel Matmati	Murder, enforced disappearance, torture, concealment of evidence in a crime, and concealment of a dead body	Gabes	March 2, 2018	1	14
2	Rashid Chammakhi	Torture murder, murder preceded by a crime, arbitrary arrest, and death in	Nabeul	April 13, 2018	1	52

⁴⁶<https://www.facebook.com/268798933134567/photos/a.269296159751511/2115593165121792/?type=3&theater>

⁴⁷ [http://www.mateurnews.com/Law enforcement Union in Gabes boycotts TDC's public hearings../](http://www.mateurnews.com/Law%20enforcement%20Union%20in%20Gabes%20boycotts%20TDC's%20public%20hearings../)

		detention				
3	Nabil Barakati	Murder, torture, concealment of evidence in a crime	Le Kef	April 19, 2018	1	9
4	Faysal Barakat	Torture, murder, arbitrary arrest, and concealment of evidence in a crime	Nabeul	April 26, 2018	1	47
5	Mouldi Ben Amor	Torture and murder	Tunis	May 14, 2018	1	19
6	Othman Ben Mahmoud	Murder and perjury	Tunis	May 14, 2018	1	10
7	Revolution events in Thala and Kasserine on January 8/ 10/ 12, 2011	Willful killing, and attempted murder	Kasserine	May 18, 2018	36	25
8	Sohnoun al-Jawhari	Torture and murder	Tunis	May 23, 2018	1	11
9	Revolution events in Lafayette, Tunis January 13, 2011	Willful killing and attempted murder	Tunis	May 28, 2018	4	7
10	Ahmad Amri	Murder and complicity in murder	Tunis	May 28, 2018	1	9
11	Revolution events in Manzel Bouzayyane December 24, 2010	Willful killing, and attempted murder	Sidi Bouzid	May 29, 2018	7	14

12	Case of the Mining Basin Events 2008	Willful killing and attempted murder, torture	Gafsa	May 29, 2018	48	16
13	Abdelwahed Abidli	Torture murder, arbitrary arrest, enforced disappearance	Sousse	May 29, 2018	1	10
14	Revolution events in West Kram January 13, 2011	Willful killing and attempted murder	Tunis	June 18, 2018	13	10
15	Revolution events in Rgueb January 9, 2011	Willful killing and attempted murder	Sidi Bouzid	July 5, 2018	8	16
16	Adnan Ben Said and Boubakr Kalleli	Murder and attempted murder	Tunis	July 5, 2018	2	7
17	Abdelaziz Mahwashhi	Torture murder, murder, arbitrary arrest	Tunis	August 1, 2018	1	13
18	Events of the civilian prison in Mahdia January 2011	Murder, attempted murder, complicity in a murder, omission	Monastir	August 1, 2018	10	11
19	Bread Riots January 1984 in Sfax	Willful killing and attempted murder	Sfax	September 12, 2018	13	14
20	Revolution events in Hayy Tathamon Majdi Mnassri	Willful killing	Tunis	September 14, 2018	1	7

	January 12, 2011					
21	Revolution events in Ras Djebel January 13, 2011	Willful killing and attempted murder	Bizerta	September 14, 2018	9	18
22	Taieb Khammassi	Murder	Tunis	November 26, 2018	1	6
23	Fathi Khiari and others	Torture murder, enforced disappearance, torture, arbitrary arrest	Tunis	November 26, 2018	6	19
24	Events of the civilian prison in Borj Roumi January 2011	Willful killing and attempted murder	Bizerta	December 18, 2018	17	10
25	Abdessattar Trabelsi	Torture murder	Bizerta	December 18, 2018	1	26
26	Salah Ben Youssef 1961	Murder	Tunis	December 12, 2018	1	6
27	Case of Kasbah events February 26-27, 2011	Murder and attempted murder	Tunis	December 12, 2018	11	6
28	Case of the Revolution of Freedom and Dignity events Grand Tunis January 12-14 2011	Murder and attempted murder	Tunis	December 19, 2018	38	17

29	Moncef Zarrouk	Torture murder	Tunis	December 19, 2018	1	11
30	Bread Riots in Kairouan January 1984	Murder and attempted murder, torture, arbitrary arrest	Kairouan	December 20, 2018	7	45
31	Bread Riots in Mednine 1984	Murder, torture, arbitrary arrest, omission	Mednine	December 20, 2018	18	27
32	Events of the Revolution of Freedom and Dignity Hamma January 13, 2011	Murder and attempted murder	Gabes	December 28, 2018	7	16
33	Bread Riots January 1984 Sidi Bouzid	Murder, arbitrary arrest, torture	Sidi Bouzid	December 28, 2018	8	16
34	Abderraouf Larbi	Torture murder	Tunis	December 28, 2018	1	33
35	Events of the Revolution of Freedom and Dignity Kerkennah January 14, 2011	Murder and attempted murder	Sfax	December 28, 2018	4	12
36	Hassan Mbarki	Torture murder	Tunis	December 28, 2018	1	6

37	Bread Riots Le Kef January 1984	Murder, arbitrary arrest, torture	Le Kef	December 28, 2018	64	43
38	Bread Riots Jendouba January 1984	Murder, arbitrary arrest, torture	Le Kef	December 28, 2018	24	24
39	Amer Deguech	Torture, murder	Tunis	December 28, 2018	1	10
40	Events of Black Thursday Sousse January 26, 1978	Torture murder, arbitrary arrest	Sousse	December 31, 2018	17	15
41	Bread Riots January 1984 Kasserine	Murder, attempted murder, torture	Kasserine	December 31, 2018	98	53
42	Lotfi Klea and others	Arbitrary arrest, murder	Tunis	December 31, 2018	12	19
43	The persons killed and wounded in on Black Thursday January 26, 1978 Tunis	Attempted murder Murder	Tunis	December 31, 2018	32	19
44	Anwar Jrad	Arbitrary arrest Torture	Sousse	December 31, 2018	4	18

		murder				
45	Bread Riots January 1984 Grand Tunis	Murder Attempted murder Arbitrary arrest Torture	Tunis	December 31, 2018	71	93
46	Mohamed Mansouri and others 1987	Torture murder Arbitrary arrest	Tunis	December 31, 2018	85	23
47	Events of the civilian prison in Monastir January 2011	Aggravated assault Attempted murder	Monastir	December 31, 2018	32	11
Total					733	923

▪ **Bills of Indictment Related to Violations of Bodily Integrity (Torture and Rape)**

Number	Victim	Specialized Chamber	Date of Referral	Number of Victims	Number of Alleged Violators
48	Basma Balai	Nabeul	May 23, 2018	1	18
49	Barraket Sahel Group	Tunis	May 29, 2018	142	16
50	Rachad Jaidane	Tunis	May 29, 2018	1	10
51	Events of the Revolution of Freedom and Dignity January 10-17, 2011	Kairouan	December 20, 2018	13	17
52	Pellets Events in Siliana 2012	Le Kef	December 28, 2018	17	14
53	Women victims of gross violations of human rights Jendouba 1987-1996	Le Kef	December 28, 2018	26	34
54	Mohamed Lamine Bey	Tunis	December	3	1

	Jnina Bey Mohamed Ben Salem		28, 2018		
55	Hmida Ajangui Salma Farhat Fatma Mathlouthi	Tunis	December 28, 2018	3	7
56	Unionists Events of Black Thursday January 26, 1978	Tunis	December 31, 2018	13	17
57	Victims of gross violations in the context of trials of Islamists Tunis 1986-2005	Tunis	December 31, 2018	35	95
58	Victims of gross violations in the context trials of Leftists 1974-75	Tunis	December 31, 2018	31	25
59	Rashida Kouki	Tunis	December 31, 2018	1	16
60	Noreddine Ben Jmia	Tunis	December 31, 2018	1	8
61	Kussay Jaibi	Tunis	December 31, 2018	1	10
62	Victims of gross violations in the context of trials of Islamists Nabeul 1987-91	Nabeul	December 31, 2018	41	69
63	Victims of gross violations of human rights Bizerta 1987-1996	Bizerta	December 31, 2018	48	35
64	Victims of gross violations Police District in Kairouan February 1992	Kairouan	December 31, 2018	7	17
65	Basma Chaker	Monastir	December 31, 2018	1	19
Total				385	428

▪ **Bills of Indictment Related to Violations of Personal Freedom**

Number	Victim	Nature of Violation	Specialized Chamber	Date of Referral	Number of Victims	Number of Alleged Violators
66	Detention case of the former	Infringement of personal freedom	Monastir	December 31, 2018	1	9

	president Habib Bourguiba	Issuance of a medical certificate out of complaisance				
Total					1	9

▪ **Bills of Indictment Related to Offences of Embezzlement of Public Funds (Financial Corruption)**

Number	Victim	Specialized Chamber	Date of Referral	Number of Victims	Number of Alleged Violators
67	Tunisair 1996-2011	Tunis	December 31, 2018	*	15
68	Financial corruption and offence of embezzlement of public funds: Zine Elabidine Ben Ali, his family and his close friends	Tunis	December 31, 2018	*	20
69	Financial corruption and offence of embezzlement of public funds in the banking sector	Tunis	December 31, 2018	*	31
Total				1	66

6.2. Referral Decisions

Article 42 of the Organic Law N° 2013-53 stipulated that: “TDC shall refer to the Public Prosecution the cases in which TDC of gross human rights violations was established and shall be notified of all the measures which are subsequently taken by the judiciary”. Pursuant to this, all the cases referred to public prosecutors included sufficient evidence⁴⁸ that crimes against humanity were committed. These cases were brought before TDC’s Council, which decided, after having reviewed them and their corroborations, and having

⁴⁸ See Article 116 of the Criminal Code on the requirement of this condition for the indictment chamber to refer the case to the criminal division.

considered the investigations' outcome, to refer them to the Specialized Chambers for adjudication.

The same Article 42 applies to the cases where investigative procedures were not completed, either because the ministries (particularly the Ministry of the Interior), the military court and the apparatuses to which the alleged violator belongs failed to send the documentation in compliance with the deadlines (December 31), despite the extensive correspondence dispatched by TDC's Presidency to that effect, or because the General Commissioner in Charge of State Litigation refused to deal with TDC.

To safeguard the rights of the victims who filed their cases, TDC's Council decided to refer in the form of referral decision a number of these cases, along with the supporting evidence justifying the occurrence of violations, to the specialized chambers. The latter shall examine them exercising their inductive powers, issuing preparatory rulings and appointing a judge to conduct the necessary investigations and examinations, in accordance with Article 143 of the Criminal Procedure Code which stipulated that "the court may appoint one of its members to carry out a supplementary investigation. In such a situation, the case is delayed to a fixed time". The criminal chambers specialized in Transitional Justice may therefore complete the investigation of cases referred to them by the Truth and Dignity Commission, with a view to ensuring the right of defense and the victims' rights, revealing the truth and holding the perpetrators liable and accountable for their infringements.

There were 131 decisions referred to the specialized criminal chambers, which included 527 victims, excluding some victims of financial crimes and offences of embezzlement of public funds:

- Victims of violations of the right to life : 264
- Victims of enforced disappearance without reappearing: 46
- Victims of violations of bodily integrity (torture and rape): 18
- Victims of financial corruption and embezzlement of public funds: 199

Since referral decisions are there to charge, it is impossible to keep track of the number of perpetrators.

▪ **Referral Decisions Related to the Violation of the Right to Life**

Number	Victim/Case	Specialized Chamber	Referral Date	Number of Victims
1	Lotfi Idoudi	Tunis	29/12/2018	1
2	Hammadi Zallouz	Tunis	31/12/2018	1
3	Anouar Ferjani	Tunis	31/12/2018	1
4	Mustapha Ben Belgacem Hassine	Tunis	31/12/2018	3

	Mohamed Hedi Nighaoui Fathi Zribi Mehrez Boudagga			
5	Boulbaba Dkhil	Tunis	31/12/2018	1
6	Hassan Saadawi	Tunis	31/12/2018	1
7	Riadh Bouslama	Tunis	31/12/2018	1
8	Taoufik Marzouki	Tunis	31/12/2018	1
9	Adel Toumi	Tunis	31/12/2018	1
10	Anis Jlassi	Tunis	31/12/2018	1
11	Hatem Mouaffak	Tunis	31/12/2018	1
12	Mohamed Amin Weslati	Tunis	31/12/2018	1
13	Cheriff mteallah	Tunis	31/12/2018	1
14	Amara Ghnimi	Tunis	31/12/2018	1
15	Mohamed Jilani Ghodhbani Abdelhakim Jilani Ghodhbani Abdelmajid Sakri Abderrazak Hammami Mohamed Salah Marzouki	Tunis	31/12/2018	5
16	Habib Jebali	Tunis	31/12/2018	1
17	Walid Denguir	Tunis	31/12/2018	1
18	Mabrouk Zran	Tunis	31/12/2018	1

19	Ibrahim Hammami	Tunis	31/12/2018	1
20	Echerif Aridhi	Tunis	31/12/2018	1
21	Ahmad Azayzi	Tunis	31/12/2018	1
22	Hatem Bettaher	Tunis	31/12/2018	1
23	Ziad Louati	Tunis	31/12/2018	1
24	Tahar Ben Maatallah	Tunis	31/12/2018	1
25	Mokhtar Attia	Tunis	31/12/2018	1
26	Ali Ben Isamaïl Ben Ali Bouin	Tunis	31/12/2018	1
27	Ahmad Ouerghi	Tunis	31/12/2018	1
28	Sadok Ben Ahmad Hichri	Tunis	31/12/2018	1
29	Belgacem Yaakoubi	Tunis	31/12/2018	1
30	Mastouri Abedlwahhab	Tunis	31/12/2018	1
31	Marwan Ben Zayneb	Tunis	29/12/2018	1
32	Mohamed Ali Hachicha	Tunis	31/12/2018	1
33	Mabrouk Zemzemi Salaheddin Babay Mustapha Hajlawi	Tunis	31/12/2018	4
34	Hechmi Makki	Tunis	31/12/2018	1
35	Mohamed Lazher Noomen	Bizerta	31/12/2018	1
36	Ahmad Boazizi	Bizerta	31/12/2018	1
37	Ridha Jday	Bizerta	29/12/2018	1

38	Amin Grami	Bizerta	31/12/2018	1
39	Sofiane Ben Jmela	Bizerta	31/12/2018	1
40	Hassan Ganouni	Bizerta	31/12/2018	1
41	Kamel Baklouti Ahmad Amdouni	Sousse	31/12/2018	2
42	Yassine Boukaddida	Sousse	31/12/2018	1
43	Ezeddine Ben Jrida	Sousse	31/12/2018	1
44	Lakhdher Sdiri	Sousse	31/12/2018	1
45	Ahmad Khammassi	Le Kef	31/12/2018	1
46	Hichem Alaymi	Gafsa	31/12/2018	1
47	Mohame Sghayar Nbili	Gafsa	31/12/2018	1
48	Echatti Khabtheni Ahmad Ibrahim Boutabba Mouhame Yahyaoui Mohamed salah Dziri	Gafsa	31/12/2018	4
49	Bread Riots January 1984 Gafsa	Gafsa	31/12/2018	23
50	Tarek Zitouni	Gabes	31/12/2018	1
51	Ibrahim Abdeljawad	Gabes	31/12/2018	1
52	Khaled Khelifi	Gabes	31/12/2018	1
53	Bread Riots January 1984	Gabes	31/12/2018	45

54	Nadhir Abdelmoomen Mohamed Ben Salah Mohamed Dghim	Mednine	31/12/2018	3
55	Omar Haddad	Sfax	28/12/2018	1
56	Ammar Beji	Sfax	31/12/2018	1
57	Mohamed Ben Mohamed	Sfax	31/12/2018	1
58	Mohamed Hamani	Sfax	31/12/2018	1
59	Hmida Ben Hneyya	Sfax	31/12/2018	1
60	Bread Riots January 1984	Monastir	31/12/2018	48
61	Attempted coup 1962	Tunis	29/12/2018	26
62	Trials of the Supreme Court of Judicature 1956-1959	Tunis	31/12/2018	50
Total				264

▪ **Referral Decisions Related to the Violation of Bodily Integrity (Torture and Rape)**

Number	Victim	Specialized Chamber	Referral Date	Number of Victims
63	Zouhayr Yahyaoui	Tunis	31/12/2018	1
64	Noureddine Ben Khdher Joseph Gilbert Nakkach Mohamed Hechmi Troudi	Tunis	31/12/2018	6

	Mohamed Ben Jannet Habib Ben Houass Ahmad Ben Othman State Security Court 1968			
65	Farid Stissi	Sfax	31/12/2018	1
66	Dhaw Thebti	Sousse	31/12/2018	1
67	Bechir Essid	Tunis	31/12/2018	1
68	Ridha Zelfani Mohamed Nassir Askri Fouad Ajili Fouad Jaziri Mohamed Habib Brahem	Sousse	31/12/2018	5
69	Shedy Ben Khlaifa Adel Ben Khmis Salah Ben Omar Lasswed	Sfax	31/12/2018	3
Total				18

▪ **Referral Decisions Related to Victims of Enforced Disappearance without Reappearing**

Number	Victim	Specialized Chamber	Referral Date	Number of Victims
70	Ahmad Lazreg	Tunis	31/12/2018	1
71	A group of 39 Algerians, 3 Tunisians and 1 Moroccan	Tunis	31/12/2018	43

	October 2008			
72	Mosbah Chaftar	Tunis	31/12/2018	1
73	Abbas Mlouhi	Tunis	31/12/2018	1
Total				46

▪ **Referral Decisions Related the Violation of the Right to Property (Financial Corruption)**

Number	Victim	Specialized Chamber	Referral Date	Number of Victims
74	Salah Arfaoui	Tunis	31/12/2018	*
75	Ahmad Ben Omar Zbidi	Tunis	31/12/2018	1
76	Mohamed Habbassi	Tunis	29/12/2018	1
77	Case of Land Lots in Ain Zaghouan	Tunis	31/12/2018	13
78	Abderrazzak Ben Bechir Ben Aziza	Tunis	31/12/2018	1
79	Abderrahman Ben Hadj Arbi Ochi	Tunis	31/12/2018	1
80	Abderrahman Illani	Tunis	31/12/2018	1
81	Mohamed Hrig	Tunis	31/12/2018	1
82	Mustapha Habs Salem Jerbi F athi Sebai Farhat Hfayedh	Tunis	31/12/2018	*
83	Fathi Ben Ahmad	Tunis	31/12/2018	*

	Bakouche			
84	Heirs to Nouredine Ben Jmiaa	Tunis	31/12/2018	*
85	Mohamed Hedi Ben abdelmlak	Tunis	31/12/2018	*
86	Claude Fortini Orlando Titziano Roger Paul Stéphane Attias Lionel Martin Bouda Attias Joseph Jean Ludovic Sophie André Kriev	Tunis	31/12/2018	*
87	Heirs to Omar Dahmani	Tunis	31/12/2018	*
88	Radhia Ayachi Nazih Ayachi Hedi Dalleji Ali Dalleji	Tunis	31/12/2018	*
89	Adel Ayachi	Tunis	31/12/2018	1
90	Ounnes Missaoui Anis Missaoui	Tunis	31/12/2018	*
91	Heirs to Chedhli Mhiri	Tunis	31/12/2018	*
92	Senior pontiffs and the Tunisian Jewish community	Tunis	31/12/2018	*
93	Azza Balti	Tunis	31/12/2018	6

	Samir Zayer Chedhli Mernissi Monaya Ben Houidi Noureddine Machfar Radhia Belassir			
94	Case of White Kelibia	Nabeul	31/12/2018	19
95	Ahmad Ben Tahar Ben Mohamed Nguira Daniel Zarouk Mohamed Bouksila Heirs to Mami family Mohamed Gabsi Mohamed Chedhli baatout Ezzeddine Ben Youssef Moncef Akacha Hady Loussif	Nabeul	31/12/2018	9
96	Makram Ben Mohamed Salah Farhat	Monastir	31/12/2018	1
97	Majed Ben Abdessayed Ben Masaoud	Monastir	31/12/2018	1
98	Noureddine Mjid	Bizerta	31/12/2018	1
99	Jnayna Bey Ben Hassine	Tunis	31/12/2018	*

100	Heirs to Ahmad Bey	Tunis	31/12/2018	*
101	Salwa Bent Slaheddine Houseyni	Tunis	31/12/2018	
102	Heirs to Chedhli Ben Mahmoud Haydar and Heirs to Jnayna Bey	Tunis	31/12/2018	*
103	Mohamed Fateh Mehrzi	Tunis	31/12/2018	*
104	Raafat Ben Mohamed Ben Mohamed Lamin Bey and Nouredine Ben Mohamed Ben Mohamed Lamine Bey	Tunis	31/12/2018	*
105	Said Ben Mohamed Chedhli Houseyni	Tunis	31/12/2018	*
106	Mohamed Jaleddine Ben slimane Ben Ezeddine Ben Hassine	Tunis	31/12/2018	*
107	Farouk Bey	Tunis	31/12/2018	*
108	Family of Tayeb Ben Ahmad Bey	Tunis	31/12/2018	*
109	Hassan Najib Azzouz	Tunis	31/12/2018	*
110	Fatma Chelli	Tunis	31/12/2018	*
111	Mounir Bahri	Tunis	31/12/2018	*
112	Fathi Dammak	Tunis	31/12/2018	1
113	Mohamed Ali Abdelali	Tunis	31/12/2018	1
114	Taieb Ben	Tunis	31/12/2018	1

	Abdeljawad Akremi			
115	Mohamed Hedi Barraj	Tunis	31/12/2018	1
116	Mounir Ben Sakhreya	Le Kef	31/12/2018	1
117	Imededdine Ben Ayed	Sfax	28/12/2018	*
118	Zied Ben Ayed	Sfax	28/12/2018	*
119	Lotfi kennou	Sfax	31/12/2018	1
Total				63

▪ **Referral Decisions related to Embezzlement of Public Funds (The State as Victim)**

Number	Case	Specialized Chamber	Referral Date	Number of Victims
120	Case of Carthage Cement	Tunis	31/12/2018	*
121	Case of the Tunisian Agency for External Communication (ATCE)	Tunis	31/12/2018	*
122	Forfeiture case	Tunis	31/12/2018	*
123	Corruption in government contracting : City of Culture in Tunis	Tunis	31/12/2018	*
124	Fianancial Corruption in the Customs	Tunis	31/12/2018	*
125	Consulting Offices	Tunis	31/12/2018	*
126	Case of Voyageur company	Tunis	31/12/2018	*

127	Recruitment Fraud (fictitious jobs) in Gafsa Phosphate Company (CPG)	Gafsa	31/12/2018	136
128	Case of Cape 3000 Bizerta	Bizerta	31/12/2018	*
129	Fianancial corruption in the petroleum sector: Ashtart oil field	Gabes	31/12/2018	*
130	Financial corruption in the petroleum sector : Zarat oil field platfrom	Gabes	31/12/2018	*
131	Environmental pollution due to Phosphate production	Gafsa	29/12/2018	*
Total				126

Chapter Nine

Cooperation and partnership ---

I. On the National level

I. Cooperation with ministries

▪ Ministry of Social Affairs in the context of care and support for victims

The TDC held regular meetings with representatives of the Ministry of Health and the Ministry of Social Affairs. The meeting held at the headquarters of the General Directorate of Social Promotion on April 5, 2016 discussed ways to strengthen cooperation to provide care and support to the various victims, particularly those not benefiting from health coverage and those experiencing social or psychological difficulties or both. As regards coordination, the Ministry of Social Affairs was the only ministry to have interacted with the TDC even though no partnership agreement has been signed between the two parties.

With the exception of the Secretary of State in charge of the Revolution's Martyrs and Wounded, and the victims of terrorism, which operates under the Ministry of Social Affairs, and which did not respond positively to the TDC's request for a meeting to discuss the question of the wounded of the revolution, the Ministry of Social Affairs has shown serious cooperation by responding to the victims' requests dispatched to the Ministry's competent departments.

▪ Ministry of Health

On January 19, 2016, a working session was held between a TDC delegation and the Minister of Health. This session discussed ways to establish coordination between the TDC, the Ministry of Health and the departments affiliated with the Ministry.

During this session, the provision of immediate health care to victims by means of health cards bearing the signature of both the Ministry of Health and the TDC, in a fashion consistent with the action carried out jointly with the former Ministry of Human Rights and Transitional Justice, was discussed. The validity of the health cards, however, should not exceed a period of 6 months with part of the fees incurred paid by the TDC.

To identify the victims' key health-related requests and needs, a pilot list of 100 victims was handed to the representative of the Ministry, spelling out the various physical and psychological conditions affecting the victims.

However, none of the cases has been examined nor has the Committee on Reparation and Rehabilitation been provided with the map of healthcare services despite the various correspondences to the end.

It should be noted that public health institutions cooperate with the TDC with regard to immediate care and urgent interventions in favor of the victims.

▪ **Ministry Liaising with Independent Bodies, Civil society and human rights**

On September 16, 2016, the TDC organized a workshop in its headquarters on the organization, management and financing of the Dignity and Rehabilitation of the Victims of Tyranny Fund". The meeting was attended by representatives of the Committee on the Revolution's Martyrs and Wounded, Implementation of the Law on General Amnesty, and Transitional Justice. Were also present at the meeting representatives of the APR's Financial Commission, the Presidency of the Government, the Ministry of Finance, the Ministry of Social Affairs, the Ministry of Development, Investment and International Cooperation, the Ministry of Local Affairs and the Environment, The Ministry of Health, the Ministry of Women, Family and Childhood and the Ministry of Vocational Training and Employment.

During the workshop, the TDC outlined its vision and philosophy regarding the comprehensive program on individual and collective reparations and briefed the participants on the progress made in that regard. As concerns the Government Order on the said Fund, the TDC proposed recommendations that are informed by the TDC's own thinking about compensation funds as well as by comparative experiences in the field.

Although the representatives of the participating parties expressed an understanding of the TDC's vision of reparation, which led them to almost stand on common ground regarding the legal conception of the Fund, the multilateral negotiations after the workshop brought the discussions back to the initial stage and the question of the Dignity Fund remained unanswered.

In 2017, the TDC prepared a proposal for the Dignity Fund draft Order, which was addressed to the Presidency of the Government, following which coordination meetings were held with the Minister of Relations with Constitutional Bodies, Civil Society and Human Rights as well as with the Presidency of the Government.

However, despite holding consultation meetings on the draft, the TDC was not invited to take part in the final working sessions held at the Presidency of the Government to reach a decision regarding Fund creation Order. The Order was issued⁴⁹ on February 28, 2018, without taking into account any of the TDC's recommendations, especially with regard to the participation of the civil society in the Fund's Board. As at the date of the end of the TDC's work, the Fund had not seen the light of day.

49 <http://www.legislation.tn/sites/default/files/fraction-journal-officiel/2018/2018A/018/Ta20182113.pdf>

2. Partnership with the Provisional Authority overseeing Civilian Justice

In performing its mandate, the TDC was fully backed by the Provisional Authority overseeing Civilian Justice which had been established pursuant to Organic Law n° 13 of 2013 dated 2 May 2013, in response to calls from judges and civil society to uphold the independence of the judiciary from the executive branch.

Immediately after the TDC was established, a series of consultations were initiated to fully grasp and interpret the TJ Law in relation to the quasi-judicial powers of the TDC and TDC's scope of action. As a matter of fact, the Ad-interim Judicial Justice Authority confirmed the TDC's exclusive investigative mandate.

The Ad-interim Judicial Justice Authority sought to develop a manual of procedures on the relations between the Specialized Chambers and the TDC. However, the manual was not endorsed because the TDC's work came to an end.

The Ad-interim Judicial Justice Authority was also an active member in the steering committee of the TJ support program with UN agencies. This remained the case until the High Judicial Council was established and took over the Provisional Authority's mandate in relation to TJ.

Overall, the judiciary played a key role in supporting the transitional justice process and the TDC.

3. Partnership with the independent national bodies

With support from the UN and the Council of Europe, the TDC organized a two-day brainstorming workshop (May 26/27, 2017) on the "Foundations for the Independence of the Independent Bodies" in partnership with four such independent authorities, namely the AD Interim Judicial Justice Authority ISIE, INLUCC and HAICA. The workshop was attended by members of the Assembly of People's Representatives, representatives of the government, of the Ministry of Finance and of supervisory bodies, as well as international experts from the Venice Commission.

The bodies presented their vision on how to ensure the independence of the independent bodies in terms of appointing their members and conducting their work and their relations with the legislative, executive and judicial authorities. They concluded with drafting some recommendations to this end. And at the end of the workshop, the establishment of the Forum of Independent Bodies was announced.

4. The General Union of Tunisian Workers (UGTT)

The effective cooperation between the TDC and UGTT started when the latter lodged a victim's file with TDC. Subsequently, the UGTT set up a Commission on Transitional Justice. During a working session on 17 August 2016, the two parties agreed on a partnership program based on the exchange of data on the UGTT archives of which it has been dispossessed over different periods, so that the TDC could recover the said archives or obtain

copies of them. The preparation of a public hearing on the Black Thursday (26 January 1978) was another opportunity for fruitful cooperation between the TDC and the UGTT activists.

5. National Bar Association

Lodging a file by the National Bar Association as a victim in June 2016 was an opportunity to confirm the trust placed in the TDC by the National Bar Association. During a working session between the two bodies on October 10, 2016, the National Bar Association announced the establishment of a TJ ad-hoc committee. The Committee was mandated to coordinate with the TDC as regards the files lodged with the TDC by the National Bar Association and its members. Representatives of the two bodies discussed the role of lawyers and their profession in the process of transitional justice.

6. Civil society

Since its preparatory period, the TDC engaged in consultations with the civil society regarding TDC's vision and strategic plan for the implementation of its mandate. This partnership took the form of periodic meetings with civil society organizations both in the capital and in the regions. One of the first activities of the TDC was to organize regional meetings with the civil society. Meetings took place in September and October 2014 in Tunis, Ben Arous, Manouba, Gabes, Tataouine, Medenine, Tozeur, Kebili, Gafsa, Ariana, Jendouba, Bizerte, Nabeul, Zaghuan, Sousse, Kairouan, Monastir, Mahdia, Siliana, Kef, and Beja.

Over 120 meetings were organized during the TDC's lifetime.

This partnership culminated in several joint seminars on the challenges of transitional justice. The TDC also organized a national consultation⁵⁰ on reparation that lasted more than four months. During this consultation, the TDC was able to collect the proposals of victims and civil society associations on reparations, the rehabilitation plan, preservation of collective memory and institutional reform.

One of the most important seminars was the one held on March 6, 2018 on the TJ process after the TDC's mandate comes to an end. **One of the outcomes of this seminar was the establishment of the Civil Society Coalition to Support the Transitional Justice Process.** The Coalition played a key role in supporting the TDC, especially in light of the attempts to stop TDC's work and abort the TJ process on March 26, 2018. On the occasion of the final conference organized by the TDC on December 14-15, 2018, the Coalition was entrusted with facilitating the final session. The session was chaired by the President of the Judges' Association who facilitated the dialogue on preparing the post-TDC period and the challenges to be faced by both governmental and non-governmental actors as well as their respective responsibilities as regards the implementation of the recommendations included in the TDC's final report.

⁵⁰ See the outputs of the consultation in the studies section

On the occasion of the celebration of the International Day for the Right to the Truth on March 26, 2019, the National Coalition to Support the Transitional Justice Process paid homage to the members of the TDC. This also served as an opportunity for the TDC to hand over a copy of TDC's final report to the Coalition. In return, the Coalition stressed the need to give effect to the TDC's recommendations.

II. On the international level

1. Project supporting implementation of Transitional Justice process in Tunisia (PRODOC)

Under the 2014 Partnership Agreement between the UN agencies (UNDP, OHCHR), on the one part and the TDC, the Ad-Interim Judicial Justice Authority, the Ministry of Justice and the Ministry of Foreign Affairs on the other, the meetings of the PRODOC's Steering Committee were held at the TDC's main office in the presence of representatives of the Ad-Interim Judicial Justice Authority, the Ministry of Justice, the Ministry of Foreign Affairs, the UN partners and the donors. The project evaluation report was discussed with the support of donors, the EU, Germany, Norway and the Netherlands.

The UN party focused on the following areas:

- Help organize public hearings
- Support the TDC's specialized committees
- Organize a training course for Tunisian journalists on covering public hearings and protecting those who present testimonies and the victims.
- Assist in the implementation of the communication strategy.
- IT and office supplies
- Means of transport

The value of in-kind support amounted to 1 345 391 TND.

The relationship between the Truth and Dignity Commission and the UN agencies has been characterized by full cooperation in all areas covered by the Partnership Agreement.

The UN cooperation included UN Women who supported the TJ process, particularly through a field study⁵¹ on the impact of human rights violations on the families of political opponents. The study used the TDC's database and the victims' testimonies collected by the TDC.

51 See full research in the studies section

Chapter Ten

Obstacles faced by TDC

Since the start, the TDC faced a number of obstacles that persisted throughout TDC's lifetime. These multifaceted hindrances partially obstructed the TDC's activities, which led to the TDC's term being extended.

I. State institutions abstaining from granting TDC access to information.

Notwithstanding an explicit provision in the TJ Law whereby the TDC is granted access to public and private archives regardless of any other legal prohibitions in force, and in spite of the Circular issued by the Head of Government (24/2014 dated September 30, 2014) on measures to facilitate the TDC's activities, TDC had to face obstacles that consisted in refraining from implementing articles 40 and 54 of the TJ Law⁵², including:

1. Denying TDC access to presidential archives and the biased attitude of the Director of the National archives

The presidential archives episode, which served to undermine the TDC's reputation with the general public, was a turning point in TDC's relationship with State institutions in respect of the National archives.⁵³

Following the meeting held in the Presidential Palace in Carthage on July 11, 2014 between the President of the Republic and the TDC Board, the President of the Republic accepted the TDC's request to have access to the presidential archives. To that end, he mandated Judge Ahmed Ouerfelli, the Head of the Legal Department to oversee this access. A series of meetings were held with the Presidential Office at the end of which a written agreement was signed on November 25, 2014, whereby, pursuant to articles 52 and 54 of the TJ Law, the presidential archives are transferred to the National Archives to be inventoried, digitized and conserved. This is all the more important that the operation may take some time to be completed since there are about 30 thousand archive boxes stored in venues that fail to meet the conditions and criteria for safe conservation.

The TDC contacted the National Archives Institute since November 13, 2014 to coordinate the management of the Presidential archives. The TDC proposed that the archives of the Presidency of the Republic be entrusted to the National Archives Institute with unimpeded

⁵² See the table of official correspondences sent by the TDC to various stakeholders.

⁵³ For more details, see the section dedicated to this topic in Book 5

access granted to the TDC. To that end, the TDC proposed a draft convention to be signed with the National archives laying down each party's responsibilities. However, the Institute refused to sign the Convention **on the pretext that it is not independent** and that the Presidency of the Government shall be consulted prior to any such commitment.

After an Agreement⁵⁴ was signed with the Presidency of the Republic on transferring their archives to the National Archives Institute, the TDC started talks with the National Archives' Director General to provide a location for the storage of the presidential archives. On another hand, the team of archivists was strengthened with four new members to carry out the inventor of said archives before putting them in the boxes for transportation (as was the case with ISIE for which a warehouse was allocated after the October 2011 elections). However, on December 24, 2014, during a working session at the National archives main office, the General manager of the National Archives expressed reservations concerning the storage of the presidential archives at the Archives' institution. He requested authorization from the Presidency of Government prior to any cooperation with the TDC. Against this background, the TDC's Council decided on December 25, 2014 to transfer the said archives to the TDC's main office before they are subsequently transferred to the National Archives.

Accordingly, to implement the TDC Council's decision, a TDC team travelled to the Presidential Palace in the morning of Friday, December 26, 2014, after having coordinated this with the Director of the Presidential Guard. Surprisingly, the TDC team members were barred from entering the premises by men in civilian dress who introduced themselves as members of the Presidential Guard trade Union. Their leader was Mr. Hichem Gharbi (who was promoted after the incident and appointed Council in a European capital). Besides barring access to the TDC team, they obstructed the transport of archives despite the instructions given in that respect by the Director of the Presidential police. Moreover, despite the confidential nature of the TDC mission, a Nessma TV crew was on site with their cameras, to the surprise of the TDC team.

Against this background, a petition was filed by the TDC Board on the same day to complain against "the obstruction of the operation of the TDC" by the National Guard Union. An investigation was initiated at the Court of First Instance in Tunis based on article 56 of the TJ Law. Four years later, the case is yet to be determined. The crime has now been requalified as a misdemeanor and the case has been referred to the District Court at Carthage where the case was pending until the TDC's work came to an end.

Moreover, the TDC Council was surprised to learn about TDC's member, Mr. Zuhair Makhoul's decision to⁵⁵ boycott the work of the TDC's Council and to freeze his membership until the case lodged against the Presidential Guard Union has been withdrawn (Assabah newspaper). The TDC continued nonetheless to consult with the Presidency of the Republic and the National Archives to give effect to its mandate regarding access to the national archives.

⁵⁴ See Appendices

⁵⁵ [Assabah newspaper](#) on 18 January 2015.

2. The Director of the National Archives departs from impartiality

On the margin of the public hearing of March 24, 2014, on the violations committed in the aftermath of the country's independence (March 20, 1956), the Director of the National Archives signed a petition drawn up by "Patriotic Historians" condemning the TDC and accusing it of political exploitation for the sheer fact that it gave the floor to the victims to give their testimonies. The said petition pointed out that "the speakers during the last "hearing" session have been carefully selected and their testimonies influenced so that they focus on specific issues to settle political scores. It may therefore be said that the testimonies have been used to achieve political goals"⁵⁶

The Director of the National Archives returned to the charge in March 2018 following a communiqué by the TDC. In fact, he denied, in a statement to the news agency TAP, any right to the TDC to study archives and added that "the study of historical documents and the issues raised by TDC do not fall under its remit nor does the Law on Transitional Justice assign this role to them. This is an academic discipline that is entrusted to professors of history. "The TDC's reading of the document is inaccurate, lacks seriousness and testifies to the TDC's ignorance of how historical documents should be read."

The signatories of this text also accused "the President of the TDC, Sihem Bensedrine, of lying by not telling the truth." On several other occasions, he continued his campaigns against the TDC and set himself up as the custodian of the victims' memory.

3. The Ministry of Interior denied TDC access to the archives of the political police.

The political police archives are of paramount importance to deconstruct despotic regimes as evidenced by other experiences of truth commissions worldwide. The experience of East Germany illustrates well this state of affairs as STASI, the country's political police, sought to interfere with people's lives to collect information about them. STASI's modus operandi was unprecedented as they kept the country under a firm grip by spreading the practice of snitching, be it coerced or induced, with the aim of imposing absolute control on the society. In the wake of the fall of the Berlin Wall in 1989, these secret files became accessible and the revelations about the extent of snitching went well beyond any imagination. The opening of these archives contributed to the building of the democratic system in Germany.

As for Tunisia, many of the victims of tyranny have requested the TDC to grant them access to their files at the Ministry of Interior. All TDC's efforts to that end were to no avail. Despite the many correspondences addressed by the TDC to the Ministry of Interior to allow access to the said secret police archives located at the Directorate-General of Specialized Services, the Directorate-General of Technical Services, the Central Intelligence Department, and the State Security Services, the Ministry turned a blind eye to this request.

⁵⁶ [The petition](#) was published on April 8, 2017

4. Military justice abstaining from cooperating with the TDC

Despite the TDCs many correspondences, the permanent military courts in El-Kef, Sfax, and Tunis and the Military Court of Appeal in Tunis refused to allow the TDC access to the case files submitted to its consideration, particularly those concerning the Revolution's events.

The TDC technical teams who visited the said courts returned empty-handed. According to the President of the Military Court, the TDC should have addressed its request to the Office of the Public Prosecutors stipulated in the Code of Criminal Procedure. However, the same requests which now have been addressed to the Public Prosecutor's office remained unanswered.

But more than that, the Public Prosecutor at the Military Court in Tunis, in a statement published on January 20, 2017, declared that the said Court **refrained from** handing over copies of the case files under its jurisdiction on grounds that they were "being examined". This clearly breached Article 40 of the TJ Law which stipulates that the TDC shall have the power: "to request the administrative and judicial authorities, the public commissions as well as any other natural person or legal entity to provide it with the documents or information they have in their possession, and to examine the lawsuits brought before judiciary committees as well as the judgments or decisions issued by them".

5. The Judicial and Financial Pole's failure to cooperate with the TDC

The TDC communicated with the Court of First Instance in Tunis on several occasions to request access to some case files being heard by the Financial Judicial Pole⁵⁷. The Pole responded that the TDC must deliver evidence as to the existence of a request for arbitration and reconciliation relating to the said case files as well as evidence that these case files now fall under Article 12 of the TDC's Code of Arbitration and Reconciliation. It should be noted, however, that no mention whatsoever was made to any reconciliation procedure in the letters sent by the TDC. Thus, the TDC's requests for access remained pending and the judges of the Financial Pole refused to hand over the experts' reports prepared relating to the cases examined by the TDC's Arbitration and Reconciliation Committee. After the Organic Law on the Judiciary, Economic and Financial Pole was promulgated,⁵⁸ the TDC submitted its requests to the First President of the Court of Appeal in Tunis. The technical team in charge of follow up of these case files noticed that the State General Prosecutor signed a number of letters and referred them to the Court. However, there has been no action taken to meet the TDC's requests.

Jamel Shaba, the investigating judge in the first office, informed the Deputy President of the TDC that all he can do is to hand over a summary prepared by himself of the cases, thus refusing to allow the TDC to enjoy its right to have access to copies of the cases under TDC's

⁵⁷ See the table of official correspondences sent by the TDC to various stakeholders.

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examination after they have been referred to them by the State Litigation Officer. In fact, 686 cases of financial corruption are heard by the courts.

6. Experts refraining from carrying out evaluation assignments

In the same context, the TDC organized a working session in July 2016 with the judicial experts mandated by the courts since 2011 to prepare experts' reports on the cases heard by the said courts. During the session, the experts acknowledged that they had examined the files and identified the violations committed and that they have achieved a rate of progress of about 90% in that respect. It was also agreed upon to prepare a framework cooperation agreement to organize the work of the experts and to hold a session in the month of August to launch the implementation of activities. When the session was held, most experts invoked «**professional secrecy and the confidentiality of ongoing investigations.**» When recalling the legal exemptions to which the TDC is entitled, particularly Article 54 of the TJ Organic Law which clearly stipulates that: " *TDC's requests to obtain information or documents may not be faced by professional secrecy obligations, regardless of the nature or capacity of the natural person or legal entity in possession of the information or documents being requested by TDC. Those entrusted with such secrets shall not be punished for revealing them to TDC*", most experts continued to refuse to cooperate. The TDC requested the arbitration of the First President of the Court of Appeal who recommended that these experts be directly tasked with performing these appraisals at the expense of TDC.

In fact, the TDC entrusted some experts with preparing the appraisals for the files submitted for its examination by the Chief Litigation Officer. However, they ⁵⁹ apologized for not being able to do so on the ground that they had not been duly authorized for that purpose by the investigating judges who had handled these cases.

7. The Ministry of Culture and the Municipality of Tunis denying TDC access to a public hall for its public hearings

In 2016, on the occasion of the preparations for the first public hearing, the TDC contacted the Municipality of Tunis, the capital city to see if it were possible to lease the Palace of Congresses to host the first of such hearings. However, the Director of the Palace of Congresses, Mr. Lassaad Alzar, refused to entertain the TDC request on the ground that the Palace would undergo maintenance.

In August 2018, the TDC communicated with the Municipality of Tunis to book the Palace of Congresses to host the TDC closing conference on 14/15/16 December 2018. However, the same director turned down the request claiming that the venue had already been booked by another organization. This compelled the TDC to change the date of the closing conference and to send another letter to the Municipality of Tunis to book the Palace of Congresses.

⁵⁹ See Appendix

Once again, however, the Director of the Palace rejected the TDC's request since new maintenance work had been scheduled to take place in December 2018, he claimed.

The TDC sent a correspondence to the Ministry of Culture to book venues at the City of Culture to hold the conference on 14/15/16 December 2018. However, Mr. Mohamed Z. A. the Minister of culture flatly refused to allow the TDC access to the said venues during the period concerned. Even when the TDC changed the dates of the closing conference, the same answer was provided. It is important to note that the said Minister turned down all requests to meet with the TDC to discuss matters relating to memorialization in the field of culture.

Had it not been for the intervention of Mr. Mehdi Ben Gharbia, the Minister of Relations with Constitutional Bodies in 2016 to provide a venue for the first public hearing, the TDC would perhaps have had to organize the event under a tent as was the case on the occasion of the kickoff of the TDC work. Despite the Minister's intervention to book the "Alissa" venue in the northern suburb of the capital city which had been used in the past by the wife of the former president and which was now confiscated, the Judge in charge of the venue reacted in a strange manner. Indeed, he contacted the TDC on the day the first public hearing was held (November 17, 2016) to say, on behalf of the Minister of Justice's chief of staff to condemn "the attack on the independence of the judiciary". The Chief of Staff went as far as imposing a condition whereby access to the room booked by the TDC would be granted only if "the TDC President is measured in her words when giving her opening speech"! Since the President of the TDC refused such "instructions" and blackmailing from the Minister of Justice, the supervising judge, a few hours before the event was to start, instructed the Court Administrator to order the TDC to pay the rental fee straightaway or see the booking cancelled. Though this is a clear breach of the principle of "the work accomplished", the TDC accepted to pay the said fees, notwithstanding the fact that they were by far higher than those applicable for the general public (the rate is 5000 TND for a wedding ceremony. For the TDC event, however, the Court Administrator set the fee at 30.000 TND, taxes excluded). This unwarranted difference was noted by the Court of Audit, which blamed the TDC for the payment of this too high an amount.

II. Presidency of the Republic

1. Reconciliation Bills

The Presidency of the Republic submitted a draft bill on an organic law on **Reconciliation in the economic and financial fields**". The bill, which stands in contradiction to the TJ system, was endorsed by the cabinet meeting on July 14, 2015.

The TDC expressed its position as regards the bill by means of statement of its Council published on July 20, 2015. The TDC stressed the complementarity of TJ mechanisms and their interlinkages as well as the fact that transitional justice is an entitlement and a safeguard for a sound transition to democracy as stipulated in the preface to the Constitution and its transitional provisions, including, in particular, subparagraph 9 of Article 148. The TDC also underscored the fact that the Reconciliation Bill empties the TJ system form its

very substance and leads to abandoning one of TJ's key tools to unravel the truth, hold perpetrators to account, carry out arbitration and reconciliation and reform institutions to ensure non repetition. The Bill also grants impunity to the perpetrators of acts of financial corruption and embezzlement of public funds. What is more, the Bill is inconsistent with the Tunisian State's commitments in the field of the fight against corruption and law enforcement to this end. A case in point is the UN Convention against Corruption (UNCAC) ratified by Tunisia. To add insult to injury, the Bill provides for provisions that fail to ensure the neutrality and independence of the proposed reconciliation commission, which, in actual fact, is a purely administrative commission that is fully controlled by the executive in terms of its composition and supervision.

In light of the importance of consultations and exchange of expertise with the relevant bodies, the TDC cooperated with the European Commission for Democracy (usually referred to as the Venice Commission)⁶⁰, to seek their opinion on the Bill for an organic Law on Reconciliation. To this end, representatives of the Venice Commission were received in October 2015 to follow up on the TDC's request. The Venice Commission handed down its advisory opinion on the occasion of its 104th session held on October 23-24, 2015.

This opinion reinforced the TDC's legal position in respect of the said Bill. In fact, TDC pointed out that *"a double-track TJ process under the auspices of the TDC and the Reconciliation Commission is inconsistent with Article 148 of the Constitution of the Republic of Tunisia that "The state undertakes to apply the transitional justice system in all its domains", unless these tracks are nearly similar and ultimately lead to achieving the TJ goals as provided for under the Tunisian law and to complying with the rule of law"*.

The advisory opinion further indicated that "TDC stipulated in the Bill does not enjoy adequate safeguards to ensure its independence nor does it achieve institutional reform as one of the goals of transitional justice. The Venice Commission also considered that the legal basis underpinning the operation of the TDC cannot be modified in a way that strips the Truth and Dignity Commission of its mandate and puts the goal of national reconciliation at risk.

Under the pretext of developing the national economy, a second version of the Reconciliation Bill was submitted to the Assembly of People's Representatives (Law 2015/49 on administrative reconciliation) and approved in September 2017. However, no positive effects of this Law on the economy have been noticed while the opposite is true.

The enactment of this law was a setback to democrats in Tunisia. In fact, human rights associations in the country described it as a gateway to impunity and a green light to perpetrators to carry on with human rights violations and the embezzlement of public funds.

⁶⁰ The Venice Commission was established by the Council of Europe in 1990 with the aim of providing legal advice to Member States, specifically, to assist those countries that aspire to bring their legal and institutional structures in line with international standards in the areas of democracy, human rights and the rule of law. The Venice Commission has been consulted on several occasions from various Tunisian institutions since 2011, specifically from the National Constituent Assembly, regarding the drafting of the Tunisian Constitution.

2. The "State within the State"

In an interview with the Assahafa newspaper (September 6 2017) the President of the Republic⁶¹ criticized the independent constitutional bodies. "In a nutshell, the President says, *the political system in Tunisia is an aberration whereby the strive for the independence of the said bodies leads to a situation of near-paralysis. The exceptional mandates with which some constitutional bodies are endowed encroach on the State powers and on the constitutional bodies themselves, including the Assembly of People's Representatives, which is at the very heart of the current political system and the custodian of the original political powers. Independence is the motto behind this state of affairs, they claim, which reminds me of the popular saying "the servant is greater than his master".* This interview, which is a clear indication as to the President's rejection of independent bodies, helps to explain the poor level of cooperation with the TDC and the President's quasi-refusal to implement Article 148 of the Constitution despite him being the guarantor of this Constitution.

3. Crossing TDC off the list of institutions entitled to honorary protocol

Since March 20, 2017, the Presidential Protocol crossed the TDC off its list. Thereafter, TDC was not invited to official celebrations.

4. The Ministry of Foreign Affairs withdraws the passports of TDC commissioners

In 2014, similarly to the members of the other constitutional bodies, the TDC President and commissioners were granted diplomatic passports pursuant to Article of Order n° 564 of 1989 dated May 15, 1989 on diplomatic passports. However, in September 2015, at the behest of the Presidency of the Republic, the Ministry of Foreign Affairs took the passports off all TDC commissioners at the exception of TDC's President.

On June 4, 2018, the Ministry of Foreign Affairs contacted the TDC President to request that her diplomatic passport be returned under the pretext that the TDC's term had come to an end on May 31, 2018 in spite of the fact that this term has been extended by one year until May 31, 2019 pursuant to article 18 of the Organic Law on Transitional Justice.

Having regard to the fact that extending the TDC's term, or lack thereof, has no impact on the continuation of TDC's operation and execution of mandate since the legal and administrative existence of the TDC shall continue under the principle of annual budget allocation. Such principle requires that TDC remains in operation until the closing of accounts and the submittal of the TDC's reports to the relevant authorities pursuant to the joint declaration between the TDC and the Ministry of Relations with the Constitutional Bodies and the Civil Society and Human Rights dates August 24, 2018. The President of the

⁶¹ [www.akherkhabaronline.com/ar/وطنية/49016/قائد-الباجي-النظام-السياسي-السياسي-شاذ-تونس-في-السياسي-النظام-السياسي-قائد-الباجي](http://www.akherkhabaronline.com/ar/وطنية/49016/قائد-الباجي-النظام-السياسي-السياسي-شاذ-تونس-في-السياسي-النظام-السياسي-قائد-الباجي/49016)
[.html](http://www.akherkhabaronline.com/ar/وطنية/49016/قائد-الباجي-النظام-السياسي-السياسي-شاذ-تونس-في-السياسي-النظام-السياسي-قائد-الباجي.html) الأخير-ذ-الأمل-فرصة-هو-الوزاري-التحوير-و-

TDC, acting in this capacity, continued her work until the end of TDC's term and until she completed the handover procedures.

Having regard to the decision handed down by the Administrative Court in case n° 4102488 on July 24, 2018 whereby the position of the TDC was deemed appropriate, based on which the Court ordered the implementation of the decision of the Minister of Foreign Affairs to be stopped and the diplomatic passport to be returned to her pending a decision on the merits of the case. The legal representative of the TDC notified the Ministry of Foreign Affairs with this Court decision.

However, the Ministry of Foreign Affairs refused to comply with the law while it should be recalled that withdrawing the diplomatic passport is in breach of Articles 38 and 66 of the TJ Law which prohibit any impediment to the work of TDC, and to Article 148 of the Constitution which lays an obligation on the State to implement the TJ system.

The decision made by the Ministry of Foreign Affairs disrupted the proper performance by the TDC President of her duties at the international level as a representative of her country in the field of Transitional Justice and precluded her from talking to the international community about Tunisia's transition to democracy and TJ experience and from taking advantage from promising opportunities for international cooperation in that respect.

III. Presidency of the Government (Prime Ministry)

Both the Organic Law on Transitional Justice and the TDC Bylaws stipulate that TDC's resolutions should be published in the Official Gazette of the Republic of Tunisia. However, the Presidency of Government refrained from doing so as shown by the examples below.

1. The Resolution on the election of TDC's President was not published

The Prime Ministry refused to publish the TDC Board's decision to elect Sihem Bensedrine President of TDC in the Official Gazette of the Republic of Tunisia, which forced the TDC to publish the said Resolution in the costly official business ad section, which was necessary for TDC to conduct business with others.

2. The Prime Ministry refrained from publishing the Resolution amending and supplementing Article 9 of the TDC Bylaws.

In light of the failure of the APR to fulfill its statutory obligation to fill the vacancies in the TDC Board, the Board of the Truth and Dignity Commission decided on September 01, 2016 to amend and supplement Article 9 of its Bylaws in order to clarify its interpretation of Article 59 of the TJ Organic Law whereby "TDC shall meet on the request of its President or by one-third of its members and its meetings shall only be valid in the presence of two-thirds of its members".

Pursuant to Resolution n° 9 of 2016 dated September 6, 2016 handed down by TDC's Council, TDC addressed a letter to the Prime Ministry to request that the said Resolution be published in the Official Gazette of the Republic of Tunisia. Contrary to the provisions of the Order⁶² on reorganizing the departments of the Prime Ministry which spells out the terms of reference of the departments falling under the remit of the Government Advisor for legal and legislative Affairs, including "collecting all the texts to be published in the Official Gazette and sending them to the official printing office for printing", the Presidency of the Government sent a letter to TDC to request TDC to reconsider the said Resolution on the grounds that it is inconsistent with Article 59 of the Organic Law on Transitional Justice.

The refusal by the Presidency of the Government to publish a Resolution issued by the TDC amounts to interfering with the usual business of TDC and attempting to influence its decisions within the meaning of Article 38 of Organic Law on Transitional Justice. Despite all these arguments and notwithstanding the promise made orally by the Presidency of the Government to publish the Resolution, the said TDC Resolution n° 9 of 1916 dated September 7, 2016 amending and supplementing Article 9 of the Bylaws remained unpublished.

Taking into account that the reading made to amend Article 9 of the Bylaws which refers to the members who are effectively in office, there is no contradiction between Article 59 of the Organic Law n° 53 of 20 N° 2013-53 on the Establishment and Regulation of Transitional Justice and Article 9 of the Bylaws.

Since Article 37 of the Organic Law on Transitional Justice provides explicitly for cases of loss of membership, namely death, removal from office or resignation, the status of membership does not pertain to the three said cases but applies only and exclusively to the serving members.

3. Refraining from publishing the organizational chart and the modus operandi of TDC's executive body

Article 30 of the TDC Bylaws stipulates that TDC establishes an executive body, the organizational chart and modus operandi of which are spelled out in TDC's Bylaws and published in the Official Gazette of the Republic of Tunisia. The same Article provides for the publication of the resolutions whereby the members of the executive body are appointed in the Official Gazette of the Republic of Tunisia.

However, despite the fact that the TDC submitted the said resolutions for publication, the Presidency of the Government refrained from publishing them.

62 Decree n° 197-133 of April 10, 1971

4. Refraining from publishing the legal provision relating to the payroll of the staff seconded to the TDC.

Article 36 of the Organic law on Transitional Justice stipulates that the staff seconded to the TDC receive their original wages and bonuses that are set by Order. In this regard, a draft Order on the bonuses of the seconded staff was drawn up and submitted to the Presidency of the Government on many occasions. However, the latter refrained from publishing such draft.

5. Refraining from publishing TDC's 2015 financial statements

TDC submitted the 2014 and 2015 financial statements to the Presidency of the Government for publication in the Official Gazette of the Republic of Tunisia. However, met by the Presidency of the Government's refusal to publish the said financial statements, TDC had no other choice but to publish them in the ad section at an extra cost.

6. Refraining from publishing the Resolution to extend TDC's term and to allocate a budget to that end

The Organic law on Transitional Justice set the TDC term of office at four years renewable only once for one year based on a reasoned resolution. On these grounds, in February 2018, the TDC Board handed down a decision to extend the term of office of the TDC by one year and communicated it to the Presidency of the Government for publication. However, the Presidency of the Government refused to publish the said Resolution. Accordingly, the Government has refrained from allocating a budget to the TDC for the entire extension period, i.e. for one year from 1 June 2018 to 31 May 2019.

7. Refraining from publishing the decision to liquidate

In preparation for its closing activities, TDC endorsed the **Manual of Procedures for Liquidation** and sent it to the Presidency of the Government for publication. However, they refused to act accordingly.

8. The Head of the Government refused to communicate with TDC.

In order to coordinate with the Presidency of the Government regarding the arrangements necessary to successfully implement the TJ process, the TDC sent several letters to the Presidency of the Government to develop a common understanding of a number of issues relating to the TDC mandate and the Dignity Fund.

IV. The negative attitude of the Minister of State Property

1. Arbitration and Reconciliation

In most of the cases processed, the defendant is the State General Litigation Officer on behalf of the State or a ministry, particularly the Ministry of Interior as regards human rights files. During the term of office of the TDC, the State General Litigation Officer consistently rejected arbitration and reconciliation in the cases of human rights violations.

More generally, during the second half of 2016, more than 900 arbitration hearings were organized. Regardless of the topics of these hearings and the files considered, the Chief State Litigation Officer requested that all cases be postponed. (See the section on arbitration and reconciliation)

2. Memorials location

Despite the many letters sent by the TDC, the Ministry of State Property refused to dedicate part of the location of the former 9 Avril prison to erect a memorial, such as a museum, or a memorialization center regarding grave violations of human rights.

It should be noted that the site of the said memorial in the 9 Avril 1938 Avenue would be another site close to the National Archives, the National Library, the College of Social Sciences and the Court of Cassation, which, on a symbolic level, would be a form of recognition of the sufferings of the victims and would usher in a new era where the scars of the past are healed and where messages of peace, respect, reconciliation and societal solidarity are disseminated. However, the Ministry of State Property refused to dedicate the said location to implement this noble idea instead of leaving the site abandoned as is the case today.

3. Appeal against precautionary measures

The TDC took precautionary measures at its own discretion as regards applicants for arbitration, as carrying on with and completing implementation measures could affect the efficiency of the arbitration and reconciliation measures. Accordingly, the legislator mandated the TDC to take the necessary precautionary measures to preserve rights pursuant to Article 55 of the Bylaws. In fact, in case of implementation, it would be difficult to get back to the initial situation and this would prejudice the applicant for arbitration and impede the arbitration and reconciliation measures

Pending the handing down of the arbitration decisions in the case files referred to above, the TDC ordered the suspension of the measures to transfer, exchange, dispose of or destroy funds and property

With a view to organizing the arbitration procedures and ensure the effectiveness of the arbitration process, the legislator has explicitly mandated the President of the TDC, under

the auspices of which the said arbitration jurisdiction has been established (the Arbitration and Reconciliation Committee), **to authorize the implementation of any precautionary measures needed to preserve rights** pursuant to Article 55 of Bylaws n° 53. Since the precautionary warrants entrusted to the President of the TDC are only measures of a precautionary nature that precede the handing down of a definitive arbitration decision under the mandate of the TDC whereby the precautionary warrants take on a judiciary character. Based on the above, it could be concluded that the Tunisian legislator explicitly grants a quasi-judiciary mandate to the President of the TDC to issue precautionary warrants of a judiciary character in a fashion similar to the arbitration decisions which, in substance, are issued in transitional justice matters and which could neither be challenged nor nullified or challenged on grounds of excess of authority.

It should be noted that the judiciary justice has adopted this interpretation and handed down a ruling accordingly. In fact, the Court of First Instance in Sfax in its hearing of case n° 80241 on August 25, 2017, ruled that the TDC procedures are legitimate and "required the defending party to stop the tax adjustment process concerning the petitioner pending a ruling on the application for arbitration and reconciliation lodged with the TDC. For his part, the Minister of State Property challenged all precautionary measures, which were nullified by the Administrative Court. As a result, the TDC was unable to implement Article 48 of the Law.

V. The negative attitude of the Administrative Court

The question of the legal quorum needed to validate the proceedings of the TDC's Council raised a legal debate. First, TDC dispatched correspondence to the Administrative Court as an advisory body to request an advisory opinion on setting the legal quorum for the proceedings of TDC's Council. However, on March 10, 2016, the Administrative Court refused to issue such an opinion pretexting that "the Administrative Court shall be consulted on other draft texts, and more broadly, on all issues requiring its consultation as per the legislation or procedures in force, or those matters submitted to it by the Government... This, however, is not the case for the present request for consultation lodged by a non-government authority".

In light of this situation, and in the face of the refusal expressed by the Administrative Court to respond to the consultation request submitted to it, the TDC requested experts in administrative law to deliver a consultation to that effect. All consultations⁶³ confirmed the soundness of TDC's proceedings and the establishment of the quorum based on TDCers on duty without taking into account the members who have lost their membership pursuant to Article 37 of TDC's Bylaws.

63 See Appendices

VI. Negative attitude of the Parliament “People's Representatives’ Assembly”

1. Abstaining from filling the vacancy

The entity tasked to enforce Articles 23 and 26 of the Bylaws regarding vacancies is the People's Representatives’ Assembly and not TDC. Article 37 of the Law entrusts TDC to ensure continuity: "*The President and members of TDC shall continue performing their tasks throughout TDC's term*". This was what the TDC actually did

Starting from September 9, 2014 and at different dates, TDC sent an official correspondence to the People's Representatives’ Assembly to request that the vacancy in its composition be filled pursuant to Article 37 of the Organic Law on Transitional Justice following the same modalities and procedures spelled out in Article 23 of the same Law. 9 such official correspondences were sent to the PRA

Although the Law sets statutory deadlines for the PRA to fill in the vacancies in the composition of TDC's Council, the People's Representatives’ Assembly **failed to comply with its obligations as per the Bylaws**, ignoring TDC's calls for the vacancies to be filled, which disrupted part TDC's proceedings. Ironically, some MPs blamed the TDC for this anomaly that they have caused.

Since jurisprudence tends to consider that the quorum for in-council entities should take into account **attending members**, TDC's Council amended article 9 of the Bylaws pursuant to a resolution dated September 9th, 2016 whereby **it is stipulated that TDC's Council shall meet on the request of its President or a third of its members. The meetings of the Council shall not be deemed valid unless 2/3 of its attending members are actually present.**

Article 59 of the Organic Law on Transitional Justice uses the phrase "two-thirds" of the members in an absolute manner. The original rule stipulates that if the wording of the text comes in absolute terms then it should be interpreted in an absolute sense. Since the reading adopted to amend Article 9 of the Bylaws provides for the two thirds of the attending members, then it does not contradict with Article 59 of the TJ Law and Article 9 of the Bylaws.

Since Article 37 of the Organic Law on Transitional Justice provides explicitly for cases of loss of membership, namely death, removal from office or resignation, the status of membership does not pertain to the three said cases but applies only and exclusively to the attending members

2. March 26, 2018: Attempting to bring TDC's term to an end

PRA held a general session on March 24 and 26 to discuss TDC's decision to extend its term of office by one year. PRA invited TDC to explain the grounds on which that decision was taken. However, TDC was surprised to see that the PRA's agenda was amended to vote on

TDC's decision. The session was tarnished by several breaches to the Constitution, the law, and the PRA's Bylaws. But the most important violation was the lack of quorum to hold the said session and the determination of the Speaker of the Assembly to manipulate Organic Law N° 2013-53 arbitrarily, granting PRA mandate to endorse or reject TDC's extension of its mandate.

This session had boiled over into calls to bring TDC's mandate to an end by such political parties as Nida Tounes, Machroua Tounes and Afek Tounes, and at a time when TDC started to refer the first cases to the TJ Specialized Chambers on March 2, 2018.

After two days of a row over the legitimacy of the Assembly's session and the withdrawal of the parliamentary majority, PRA's Speaker ordered the vote to start. However, the number of deputies was less than the quorum required to make a decision (68 votes against) and the Speaker declared the session adjourned. He then sent a letter to the Head of the Government⁶⁴ requesting him to take the necessary measures to bring TDC's proceedings to a close. Subsequently, the Secretary General of the Government, Mr. Hedi Mekni, took a number of measures to disrupt TDC's proceedings, including, inter alia, ending the secondment of staff with the Truth and Dignity Commission and requesting ministries to abstain from dealing with TDC.

After TDC held talks with the Minister of Human Rights Liaising with Constitutional Bodies, an agreement was reached by the two parties to rectify the negative position and to sign an agreement published in a joint declaration⁶⁵ whereby the Government reconfirmed its commitment to complete the process of Transitional Justice.

VII. Negative attitude of some unofficial parties

1. Media Bias against TDC

Since the start of its operations, TDV was the target of systematic campaigns of disinformation in which audiovisual and print media as well as online websites took part through a series of falsehoods and slanders. These hostile attacks were designed to tarnish TDC's reputation in utter disregard to the principle of impartiality and to the simple procedure of source verification. TDC had therefore to use the right of reply more than 50 times to dismiss the widely disseminated fallacies which, by November 2018, had reached 432 articles⁶⁶.

The systematic campaign against the TDC gained momentum in December 2016 with the publication of 95 articles full of falsehoods and slanders at a time when the first public hearings about human rights violations were held.

⁶⁴ See Appendix

⁶⁵ <http://www.ivd.tn/> /الهيئة-أعمال-استكمال-حول-مشترك-بلاغ

⁶⁶ Table of negative articles about the TDC

On 17/18/19/20 and 21 October, 2016, the Truth and Dignity Commission staged a training session on covering the public hearings, and protecting victims and witnesses for the benefit of journalists and media professionals from various print, electronic and audiovisual media outlets.

2. Campaigns staged by hostile law enforcement unions

Some police unions spared no effort to disrupt the work of TDC, turning members of the law enforcement institutions against TDC, encouraging them to ignore TDC's summons to testify. The first clash with TDC occurred on December 26, 2014 when the union of presidential guards dared to prevent a TDC delegation from entering the presidential palace despite there being a previous agreement with the President of the Republic and despite having coordinated the visit with the Director of presidential security. Surprisingly, the case brought against this union within the meaning of Article 66 of the Organic Law on Transitional Justice saw the crime committed re-characterized as misdemeanor while the secretary general of the union was promoted and appointed consul in a foreign country. It should be recalled that this incident served as a first occasion for Zouheir Makhoulf to breach the obligation of discretion. In fact, in January 2015, he published an announcement whereby he declared his membership in the TDC frozen⁶⁷ if the case brought against the union is not withdrawn.

As a negative reaction to the first hearings held by the Specialized transitional justice chambers, the National Front of Police Unions, in a statement published in October 2018 called upon all members of the police institution, be they serving or retired,⁶⁸ to stand in the way of any attempt to hold the perpetrators of grave violations of human rights under the dictatorship to account. The statement described Transitional Justice as "a vindictive justice that tramples on the constitutional, universal and legal principles" despite the fact that in referring the cases to the Specialized Chambers, TDC fully complied with the Constitution and the Law on Transitional Justice.

The police unions reiterated their explicit rejection of the TJ process, which they described as dysfunctional. They further added that the trials in the context of Transitional Justice represent "an explicit violation of international treaties and conventions as well as of the Constitution... let alone the fact that these trials lack the guarantees of fair trial and breach the principles of human rights."

In a dangerous precedent, the National Union of Internal police Forces called for a boycott of all measures taken to ensure the security of all the hearings held before the TJ specialized chambers on Tuesday January 8, 2019 in the Gabes Trial (First Instance) Court. The decision was the result of the fact that the Specialized Chambers had summoned some perpetrators of grave violations of human rights to appear before the courts, which led the Union to claim that the TDC "had prepared the nooses to please some parties". This has little to do with reality and could only be seen as casting doubt on the integrity and independence of the judiciary to which the cases have been entrusted. It is also an attempt to pit the public

67 <http://www.assabah.com.tn/article/> -سدريين-بن-تمسكت-إذا-مجمدة-تعتبر-عضويتي-لالصباح-خاص-تصريح-في-مخولف-ز-هير-نقابة-بمقاضاة

68 See Appendices

opinion against the Truth and Dignity Commission, the independent national institution that has, since the beginning of its activities, distanced itself from any political or partisan disputes and tensions.

3. The International Center for Transitional Justice (ICTJ) parts way with its impartiality

In the beginning of its mandate, TDC had positive cooperation with ICTJ, the International Center for Transitional justice. Accordingly, several activities have been staged jointly with the various TDC committees with the participation of international experts in the field of Transitional Justice.

However, since early 2017, ICTJ country office changed its policy vis-à-vis TDC, as evidenced by the many attempts to interfere with affairs of the TDC and the attempts to influence its decisions and simmer internal conflicts. Once those conflicts were overcome, the ICTJ Country Director started to play the victims off against TDC and to act as if the Center were a parallel Truth and Dignity Commission. ICTJ became involved in the campaigns aimed to cast doubt on the legitimacy of TDC while the campaigns to support the Draft Law on Administrative Reconciliation were underway in September 2017. Moreover, in a statement to the press agencies, ICTJ accused the TDC of having failed to fulfill its mandate.

On January 17, 2018, ICTJ country director declared to TAP news agency that “the final report is disappointing” and cast doubt on the legitimacy of TDC’s work, which she described as a “failure” even before the term of TDC came to an end. She thus stated that “TDC is not capable of performing its mandate”. ICTJ’s aggressive posture stands as evidence to the Center’s breach of the principles of neutrality and integrity spelled out in the Headquarters Agreement whereby ICTJ shall not interfere with the internal affairs of countries. In this respect, a letter of protest was sent to the Center in January 2018 and since then all relations with ICTJ have been severed.

On January 31, 2018, the ICTJ sent an official letter to the Head of ICTJ in which it shed light on the strange posture of the Center’s country office whereby, for the first time in its history, the Center takes action against an existing Truth Commission that it should normally support. The ICTJ President’s answer through the country office was a justification of the said office’s aggressive stance⁶⁹.

4. The negative attitude of some UGTT leaders

In June, a file was lodged by UGTT with the TDC whereby the trade union requested that light be shed on the violations inflicted on the organization since 1965 and that UGTT be rehabilitated. The trade union called upon its members⁷⁰ to cooperate with the TDC. Accordingly, the UGTT’s Executive Office set up an ad-hoc committee chaired by Mr. Mouldi Jendoubi to coordinate with the Truth and Dignity Commission. A session was held on August 17, 2016 to discuss joint working arrangements with a view to shining the spotlight on

⁶⁹ See Appendices

⁷⁰ <http://www.ivd.tn/النق-يدعو-للمشغل-التونسي-العام-الاتحاد/>

the violations. Moreover, the two parties agreed to sign a Cooperation Agreement in January 2017. However, the UGTT backed off from this agreement in the aftermath of UGTT's 23rd Congress organized in January 2017 without advising TDC in advance or explaining the reasons.

Additionally, when TDC invited the UGTT Executive Office to participate in preparing the public hearing on the January 1978 events⁷¹, the union leadership refused to give a testimony on behalf of the UGTT and to speak at the hearing as a victim in relation to the Black Thursday events, which were now examined by the Specialized Chambers.

On the occasion of the preparation of the public hearing on the Seliana buckshot events⁷², the local UGTT secretary general refused to give his testimony regarding these events and exerted pressure on the witnesses who had accepted to speak at the hearing. In consequence, one of the witnesses backed away from his commitment to give his testimony as scheduled at the hearing after he declared he was blackmailed into being offered a job if he boycotted the hearing. After the public hearing, the local UGTT office published a statement whereby it accused TDC of being “selective in the way it dealt with the Seliana file”.

VIII. The Closing Conference

At the end of its term and before the final report was published, the TDC decided to open a dialogue on the actions it has carried out, the results achieved, and the recommendations it wishes to be implemented to ensure non-repetition of the violations, entrench the rule of law, and preserve memory.

To this end, a closing conference was organized by TDC on December 14 and 15, 2018 to brief the public on TDC's outcomes. The Conference was attended by representatives of State institutions, the members of the civil society who have been engaged in the TJ process, national and international experts and intellectuals and artists.

The Conference outlined the various findings reached by the TDC committees as well as the challenges facing the TJ process after TDC's term of office comes to an end. It also identified the parties responsible for implementing TDC's recommendations contained in the final comprehensive report.

1. Seven sessions dedicated to deliberations on transitional justice

The Closing Conference organized seven sessions, one for each TDC committee to talk about the following questions:

⁷¹ <http://www.ivd.tn/> النق-يدعو-للشغل-التونسي-العام-الاتحاد

⁷² <http://www.ivd.tn/timeline/timeline> /حول-عشر-الثانية-العلنية-الاستماع-جلسة

- What truths have been discovered by the TDC when dismantling the totalitarian system?
- The impact of violations on women, spouses and children
- Dismantling the system of corruption
- The comprehensive reparation program
- Memorialization sites. Memorialization works
- Forms of reconciliation
- Reforms and guarantees of non-repetition

The last session was dedicated to the Civil Society Coalition, which discussed the challenges facing the civil society in implementing the TDC recommendations and dealing with the victims' archives.

2. Presenting the facts: Figures

Over two days, the facts identified by the TDC through its activities were displayed and light was shed on the modus operandi of the repression and corruption apparatus used by Tunisia's successive rulers since the country's independence to take control of the State and use its resources to serve their own interests.

The President of the Truth and Dignity Commission⁷³ stated that after the files lodged with the TDC were investigated and facts were checked, it was obvious that the successive totalitarian regimes having ruled Tunisia did not make any distinction between their victims based on their affiliations, thinking, religion or region and that the same machinery of oppression was applied to them.

The work of the TDC has been a key milestone along the path of the country's journey to democracy's safe shores. In fact, TDC was able to identify the weaknesses which have plagued the State and, on the other hand, Tunisia's strengths, including all the patriots in the civil service, the security institution, the judiciary and in all public institutions.

On December 14 and 15, the Truth and Dignity Commission formulated a number of recommendations as an attempt to understand which reform mechanisms could help to protect the country and its citizens as well as the Tunisian soil and resources. The recommendations also aimed to offer all Tunisians from different walks of life, regardless of their political beliefs and affiliations, the opportunity to live in a country governed by the rule of law on an equal footing.

On the occasion of the Closing conference, the Truth and Dignity Commission called upon the State to assume its responsibilities as regards guarantees for judges' protection and independence. It also invited the State to vet the people appointed to public offices, the security forces, the judiciary and all State institutions to ensure no one who has committed a

⁷³See speech by TDC president

crime against the State institutions or any violations in the name of the state or under its protection remains in office.

TDC also made recommendations on reparations to victims which should be more symbolic and moral than material. In fact, it is the State's duty to provide reparations to the victims of violations. Far from over-burdening the State, the reparations program elaborated by the TDC can be a source of revenue for the State Treasury and can add to the country's riches.

The TDC stressed the civil society's role as watchdog and critic of State actions to ensure the TJ process is completed, its goals reached and TDC's recommendations implemented.

National reconciliation, according to the Conference, is a process whereby the citizen is reconciled with the State, the history and the institutions, which requires that some mechanisms be implemented as a prerequisite for reconciliation, including, most importantly, revealing the truth about past violations. Thus, citizens can feel that they belong in their country and that the State and its institutions are theirs.

During the workshops, the floor was given to the civil society participants who were unanimous to stress the need for the TJ process to go on unimpeded until the TDC recommendations are fully implemented. The CSO representatives recommended that the legal framework for the national archives be reformed so that it is in line with the specific nature of the archives on transitional justice and the need to preserve the victims' files as well as the national memory, pending the establishment of a specialized authority as per the law on transitional justice.

On another hand, the representatives of the civil society urged for the Dignity Fund to be implemented and run in a transparent manner and for the TDC recommendations on compensation and reparations be complied with to respond to the needs of the most vulnerable among the victims.

In their final statements to the Closing Conference, the TDC commissioners said that they have strived to fulfill their historic mandate regarding taking, recording and saving the victims' statements. They called upon the official authorities to comply with their duties regarding implementing and operationalizing TJ programs and procedures after the end of the TDC's term of office.

3. The public hearing on media disinformation

During the Closing Conference, the 14th public hearing was held around the theme of propaganda, disinformation⁷⁴ and documenting the role that the media could play in giving rise to and sustaining totalitarianism. The public hearing was also an opportunity to shun the spotlight on the modus operandi of the media apparatus and the reforms to be implemented

⁷⁴ <https://www.youtube.com/watch?v=UNrCXS9XmwU>

towards free and democratic media that could drive the momentum towards democracy and the rule of law.

The TDC showed the first part⁷⁵ of documentary on media propaganda and disinformation. In part two⁷⁶ of the same documentary, a number of facts revealed by the TDC in the course of its work, as well as a number of testimonies, were presented. Among the journalists who worked at the time of the media dictatorship under Ben Ali and Bourguiba and who addressed the Conference, we can cite Mohamed Bennour⁷⁷, Mongi Ellouz⁷⁸, Lotfi Hajji⁷⁹, Sukeina Abdulsamad⁸⁰ and Fahem Boukaddous⁸¹.

4. The role of art and artistic creativity in memorialization

In recognition of the role that could be played by art and artistic creativity in preserving the national memory, entrenching the values of citizenship and human rights and guaranteeing non-repetition, the TDC gave the stage to Ammar Letifi, Hammouda B. Hassine, Kaouther Dhaoui, Hajer Zeidi, Asma Oueslati and Mohamed Salah Oueslati to perform a play called “Dignity”⁸² under the stage direction of Mohamed Sabeur Oueslati. The play, which won the public’s admiration, represented in an ironic style and using the light and sound duality, the violations against human rights and liberties committed under the totalitarian regime and their impact on society. The play presented a snapshot of the reality of human rights at that time and a typical portrait of the prisoner and his relations with the family and the society. In an ironic tone, the play expresses criticism towards the state institutions and how they were used to violate human rights.

A poem was read by poet Bechir Khalif⁸³ in which he drew the contours of the relationship between the ruler and the ruled and recounted the abuses inflicted on all victims regardless of their political affiliations. The poem also described the battle waged by political parties, associations and organizations against the dictatorship and criticized the oppression of liberties, the strangling of the press through censorship and the silencing of the voices of journalists. In his poem, Bechir Khalif, painted a picture of the human rights violations committed by the various State arms against the opposition.

On the same occasion, the Ennajma School Chorus⁸⁴ sang a number of songs on hope and life before singing the national anthem as a symbol of the future role of children.

75 <https://www.youtube.com/watch?v=q0EVAvKF4AI>

76 <https://www.youtube.com/watch?v=13XBdCV41is>

77 <https://www.youtube.com/watch?v=KO5jpWm9Slw>

78 <https://www.youtube.com/watch?v=b1jkh8ZtoiQ>

79 <https://www.youtube.com/watch?v=VZjoUugYQA>

80 <https://www.youtube.com/watch?v=eQUZHF3QdnQ>

81 <https://www.youtube.com/watch?v=6UMGUCwZX1U>

82 <https://www.youtube.com/watch?v=MuDUnBr8fM>

83 <https://www.youtube.com/watch?v=n1G3DDRjK1E>

84 https://www.youtube.com/watch?v=S9a7_lslxPc



Part TWO
Dismantling the
Despotism System

Chapter One

Pillars of the despotic system _____

The Article 14 of the Organic Law N° 2013-53 on the establishment and organization of transitional justice states that: **“Institutional reform aims at dismantling and rectifying the system of corruption, oppression and tyranny so as to guarantee the non-repetition of the violations, the respect of human rights as well as the establishment of a State of Law.”**

By article 39, the legislator entrusted the Truth and Dignity Commission (IVD) with: **“Determining the responsibility of the organs of the State or any other parties for the violations stipulated herein, clarifying its reasons and proposing the remedies that prevent the recurrence of such violations in the future.”**

The investigation into the dossiers filed with TDC revealed the gravity of state violence against individuals and groups. An institutionalized and systematic violence, which equated the elderly with the children and the men with the women and crushed entire families and regions. Moreover, it did not distinguish between left, right, nationalist, trade-unionist, or ordinary citizen who hindered the “machine”. After the investigation into the archives, which it got hold of, the Truth and Dignity Commission was able to begin dismantling the despotic system that ruled Tunisia for six decades.

TDC) was able to identify the joints or articulations and mechanisms employed by the authoritarian regime to pervert law and employ the institutions to serve the interests of those close to the regime. It was a system designed to subjugate the entire society. It created social, political and economic marginalization. It is a system based on an octopus network extending its grip on all aspects of economic, social, cultural and political life based on and consisting of:

- **Network of security control**

based on political police⁸⁵, neighborhood committees, torture apparatus, collective punishment mechanism, humiliation, security prosecution, starvation and livelihoods cutting off policy.

- **Network of professional control**

based on adulterated job competitions, fictitious employment, and recruitment by nepotism, professional party cells...

⁸⁵ The Commission (IVD) relied on the following definition of the concept of political police: Political police is a parallel security network infiltrated within the official structures of the security apparatus employed to serve the policy of a government (usually the head of state) to implement the own agenda of this body. This apparatus acts outside the framework of law in total impunity and benefits from privileges guaranteeing loyalty. For more details see the axis on the security apparatus.

- **Network of economic control**

based on a system of licenses ⁸⁶ and privileges to manipulate entrepreneurs and contractors, employ the adjustments structures to serve political purposes (taxes, social funds, experts ...), the transfer of public property to the private to win clients.

- **Network of financial control**

based on employing the central bank and public banks to serve people close to the regime and converting their debts to public debt, and handcuffing citizens with home loans (popular car, popular computer, home equipment...)

- **Judicial arm of the authority**

based on ensuring the loyalty of some judges in key positions (public prosecution, investigation judges, presidency of the courts, the general prosecution, inspectorate ...) who give judicial cover to political decisions and use the prison institution as a sword of Damocles against those who oppose them.

- **Network of media misinformation**

Information and communication were and are still under the dominance of the trust controlling finance, media and security. Indeed, the state built after the independence inherited the security dealings with the media. Thus, what was published in the newspapers comes ready from the Ministry of Interior. ⁸⁷Moreover, the Radio and television archives were also managed in a security way. Ben Ali developed this system by creating the Tunisian Agency for External Communication (ATCE). ⁸⁸He entrusted it with the management of public advertisement distribution, which was carried out according to loyalties. With the fall of the Ben Ali regime, the media control system got confused and social media played the role of alternative media. Nevertheless, the “machine” (apparatus) has quickly restored its structure outside the framework of the state institutions, using the private communication agencies which absorbed and recycled “a misinformation expertise”. Polling agencies started to distribute advertisements according to the involvement of the media institution with the network of the financial- security- information complex.

- **Loyalty to personal interests and authority**

TDC has also discovered that those who ruled Tunisia were not always loyal to the country and public interest. In fact, rushing for power was one of the main motives that led to the deviation

⁸⁶ Ben Ali has assigned a high employee with the rank of Minister in the Presidential Palace, who is the Secretary General of the Presidency, to supervise the granting of licenses in return of denunciation reports (from a newsstand license to a restaurant license...) TDC referred a file of the cases to the specialized judicial chambers on December 31st, 2018. See Appendix.

⁸⁷ See the testimony of the Manager of the Al Hadath Newspaper, Abdelaziz Jeridi « the first; third, and fifth pages used to come ready from the Ministry of Interior).

⁸⁸ The subject of a referral decision to the specialized judicial chamber in the Court of First Instance in Tunis on December 31st, 2018.

of power and the pursuit of political choices that are inappropriate for the public interest. These policies gave rise to the monopolization of the state and its use for only the interests and goals of the ruling class. Dissident voices were silenced by repression, torture, and murder. This type of rule produced a “repressive machine/apparatus” inherited from colonialism and continued throughout Bourguiba’s rule (through the employment of the same elements who worked within the French repression machine, especially in security), to expand and acquire more sophisticated repression expertise during Ben Ali’s trust.

Ending the conflict between Bourguiba and Ben Youssef

The despotic system was established when the colonizer chose Bourguiba’s wing as a partner among the different wings of the national movement. Thus, “Bourguiba’s fellows” were handed the power over according to the « policy of steps » within "autonomy agreements “. This intervention, by the representative of the French authority, to resolve the conflict between the two leaders of the Free Destourian Party (Bourguiba and Ben Youssef), as well as the choice of the violent approach to resolve the conflict were imposed on Bourguiba. Thus, according to the testimony of the French Ambassador Roger Seydoux ⁸⁹(who used to be called High Commissioner during the period of internal independence), in which he describes the decision of resolving the conflict between the two leaders as the “small coup” which he initiated. Seydoux says in his testimony ⁹⁰ at the French department of archives in 1983: *“I made a very serious decision that nobody knew. Indeed, I pushed Bourguiba to make a decision as he wanted to preserve his superiority and popularity. I told him that he had to choose between the imprisonment, arrest or exile of Salah Ben Youssef. I asked Bourguiba to come to the general residency headquarters and to sign. We were just four; the military advisor, Colonel Bernachol, and*

⁸⁹ Foreign Affairs Ministry. Archives and Documentation Department. Roger Seydoux, AO10_Interview N° 1 December 20, 1983.

⁹⁰ And so, it is here, ahead of a revolutionary situation, that I made a very serious decision that nobody knew. Indeed, I pushed Bourguiba to make a decision as he wanted to preserve his superiority and popularity. I told him that he had to choose between the imprisonment, arrest or exile of Salah Ben Youssef. I asked Bourguiba to come to the general residency headquarters and to sign. We were just four; the military advisor, Colonel Bernachol, and Bourguiba accompanied by one of his ministers (But not Mongi Slim as I was very cautious of him), maybe he was his chief of cabinet who is named Abdalah Farhat, I am not sure.

During the dinner, I explained to him my theory. I told him that things could not continue like this. Bourguiba told me: “You have to put him on a French plane and send him to Libya.” I answered: “But I am not representing Tunisian authority anymore, you are the Tunisian authority. It is up to you to take the decision.” After a somewhat turbulent debate, I felt that Bourguiba was still confused a little bit and still hesitant, as if he had crossed the Rubicon where he decided to break up with this man, despite hate he still had some affection going back to his youth memories.

Finally, the following decisions were made: detaining Salah Ben Youssef and the visit of the Youssefite cells identified by the police and detaining their elements. This is it, a small coup. It totally succeeded because it had been decided right then at midnight and was carried out at 4 a.m. at the crack of dawn.

I do consider, without any doubt, that I care about Bourguiba’s future, but what I care about much more than that are French politics. And French politics cannot be ensured without the maintenance and overthrow of Bourguiba.

Bourguiba was accompanied by one of his ministers (But not Mongi Slim as I was very cautious of him), maybe he was his chief of cabinet who is named Abdalah Farhat, I am not sure. During the dinner, I explained to him my theory. I told him that things could not continue like this. Bourguiba told me: “You have to put him on a French plane and send him to Libya. I answered: “But I am not representing Tunisian authority anymore, you are the Tunisian authority it belongs to you to take the decision.” After a somewhat turbulent debate, I felt that Bourguiba was still confused a little bit and still hesitant, as if he had crossed the Rubicon where he decided to break up with this man, despite hate he still had some affection going back to his youth memories.

Finally, the following decisions were made: detaining salah Ben Youssef and the visit of the Youssefite cells identified by the police and detaining their elements. This is it, a small coup. It totally succeeded because it had been at the right time, at midnight and carried out at 4 a.m. (...) but a warning from Mongi Slim, allowed Ben Youssef to flee to Libya. (...) And when this decision was taken, the majority of my collaborators were unaware of it. In order to deceive Salah Ben Youssef, who asked me to meet him a few weeks ago, I delegated his meeting to Mr. Saumagne. The latter was a civil controller, who was disappointed with Bourguiba and wanted to convince me to meet Salah Ben Youssef. (...) First, we wanted the fruits of mutual interdependence, in return we were offering independence.”

Thus, on January 28th, 1956 Bourguiba took his decision to arrest the Youssefites throughout the country. Then, France assisted Bourguiba’s wing from the Destour party to liquidate his opponents through bloody repression, intimidation, and “pacification” operations which culminated during the summer of 1956 and led to the death of more than 1100 people between those killed under the shelling of the mountains of the southwest, the southeast and northwest (735) and extrajudicial liquidations (35), executions (28), arrests (315) including 122 who were sentenced to forced labor by special/exceptional courts. ⁹¹This interference in the internal affairs, affected negatively Tunisia’s chances to improve the independence negotiation conditions and to benefit from the international climate, which was in its favor, as did the brotherly Morocco.

Moreover, this situation has also caused an almost total decline of any free activity in the public space and the confiscation of any dissident and thus paved the way for the establishment of an authoritarian and tyrannical regime.

The tight grip by this regime on power and the seizure of the country's resources, and its abilities, means, and goods including: management, equipment and resources, and the deprivation of voters from deciding on the country's fundamental choices, options, and decisions, robbed the Tunisian people of their right to choose their leaders through the establishment and activation of an unfair electoral system that enshrined the dominance of loyalists and abolished any real competition. This made the impossibility of a peaceful transition. A ruling mechanism based on the overlap of state organs with the ruling party, systematic repression against dissident voices, especially at the Tunisian University, had been established. Prisons were full of the best youth of Tunisia. Social ties were dissolved using the

⁹¹ See the part related to violations which happened in the context of the departure of the colonizer from Tunisia.

mechanism of denunciation, gaining false political legitimacy through rigged elections, and the control of the propaganda system and media misinformation.

The system of government was also based on the subjugation of a part of the intellectual elite by mandating it to produce an official narrative that justifies the regime's violations and its abuses of the citizens' rights as well and ornamenting the regime with fabricated attributes such as 'historical legitimacy' and the individual qualities of the leader and his 'invincible' party through propaganda that dominated different fields of the public space.

Chapter Two

Party of the state

Since the independence, the overlap between the ruling party and the state presented a fundamental form to impose authoritarianism and tyranny. The multiplicity of the overlap mechanisms between the party interests and the state institutions is considered as the most prominent conclusion reached through research and investigation relying on the archives of the Truth and Dignity Commission. Moreover, delegation of control and security missions of repressive nature and limiting freedoms to the local and regional structures of the party, has contributed to the rise of human rights violations to include all areas of citizens' lives as well as the negative repercussions of such an unhealthy relationship on the developmental capacities of the society at all levels.

I. Free Destourian Party

Welfare committees System (Lijan Al-Riâaya) :

The welfare committees (Lijan Al-Riâaya) are considered as one of the most prominent parallel security mechanisms to the official state apparatus, established by the Free Destourian Party during the resistance to colonialism and used later by Bourguiba's regime to repress political dissidents. Indeed, welfare committees (Lijan Al-Riâaya) were established since the spring of 1955 and were entrusted with missions of raiding and arrests against Youssefite resistance in cooperation with French forces, especially after the emergence of the dispute between Salah Ben Youssef and Habib Bourguiba over the form of independence. This left a large number of victims of torture and physical liquidation such as what happened to Mokhtar Attaia and Hussein Bouzayane as well as kidnapping as was the case for Abdelhamid Fakih. In the same context, it was decided to liquidate "Salah Ben Youssef" on January 28th, 1956 after raiding his home. The welfare committees (Lijan Al-Riâaya) were entrusted with this mission, but Salah Ben Youssef managed to escape towards Libya before the operation. He remained abroad till his assassination in Frankfurt Germany on August 12th, 1961⁹². His driver: Ali Ben Ismail as well as Assabah newspaper photographer, Mohamed Ben Ammar, were assassinated too.

The cooperation between the welfare committees (Lijan Al-Riâaya) and the French colonizer continued during the independence, especially during the battle of "Agri Mount" in the Tunisian south. This battle happened on May 29th, 1956 under the leadership of Ajmi Moudawer, Ahmed Al Azrak,⁹³ and Ubbak Annacer. It engaged about 276 resistance fighters

⁹² Subject of indictment n°29 which was referred on December 12th, 2018 to the department specialized in transitional justice in the Court of First Instance in Tunis.

⁹³ He was the victim of enforced disappearance and TDC (IVD) succeeded in discovering the circumstances and details of his assassination by the state apparatuses in 1986 (by order of Bourguiba and execution of the

divided in 9 groups barricaded in the mountains. They were bombarded by French warplanes. More than 60 resistance fighters were killed and the remaining were imprisoned in coordination with the welfare committees (Lijan Al-Riâaya)⁹⁴ who guided the French Army to the places where they were barricaded, then they took part in their torture inside the French Army's barracks, in Tatouine, where they were detained. Many testimonies confirmed that the relatives were prevented from burying their loved ones under terror. This is why their remains are still scattered around the mountain until today.

At the time, the Minister of Interior of the Tunisian government, Mongi Slim did not agree with the existence of these parallel security services after the independence. He was seeking for consensual solutions without having recourse to violence and physical liquidation among political opponents. However, in the end, he was forced to codify the existence of the welfare committees (Lijan Al-Riâaya) through the issuance of a legal text regulating their work. He required that their activities should occur in coordination with the official security services. Thus, the welfare committees (Lijan Al-Riâaya) acquired a legal status following the decision of the creation of the Vigilance Councils, issued by the Prime Minister on March 31st, 1956. On April 19th, 1956, a beylical decree published in the Tunisian Gazette, established the payment of the grants that can be allocated to the members of these councils. They were given the mission of contributing in police operations according to the higher order instituting them. Their members were paid from the Tunisian budget of the municipality of Tunis, which is due to the Ministry of Interior.

Sabbat Dhalam and Zawyet Sidi Aissa:

In one of the testimonies received by the Truth and Dignity Commission and concerning victims tortured by members of the welfare committees (Lijan Al-Riâaya)⁹⁵, S.L declared that Sabbat Dhalam, in the capital city of Tunis, and Zawyet Sidi Aissa in Beni Khallad, Nabeul, which were respectively supervised by Hassan Ayadi⁹⁶ and Omar Chachia, were among the most important detention, torture, and killing centers in the hands of welfare committee members to accomplish the missions of arresting every dissident person be it Zeituni, Youssefite, or other.

minister of interior Zine Al Abidine ben Ali). TDC referred this case to the judicial specialized chamber in the court of First Instance in Tunis.

94 See annexes (archival documents from the French army) and the part dedicated for the Agri Mount battles.

95 The subject of an indictment.

96 The historian Dr.Mohamed Dhifallah says: The center of Sabbat Dhalam was opened for the investigation with the Youssefites by an order of the leader of the nation .Indeed, Bourguiba in the framework of his fight against the Youssefite movement, assembled old fighters who were experts in the use of weapons " "Cheikh Hassan Ayadi mentioned that his sight had been extended to several regions in the Tunisian North; especially in the capital and its suburbs and Souk Al Arbaa (Jendouba) region and the Cap-bon where we find the main center for the Welfare committees in Beni Khalled under the supervision of Omar Chachia. He adds: «he established a center in each village".When it comes to Sabbat Dhalam he got help from his old comrades from the old fighters whose names were not mentioned. But the recurrent testimonies mention among those who worked in Sabbat Dhalam: Ali Warak, Said Douiri alias Kaaboura, and also Taieb Sahbani. Moreover the brilliant Destourian leader Taieb Mhiri ;who was after the independence entrusted with the Ministry of Interior could not be unaware of what was happening in Sabbat Dhalam."

The Truth and Dignity Commission could, through its investigative work, hear the testimony of one of the executive elements in welfare committees (Lijan Al-Riâaya) in Tunis. Abdelhamid Mami declared “We were bringing and arresting everyone who is against our party, and belonging to the “Salah Ben Youssef “group. Some of them were tortured in “Sabbat Dhalam” and others were transferred and shot dead elsewhere. All the elements of the party who arrest the Youssefite dissidents do not go out in daytime but during the night and perform the arrest operations and torture the arrested persons in “Sabbat Dhalam”, and then kill them. The “Sabbat” was closed during the day to be opened for beating and torture, during the night. We always heard screaming and torture sounds ... Already, in 1956, « Sabbat Dhalam » was equipped with electricity. At night I used to go out with a large group supervised by Hassan Ayadi. I worked with him in the company of “Ali Warak”, who was amongst the group who killed “Moncef”.

We used to move in groups of five or six persons and perform the arrest operations. I was sixteen at the time. As groups we did not do these operations for money. I, personally, used to work for the central pharmacy. My mother knew that I was acting amongst Hassan Ayadi’s group. We detected Bourguiba’s opponents through the debates and discussions. After recognizing them, we used to follow and arrest them during the night. A large number of Youssefites were killed in “Sabbat Dhalam”. Later on, they were transported in a special car in groups of four or five persons to be buried in the Sijoumi area. Hassan Ayadi was the only one who could decide to kill or not the person that we have arrested and tortured. “Sabbat Dhalam” was closed in late 1956.

The testimonies have also showed that “Sabbat Dhalam” headquarters in Tunis City (the capital) was close to the headquarters of Douiret’s cell related to the Free Destourian Party. By the same token, Zawyet Sidi Aissa in Beni Khalled Nabeul used to be a local headquarters for the Free Constitutional Party after the independence. The zawyet Sidi Aissa used to be a torture center for opponents, under the supervision of Omar Chachia.

According to a testimony received by the TDC , Tayeb Ben Mohamed Ben Aziza was taken from his home in the Brij, Takelssa in December 1955, when he was 26 years old. He had been detained in Zawyet Sidi Aissa detention center. Omar Chachia and the welfare committees (Lijan Al-Riâaya)’ members pronounced a death penalty against him. But he benefited of an amnesty after weeks of savage torture meant at breaking his will and his belief in his cause according to the testimony of his son Lotfi Ben Aziza.

Tayeb Ben Aziza was a native of the Brij village in Takelsa situated in Nabeul governorate. He used to be the leader of the Destourian youth in the Cap-Bon. After the split of the Free Destourian Party he joined the Youssefite movement.

Bourguiba’s regime continued to rely on the services of the welfare committees (Lijan Al-Riâaya) as partisan structures parallel to the state apparatuses and organs, while facing social and trade union movements and major events.

When controlling and pursuing opposition political movements, Habib Bourguiba’s regime relied on some of the elements who played a role in the battle for national liberation. These

elements contributed in providing information about the opponents of the regime's orientations. For instance, when in October 1968, a person native to Gafsa, expressed his anger at not being rewarded for the services he provided to the country during the National Liberation Battle while he was in a bar in Tunis, an informant wrote a detailed report of the protestor's statements to the security services, as it was stated in the security report of Snad⁹⁷Guard station.

In the 1978 trade-union events stemming from the crisis between the authority and the leadership of the UGTT, the welfare committees (Lijan Al-Riâaya) of the then ruling party (at the time named as The Socialist Constitutional Party) played a key role in the attacks on trade unionists and their arrests.

II. Democratic Constitutional Rally (RCD)

In its quest to discover the mechanisms and instruments on which was based the system of tyranny and oppression concerning the engagement of the services of the state in favor of the party, the Truth and Dignity Commission (IVD) relied on about 250 archival documents (mostly from outside the national archives as the inventory of the dissolved Democratic Constitutional Rally's archive was not done yet despite its transfer there since 2011). These documents revealed the success of the Democratic Constitutional Rally (RCD), all along these 23 years, in penetrating in the articulations and levels of the society. Thus, the party membership card has become the equivalent of the National ID card for the Tunisian citizen. Without this card, he/she cannot enjoy his basic rights such as health treatment card, obtaining a bank loan, a social aid, an agricultural support, or a job ...

Furthermore, the coercive and pressure methods used by the party to force citizens to accept its choices and orientations had other dimensions when seen from the perspective of the political system.

It is worth mentioning, that the tyranny and repression practiced by the Ben Ali regime on the "Tunisian Society" led to the outburst of a social revolution, which led to the dissolution of the Democratic Constitutional Rally (RCD). This happened following a court ruling issued by the Tunis Court of First Instance in case n° 14332 of March 9th, 2011 pursuant to the provisions of Law n°32 of 1988, dated in May 3rd, 1988 and of the organization of political parties as well as the article 128 of the code of civil and commercial procedure. It was based on a lawsuit filed by the Minister of Interior on February 6th, 2011, requesting the dissolution of the Democratic Constitutional Rally party (RCD) following his decision to close its headquarters and suspend its political activity, in accordance with its prerogatives set forth in article 19 of the law on the Organization of Political Parties Act 1988.

The ruling implied also the liquidation of all the funds and properties belonging to the RCD through the administration of state domains. This was announced by the head of the

⁹⁷ See annexe.

transitional government, "Mohamed Ghannouchi", shortly after the announcement of the verdict and the establishment of the Confiscation committee.

I. Mechanisms of the overlapping of the Democratic Constitutional Rally ‘s Interests in the state institutions:

▪ Mechanism of “Provision”

Provision was an official decision of giving the opportunity for the (RCD) party

and some other associations, to benefit from the services of public employees. That means the employees work for the (RCD) or associations whereas they are paid from the budget of their public institutions or administrations.

On the basis of an official memorandum, issued by the General Secretariat of the Government and addressed to the Presidency of the Republic, the mechanism of “Provision” is granted upon a decision signed by the Prime Minister and clearly marked by the concerned minister whether in the administration or in the public institutions and establishments according to a request necessarily signed by the President or the General Secretary of the organization. It is an annual decision which should be renewed. Thus, a new employee cannot be added unless as a substitute for an old employee.

According to an official memorandum sent by “Mohamed Rachid Kechich”, the general secretary of the government, in 2002, the number of public employees made available for the Democratic Constitutional Rally (RCD) in 2001 was about 486 from a total of 1241 employees made available for the other associations, organizations and “opposition” political parties.

These requests included employees and agents working in the field of education (teachers, professors, and supervisors), the regional administration of state domains, the Gafsa phosphate company, the tobacco factory, as well as other public institutions.

Moreover, some documents showed the intervention of the presidency of the republic giving orders in 2002 to make available a number of public employees working for the Tunisian office of commerce and TRAPASA company for the benefit of “opposition” parties, that are predominately loyal and directly supportive to the choices and orientations of the regime. These parties include: The Popular Unity Party, the Socialist Democrats Movement, The Unionist Democratic Union, the Renewal Movement (Attajdid movement), and the Liberal Social Party.

▪ Temporary sabbatical leave and instrumentalization of cultural permits:

In the context of the accomplishment of their field activities or their organizational preparations for celebrations, the different coordination committees and professional federations of the (RCD) party contact some of the administrators of the public institutions to ask them to enable their employees who have responsibilities within the different structures of the Democratic Constitutional Rally Party (RCD) to benefit of sabbatical leave or a cultural permit to devote themselves to the party.

The duration of the sabbatical leaves in these requests usually vary between three days and a week as it was revealed by a correspondence received by the Chairman of “Banque de l’Habitat” (Housing Bank) from the secretary general of the coordination committee in Ouardia on November 16th, 2005 on the occasion of the world summit on the information society. Thanks to this mechanism or instrument, the employee on sabbatical leave avoids the deduction of these days of absence from his monthly salary. He receives a certificate from the party administration proving that he has accomplished the mission he was entrusted with, to be invoked in the institution or establishment employing him.

Some of the examples that we have discovered in the same context include the correspondence of the general secretary of the coordination committee of the Democratic Constitutional Rally (RCD) in Gafsa on October 13th, 1999, addressed to the regional manager of the national fund for retirement and social welfare (CNRPS), in which he asked the latter to allow the “ head of the social affairs cell” to enjoy a cultural permit for 10 days, from October 14th to October 24th, 1999 to take part in the legislative and presidential election campaign for the benefit of the party.

- **Fictitious Employment Mechanism**

Some people are recruited by public institutions according to a decision sent to the given institutions. Nevertheless, the recruited person would accomplish other missions which are totally different from the field of activity of the institution which recruited him. These persons shall provide information and security data for the regime wherever they are sent. In return, they enjoy professional promotions and they are entitled to all the allowances and financial privileges from the public institution budget. The recruitment of “B.B” by SOTUTEL and “S.S” by the office of the civil aviation and airports (OACA) then making them available for the Tunisian agency for external communication (ATCE) are considered as ones of the most salient examples of the fictitious employments used by Ben Ali’s regime. Usually the institutions and establishments or agencies with privileges and significant wages are the ones selected such as: Gafsa phosphate company, Tunisian national oil company, TUNISAIR, the office of the civil aviation and airports, the national fund for retirement and social welfare (CNRPS), the national social security fund (CNSS), SOTULUB, as well as the public banks such as the Housing Bank (Banque de l’Habitat) and the Tunisian Bank.

These fictitious employments were not limited to the political elements of the Democratic Constitutional Rally party (RCD) and the people loyal to it. They also included a group of trade- unionists. The secretary general of the Tunisian General Labor Union (UGTT) used to directly intervene for them with the president of the republic. The number of such requests rises especially during trade-union election conferences, major political events, and legislative and presidential elections. The fictitious appointment of the trade unionist “M.A” in the Transport Company by Pipe-lines in the Sahara (TRAPSA) in 2005, and “M.T” as an assistant director and paid 1426TD monthly in , the Tunisian National Oil Company (ETAP) , and the appointment of “M.Sh” in the National Social Security Fund (CNSS) , in 2004 are among the examples stated in the archival documents.

- **Exploitation of the mechanism of “Barn workers”:**

This mechanism is said to be established in order to reduce unemployment. It is still used and theoretically targets the poor. The given jobs are generally related with gardening, cleaning and so on. Several archival documents⁹⁸ revealed the exploitation of the “Barn workers” in the building of the headquarters for the coordination committee of the Democratic Constitutional Rally in Zeramidine between 1999 and 2003. It used to be called “the Rally House”. Indeed, the local council of the governorate of Monastir provided the building contractor who won the tender, with a group of workers registered under the “Barn Workers Mechanism”, to accomplish the necessary duties. Nevertheless, they were paid at the expense of the governorate budget. We have also reached a conclusion through the complaints received by the (RCD) coordination committee. In fact, the building contractor falsified the list of the workers. He added a number of names including deceased persons and people who do not work. He received the wages of 47 workers whereas the latter did not have a physical presence.

▪ **Mechanism of extension beyond full retirement age**

All along the rule of the Democratic Constitutional Rally (RCD), the interests of the former political system entailed the reliance on the services of several high-ranking officials and high employees in all fields. Indeed, many benefited from extensions after reaching the full retirement age. These extensions included a significant number of physicians who were ready to issue medical reports and tests denying the existence of physical harm on the bodies of the victims of police violations and torture. Moreover, several judges⁹⁹ could benefit from these extensions too. These were the ones who succeeded in the conduct of political trials and imposed the most severe sentences on political dissidents.

▪ **National solidarity fund 26-26:**

The National solidarity Fund 26-26 was established on December 8th, 1992. The mission of collecting donations and contributions to the solidarity fund was assigned to all the party (Democratic Constitutional Rally) (RCD) elements throughout the country as they could take advantage of their influence. Indeed, all the citizens were forced to materially contribute in the fund to prove their loyalty to the party principles and the system or regime orientations. Besides, businessmen were forced to pay pre-determined amounts of money. Indeed, the local and regional coordination committees determined these amounts that could be paid in cash or through bank checks.

As an example: the contribution of the governorate of Sousse to the income of the national solidarity fund 26-26 increased from 789.088.988 in 1997 thousand dinars to 2.194.267.399 in 2005 to reach 3.250.924.2019 in 2009. The contribution of the staff of the ministry of interior increased from 63.82.500 TD in 1993 to reach 78.659.160 TD. The donations of the coordination committees (RCD) for the benefit of the solidarity fund 26-26 from the collection amounted to about 40.201.402.265 as of December 8th, 2009.

98 See annexes.

99 See annexes.

2. Sources of funding of the Democratic Constitutional Rally (RCD):

Sources of funding of the Democratic Constitutional Rally (RCD) were mainly based on the participation of the private companies, then public institutions and enterprises and finally the natural persons.

A document belonging to the archives of the (RCD) party and entitled “comparison table between the contributions in the elections campaign of the President Ben Ali for 2004 and 2009 and updated on November 18th, 2009” revealed that the total of the contributions of businessmen and private institutions during the legislative and presidential elections reached 7.751.432.350 in 2004 to double in 2009 and reach 14.874.581.103.

▪ The Contribution of the public institutions and enterprises

For instance, some documents related to the sources of funding of the coordination committee of the Democratic Constitutional Rally in la Manouba ¹⁰⁰, during the annual celebration of the anniversary of "November 7, 1987", for the year 2009, revealed that the total annual amount spent was 255.459.341 according to the report “the general budget of the committee”. It also divulged that the main sources of funding were public and banking institutions. Indeed, the different archival documents of the coordinating committee of the Democratic Constitutional Rally in la Manouba, in 2009, revealed to us that it received important amounts of money, which reached up to 65 thousand dinars from the budgets of more than 22 public institutions to implement the planned activities for the celebration of the 22nd anniversary of “Change”. Among these institutions were: “Ar-Razi” hospital, Al Kassab Institute of Orthopedics, National Sanitation Office (ONAS), National Oil Distribution Company (AGIL), National Office of Crafts, The National Agency for the Protection of the Environment and the Tunis Chamber of Commerce.

▪ The Contribution of private enterprises

A document sent from the local committee of coordination in Tozeur to the central administration of the Democratic Constitutional Rally revealed the contribution of M.M, the president of the Regional Union of Industry and Commerce in Tozeur, for the years 1997-1998 with an amount of 39.724.700. The amount was distributed between 11.893.660 allocated to the Tozeur coordination committee intended for the support of the party cells and federations and 15.206.100 to support the different security structures (National Guard, police, public security) in the governorate of Tozeur. Another amount of 11.205.000 was dedicated to the support of regional structures such as: The Women’s Union, The Scouts ‘Club, Regional Organization of Education and Family and the Quran Association in Tozeur.

¹⁰⁰ TDC had access to huge archives belonging to the coordination committee in la Manouba thanks to a citizen who saved these archives from the burning done by officials from the Democratic Constitutional Rally (RCD) during the events of the revolution. It should be noted that TDC did not have the access to the important archives from the National Archives Institution which received the archives of this party following the judicial decision to dissolve it.

The report elaborated by the coordination committee in La Manouba in 2009 indicated also the fact that the contributions of the private institutions reached an amount of: 189.220. 000. Another amount of 1.237.500 was collected from the subscriptions in the party. These contributions sent to the coordination committee in La Manouba through bank checks from more than 54 private institutions ranged from 200 TD to 10 thousand TD in 2009. Among these companies were: Tunisian Company for Soft Drinks (STBG) “Mezghani furniture”, Tunisian Company for wholesale Markets, Tunisian Company for the Chocolate of the Mediterranean (Chocomed) and Salama’s Brothers’ Foundation.

▪ **Contribution of Banks**

The Democratic Constitutional Rally coordination committee in La Manouba received about 23 thousand TD in 2009. This amount was provided by:

- Tunisian International Bank: a check of 10.000 TND on August 4th, 2009.
- ”Société Tunisienne de Banque” The Tunisian company of Bank: a check of 5000 TND on August 28th, 2009.
- Amen Bank: a check of 3000 TND on September 2nd, 2009.
- ”Banque Nationale Agricole” The National Agricultural Bank: a check of 5000 TND on July 29th, 2009.

3. Debt relief

Many archival documents revealed that the Democratic Constitutional Rally enjoyed exemptions from paying significant amounts of money (unpaid bills) owed to Tunisia Telecom. Tunisia Telecom took the decision in its quality of creditor. Besides, the Agency of External Communication¹⁰¹(ATCE) allocated significant amounts of money to the party through the representations of the Office of Tunisians Abroad (OTE). These donations took the form of grants to participate in the celebrations of the Tunisian diaspora on the anniversary of November 7th, 1987 or through ensuring the payment of the visa fees, tax stamps, and the wages of the music groups taking part in the shows organized on the occasion. The total amount of money allocated to the Democratic Constitutional Rally through the Office of Tunisians Abroad between 1999 and 2010 is estimated at 178.458 thousand TD. Furthermore, the Agency took in charge the expenses of the organization of the general congresses of the party including: the “Ambition Congress” in 2003 and the “Challenge Congress” in 2009. These expenses were estimated to: 676.371 TD.

4. Not paying social security fees:

The Democratic Constitutional Rally and all the institutions affiliated to it enjoyed an administrative immunity that allowed them to avoid paying their contributions to social security funds. This contributed to the social security funds financial deficit palpable even today. A correspondence issued by the Chairman First Executive Officer of the National Social Security Fund (CNSS) to the Minister of the State Domains on March 24th, 2011 revealed that

¹⁰¹ Source: “The National Commission of Investigation on the Cases of Corruption and Malversation”

the amount of the debts of the Democratic Constitutional Rally and its affiliated structures reached about 21.994.099 TD on December 31st, 2010 divided into: 21.994.099 TD as good debt, 42.125.240 TD as penalties, and 238.494 as social loans.

The Commission (IVD) also had the access to a correspondence from the Minister of Social affairs N °132 on February 1st102, 2011 in which he was asking the National Social Security Fund (CNSS) to grant the “Labor House “and the “Arts of drawing, Publishing, and Press Company” a financial advance which reached: 269.630.696 TD from the budget of the Fund. The advance was meant to pay the January 2011 wages of the workers, employees, and journalists of these two institutions.

5. Exploitation of state resources during the legislative and presidential elections:

▪ Exploitation of the public buses fleet:

The archives received by the Truth and Dignity Commission (IVD) included a record of correspondences sent from the Secretary General of the Democratic Constitutional Rally (RCD) to the Managing Director of the “Tunis Transport Company” in 2009. He was asking him to make available or harness national or regional buses to ensure the execution of the party’s plans and activities during the official events (Independence Day, Youth Day ...) and the celebration of the “Change Anniversary” as well as during the legislative and presidential elections. Thus, the number of buses that were made available to the regional coordination committees in 2009 reached about 1039 buses.

The buses were used to transport the party’s supporters back and forth. Moreover, the correspondence included demands of provision of buses for the party without mentioning their number.

▪ Exploitation of the Fleet of Vehicles of the Public Institutions, enterprises and agencies:

On the basis of official correspondences in which he was asking the provision of “luxurious cars” for the transport of guests and official personalities taking part in the planned festivities, the Secretary General of the party sent in 2007 correspondence respectively to the Chairman First Executive managers of the Retirement and Social Welfare Fund(CNRPS), the Tunisian Navigation Company, and the Chemical Complex. Indeed, he was asking them to make available a car with a driver and a quantity of gasoline for the party for a period of one week to 21 days within the framework of the preparations of the festivities of the Independence and Youth Days. Besides, in 2009 the Chairman of the Tunisian Company of Bank(Société Tunisienne de Banque), the Chairman of the National Oil Distribution Company, the Managing Director of the Office of the Civil Aviation and Airports(OACA), the Managing Director of the Central Pharmacy and the Chief First Executive Officer of the Housing Bank (Banque de l’Habitat) made available, at the request of the Secretary General of the party, administrative and company vehicles with drivers and all the necessary quantities of gasoline

102 See annexes.

for the transport of the President of the Republic guests during the celebration of the 22nd Anniversary of “Change”.

6. Financial corruption of the party officials:

The archival documents related to the practices and behaviors of the political leaders of the Democratic Constitutional Rally (RCD) throughout the country revealed their repetitive and unlimited use and exploitation of their party influence and their own authority and their abuse of the rights of natural persons as well as the public fund goods.

- **Non-payment of the rental fees of the headquarters of the committees:**

On May 15th, 2008, a female citizen presented a complaint to the Secretary General of the Democratic Constitutional Rally (RCD), indicating that the President of the cell of the Party in “Upper Ettahrir” neighborhood did not pay the rent of the party's premises for five consecutive months. He gave her a check with an amount of 215 TD but she discovered that he bounced the check.

Moreover, the Chairman of the Retirement and Social Welfare Fund (CNRPS) sent a correspondence on May 5th, 2008 to the Secretary General of the Democratic Constitutional Rally (RCD) requesting him to pay the rent of the premise N°2 located in the building N°78 in the Casablanca Residence and amounting to 11.556.500 TD for the period going from September 1st, 1998 to the end of April 1998.

On March 10th, 2010 the Head of the National Water Exploitation and Distribution Company (SONEDE) sent a correspondence to the Secretary General of the coordination committee in La Manouba requesting him to pay the unpaid amount of 4.042.329 TD including 27 consecutive quarters concerning 7 consecutive years from 2003 to 2009.

- **Non-Payment of bank loans:**

In a correspondence from the Cabinet of the Minister of Interior and Local Development, it was indicated that the bailiff requested the urgent use of public forces to apply warrants of execution in the benefit of the Banking Union of Commerce and Industry against the so called “Hamadi Trabelsi” in his capacity as the Secretary General of the Democratic Constitutional Rally (RCD) in La Jdaida, On April 17th, 2007. In fact, the latter did not pay debts estimated to 13.146.935 TD. Besides, another recourse to the use of public forces targeted the same person for not paying debts to the Tunisian Company of Electricity and Gas (STEG) estimated to 1.154.479 TD on June 5th, 2007. A third request was related to debts to National Social Security Fund (CNSS) with an amount of 461.735TD on February 8th, 2008. However, the use of public force did not happen.

- **Embezzlement of money from the revenues of the party memberships**

A top secret internal correspondence issued by the Secretary General of the Professional Federation in “El Menzah” revealed that the treasurer of the professional federation pocketed funds collected as annual membership fees of the cells of the Housing Bank (Banque de

l'Habitat) and the Tunisian National Oil Company (ETAP) from 2005 to 2009 without depositing them in the current account of the party while giving the opportunity to the cells' representatives to have payment receipts. He also created an official stamp with the party's name and his capacity as treasurer without the consent of the members of the structures. By the same token, one of the brothers of a member of the central committee of the Democratic Constitutional Rally (RCD) succeeded in stealing the funds deposited in the treasury of the coordination committee in "Jendouba" according to what was stated in some of the official reports. In addition, according to some complaints received by the central administration of the Democratic Constitutional Rally, some of the Secretaries general of the party deceived people and made them believe that paying money for the National Solidarity Fund 26-26 and the Employment Fund was an obligation while they kept all the collected money for themselves.

7. Disposal of public properties and social assistance funds:

The president of a Democratic Constitutional Rally (RCD) cell in "Zaghouan" succeeded in exploiting a clay quarry for his own account with the approval of the Omda for a long period of time until he was stopped from exploiting it by judicial decision. This is in addition to intervening in the attribution, sale and exploitation of land, public housing developments and commercial plots in exchange for receiving financial commissions. Some of the presidents of the cells of the party deliberately exploit the social assistance funds allocated by the state to low-income classes such as the projects of decrepit /rudimentary dwelling removal and getting a part of them in return for signing up for the full amount. Some omdas also enabled a group of peasants to have title certificates for forged agricultural lands so that they could obtain loans, seeds, fertilizers and financial aid under the head: support to small farmers in return for a percentage of the amount obtained.

Some omdas forced citizens to give them money in exchange for an agreement to enjoy drinking water or electricity, or to receive a free patient card. Some mayors have also been able to get money in the form of commissions for obtaining loans from development associations financed by the Tunisian Solidarity Bank. Sometimes, the commissions amounted to 50 TND, according to some complaints filed by citizens.

- **Enabling the children of the party's officials to enroll in the universities of medicine and pharmacy without meeting the eligibility criteria:**

While the intervention of the Secretaries General of the coordinating committees, members of the RCD federations and parliamentarians included the appropriation of public goods or real estate and the shifting of social assistance to their own account, some senior officials of the state and members of the Democratic Constitutional Rally (RCD) had previously made demands to the President of the Republic or to the Minister of Higher Education during the academic years 2001 and 2003, 2004 and 2008 to:

- Allow their children or relatives to enroll in medical or pharmacy schools in Tunisia after passing the baccalaureate exam, despite the lack of the legal criteria imposed on all candidates.

- Obtaining university scholarships illegally for their children or the children of a relative who are studying in European universities such as French and Canadian universities.

8. The Oversight role of the party on the society:

The members of the local and regional coordination committees monitor all the movements, events, and meetings organized by the groups or the individuals classified as adversarial or dissident, whether they are secret or public. Then, detailed reports are immediately issued. Examples include: On September 21st, 2001 a correspondence detailed the content of the meeting of the members of the steering committee of the Tunisian League for the Defense of Human Rights (LTDH) concerning the case of sexual harassment of the secretary of the league and committed by “K.K”. The correspondence included data about the meeting of the members of the Tunisian Association of Democratic Women (ATFD) and their position as to the sexual harassment case.

The correspondence of the Secretary General of the coordination committee in La Manouba focused on 4 different issues:

- The developments of the trial of Mrs. “S.B”, noting the increase of the number of lawyers and the fact that the hired lawyer evoked the necessity of her release within 48 hours and his threats to organize a big rally outside the women’s prison in La Manouba.
- The content of a communique issued by the Union of the Tunisian Magistrates alerting the dangers of the involvement of the judicial authority in a conflict with the authority while excluding the fact that the communique was issued by judges.
- The Publishing of an article entitled: "Judges, fear God and join your people." By “R.Gh”
- A statement issued by 3 international human rights organizations and calling on the Tunisian authorities to release all prisoners of conscience."

A top-secret correspondence n° 4670 sent from the Secretary General of the Democratic Constitutional Rally (RCD) “Chedli Neffati” on September 4th, 1991 to the Secretaries General of the coordination committees deals with “The importance of the immediate notification about data and the latest developments”. In fact, he points out in the correspondence that “Giving the important role played by information as it allows getting ahead in all fields and consolidates the principle of the necessity to inform of all the developments and events regardless of their importance, it is required from our brothers the Secretaries General of the coordination committees to work on informing the administration of the rally of any information, news, or event regardless either through a direct communication with the permanent secretaries or the members of the cabinet of the Secretary General. If necessary, they have to contact the Secretary General himself so that we can deal with the events efficiently.”

▪ Using the neighborhood committees for surveillance:

The democratic Constitutional Rally (RCD) extended its influence and authority over all the popular neighborhoods and cities through the creation of the neighborhood committees and

assigning them total surveillance missions covering all the spheres of life: political, security, social, cultural, elections, economic.

According to the data of the “Report of the local committee of the neighborhood committees” supervised by the Minister of Interior “Hedi Mhenni” in March 2004, the number of neighborhood committees in the Governorate of Tunis reached about 353 neighborhood committees including 3565 members distributed between 3106 males and 457 females. Moreover, the total expenditure of the neighborhood committees in the governorate of Tunis until 2003 reached 3.010.000 million TD according to the data in the above-mentioned report.

During the big festivities and celebrations, the party had recourse to the creation of the « vigilance committees » assigned exceptionally with the missions of the surveillance and spinning of any movement or gathering which seems unusual to them. Indeed, they have to immediately report that to the police units or the members of the coordination committees. One of the most salient examples of this is the report of the chief of district of Kesra to the governor of Siliana informing him of the composition of the vigilance committee on the celebration of the New Year’s Eve and which includes 23 members.

▪ **Restriction on Freedom of Belief**

The regime sought to further restrict religious freedoms and use the contents of the article of Law n ° 34- dated May3rd 1988 on mosques. The security plan of the Ministry of Interior included the "dismissal of imams suspected to be extremist or sympathetic", " bridging vacancies in the staff of mosques and paying them on account of the “barn workers “ when necessary" and the "coordination with the Ministry of Education and Science on the good selection of the directors of secondary schools and the supervisors, "And" sensitizing officials in public institutions and establishments on the need to coordinate with the structures of the Democratic Constitutional Rally at all levels, especially in terms of recruitment, placement and provision. "

On December24th, 2002, the Secretary General of the Democratic Constitutional Rally Party (RCD), Ali Chaouch, sent a letter to the President of the Republic announcing a plan of action to limit the "extremist religious phenomena of Salafism, and” Daawa and Tabligh” groups, wearing the hijab and sectarian dress." We also noted through the documents sent the response of the President of the Republic to the proposal on December 28th, 2002, pointing out the "adoption of the plan proposed by the Committee and monthly inform me of the updates." The strategic plan included a field intervention regarding the Ministry of Religious Affairs and another related to the Ministry of Interior.

Chapter Three

Pillars of denunciation

The previous authoritarian and tyrannical regimes largely based their domination upon denunciation as a mechanism of surveillance and domination on the whole society. Indeed, each political system established a network of informants, rooted in all political, economic, and cultural fields including the surveillance of the private life of citizens, especially dissidents and political opponents, but also some elements within the system.

There was also a close and direct relationship between the reports of informants and the violations targeting dissidents from the different political movements as well as human rights activists.

1. A Comprehensive and deep system:

We realized that denunciation, as a mechanism of surveillance and control, was not among the new mechanisms established by the regime of Bourguiba. It rather goes back to the colonial period and the beginning of the independence. Indeed, the correspondences reporting secret information and data between the French Embassy in Tunis and the French state and which clearly included the source of their information as “local informant” (informatateur local), “public officials of the state” (fonctionnaires tunisiens) and some “notables” (Cavaliers du Makhzen) in the different regions of the country, were numerous. These correspondences included for example: information regarding the movements of the supporters of Salah Ben Youssef in the Tunisian South especially in the governorates of Kébili, Gabes, and Mednine as well as the Libyan border on July 3rd, 1956. They also included the nominal list of the persons who met Salah Ben Youssef in the Libyan capital Tripoli before the latter’s journey to Rome, as well as information on the attempts of reconciliation between Habib Bourguiba and Salah Ben Youssef, and led by the Libyan government on July 20th, 1956 in Tripoli. The correspondence indicated that the Governor of Medenine asked his collaborators and his staff to offer all those who ask a pass card valid for 8 days to attend the meeting.

Despite the fact that the denunciation mechanism was tied to previous historical circumstances, its systematic use against political opponents flourished during the Democratic Constitutional Rally period, to reach the level of material awards for informants, rewarding positions and the settling of personal scores among them. This is why it is worth mentioning that the regime of Ben Ali did not derive its oversight and repressive power from the capacities and the potential of the various regular security services but rather from the services and capacities of the denunciation networks, whether active directly in coordination with the security services in return for financial reward or dealing with coordination committees and the constitutional cells of the Democratic Constitutional Rally (RCD).

In his testimony on how the Ministry of Interior dealt with the networks of informants, a high official “Chargé de mission” in the Cabinet of the General Executive Manager of the General Administration of the Specialized Services from 1983 to 2011 said: “There are two different funds in the Ministry of Interior. The first is a special box (Fonds Special) dedicated to the

private procurement of the ministry such as the supply of wiretapping devices. Some additional and unstable amounts are disbursed from this fund as rewards for the “supplied informational service”. The second is a black box called “police costs” (frais de police), which is distributed in the form of grants allocated to the network of informants classified in nominal lists and distributed among the services on behalf or for the State Security services, the intelligence and information services, police and national guard, and missions abroad. ”

2. Denunciation in the media field:

It is easy to demonstrate and prove the use of the regime of Ben Ali for the denunciation mechanism in the media field through the information and data found in the archival documents, distributed between official correspondence of the structures of the Democratic Constitutional Rally (RCD) and the written reports exchanged between the direct informants and the Presidency of the Republic.

Collecting Information during the Coverage of seminars and conferences

The press elements taking part in press seminars and conferences provide detailed information on the participants, with a focus on all the presented data as it was shown by the majority of the denunciation reports drafted in this context. In January 29th, 1991, after the President of the Republic’s approval, N.L was commissioned by Sadok Chaabane, the advisor to the Presidency of the Republic, in his capacity as journalist in “Realities” (Réalités) and member of the press union, to provide him with “information related to parties, associations, and the “world of journalism.””

The reports of the so-called “M.Ben.S” that he used to send periodically to “Abdel Wahab Abdalla” in his capacity of Counselor Minister to the President of the Republic, between 2000 and 2003, are among the examples of the denunciation reports in the media field. In the same context, “S.Ben.H” was commissioned with the presentation of the association in the international conferences to embellish Tunisia’s image and reputation abroad.

Furthermore, TDC had access to a correspondence in the Presidency of the Republic, in which an opposition journalist (R.Kh) proposed his informational services to Ben Ali. The latter indicated his approval and recommended the concealment of his identity and the use of the code 002 to deal with him in return for remuneration.

3. Denunciation through coordination committees

The General Secretaries of the coordinating committees used to regularly send to the Secretary General of the Democratic Constitutional Rally (RCD) periodical or weekly reports entitled “Follow up of the General Situation”. The reports included all the developments that happened in the different regions in all fields (politics, society, culture, public security, Education, protest and trade-union movements, business, agriculture ...).

On July 3rd, 2007 the delegate (local representative of the authority) « *Muutmed* » of El Menzah sent to the governor of Tunis a secret correspondence under the number 100 to inform him that he saw the lawyer Radhia Nasroui “*recording a video related to the developments of the electoral process of the Tunisian Order of Lawyers using her mobile phone. Meanwhile she left her daughter for about half an hour to follow the developments of the photos and to proceed a phone call in the neighboring public telecommunications center.*”

4. Denunciation through neighborhood and vigilance committees

The Regime of Ben Ali relied on Vigilance Committees throughout all the regions of Tunisia. Their main mission was more and more surveillance of the movements and meetings of the citizens as well as the surveillance of the activity and movements of all the elements of the opposition parties. This was based on the system of work of the members of these committees, which is usually full day and night by adopting the system of rotation. Among the examples “the Vigilance committee in the district of Kesra “constituted of 23 elements with the indication of the phone number and the district to which belongs each member according to the correspondence of the delegate / “Muatamed” of Kesra to the governor of Siliana.

When it comes to the neighborhood committees it was stated in the report of the “Regional committee of the neighborhood committees”, supervised by Hedi Mhenni, Minister of Interior in March 2004, that the number of neighborhood committees in the Governorate of Tunis La Medina reached about 353 neighborhood committees including 3563 members distributed between 3106 males and 457 females. Moreover, the total expenditure of the neighborhood committees in the governorate of Tunis until 2003 reached 3.01.000 million TD according to the data in the above-mentioned report. The report also stressed the importance of these committees in their ability to "daily and direct adherence to the lives of the population" and "to polarize and link intimate relations with the population".

5. Mobilizing the professional sectors to draft denunciation reports:

Ben Ali 's regime used all the professional sectors and instrumentalized all the professions to force them to carry out the task of denunciation and the drafting of monthly reports to the central administration of the Democratic Constitutional Rally (RCD). Thus, a secret correspondence from the delegate (*Muatamad*) of Laaroussa to the governor of Siliana on April 20th, 2009, included a report entitled “the Security Plan in the delegation of Laaroussa”. The report indicated “Sectors to report Information” which are:

- Delegates (*Muatamad*), local administration representative at the level of quarters (Omda), the party cells, neighborhood committees, loyal civil society components, preachers, imams.
- Rural transport, taxis, louages
- Coffee shops, public shops, Internet cafes
- Payphone, tapes and CDs shops,
- Forestry and guardians' sector
- Real estate agents and brokers,
- Owners of various car repair workshops,
- shops selling food, vegetables, cereals, meat and bakeries and selling milk and dairy products;

- Aluminum joinery, goldsmithing, sale of agricultural and chemical materials,
- Pharmacies and laboratories

6. Denunciation in educative establishments and universities

Under Ben Ali's regime, denunciation strategy systematically targeted the educative field and university. As it is shown by the correspondence of "Abdallah Kallel" to all the governors of the republic on March 11th, 1991, to inform them of the necessity to "tighten a plan for more vigilance and to counter extremist elements". The "inquiry" point also included the need to "strengthen the link with the secondary schools and university dorms directors to follow the situation there as they are an important source of information."

A president of a Democratic Constitutional Rally (RCD) cell in the federation of Bouaarada, while he was simultaneously the director of the secondary school of Bouaarada sent on April 2nd, 2002, a report to the Secretary General of the Democratic Constitutional Rally (RCD) to inform him of a student demonstration to support the Palestinian cause with the participation of some teachers whose names were listed. Thus, in the light of these facts mentioned in the denunciation, a series of punitive measures were subsequently taken against them as the deprivation of administrative assignment, transfer or promotion.

7. Instrumentalizing Taxis (cabs) in denunciation:

The regime worked on the intensification of the surveillance of the movements of all citizens to investigate information. Indeed, the General Administration of the Specialized Services (police) has submitted a project to establish an open company to exploit cabs (taxis) under the name "TAXI ALLO". They justified this mechanism by "*their continuous endeavor to develop and strengthen the "intelligence process", especially at the internal level.*"

To start implementing the project, the General Administration of the Specialized Services proposed the provision of official headquarters and "the recruitment of 70 employees and workers among retired policemen". The Project has also included an overview of the organizational structure of the company including a general manager, a technical director, an administrative and financial director, a staff manager, an accountant and maintenance staff (mechanics, wireless phone repairs ...)

In addition to providing the necessary equipment for the work of information and intelligence such as a telephone distributor, wireless devices, offices, twenty cars and fifty (50) drivers working 24 hours on a system 6/8.

It should be noted that Habib Bourguiba's system was based on the denunciation of some taxi owners, as in the case of Ben Ali. On December 27th, 1978, the Director General of the General Administration of the National Security sent a correspondence to the governor of Gafsa to grant M.D. a license to exploit a regional taxi, as a reward for his great services to the security department in the field of information.

Some taxi owners also monitored political opponents and all their family members either by following and pursuing them on the move or by driving them with a cab, and later informing members of the cells of the Democratic Constitutional Rally (RCD) or one of the police stations directly.

Chapter Four

Censorship of correspondence in the Post _____

The Postal Services Code established by law n°38 of the year 1998 issued on June 2nd, 1998, assigned the Postal Administration with the supervision of all postal or electronic mailings under "disturbance of public order". On this basis a supervision committee was created within the postal sorting center of Tunis-Carthage. Its main mission was sorting, reviewing and seizing all correspondence and parcels sent if necessary.

Creating a censorship cell within the postal sorting center

This committee prepares a report for this purpose, and sends it to the Presidency of the Republic and awaits the presidential instructions, which are generally ordering the conservation of the letters' what means preventing their owner from receiving them.

Indeed, TDC (IVD) found in the archives of the Presidency of the Republic reports regarding the treatment of the correspondences by the "supervision committee". In this context, it had been proved that correspondences from some of the political dissidents living abroad in Norway, Austria, Greece, and Switzerland or from human rights organizations and sent to some people active in human rights fields were seized.

It was stated in the memorandum¹⁰³ sent to the former President of the Republic Zine Al Abidine Ben Ali, in the daily summary of the most important information issued by the security services on July 1st, 1995, including several fields among which the postal supervision: "We found 5 parcels addressed by Amnesty International to its Tunisian Section, among the normal external mail from Belgium. Each package contains 20 copies of the organization's annual report for the current year (please find the report). The report focused on the forms of human rights violations in 151 countries, including Tunisia. It disclosed the elements responsible for the abuses. When it comes to Tunisia, it mentioned the arrests among Nahdha partisans and the Tunisian Communist Workers Party elements starting in 1991. It also highlighted the fact that the bad conditions experienced by the prisoners led them to launch hunger strikes and add to at least 4 people among them dying within one year.

Most of the correspondences issued by human rights organizations and foreign news agencies, or their counterparts, were also seized after reviewing their content in order to cut off all communication mechanisms between political opponents or human rights activists. The Tunisian League for the Defense of Human Rights (LTDH), the National Council for Liberties in Tunisia (CNLT), and Amnesty International in Tunisia are among the most prominent organizations whose correspondence was violated.

¹⁰³ See annexe.

Chapter Five

Prisons and the scourge of torture

The Truth and Dignity Commission received 14657 complaints of torture, which concern 688 women and 13,969 men. Moreover, TDC (IVD) received 29137 complaints related to cruel and inhuman treatment in prisons and detention centers, including 2,565 for women and 26,572 for men. TDC documented these complaints through the hearings it organized as well as through the testimonies of the victims about the violations they had experienced.

I. Prisons:

Each crime has a scene. Prisons are considered as the crime scenes of tyranny and despotism. This is why it was necessary to evoke this dangerous matter as a mechanism to subjugate dissidents, in order to be aware of the atrocity of the violations of human dignity and confiscation of the prisoners' rights which happened in Tunisia over 60 years.

I. Legislative framework of the prison system:

▪ National and International Standards:

To determine violations inside the prison institution, TDC relied on national and international standards, which focused on the rights of the prisoner through the adoption of different rules for the treatment of prisoners, in particular the “Standard Minimum Rules for the Treatment of Prisoners” adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955 and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July, 1957 and 2076 (LXII) of 13 May, 1977. Indeed, the Tunisian legislature adopted these rules. Moreover, it ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The National Law regulates the work and functions of prisons through Law No. 52 of 14 May 2001 on the Prison System, which is based on Ordinance No. 1876 of 1988, as well as on Law N° 51 of 2001 of 3 May 2001 on Prisons and Correctional Staff and Reform, and Law No. 58 of 2008 dated 04 August 2008, related to the pregnant and nursing mother.

Through testimonies, TDC examined the systematic abuses that occurred within the prison institution, which served the regime of the ruling authority and tended towards narrowing as it was dedicated to deterring and suppressing political opponents and those who were against the regime.

It should be noted that the method of the appointment of some of the directors of prison structures is by direct order of the President of the Republic himself, such as the Director General of Prisons and the Director of the Civil Prison in Tunis.

2. Abuses Inflicted on the Detainee in the Prison

The prisoner is received by a prison officer in charge of body check. Thus, begins the journey of degrading abuses and ill-treatment, where the prisoner is stripped of all his clothes in front of the eyes of the rest of the prisoners to further degrade his human value.

Every prisoner who tries to oppose these practices, which had become part of the routines of the prison institution, is subjected to violence and direct transfer to the punishment wing and is chained and subjected to Foot whipping or bastinado (Falka).

Overcrowding negatively affects the rights of the prisoners and those of the prison officers also. In fact, it causes the confinement of the detainees in their cells for more than 23 hours a day. The deterioration of the physical conditions of detainees who may suffer from distress for hours inside the rooms and lack of air and light makes it difficult for them to sleep normally and causes weariness. Moreover, prison staff is also less able to control inter-prisoner violence.

3. The Role of Psychologists in Torture inside Prisons

Torture inside prisons used to be practiced under the supervision of the Prison's Director, and especially by some psychiatrists who were proficient in torturing prisoners. In both his confidential and public testimonies, the former prisoner Sami Braham¹⁰⁴ stated details on the practices of Sami Kallel. In his testimony and that of the former prisoner Mokhtar Jbali, they told what happened on March 20th, 1994 corresponding to the Independence Day. In fact, Sami Kallel, with a group of prison officers directly supervised the evacuation of the prisoners in solitary confinement from their cells, after closing all the rooms of the prison, and insuring the security of the place using the canine brigade. After pouring water on the floor of the place of the cells, they scattered their belongings. Then, they stripped them of all their clothes. They ordered them, under threat, to queue and have sex with each other. When, detainees did not comply with the orders they were pushed one against the other and their bodies collided in a violent tragic scene of indecent assault and physical sanctity violation. The prison officers armed with truncheons were hitting and kicking and throwing the naked bodies on each other in a narrow place where you can't escape or isolate yourself. The scene did not stop until one of the prisoners, Sami Braham, had a panic attack, which confused the officers and forced them to stop this farce.

This operation took place under the supervision of Sami Kallel, the psychologist in charge of re-education and with the knowledge of the Prison Director Faisal Romani, who kept looking forward to the outcome of the operation. There were also doubts that someone was in charge of the videotaping of the operation. After this operation, four prisoners started a wild hunger strike but the administration ignored them until the deterioration of their health. Then, the Director of the Prison visited them to inquire about the reasons of the strike as if he did not know them. He promised to investigate the facts. Later on, the prisoners were asked to take part in a session with the psychologist Sami Kallel in the rehabilitation room. The latter told them: "Why all the emotion of what happened? Do you want to convince me that you are

104 The testimony of Sami Braham https://www.youtube.com/watch?v=M5h-xHwFt_s

against nature and that you are without instincts?" Then he wrote in French on the blackboard: "*on est tous plus ou moins homosexuels*" (we are all more or less homosexuals).

This shows that the issue was more than mere punishment or abuse but it was rather putting isolated prisoners in fragile conditions in a test position like any experimental mice...

This official continued to practice all his innovative methods in the psychological, mental and symbolic destruction of political prisoners.

The Rehabilitation program he directly supervised was the embodiment of what he was trying to impose on prisoners who were forcibly transferred to him or under invitation and temptation of mitigation of sentence or release, which never happened.

The rehabilitation program was based on forcing the prisoners to attend a series of weekly lectures by well-known intellectuals and academics in the goal of brainwashing prisoners under the title "De-radicalization of their Minds". But Sami Kallel turned this program into a hell, as he deliberately provoked and humiliated prisoners and insulted their families, and made fun of their religious beliefs after each lecture, as a form of further abuse and humiliation, until it became a matter of settling accounts with them by exploiting the influence and power he had, with the complicity of the Prison Director. Whoever discussed or opposed him was punished and tortured...

After all the violations he committed, Sami Kallel was appointed at the Tunisian Institute for Strategic Studies of the Presidency of the Republic in charge of the rehabilitation of terrorism prisoners' case !!!

This was also the case for Tawfik Bououn, a police officer, who was in charge of attacks on the civil society militants during the last decade of the Ben Ali's regime. Indeed, he was appointed human rights adviser to the Ministry of Human Rights and the relationship with independent bodies under Minister Kamal Jendoubi (2015), which sparked the protests of the human rights organizations.

II. Torture

The Tunisian State ratified by Law n ° 79 of 11 July 1988 the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984. By Decree No. 5 of 2011 of 19 February 2011, the accession of the Tunisian State to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on December 18th, 2002 was approved. It was ratified by the Constituent Assembly by virtue of article 25 of the organic Law No. 43 dated 2013 of 21 October 2013.

I. Torture as a systematic violation

The investigations carried out by TDC (IVD) proved the depth of the planning and the systematic character used in the practice of torture and cruel, degrading and inhuman treatment by the law enforcement bodies in Tunisia.

Starting from the independence, the torture machine has been used by the state as a systematic mechanism to subject dissidents and to tighten the grip on society in general. It

used to be limited to the Ministry of Interior and its different branches. However, the regime of Ben Ali, expanded its reach to all the police stations throughout Tunisia. The National Security barracks in *Bouchoucha* and police stations became some kind of “torture workshops” where citizens are humiliated and crushed.

In addition to security officers, some physicians and judges adhered to this mechanism. Indeed, total impunity encouraged the spread of torture as an epidemic, and it became a routine practice that went far beyond the repression of dissidents and an expression of state violence.

It was demonstrated from the files of the victims and the content of the records of their hearings, whether they were public or confidential¹⁰⁵, that they were subjected to insults, humiliation, cruel and inhuman treatment, and systematic torture after their detention for an indefinite period of time without legal authorization. The sanctity of their homes was also violated by agents of the political police¹⁰⁶ and other agents who do not have the status of a judicial police officer/law enforcement officer, which allows them to legally exercise the powers of searching residential premises, arresting and interrogating suspects and investigating crimes committed after obtaining legal authorization from the specialized judiciary power. **Indeed, the political police elements were present in the majority of units and teams, including police, national guard, presidential guards, intelligence and information, and in all public and private institutions and administrations.**

According to the files received by TDC, torture was practiced when launching security campaigns against all political groups and civil society organizations during the rules of Bourguiba and Ben Ali in the regular or irregular centers, in the basement of the Ministry of Interior and its offices of the State Security Department and in the headquarters of the information and specialized services groups, in the headquarters of the security districts, Gorjani Barracks, Bouchoucha Barracks, Aouina Barracks, in the detention centers, in the security districts and police stations throughout the country and also in the headquarters of the ruling party, as well as in secret headquarters such as Sabbat Dhalam, Zawyet Sidi Aissa and inside the neglected agricultural farms, including two houses in the area of Naasan. The first was the residence of the Minister Mustapha Khaznadar, which was confiscated by the Tunisian state after he fled irrevocably to France.

2. Responsibility of physical actors

Is considered torturer anybody who intentionally inflicts on a person “severe pain or suffering, whether physical or mental, for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind”¹⁰⁷

105 Annex n°1 summary of the victims’ declarations.

106 See the previous definition in the introduction.

107 Article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by General Assembly Resolution 39/46 of 10 December 1984.

Under the rule of Bourguiba, groups of torture included security elements such as: Hassan Ayadi, Omar Chachia, Tayeb Sahbani, Ali Douiri (alias Ali Wrak), Abdelkader Tabka, Monji Abid, Mohamed Bohli, Hadi Kacem, Romdhane Ben Ennacer, Abdessalam Darghouth (alias Scappa), Abdelmajid Khemili, Mohsen Sghira, Mohsen Abdesslem, Monji Amara, Moncef Ben Kebila, Noureddine Ben Ayad, Mohamed Sfaxi, Ammar Sakouhi, Hassan Arbi, Abdelaziz Tabka, Hedi Al Fessi, Fraj Gdoura, and Mahjoub Ben Ali.

For the regime of Ben Ali, bands of torture included in particular: Mohamed Ben Mahjoub Ben El Mouldi Ben Ennaceur (alias Hles.) Abderahmen Kasmi (alias Boukassa) , Zouhair Redissi (alias Ezzou) , Mahmoud Jawadi, Elyes Ghanmi (alias Dahrouj), Tahar Deglia (alias K.G.B), Fraj Jouili (alias Mehrez Gatla), Khaled Souissi (alias Judy), Faycel Chaouachi (alias Elkass), Kamel Riahi (alias Chekif), Lazher ElKefi (alias Boulahia), Lotfi Chebbi (alias Al Ommassakh), Mahmoud Ben Frej (alias Si Taoufik), Moncef Ben Gbila (alias Chafet), Bechir Ben Amor Ben Ali Saidi (alias Zarga) and Jalel Ayari (alias Rambo), Hmed Hamrouni (alias Cheikh Sek), Amor Sellini (alias Toukabri), Raouf Ben Salem (alias AlHaj), Kamel Ouertatani (alias Janiour), Hassan Dhifallaoui (alias Dhifaoui)."¹⁰⁸

These names were repetitively mentioned by the victims of violations or witnesses.

3. Responsibility of commanders

"Is considered a torturer a public employee or similar officer who orders, incites, approves or tolerates torture in the course of his or her employment or on the occasion of his or her exercise shall be deemed to have been tortured. " The criminal responsibility of anyone who orders, incites, approves, or acts passively by being silent about torture is directly existing by considering him as an original actor.¹⁰⁹

While identifying the physical actors is considered an important link to reveal truth and ending impunity the investigative strategy adopted by the investigative units in the Truth and Dignity Commission (IVD)¹¹⁰ aimed, in particular, to prosecute and track senior officials in the chain of command who were involved in abuses in view of their central role. Indeed, their mere explicit or implicit incitement or silence on the abhorrent practices of agents under their supervision and authority or their failure to take a preventive role to prevent violations are the factors that influence such violations.

Investigations carried out by TDC proved that torture was a systematic and planned crime by senior security officials who ordered, instigated, approved and stood silent towards the torture of victims during the exercise of their functions. Indeed, the leaders of the security who supervised security affairs are the Presidents Habib Bourguiba and Zine El Abidine Ben Ali, Ministers of Interior Taieb Mehiri, Beji Caid Essebsi, Driss Guiga, Taher Belkhodja, Habib Ammar, Abdallah El Kallal, Rafik Haj Kassem, and security officials at the Ministry of Interior, including Abdelaziz Tabka, Ali Seryati, Mohamed Ali El Ganzoui and Ezzedine

108 The investigations within TDC (IVD) succeeded in revealing the identities of the physical actors of the gross violations of human rights despite their hiding behind pseudonyms and they were referred to the specialized judicial chambers for the violations they have committed.

109 Article 101bis of the Code of Penal Procedure.

110 See the section related to interrogation and accountability.

Jnayeh. They were aware that their subordinates who were working under their orders and control committed severe violations consisting of torturing detainees in detention centers which depend on them, and did not abide by their duties underlined by International conventions and covenants requiring the protection of detainees from any attack on their physical integrity, which makes their criminal responsibility proven under international criminal law based on TDC of a negative act that led to violations.

4. Types of torture

The detainee is progressively exposed to insults using profanities and threats then physical violence by slapping, kicking, beating with sticks and truncheons to subdue him and remove the spirit of resistance from him. Then he is humiliated and degraded by stripping him off his clothes and putting him in humiliating stress positions and suspending him perpendicularly from his feet to the ceiling using ropes and iron bars (Balanco) or horizontally, wrists and knees tied to a baton, between two tables, in the position of “Roast chicken”. He is whipped and beaten on his bottom and the intimate parts of the body using hoses in the goal of making him ashamed of showing the traces and to hide the violence impact and traces from the public during the trials. Added to this, the different recorded sexual violations practiced on men and women such as rape as well as sexual violence by abusing the genitals in an horrible manner causing impotence and physical fall by using electric chocks on intimate parts of the body, especially genitals, and by forcing them to sit on a broken bottle and deliberate cigarettes burns on intimate and hurting parts of the body, along with rape using batons, truncheons, and glass bottles. In addition to all that direct sexual abuses and forcing them to be totally naked in front of a friend or relative to humiliate the detainee, forcing them to touch each other’s intimate parts and mimick sexual acts. Not to mention injuring living tissues using handle drills (chignole), denailing, tearing out teeth, and threatening with assaults and sexual abuses on the detainees’ female relatives or one of their family members. The detainees are also deprived of medical care and some physicians are implicated in torture operations by supervising them and giving the green light to continue. Torture forms also include: mimicking an execution, solitary confinement for weeks until wounds are healed and the traces of violence and sleep, food, drink and medicine deprivation disappear, drowning in water, rotten water, and human waste, exposure to strong light, and inciting the spouse to divorce, reprisals, defamation until the person becomes isolated, fabrication of images and visual recordings to hurt honor.

5. Torture testimonies

Exposure to different forms and types of torture and inhuman and cruel treatment has not been limited to one specific limited period. It is rather a continuous and systematic practice by political authorities towards every dissenting opinion and political opponent. The following are testimonies of some of the victims of torture:

- **Testimony of Abdelkader Ben Yochrat (1962):**

Abdelakder Ben Yachrat was sentenced to 20 years of forced labor in the case of the coup of 1962. He had been arrested from January 24th, 1963 to June 1973.

From January 1963 to October 1965, we were in the prison of Ghar Al Melh. It is a dark cell located at the end of a long corridor in the form of a “camel neck”, this is why it used to be called: the “camel neck cell”. We were 13 squeezed prisoners. There was also another cell called “the room 7” gathering the other prisoners of the case 62.

In October 1965, we were transferred to the prison of Borj Erroumi in the Nadhour area in Bizerte. We had been thrown in the bottom of a cave sculpted in the mountain of Nadhour at a depth of 30 m from the ground, in a place where the water infiltrates continuously as if we were in a well. (it is a place which used to be exploited to hide military munitions by the French army during World War II). For more than 3 years, we stayed in the bottom of this cave, which was very wet, close to the sea and which walls are continuously dripping from everywhere and forming puddles on the ground. We were kept continuously in the dark and deprived of movement as our feet were tied to the wall with chains. We were also deprived of fresh air and sunlight. We couldn't see the sky.

Through all those years we had spent in the cave, our comrade the deposed judge, Mr Ahmed Tijani was in a solitary confinement in a small cave, with a low roof, not exceeding 1.5m/2m. He used to be held with a thick iron door and his feet were chained to the wall. This caused him psychological disorders throughout that period.

For 6 years, whether it was in Ghar Al Melh or in the cave in Borj Erroumi, our right foot used to be tied with an iron chain, hammered in the wall. Its length did not exceed 50 cm. For all these years, we used to regularly and arbitrarily receive collective beating from our jailers. We had been humiliated, completely deprived of our humanity. We used to live in extreme fright and fear in an isolated world. The unique relationship we had was that with the guards who practiced on us all forms of torture.

Throughout these years of torture, we received few visits from some of the officials of the Ministry of Interior, who used to come to observe our harsh conditions, and were disgusted of our smell and horrible appearances. They used to leave us with reassured faces, leaving things going behind them like they saw them.

I remember the visit of Mr. Taieb Al hiri in Ghar Al Melh and also that of Beji Caid Essebsi, Security Director at that time in Ghar Al Melh, and Mr. Foued Mbazzaa when he was the Security Director in the cave of Borj Erroumi. I remember as well the visit of Mr. Hedi Baccouche when he sued to be the governor of Bizerte.

▪ **Testimony of Moncef Al Matri:**¹¹¹

“One day we had received the visit of the head of security Beji Caid Essebsi whom I knew personally for a long time. Of course, they left us chained to the wall during his visit. The director of the prison and 3 guards accompanied him. He halted in front of me during his short visit. Indeed, Beji Caid Essebsi was like I had always known him since my childhood. He was wearing nice clothes and launching a strong smell of perfume that I had not inhaled for months. He came towards me and asked me “Moncef are you fine?” I thought that he was really worrying about our situation. So, I answered him in protest “Alhamdulillah, but we are

111 Moncef el Matri . *De Saint Cyr au peloton d'exécution*. Arabesques 2014

hungry and cold and we can't get in touch with our families and I am wondering why are we chained?"

Then I lifted my foot to move the chain and force him to hear its noise. To my knowledge, there was an internal law and we were supposed to be under the protection of justice.

He answered: "stubborn as usual, we will see!" . Then he stared at the director of the prison with a detective gaze before leaving silently and without commenting. After his departure, we spent an hour discussing what happened. We were convinced that he would intervene to improve our conditions. This because many of us more or less knew him.

But the day after, we were taken outside to have some fresh air. A "surprise" was awaiting us: around the basin where we used to run, the ground was covered with broken glass and bottoms of broken bottles.

Each two meters was positioned a guard who was counting everyone who passes from there. The frightening torture started then: it was necessary to run without cutting one's feet with the sharp glass but also to avoid the guards' whips. The youngest of us had been pushing each other to avoid the shock they were receiving whereas the elders who were the weakest fell on the ground and lifted their bloody feet and hand. But after 5 or 6 turns, we were all on the ground. Blood was flowing everywhere. Few moments after, we went back to the cell by dragging our chains to tie them to the wall again. We were deprived of food for a week. It was the price we had to pay because of our protest in front of the Minister because we simply believed that he would intervene to improve our detention conditions. Some of my friends were angry against me and we did not know if these revenge measures had been ordered by the Minister of Interior or by the director of the prison. The latter do not like the prisoners' protests during the officials' visits."

▪ **Testimony of Ahmed Ben Othman (1968 and 1974)** ¹¹²

"In March 1968, the university witnessed a strike to claim the release of a student sentenced to forced labor. I was detained with all the dissidents and the members of the General Union of Tunisian Students (UGET).

During investigation, the police dealt with us severely, add to that the extreme torture. For our trial, the regime created a special judicial structure: The Court of State Security. I was convicted and sentenced to 12 years in prison by this court. My wife who had been previously deported was sentenced in absentia to 5 years in prison.

One day before my detention by the political police (Department of land security (DST)), I was transferred by the parallel security apparatus related to the unique party (the Socialist Destourian Party (PSD)), with other student leaders. I had been exposed to savage beating to the point of fainting. I had also experienced all kinds of torture, both psychological and physical when I was in the Department of Land Security (DST): they had started by putting me in a small empty room. They took my clothes off and forced me to kneel down and carry a heavy chair. Whenever my arm was weakened, they whipped all parts of my body. This lasted

¹¹² This testimony was published in 1979 in Les temps modernes magazine

for hours to the point of fainting. Then they poured water on me and everything started again.

After three days and nights of this treatment without sleep and food, the rate of fainting became faster. This is why they had to change the torture form. I had to sit on a chair and my eyes were exposed to a strong light bulb, thus preventing me from protecting my eyes from being hit for more than 24 hours without interruption. I did not succeed to open my eyes despite all the hits I was receiving from all directions. Due to this treatment, I had been unable to bear any light exposure for more than one month. I was suffering myopia, which was getting worse. They also tortured me with cigarettes that were extinguished all over my body, especially on the intimate parts.

This torture did not stop for three months until the investigation of the political police with us ended, and we were transferred to the investigating judge, and then to the civil prison. Our lawyers had been under pressure and were prevented from defending us. They even received threat letters. Some other elements had been kidnapped by the parallel security apparatus.

I couldn't see my wife even once. I met her only one year after my release on December 19th, 1975. The authorities continued to prevent her from staying in Tunisia.

Hundreds of young people had been arrested before my detention. But this time things were harder. Indeed, authorities had arrested a big number of university and high school students as well as workers, teachers, employees, girls and boys and even whole families, sometimes over three generations (children, parents and grandparents). This was all for distributing publications criticizing the regime and demanding the respect of democracy.

I had been pulled to the operations room, where they ripped my clothes off, chained my hands, and passed my knee between my tied hands. Then a long iron bar was inserted between my knee and my arms and I was suspended down. Then they started beating me using bull whips and hoses on all parts of my body. They focused on my feet. From time to time, they poured water on my wounds. When two officers were beating me, a third officer was counting the number of beats. There was a torturer I knew in the past called "Hedi Kacem" who addressed his colleagues saying "I gave him five hundred hits in a row and he did not shout once."

The surveillance was continuously ensured by 4 policemen. They were watching each other. After two days, as soon as the healing was ensured, the same team of torturers including: Abdelakder Tabka, Abdeslem Darghouth, and Mohsen and three others whom I had forgotten the names, covered my head to prevent me from looking and put me in a car and drove me to a farm, 12 km away from Tunis. It was a former colonialist isolated farm and equipped by the DST for torture sessions. There they tore the rags that remained on my body and I was tied to an iron bar. Again, I was suspended between two tables, with my head down. Again, I was beaten with a hose, leaving less impact than other torture instruments. They poured stinking water on my eyelids and nose. Whereas Abdelkader Tabka pulled off my toenails. Then they put me on my knees and inserted a long hose in my anus till I fainted. In another torture session, they burned me with cigarettes on the level of the eyelids, the lips and testicles.

They used to torture me at any time of the day and night: burning with cigarettes, whipping, beating with batons, sticks inserted in the ears, insults, and spitting on the face. Meanwhile, a person was holding my mouth open with an iron hook and peeing in my mouth and laughing. I remember, in particular, Abdesslem Darghouth.

After about one month of torture, I refused to communicate with them, shout, or eat. The Minister of Interior sent the head of his cabinet to prepare a report on my health situation. Thus, he ordered to immediately arrest torture as he did not want to have a corpse on the arms.

▪ **Testimony of Bechir Al Khalfi (1987 and 1991)**

In the morning of February 9th, 1991, I was arrested in my home in La Mnhla after a period of escape which lasted for almost 9 months, during which I took part in demonstrations, wrote on the walls, and distributed leaflets. After I was arrested, I was taken to the Ministry of Interior where first arrived Mahmoud Jawadi and after him Seryati.

I had been suspended from 2.30 to 3 am and tasted death many times: the “roast chicken” and burning my body with cigarettes and attempts to castrate me. One of the torturers, called “Steve” was beating me with an iron bar with all his hatred and resentment until he broke his hand. Then Mahmoud Jawadi addressed them saying: “Leave him to me!” Despite my horrible and disastrous state, they suspended me again and he beat me with all his harshness. After efforts, fatigue, and a sense of exhaustion, he threw the stick aside and climbed from the top of the legs and began to peel off the skin from the bone and blood was flowing. And after he reached the bottom of my feet, he repeated that again, and climbed with his shoes, carrying the remains of the mud and started again to glide over my reeds to the extremities of the limbs and blood was flowing and the result was the peeling off of the entire skin from the borders of my knees to the fingertips.

After 13 days of detention, I was placed in the 9 Avril civil prison in a deplorable state. In the prison corridor I was subjected to atrocious torture. Then, the guard, Belkacem Mloukhia, forced me to take off all my clothes and I was left like this for a moment. After that, they put on me a rotten blue uniform. I was left in an isolated cell. I was almost naked and chained. After that, my sentences had been successive and I had been constantly sent to the isolated cell. I was trapped amid denunciators. Rare were the days where I was not summoned, investigated, and searched. I was placed in solitary confinement for more than one year. It was a year of extreme fright and torture by Belkacem Mloukhia, Said and Hassen Al Banna. The most brutal of them were Imed Ajmi and Fouad Mustapha nicknamed Sharon. I experienced violence in the court too because I refused to stand when the judge Ridha Boubaker, who became general directors of the prisons later on entered the courtroom. I had to visit the isolated cells in each prison I was moved to. Each time I was transferred from one prison to another I found all the people working there waiting for me to frighten me. But as I got used to that, this was to no avail.

▪ **Testimony of Mehrzia Bel Abed (1993)¹¹³**

¹¹³ Mrs. BelAbed made this testimony in the public hearing of the Commission (IVD) on December 16th, 2016.

“We went to the police Department in Nogra in Ettadhamen neighborhood. Once I was there, I saw Fadhila with her son, who was much younger than my son, on her lap. I also saw Sabiha who was in a very bad state. Her clothes were torn off. She was totally surrendered. When I entered, they asked her: «Do you know this woman?» She answered:” Yes, we are from the same neighborhood”. Sabiha was not at all linked to the Islamist movement. I said: Yes. He ordered me to sit and this is what I did while holding my son. He told me: We’ll ask someone to take him. I thought that they drove him to my family. But after one day, I discovered that they put him in a separate room. They took me to another room and started booting me and slapping my face and tearing my clothes off. When I held my belly, he asked me: what is happening to you? I answered that I was three months pregnant. Lazher, nicknamed Lazher Boulahia (the bearded), a torturer known for torturing women and who was proud of that, intervened and ordered them to leave me to him. He told me: this Jewish, this Israeli, I will take him out of your belly; and started punching my belly for the whole day until I had started bleeding. At 2 a.m., they never drive us early to Bouchoucha they usually do it at 2 a.m, when I entered, I passed in front of the detainees who had been wondering why I was covered with blood. There is no God but God and Mohamed Messenger of God. We could not sleep and in the morning the same process was repeated. I spent 4 days bleeding. On the second day, the chief of the group of Ariana arrived and asked me: “Who did that to you?” I answered that it was Lazher and that he even tried to sexually harass me and I started yelling until they all entered. I told them: let him beat me but he doesn’t have to touch me like this. The chief of the group moved me to the security department in Ariana where the investigation continued. I remember that a poor guard used to come to me to ask what happened to me. I explained to him that I lost my baby. He wanted to offer me soap but he didn’t find any and he didn’t know how to help me. He was telling me: “Don’t worry, thank God you are still alive, you can’t imagine what is happening to men who were here “

On the fourth day, they drove me to Charles Nicolle Hospital where I spent 6 days. I remember that the physician asked them when she saw me: what happened to her? They had already threatened me: We will kill you if you uncover that we are policemen. On the road to the hospital, they were telling me we will drive you to the morgue. I was in a very bad physical and psychological state. When the physician asked them: “what happened to her?” They told her: “coup d’état attempt”. You have to be careful and isolate her in a room. She laughed at them and said: “I don’t think that this woman can overthrow the regime.”

They tried to enter in the operation room when the physicians were treating me with curettage but the doctors and an anesthetist prevented them explaining that it is a hospital and not a police station.

These are few examples from the testimonies of thousands of victims who described horrors of the torture apparatus used by the regimes of Bourguiba and Ben Ali.

Chapter Six

livelihoods cutting off mechanism and Security Pursuit

The despotic regime in Tunisia, in particular, under the rule of Ben Ali, was characterized by the use of the administrative control and security pursuit and perverting the administrative control to make it a mechanism of abuse of former political prisoners and human rights defenders, based on orders and oral instructions, and preventing them from making money and reintegrating in society. Daily signing in police stations becomes a pretext to put them in a prison without barriers. Things are taken to the extent of forcing the former prisoner to sign each two hours which destroys each social and professional lives and undermines his psychological balance to the point of thinking of suicide or wishing to go back to the actual prison that seems to him more spacious.

TDC (IVD) examined the exposure of 15754 victims to administrative control and security pursuit from the total of the victims who filed cases with the IVD which numbered 62720; It was not a complementary sentence as it was stipulated by law, it was rather an outlawed comprehensive punishment. It mainly targeted young people with a rate of 53.4%. It also concerned women with a rate of 16% and men with a rate of 84%. TDC (IVD) noticed that the Islamist Movement was the political family which was the most targeted by this punishment in the decades of the 1990s and 2000s.

I. Restriction of freedom of movement and Employment

The administrative control is considered as one of the forms of restriction on liberty of movement subject to the conditions stated in the Article12-3 of the International Covenant on Civil and Political Rights. Nevertheless, this right¹¹⁴ as well as the rights to leave the country and be back to it¹¹⁵ are frequently violated. This administrative procedure is considered as a violation of the personal right in freedom and safety. To prove the violations, we need to consider all the factors such as the nature of the restrictions, duration, effects and manner of application of the control.¹¹⁶ Furthermore, the obligation of the repetitive signature with the police might represent a violation of the right to work and can force a person to stay at home most of the time. The signature with the police several times a day can lead to lose a job or prevent from accessing work or education.

114 See the Human Rights Watch Report <https://www.hrw.org/ar/report/2010/03/24/256042>

115 International Covenant ; Article12 African Charter Article12

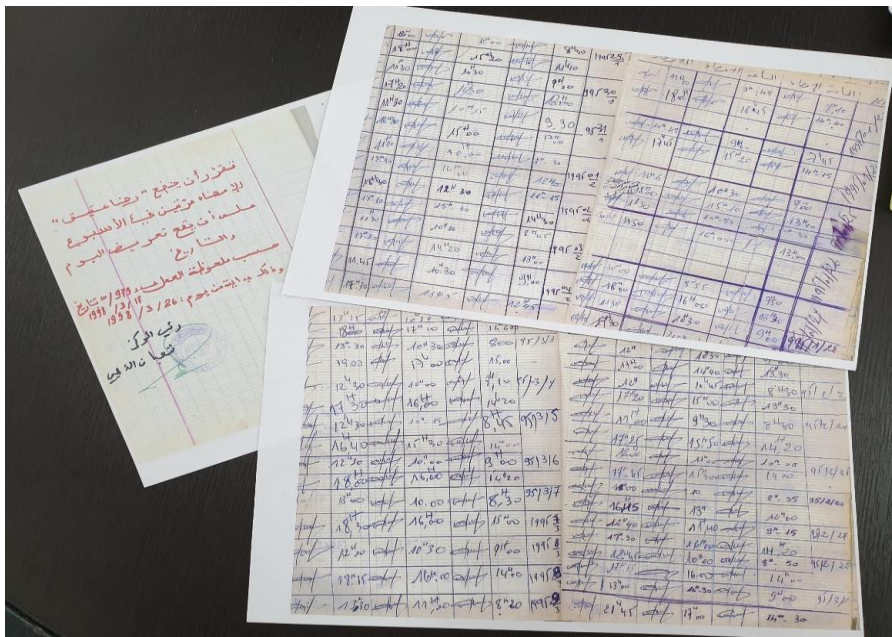
116 See the European Court for Human Rights Guzzardi against Italy (1980)EHRR5333 paragraphs 92 and 94.

The Tunisian law in article 5 of the Penal Code¹¹⁷ provides for administrative control as a complimentary punishment, in addition to the original sentence. It means forcing someone to reside in a specific area, determined by the executive authority after serving the sentence and beginning from the date of release for the released prisoner. However, it has been transformed from a complementary punishment to a comprehensive one, with the executive authority putting the former prisoners under its control in order to have full and comprehensive control over their individual lives.

II. Abusing the victim through the procedure of signing several times per day:

TDC examined the archives of signature books and security reports drafted by security officers about political opponents, which were obtained by a number of victims who saved some of the documents from destruction when some security officials tried to burn the archives of the police stations during the revolution. After reviewing these books and reports, we understood the extent of the suffering the victims were subjected to. Indeed, security control was permanent and close.

In this framework, we mention, to name but a few, that the political dissident R.A was forced to periodical signing 8 times/day. Since his release from prison in 1994 he was forced to sign at the following hours: 7:30, 8:30, 10:00, 12:00, 13:30, 15:30, 16:30, 18:30. Thus, he is deprived of work and living in normal conditions.



117 The Penal Code, 2018, Article5: check <http://www.legislation.tn/sites/default/files/codes/PenalArabe.pdf>

It is worth mentioning that the signing process is rarely done in the same police station. Indeed, victims have to go to different police stations (national guard, police station, police zone, state police, investigation station...). They have to travel long distances. Mrs. FM recalls that after her release from prison, she went to the police zone in Kairouan in 1998 and they had asked her to go to the police zone in El kef while she was residing in Jerissa and she was forced to sign 4 or 5 times per day. Indeed, Jerissa is a rural area and police officers were preventing her from staying in the police station. Waiting to sign at different times of the day was a form of abuse as the police zone was too small and there are no waiting rooms. **“It was enough that the people got used to me going back and forth”**. She was also punished for a 2 or 3 minutes delay. She was returning home and when she arrived, she went back to the Security zone to sign because there was nowhere to go in the area of Jerissa. She also recalls being humiliated by agents who deliberately insulted her in unethical terms and someone tried to harass her. He was drunk and threatened to attack her with a sharp tool.

The security reports examined by TDC (IVD) reveal the size of restrictions experienced by former prisoners and their daily suffering on one hand and the intensity and preciseness of security control on the other hand. Indeed, one of the security reports issued on December 3rd, 2009 shows control on political opponents, control of mosques in the morning and evening prayers, control of cyber cafés, and surveillance of abandoned houses. There was another report with the word secret written over it, and which said: "In the scope of continuous surveillance of the released elements from prison I informed you that today May 20th, 1996 about 20:00 we checked the owner of the identity above in his house. The latter opened the door as soon as we lightly knocked on it which means that he did not sleep yet."

The orders for signing are issued by the Sub-directorate for Special Research by an order of the central administration for general intelligence and the general administration of specialized services in the framework of controlling lists of opponents regardless of their political affiliation, in particular those who have visibility in the governorate. It includes their names, last names, their professions and profiles as well as the summary of the control including their movements and activities on October 17th, 1990. Indeed, the document states: "In the context of the revival of the Technical Committee and in the light of the resulting sessions, we provide you with copies of nominal lists in your regions, which were selected in the same committee to coordinate with the regional security administration and national guard which has already received similar copies of these lists to give permission in order to monitor their movements and identify their contacts, quality and follow-up activity."

III. Pushing to suicide

The effects of security control on victims and their families are grave and even more severe than the prison sentence. Indeed, this punishment works to subdue the victims and destroy their psychological balance in order to degrade their self-esteem. Despite the fact that security control is just a complementary sentence but the victims see it as a more severe punishment than prison and detention. It can destroy the victims psychologically and physically. It has pushed some people to think of suicide or commit it as it was the case for the political dissident

A.R.B who committed suicide 3 months after his release from prison. Indeed, he had been under administrative control without a verdict. His widow recalls: he was signing 4 times per day, and he was ordered to take me with him to the police station. Once, he had been booted on his chest by the so called “Mourad A”. They threatened him with stripping off his wife’s clothes if he spoke about the interrogation sessions. She also recalls that the victim suffered through the administrative control period as he had been forced to daily sign and he had been continuously interrogated and harassed and this pushed him to commit suicide on November 12th, 1997, just three months after his release from prison.

“The victim left the prison in a very bad psychological state and this situation worsened through the first months of administrative control and psychological harassment he was experiencing and his continuous feelings of guilt towards his family.”

IV. Security surveillance

Victims of security control agree that it is “suffocating”, “permanent”, and “harsh”. It is usually paired with daily and night raids thus causing fright for the victims and their families alike, in particular children and parents, because of their specific psychological characteristics. Police officers, members of the cells of the Party (RCD), as well as informants, some relatives and neighbors were the ones who accomplished the surveillance mission. In this context, the victim R.GH recalls the restrictions she faced: “It is really hard to talk about the close surveillance, about the parking cars for days, weeks then months outside our house. To enter their home, the house’s owners have to show their I.D. It is really hard to talk about the siege they were imposing on my sisters and brothers. One of my brothers was the head of a national company and they used to go to his work to threaten him. They did the same with my sister. My brother, a journalist, was forced to resign to avoid a coverage about an “affair” they purposely wanted him to do. Indeed, I was among the detainees. Security forces presence was permanent, especially that of cars and elements standing outside the house and in the street supervising all the passersby. Being inside the prison is much more comfortable than being outside, moving and communicating in this continuous state of fear and fright and that feeling that you can be raided at any moment.”

Security control affected victims, their family members and the human rights organizations too. The feminist human rights activist A.B mentions that she has been subjected to close and permanent security surveillance since the 1980s, especially in relationship with her activism in the civil society. “Our association used to be surrounded by security forces. We could not have meetings in public places. We did not have media visibility. They used to wiretap our conversations. Internet connection was very bad and was not working properly. Same with the phone. There were restrictions. Sometimes harassment consumes you slowly. You cannot enjoy your rights normally. You suffocate to obtain what you need. Even to talk on the phone you have to fight!”

Through constant and close administrative and security surveillance, security agents seek to target the family, which works to maintain the balance, cohesion and stability of the individual, family and society. By transforming the victim from a balanced and active individual in society into a psychologically collapsed and socially ostracized human being,

through shedding these abuses in front of the spouse or children, it would psychologically affect the victim. Victims affirmed that their children were subjected to a decline in their educational level, repetition or exposure to mental disorders or organic diseases, and that children do not recognize their parents or hold them responsible for their failure or living conditions.

The exposure of victims to administrative and security surveillance, had a significant negative impact on their family and professional lives and the achievement of their psychological balance. In fact, it was not a complementary punishment but a comprehensive and illegal one.

Chapter Seven

Using Judicial Institution

TDC (IVD) received 12380 complaints related to victims of violation of the right to litigation and fair trials and 444 complaints related to victims of exceptional courts.

After the signing of the Protocol of Independence, the Tunisian State unified the Tunisian judiciary by incorporating the shariah courts into the system of justice courts and unifying the procedures under the Order of August 3rd, 1956. Moreover, in accordance with the Tunisian-French judicial agreement signed on March 9th, 1957, the French courts were abolished and their competences transferred to the Tunisian courts as of July 1st, 1957. Indeed, Article 1 of the Convention had required that "From the entry into force of the present Convention, the French courts in Tunisia shall be abolished and all their competences vested in the courts shall be transferred to Tunisian courts." However, Article 3 of the Convention stipulates that for five years after the entry into force of the Judicial Convention, the presence of French judges in court proceedings continues when one among the litigants holds French nationality.

The Tunisian state and the Tunisian judges fought the battle for the entire independence of the judiciary by distributing French judges to the courts in the interior, which did not undertake many cases, in order to reduce their scope of intervention, in addition to libeling some members of the French jury (Les jurés) and preventing them from participating in the trials as they were not neutral¹¹⁸. The departure of French judges at once represented a great challenge, courageously raised by Tunisian judges who established a judiciary imbued with the values of independence and professionalism and the executive authority did not dare at that time to interfere in the conduct of the judiciary. Nevertheless, with making the judiciary Tunisian, the executive authority had sought to establish exceptional courts, which do not meet fair trial conditions and through which it had imposed its political will.

I. Exceptional judiciary in the state of independence

Two months before the signature of the entire Independence Protocol, a **special criminal court** had been established on January 28th, 1956 to hear cases of political nature. It was a temporary court. Its authority did not exceed 6 months starting from its establishment. Its verdicts were liable to appeal by cassation. It could also order the seizure of the property of the convicted in whole or in part. This special criminal court considered the first cases against the Youssefite opposition to liquidate the opponents and eliminate any form of dissent before being replaced on April 19th, 1956 by another exceptional court.

¹¹⁸ See annexes.

1. Supreme Court of Justice

After Habib Bourguiba headed the Tunisian government in the beginning of April 1956, a **new exceptional** court had been established. It is the High Court of Justice created according to the supreme order of April 19th, 1956 issued in the Tunisian Official Gazette in April 27th, 1956 to consider the cases of political nature such as incitement by any means on crimes/felonies of murder, arson, looting, and demolishing buildings when this incitement is of political nature as well as in all attacks on the supreme interest of the homeland so as to eliminate all opponents and dissidents.¹¹⁹

On July 29th, 1966, Habib Bourguiba declared on the occasion of the closing of the judicial year that it was necessary to establish exceptional courts as “it is difficult for judges to cope with new circumstances or to cope with the critical transitional period because they have limited themselves to the legal training they had studied or to the principles they are used to. In this case, officials must resort to the establishment of exceptional courts to avoid wasting time. Indeed, there is no point in trying to persuade individual judges to change their procedures and approaches.”¹²⁰

These declarations confirm that **the Supreme Court of Justice** was an apparatus working under the instructions of the executive authority, lacking neutrality and impartiality and violating the principle of separation of powers.

▪ Violation of the principle of the Independence of Justice

The members of this court belong both to the judicial and executive authorities. Indeed, the Free Constitutional Party has the power to form the court and appoint its members and thus it can directly influence its functioning and the verdicts it issues. Indeed, the Supreme Court of Justice is composed of the president of the court (judge or lawyer) chosen by the Council of Ministers¹²¹ and six members selected by the Constituent Assembly, two State Agents playing the role of the public prosecutors and chosen by the Constituent Assembly as well (they became 1 after the amendment of July 56), in addition of 5 members entrusted with investigation chosen by the Constituent Assembly (at least 3 after the amendment of July (1956)). Then the October 1957 amended the composition again.

119 The speech of Habib Bourguiba on April 24th, 1956 as a proof on the nature of the missions of the Supreme Court of Justice: “We created the Court of Justice and we took into account in its composition all the circumstances that I had explained to you, so that it takes revenge from terrorists who committed horrible crimes and tries them as quickly as possible and with an enthusiastic popular spirit. Thus, its mission won’t be limited on the useless investigation of details because its mission is mainly consisting in the preservation of the growing state, removal of evils from its way, its help in its journey especially in this critical period, during which we are all trying to implement the bases of this young state and its protection from ill-intentioned people, who are misleading citizens and making them doubting their leaders by accusing them of leaving the Islamic Arabic League and belonging to France”

120 See annex.

121 Mohamed Farhat was appointed as the president of the Supreme Court of Justice following a proposal from his brother Abdallah Farhat who was serving as the Chief of Cabinet to the President Habib Bourguiba.

- **Violation of the two degrees litigation principle**

The judgements and verdicts of the Supreme Court of Justice were not subject to appeal or cassation and accordingly the execution of the court's decisions is immediate.¹²²

- **Violation of the rights of defense**

These trials were characterized by serious violations of the rights of Defense, in particular for the rapidity of investigation and interrogation, which did not allow the presence of lawyers except those harnessed who were loyal to the regime to play the role of the public prosecution and not to defend the accused. The judgments and verdicts were issued in record time. Indeed, the first session chaired by Mohamed Farhat did not last more than 6 hours and the sentences varied between death penalties and forced labor for life.

- **Working outside the framework of the law and exploiting the legislative authority**

The laws organizing these courts were tailored such as extensions in the duration and the competences of the Supreme Court. Indeed Article 10 of the ordinance of April 19th, 1956 limited its duration to 6 months, i.e. to October 1956. But the Supreme Court continued its commitment to the cases and this was not codified until a year and a half after the expiration of the period stipulated by the law. And thus, the functioning of the Supreme Court of Justice continued for three years and a half and it was also entrusted with the issues of illegal gains and deprivation of national rights. Indeed, this court may hold the property of the convicted person partially or totally or prevent him for a certain period of time from the exercise of his civil and political rights, with guaranteeing Mohamed Farhat, the President of the Court, the absolute freedom to determine the duration and granting him absolute power and authority after the establishment of the regional committees of confiscation.

Between April 1956 and October 1959, the Supreme Court of Justice issued n°53 death sentences from which 36 were executed, and 244 sentences of 20 years forced labor without the guarantees of a fair trial. The Supreme Court of Justice was abolished by law n ° 139-1959 dated October 22th, 1959.

2. Military Court

Trials of political opponents did not stop with the abolition of the Supreme Court of Justice in October 1959. Indeed, the use and instrumentalization of the judicial authority continued to serve Bourguiba's regime and to get rid of the opponents by relying on the Military Court, which is a biased exceptional and not independent court. It does not guarantee fair trial requirements because of the direct subordination of its judges to the executive authority, which appoints them through the Minister of Defense. Moreover, its sentences and verdicts were final and were not liable to appeal and the deadlines for cassation were very brief (4 days). Prior to the establishment of the State Security Court, the Military Court took charge of political cases such as the accused of "the coup attempt in 1962" (The group had been arrested on December 19th, 1962 and the verdict was issued on January 17th, 1963 and they had been

¹²² Article 10 of the beylical decree of April 19th, 1956 stipulates "that the verdicts issued with sentences by the Supreme Court of Justice are not liable to appeal and should be executed instantly"

executed on January 24th, 1963 in a short record and that is a clear violation of the requirements of a fair trial¹²³). The military trials were not limited to soldiers, former guerillas and Youssefites. Indeed, they included the participants in protests and demonstrations as it was the case with the leftist student Mohamed Ben Jannet in 1967.

The Military court issued in the context of the trial of the accused of “the coup attempt in 1962, 13 death sentences among which 10 were executed. The sentences for the other accused ranged from forced labor for life to one year in prison. The Military Court assumed also the trial of 4 accused persons including Cheikh Hassen Ayadi and on May 9th, 1963 he was sentenced to death and the sentences for the other defendants ranged between forced labor for 10 years and suspended prison sentences. Add to this the trial of 171 elements from Ennahdha movement on August 28th, 1992. Indeed, 35 accused were sentenced to life in prison and the other sentences ranged between 24 years and one year in prison. On August 30th, 1992 sentences had been issued against 108 from Ennahdha elements: 10 were sentenced to life in prison, 4 to 20 years in prison and 9 to 15 years in prison... the case was dismissed for 5 defendants. All these trials lacked the requirements of fair trials.

After the freedom and dignity revolution, the Military Courts were entrusted with the cases of the martyrs and wounded of the revolution after the amendment of the Military Procedures Code pursuant to Decree No. 69 of 2011 dated July 29th, 2011, the establishment of the **principle of two degrees of jurisdiction and bringing a civil action**, and the abandonment of the investigative judges in the courts of first instance for the benefit of the military tribunal pursuant to the provisions of article 22 of Law No. 70 of 1982¹²⁴. However, these revisions did not provide guarantees of a fair trial and did not achieve the independence of the military justice. Indeed, on September 3rd, 2011 the investigative judge in the Military Court in Tunis terminated his investigations in the investigative case n°3/2364 related to the violations that occurred in the Grand Tunis in the context of the events of the revolution in a record time and that before the decree on the amendment of the military procedures and sentences code came into force¹²⁵ in the goal of preventing those who filed a civil suit from being part in the investigative phase and submitting their requests and pleadings. On January 12th, 2014, the Criminal Chamber in the Military Court of Appeal issued unfair judgments by re-describing the facts and legal adaptation of criminal offenses, thereby mitigating the initial sentences¹²⁶ and enabling impunity for senior officials and security commanders.

This prompted the legislator to issue the organic law n°17 of the year 2014 dated in June 12th, 2014 and concerning verdicts related to transitional justice and causes related to the period between December 17th and February 28th, 2011.

123 See the part about the « Coup Attempt »

124 Article 22 of the law n°70 of 1982 dated August 6th, 1982 related to the definition of the general organic law of the internal security forces “The military court in question shall be referred to the cases in which the members of the internal security forces are a party for an incident found in the scope of the work and affecting the internal and external security of the State or to maintain order on the public way and in public premises and public and private institutions during or after meetings, processions, demonstrations and gatherings”.

125 It entered into force starting from September 16th, 2011.

126 Human Rights Watch Report: Flawed Accountability Shortcomings of Tunisia Trials for killings during the Uprising.

TDC assumed, in accordance with this law, the investigation in the files of the martyrs and wounded of the revolution. Despite the refusal of the military justice to guarantee TDC access to the judicial files¹²⁷, the latter succeeded in completing the investigation in the files of the victims of the grave violations in the context of the freedom and dignity revolution and referred 12 indictments to the specialized courts of transitional justice.¹²⁸

The military justice in dealing with the file of the martyrs and wounded of the revolution and its symbolism proved by the rulings issued by the military courts, that despite the amendments to the Military Procedures and Sentences Code, the military courts remain an exceptional judiciary and should be limited to military crimes.¹²⁹

3. Court of state security

On July 2nd, 1968 by virtue of law n°17 of the year 1968, a new exceptional court had been established, the **Court of State Security**. It was characterized by the violation of the principle of litigation on two degrees as the decisions issued by the investigative judge are not liable to appeal. Moreover, the composition of the court was not independent. Indeed, in accordance with the law which established it, its members include two members from the Assembly of the Nation belonging to the ruling party.

The Court of State Security assumed the trial of the group “Perspectives” (Afak) in the framework of the case n°2 whose facts occurred before the establishment of the Court of State Security. The court bench was composed of Ali Cherif as president, and as members: Houssine

127 The President of the Truth and Dignity Commission (IVD) sent 21 correspondences to General Public Prosecutor Head of the military justice to give TDC copies of judicial files but there was no answer.

128 The file of the events of the revolution in Tala and Kasserine was referred to the specialized judicial chamber on May 28th, 2018. The file of the events of the revolution in Cologne street on January 13th, 2011 was referred to the specialized judicial chamber in Tunis on May 28th, 2018/ The file of the events of the revolution in Menzel Bouzayane on December 24th, 2010 was referred to the specialized judicial chamber in Sidi Bouzid on May 29th, 2018/ The file of the events of the revolution in Kram West on January 13th, 2011 was referred to the specialized judicial chamber in Tunis on June 18th, 2018/ The file of the events of the revolution in Regueb on January 9th, 2011 was referred to the specialized judicial chamber in Sidi Bouzid on July 5th, 2018/ the file of the events of the Revolution in Ettadhamen neighborhood on January 12th, 2011 was referred to the specialized judicial chamber in Tunis on September 14th, 2018/ The file of the events of the revolution of freedom and dignity in Ras Jbal on January 13th, 2011 on the specialized judicial chamber in Tunis on September 14th, 2018/ The file of the events of the revolution La Kasbah 2 to the specialized judicial chamber in Tunis on December 12th, 2018/ The file of the events of the revolution in the Grand Tunis was referred to the specialized judicial chamber on September 19th, 2018/ The file of the events of the revolution the group of Kairouan January 10_17 2011 was referred to the specialized judicial chamber in Kairouan on December 20th, 2018/ The file of the events of the revolution in El Hamma on January 13th, 2011 was referred to the specialized judicial chamber in Gabes on December 28th, 2011/ The file of the events of the revolution in Kerkena on January 14th, 2011 was referred to the specialized judicial chamberspecialized judicial chamber in Sfax on December 28th, 2018.

129 Article 10 Paragraph 2 of the Constitution of 2014: Military courts are competent to deal with military crimes. The law shall regulate the mandate, composition, organization, and procedures of military courts, and the statute of military judges.

Maghrbi and Mohamed Lahbib Ben Mohamed who were members of the Assembly of the Nation as well as the judges Bechir Zahra and Hechmi Zammel. The Court of State Security issued its verdict on September 16th, 1968. 104 leftist students were involved and were accused of conspiracy against the internal security of the state and maintaining a non-recognized organization, the defamation of the state, its president, state secretary for national education, the defamation of the police and the state secretary for foreign affairs and the president of a foreign country and its minister of foreign affairs, as well as the defamation of the university and the defamation of judicial authority and the propagation of fake news. The sentences ranged from 14 years in prison to ruling on not hearing the suit. The Court of State Security assumed the liquidation of the opponents and the eradication of all forms of opposition to the regime and the state policies including activists of the Tunisian Socialist Studies and Action Group, the Marxist-Leninist and Baathist groups, and the prosecution of trade unionists in the context of the events of the Black Thursday and Islamists.

The Court of State Security issued between July 1968 and September 1987, 22 death sentences, sentences ranging from 16 years in jail to ruling on not hearing the suit. It was abolished in virtue of the law n°79 issued in December 29th, 1987.

4. The Supreme Court

The Supreme Court was established by virtue of the provisions of Article 68 of the 1959 Constitution. The organization of its competences, composition and functioning was regulated by law n°. 10 of April 1st, 1970. The Court assumes the trials of the government members for high treason charges¹³⁰. The article 5 of the above-mentioned law indicate its bench, which is composed of “a President and 4 official members and 3 delegate members. The President is chosen among the senior judges and is appointed by order. The Assembly of the Nation elects the remaining of the members from its deputies by absolute majority on the occasion of each parliamentary term.”

The Supreme Court had been presided by the Judge Mohamed Farhat¹³¹. On May 19th, 1970 the Secretary of State for Planning and National Economy, Ahmed Ben Salah, appeared before this court with charges of high treason following the failure of the experience of cooperatives. On May 23rd, 1970 he was sentenced to 10 years of forced labor and 10 years under house arrest and striping him of his political rights. In the same case Omar Chachia, Taher Kacem, Monji Fekih, Hedi Baccouche, Ibrahim Haider had been tried with charges of the participation in high treason. The Supreme court sentenced Omar Chachia to 10 years forced labor with his deprivation of his national medals. The other defendants had been sentenced with 5 suspended years in prison and for a rule on not hearing the suit for Ibrahim Haider.

¹³⁰ The article 2 of the law n°10 indicated the deliberately and repeatedly exceeding the limits of power, or carrying out unconstitutional acts or detrimental to the higher interests of the country. Crimes that might be considered as high treason of the state and these are: violating state security/ causing the president of the republic to make mistakes causing abuses to the high interests of the homeland/ committing of any act upon the performance of his functions which might be described as felony or misdemeanor at the time of its commission and shall be prejudicial to the reputation of the State.

¹³¹ The Judicial Commission of the Supreme Court was appointed according to order n°112 dated on April 2nd, 1970.

The Supreme Court assumed also the trial (under the presidency of Abdesslem Mahjoub) of Idriss Guiga the Minister of Interior following the bread events in January 1984. The judge issued a verdict in absentia against him. He sentenced him to 10 years forced labor on June 16th, 1984 and deprived him of his civil and political rights and national medals for 10 years and put his properties under credit after confiscation. The Supreme Court was abolished by the 2014 Constitution.

II. Instrumentalization of ordinary courts

Trials of political opponents did not end with the abolishment of exceptional courts such as the Court of State Security. Indeed, the harnessing of the military, judicial, and administrative justice continued in the treatment of the relationship with the political opposition. Then, its instrumentalization expanded to include human rights militants and journalists, which turned the judiciary into a mere apparatus working under the instructions of the executive authority. This was accompanied with a total and systematic attack on the rights of defense. Indeed, its scope has been limited, its role has been surrounded. Some trials occurred without allowing lawyers to advocate even.¹³²

This regression did not only affect the justice when it comes to political trials but it also affected ordinary justice common law which started suffering from the intervention of the regime, the tightening on human rights and the violation of the principle of equality before the law and the right to litigation. Indeed, whenever a trial was linked to an official of the executive authority or one of its protégés loyal to it, the judicial apparatus is hindered and all the claims or complaints against him were dismissed.

III. Supreme Judicial Council and the independence of judges

The intervention of the executive authority in the judicial authority is reflected through the Supreme Judicial Council¹³³ and the composition of its board. Indeed, it is the one that considers all the matters related to the professional trajectory of the judges and takes decisions in the field of employment, appointment, promotion, transfer and discipline as it is presided by the President of the Republic, who is represented by the Minister of Justice. The President appoints the majority of the members of the council and even the elected members as their election was fictitious. In the absence of guarantees of the independence of the judge because of the absence of the principle of non-isolation of the judge and the principle of non-transfer of the judge only with his consent, lack of loyalty to the instructions of the executive authority and disobeying its orders results in arbitrary transfer without the consent of the judge and freezing in rank.

Under the regimes of Bourguiba and Ben Ali, the judicial authority lost its institutional independence. It was used to confront political opponents and to abuse them to serve the

¹³² Like what happened in the cases of Zouhair Yahyaoui, Abdallah Zouari, and Hamma Hammami (the appeal stage) in 2002.

¹³³ Law n°29 of 1967 dated on July 14th, 1967 and related to the organization of the judiciary and the Supreme Council of Justice and the organic law of magistrates and which witnessed several amendments.

narrow interests of those close to the regime. Nevertheless, some honorable judges refused to kneel down to the instructions and fought for their independence, tried to insure justice and did their best for the delivery of rights to their owners. They rebelled against serving the interests of the despotic regime and as a result were subjected to isolation, arbitrary transfer, exclusion, as well as administrative penalties. These honorable judges include:

- **Magistrate Ibrahim Abdelbaki**

The First President of the Court of Cassation Ibrahim Abdelbaki had been isolated after issuing a verdict which did not please the Prime Minister Mohamed Mzali in a common law trial, as one of the parties to the case was his cousin.

- **The Young Magistrates Association¹³⁴**

In response to the decision of President Habib Bourguiba to dismiss the President of the Court of Cassation, Ibrahim Abdelbaki, the Young Magistrates Association issued a statement on January 1st, 1985 that included the following: “We denounce the exemption of the First President of the Court of Cassation from his duties following the exercise of his legal powers in a civil case he had considered. We consider this a violation of the independence of the judiciary and undermining of the dignity of every judge.” The rhythm of the resistance of the Young Judges Association against the monopoly of the executive power grew to lead to the declaration of a general strike of magistrates which was organized on April 10th and 11th, 1985. As a response to this, the Minister of Interior took an administrative decision to dissolve the Young Magistrates Association on April 15th, 1985. Moreover, at the same date, the Minister of Justice took decisions to refer judges active within the association to the Disciplinary Board for obstructing judicial work and some of them had been isolated including the judges Mohamed Lotfi Beji and Taher Zagrouba. Moreover, disciplinary punishments were imposed by suspension and reprimand against several judges, including Judge Akila Jaraya, Judge Mustafa Cherif, Judge Mohamed Ghabish and Judge Mahmoud Jaidi.

- **Magistrate Ahmed Bensedrine¹³⁵**

The Judge Ahmed Bensedrine, President of a Chamber in the Court of Appeal in Tunis, had been harassed, his professional status had been frozen, and he was prevented from promotion. He was even demoted and subjected to defamation following his fight for the independence of the judicial facility and his exposition and confrontation of the practices of the General Prosecution of the Republic Mohamed Farhat (who served as the president of the exceptional court: the Supreme Court in which all the guarantees of a fair trial were absent), who used to intervene in the conduct of civil and criminal cases to serve the interests of the despotic regime and its narrow interests. Among the cases which embodied his battle for his independence was a case related to the imposition of an exaggerated tax without a legal provision in order to put the hand on the properties of the Doghri group: a family of major merchants. When the Prime Minister, Hedi Nouira, intervened and wanted to influence the course of the case through giving instructions to the Judge Bensedrine, the latter refused to obey the authorities’ desire and he even established the right of the businessman Doghri which put him in a confrontation

¹³⁴ The subject of the commitment of TDC (IVD) n°025495_0101

¹³⁵ The subject of the commitment of TDC (IVD) n°028906_0101.

not only with Mohamed Farhat but also with the state as a whole, as represented by the Prime Minister, at this time, Hedi Nouira. As a result of the pressures, he had to resign and he addressed a letter on March 28th, 1975 to the President of the Republic Habib Bourguiba¹³⁶ in his capacity of the President of the Supreme Council of the Judiciary in which he tackled the regression of the judicial facility as a result of the guardianship imposed and the domination and tyranny of the Prosecutor General of the Republic, Mohamed Farhat, saying : “He was permanently intervening in the course of criminal cases and even of the civil ones to manipulate the outcome of the cases and justice in a salient violation of the rights of litigants. When it comes to civil cases, he used to stop execution of judgments issued in the name of the people, while it must be stated that this measure was authorized by the President of the Republic.

As to criminal cases, he used to order the non-treatment of the legal suit in ongoing cases. His arrogance reached the degree of declaring: “No one can remove me from my post and I will not give it up until my burial in the cemetery” and “ my wealth is huge and no one can do anything against me even God Almighty”.

▪ **Magistrate Rachid Sabbagh**

Following the issuance of a ruling by the Administrative Court in 1991 for the benefit of the judges isolated in 1985 and belonging to the Young Magistrates Association, Ben Ali was not pleased and ordered the termination of the extension for the First President of the Administrative Court, Judge Rachid Sabbagh, as well as his suspension from work.

▪ **Magistrate Mokhtar Yahyaoui¹³⁷**

On December 29th, 2001, Magistrate Mokhtar Yahyaoui was dismissed because he sent a letter to the President of the Republic in his capacity as President of the Supreme Council of the Judiciary, in which he tackled the situation of the judiciary, its deterioration, and inability to accomplish its role as a result of the guardianship imposed on it by the executive authority and the latter’s interference in its affairs¹³⁸. The letter included the following:

¹³⁶ See annex.

¹³⁷ The subject of the commitment of TDC (IVD) according to the file n° 027592_0101.

¹³⁸ July 6th, 2001

To the President of the Republic and of the High Council of the Judiciary,

I send you this letter to inform you of my condemnation of the catastrophic state which the Tunisian justice system has reached. Things have come to such a point that judicial authority and judges have been stripped of their constitutional prerogatives and are no longer performing their responsibilities in the service of justice as an independent institution of the Republic. It is precisely this independence that lets the judiciary contribute to building the future of their nation and to the fulfillment of their appropriate role in the protection of Rights and Liberties.

Tunisian judges at all levels are frustrated and exasperated by their forced duty to deliver verdicts which are dictated to them by the political authorities and which are not open to impartial thought or criticism. This practice results in judicial decisions which, more often than not, reflect nothing but the interpretation of law that political authority wishes to impart.

Subject to interference and harassment, Tunisian judges no longer have any room to perform their duties. Treated with arrogance and working in a milieu of fear, suspicion and paid informants, members of the judiciary are confronted with means of intimidation and coercion that shackle their will and prevent them

“Tunisian judges at all levels are frustrated and exasperated by their forced duty to deliver verdicts which are dictated to them by the political authorities and which are not open to impartial thought or criticism. This practice results in judicial decisions which, more often than not, reflect nothing but the interpretation of law that political authority wishes to impart. Subject to interference, Tunisian judges no longer have any room to perform their duties. Treated with arrogance and working in a milieu of fear, suspicion and paid informants, members of the judiciary are confronted with means of intimidation and coercion that shackle their will and prevent them from voicing their true convictions. Their dignity is insulted daily and their negative image in the heart of public opinion is mixed with fear, arbitrariness, and injustice, to the point that the sole fact of belonging to our profession is degrading in the eyes of the oppressed and people of honor.”

On February 26th, 2002, Mokhtar Yahyaoui filed a case before the administrative court to overturn his dismissal. But the court did not consider it for 10 years and did not deliver its verdict until the happening of freedom and dignity revolution exactly on March 23rd, 2011. It annulled the dismissal decision of December 29th, 2001.

▪ **Tunisian Magistrates Association**¹³⁹

Following the resistance of honorable judges and their battle for the independence of the Tunisian Magistrates Association, a coup against the legitimate structures of the Association, presided by the judge Ahmed Rahmouni (who was elected with the other members of the Association in December 2004) was programmed. Instructed by the President of the Republic

from voicing their true convictions. Their dignity is insulted daily and their negative image in the heart of public opinion is mixed with fear, arbitrariness and injustice, to the point that the sole fact of belonging to our profession is degrading in the eyes of the oppressed and people of honor.

The Tunisian justice system is subject to the implacable tutelage of a class of opportunists and courtiers who have come to constitute a veritable parallel justice system, one that is located outside all legal norms and that has bought out the National Council of Judges and the majority of sensitive positions in other courts. Ignorant of the very notions of impartiality and objectivity, their harmful actions have come to substitute the idea of independence with that of resignation [the two terms are phonetically similar in Arabic—NDLT]. This has engendered a real feeling of discouragement among the truly impartial judges. Blocked from playing the role to which they aspire, these judges are not able to assume their responsibilities, nor exercise their skills in the service of justice or in the interests of their country.

Meanwhile, the class of bought judges does a brisk trade with its allegiances, imposing a spirit of dependence and submission, running against all ideas of change and creative adaptation, and zealously identifying itself with the regime currently in power. Their objective is to systematize the conflation of the current regime and the State, corrupting all institutions. This behavior, which breeds discord and confrontation, constitutes in reality the true danger to order, security and stability. The daily practice of our profession has allowed us to appreciate the true reality lived by judges and this has incited us to forego the duty of silent reserve to which we are held. In a situation where all the possibilities of dialogue, however stormy or unstable, have been shut down, silence can no longer be an option, and the cry of our consciences rings out like a necessity which I can ignore no longer, even if it is our prisons which should paradoxically be the place for us to find dignity, freedom and a clear conscience. Mr. President, your constitutional responsibilities make it your duty to take decisions that require the removal of all interference with justice and with the institutions of the State, in such a way as to permit, to all citizens, the effective exercise of the liberties guaranteed by the Constitution. It is this condition which will make possible the true changes which our people desire; it will be in the true interests of our country.

139 The subject of the commitment of the Commission (IVD) according to the file n°025487_0101.

himself; it was planned by the Minister of Justice and executed by the judge Khaled Abbas¹⁴⁰. Indeed, on July 3rd, 2005, the bylaw of the plenary meeting was frauded and the elected executive bureau was removed.¹⁴¹ Its headquarters were seized and collective vacancies in its administrative body were created through the judicial movement and the arbitrary transfer of 15 members out of 38 members to other courts. This resulted in their loss of their representative status and membership of the administrative body. For instance: Mrs. Kalthoum Kannou, Secretary General of the association and Advisor in the Appeal Court in Tunis, had been transferred and appointed as investigative judge in the Court of First Instance in Kairouan, Mrs. Wassila Kaabi, member of the executive body of the Association and Advisor in the Appeal Court in Tunis had been transferred and appointed as investigative judge in the Court of First Instance in Gabes. Nine other members of the executive body of the Tunisian Judges Association were transferred to work in courts in the interior areas of the country: Leila Bahria, Assia Abidi, Omar Oueslati, Ali Louati, Youssef Bouzekher, Monji Telgh, Hammadi Rahmani, Anas Hammadi, Mohamed Ben Mansour, and Anas Ferjani.

IV. Attempts to domesticate the bar

I. Attempts to control the bar under Bourguiba's rule

In the context of restriction of freedoms, interference of the executive authority in the judiciary, and the instrumentalization of judges to serve the political system, the regime relied on loyal lawyers to complete the “play” of political trials and formally respect the procedures by allowing the defendants to have a pseudo defense which condemns instead of defending. This happened for example, as what was declared by the defense of the elements accused of the “Coup Attempt in 1968”: Mr Ridha Kahia: “Your court will examine the case with the utmost foresight and vigilance, I inform those who appear before you (meaning the defendants), that the Tunisian people expressed their anger and wrath, and if they were released, they would get harder punishment from the people.” The lawyer Ibrahim Zitouni declared in his speech for the defense in the permanent military tribunal: “Your court revealed that the defendants’ thinking is poor and degraded and that the prosecution is fully right to describe them as incapable to act.”

Ibrahim Zitouni, being the lawyer of Abdelaziz Akermi described the latter in his speech of defense as: “fooling and implicating the group, because he is a well-spoken and articulate intellectual. He also described Lazher Chraiti as “the leader of the leader of the people in naivety and simplicity.” On his part, Mr Salheddine Caid Essebsi expressed his regret to plead in such a case and defend such people. He asked the court to impose death penalty on the accused.

The regime tried also to control the lawyers’ structures and to politicize the sector.

¹⁴⁰ See annexes

¹⁴¹ The elected executive bureau was removed and impeached on the basis of a petition of impeachment signed by 183 magistrates. The Commission (IVD) had the proof that some judges had been misled. Indeed, they signed a white paper because they thought it was the presence paper. Their signatures had been exploited in the petition of impeachment.

But some independent lawyers defied the regime's attempts to use the judiciary. They mobilized and volunteered to secure the right to defense in political trials. They confronted the judiciary and its violation of the legal procedures and denounced the absence of the minimum guaranties of fair trials.

Against a backdrop of their defense of their independence and the principles of the legal profession, several lawyers were subjected to intimidation, threats and imprisonment. For instance, in the context of his pleading in the case of the expropriation of a property owned by a Tunisian Jewish and in response to the requests of Tunis municipality, the defense speech of Mr. Chedli Khaladi, Dean of lawyers, included: "Does the state want to steal people's properties?" These statements did not please President Habib Bourguiba, who ordered his trial. In 1961, he was condemned by a judgement by force to 6 months in prison. The sentence was confirmed in appeal. According to some testimonies, the dispute between Habib Bourguiba and the Dean Chedli Khaladi broke out after the latter published an article in "La charte tunisienne" entitled "Le Bateau ivre" in which he criticized the New Constitutional Party and Habib Bourguiba.¹⁴²

After the imprisonment of the Dean Khaladi, a committee composed of lawyers loyal to Habib Bourguiba was formed to manage the interests of the Bar. The committee continued to manage the Bar until 1965, the date of the election of Mr. Mohamed Chakroun, Dean of the Bar.

This policy continued during Ben Ali's rule.

2. The Party infiltration of the Tunisian Order of Lawyers and the instrumentalization strategy

TDC (IVD) accessed to the archives of the Presidency of the Republic related to the sector of the legal profession. It found several documents indicating the interference of the Democratic Constitutional Rally (RCD) in the elections of the Deanery, the Tunisian National Order of Lawyers and its different branches as well as the preparations to control the professional sectors.

Indeed, the party works on the assessment of the situation of each branch through the focus on the different existing and expected coalitions and alliances between all the candidates running for the elections, those who intend to run and those urging them to run. They relied in this on the reports received by the regional coordinating committees and the cell within the Bar.¹⁴³

The Presidency of the Republic used to reward the loyal lawyers by granting them the privilege of pleading for the public institutions, enterprises and establishments.¹⁴⁴

142 Abdejelil Temimi Between the defense , the judiciary and politics under the regime of Bourguiba P 75 third collection the Tunisian and Maghreb National Movement n19.

143 See in the annex the correspondence sent by the President of the Democratic Constitutional Rally (RCD) on April 24th, 2010.

144 See the correspondences sent from the Secretary General of the President to the CEOs on May 22nd, 2007.

قرطاج في 17 جوان 2000

الجمهورية التونسية
رئاسة الجمهورية
الكتابة العامة

مذكرة
إلى سامي عناية سيادة رئيس الجمهورية



الموضوع : قائمة المحامين المتعاقدين مع المنشآت العمومية.

لقد قام الكاتب العام للحكومة (في نطاق السرية المطلقة) بإعداد قائمة المحامين المتعاقدين مع المنشآت العمومية.

يلاحظ في هذا الخصوص ما يلي :

- 1 - شملت هذه العملية 187 منشأة عمومية متعاقدة مع 1036 محام (لم تشمل هذه العملية كل المنشآت العمومية ولم تشمل كذلك البلديات والمجالس الجهوية وذلك حفاظا على السرية).
- 2 - لقد وردت في شأن المحامين المذكورين بالقائمة عدد 1 المصاحبة إرشادات سيئة.
- 3 - إن المحامين المذكورين بالقائمة عدد 2 المصاحبة متعاقدون مع أكثر من 5 منشآت عمومية (من 6 إلى 22 منشأة عمومية).

ولسامي عنايتكم سديد النظر.

مع كامل التقدير والاحترام

الكاتب العام لرئاسة الجمهورية

صلاح الدين الشريف

مواصلة
إعداد
(تقارير)
لأ

17 جوان 2000

In this way, the Presidency of the Republic proposes a nominal list of the lawyers who will be appointed for the defense of the Tunisian state in the Tunisian courts. Then, the list is sent to the Secretary General of the Democratic Constitutional Rally (RCD) to present his opinion and position as to each name mentioned in the list. The latter gives his opinion according to the

loyalty and the services presented within the structures of the party and the position of each lawyer to the political system. After the finalization of the list of the lawyers who will deal with the public institutions and establishments every year, the President of the Republic orders the formation of a narrow committee¹⁴⁵ working on the classification of the agreed upon lawyers to 3 different categories, under the title of: “Help to the lawyers of the Party (RCD)”¹⁴⁶. The three lists are: 1. The “Hard core” including 102 lawyers who are benefiting of at least an annual sum of 20 thousand dinars. The second list includes 105 lawyers benefiting of annual amounts between 10 and 15 thousand dinars. The Secretary General of the Party commits himself to follow the activities of the RCD lawyers to allow the committee to periodically suggest these lists according to the efforts of each lawyer within the party. After that these lists are sent to the public institutions and establishments which will execute the orders. In the same context a correspondence sent to Ben Ali indicates that the heads of the public institutions and establishments (in a personal and confidential manner) who are dealing with adverse lawyers, were summoned and alerted not to deal with these lawyers in the future and set t December 31st, 2000 as a deadline to their assignment and this to close the ongoing cases.¹⁴⁷

145 It is composed of Abdelaziz Ben Dhia, Abderrahim Zouari, Rafik Haj Kacem, Bechir Takeri, Fathi Abdennadher, Slaheddine Cherif, Abdallah Kaabi in its first composition in July 2000.

146 See the nominal list in the annexes.

147 See annexes .





جدول بياني في الإجراءات المتخذة بشأن التعاقد مع محامين وتكليف التعامل مع آخرين

اسم المحامي	تاريخ إبرام إتفاقية الخدمات القضائية	الوكالة التجارية لتتصالات الملحق بها	الإجراءات	الملاحظات
الحبيب عاشور	10 مارس 2001	حشاد	إبرام ملحق لإتفاقية	توسيع نطاق الإتفاقية إلى الوكالة التجارية بالتقدير محامي جديد
سامية بالحاج صر	02 جويلية 2007	القصبية وباب الصل	إبرام إتفاقية جديدة	محامي جديد
محمد خلف الله	07 جوان 2007	البيقير وبارنو	إبرام إتفاقية جديدة	محامي جديد
سليمان الجريسي	30 ماي 2007	الزهراء والمروج	إبرام إتفاقية جديدة	محامي جديد
سهام المجهري	03 جويلية 2007	البيقير	إبرام إتفاقية جديدة	محامي جديد
عبد الجليل الشكرراوي	29 جانفي 2007	البيقير وخير الدين باشا وين عروس	تكليف التعامل معه	
عبد بالشوخ العربي	29 ماي 2006	البيقير	تكليف التعامل معه	
كريم جواحيحة	30 ماي 2006	الوردية والمرسي	تكليف التعامل معه	
نعسان بن عامر				لم يشن الإتصال به في العنوان وأرقام الهاتف المتوفرة
هدية القاسمي	24 أفريل 2002	بارنو	تكليف التعامل معها	

In fact, the heads of the public institutions and establishments executed the decisions of the committee to put an end to dealing with independent lawyers and those who plead for the defendants of political cases as was the case with several lawyers especially Dean Abderazek Kilani and the lawyer Abderraouf Ayadi.

Nevertheless, the regime did not stop at this limit. Indeed, several independent lawyers were subjected to the violation of the sanctity of their offices and the professional secrecy of their files by the political police, as happened to Radhia Nasraoui and Ayachi Hammami, whose offices had been set on fire. Their livelihoods were cut through tax audits as a punishment tool after preventing them from pleading for public institutions and establishments and threatening and preventing clients from approaching their offices.

Thus, lawyers were classified in different categories: the RCD lawyers, the enthusiastic lawyers, the normal lawyers and they are rewarded with exclusively allowing them, regardless of their professional competence in defending the interests of the public sector from pleading for public institutions and establishments. Different cases are distributed to them and “dealings with them are intensified” according to their loyalty to the system.¹⁴⁸

For example Abir Moussi was rewarded amounts of 125.526.160 TND in one year (2009) for assaulting her colleagues during plenary sessions (as was the case with Mohamed Abbou), (as it is indicated in the following table).

In a memorandum submitted to the President Ben Ali by Fathi Abdennadher from the legal department in the Presidency of the Republic on May 6th, 1998 about “cooperative lawyers”, he presented the table of the amounts paid in the years 1996 and 1997 and explaining that “some lawyers just draft reports in few lines without including a realistic and legal analysis” and that “the factor of relationships plays an important role. Indeed, a lawyer like Samir Abdallah (who used to be a dissident before joining the party (RCD))¹⁴⁹, is monopolizing more than one institution. He receives huge amounts of money. No matter how efficient he can be, he would not be able to deal with all the files without the relationships factor.”

The report adds that “the presence of the lawyers of the Party (RCD) is noticeable, but with the presence of others. The balance can be made by appointing other elements loyal to the party and who need that and diminishing the number of cases for some dissident or independent lawyers , who receive important amounts of money from several companies.”

In an updated list for 2009, the amounts allocated to the enthusiastic lawyers rose to more than 125 thousand dinars per year.¹⁵⁰

148 See the lists in the annexes.

149 Who received according to the document 71341 thousand TD in 1996 and 72061 thousand TD in 1997.

150 See the list in the annexes.

924000	476000	BNA		عبد الوهاب الماهر
	448000	BH		
	0	البريد التونسي		
18482943	18482943	STB		عبد الوهاب الراعي
6159680	799920	AFH	1	عبد الوهاب السنوني
	0	STB		
	0	CNRPS		
	2094400	CNSS		
	3265360	STAR		
2009037	2009037	STEG		عبد الوهاب بن رحمة
125526160	1508960	CNRPS		عيسى موسى
	117577480	CNSS		
	2907800	TELECOM		
	3531920	STAR		
12605400	1380400	CNRPS		عثمان الوسلاتي
	10948000	STAR		
	277000	البريد التونسي		
11709969	4855047	ديوان الحبوب		عثمان بن فضل عثمان صتا
	3870000	BNA		
	2984922	CNSS		

Chapter Eight

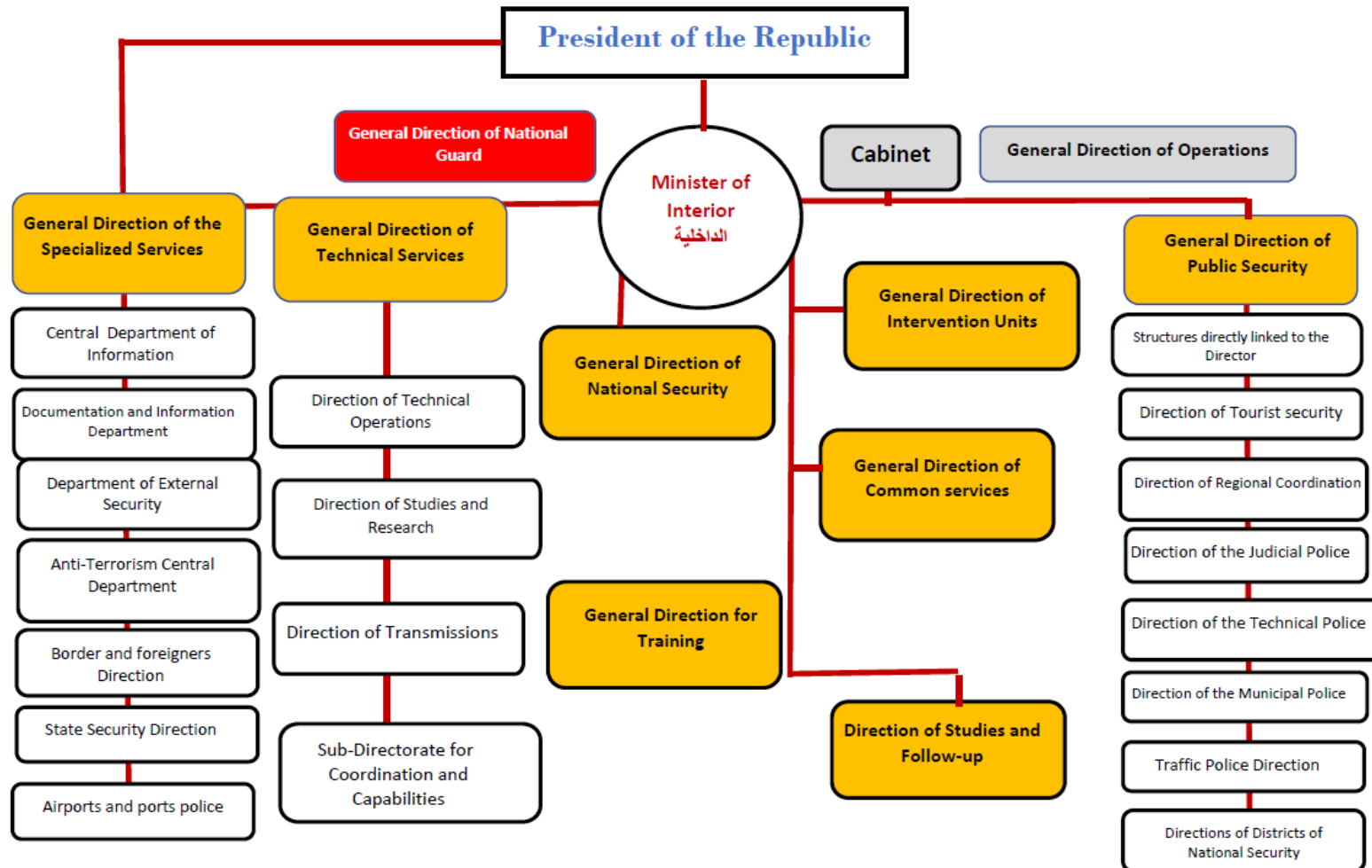
Instrumentalization of the security system_____

Authoritarian regimes used security systems to serve their interests instead of exploiting this institution in the function it was established to accomplish consisting in preserving security. The Regime of Bourguiba inherited the security system from the colonial authority and preserved the same structure designed for it by the Consul General of France. Whereas, Ben Ali developed this system and restricted it more tightly. Under his regime, the Ministry of Interior was administered according to a very precise structure that remained secret and confidential. Indeed, all the legal and regulatory texts which were issued in relation to the Ministry of interior were not published in the Official Gazette.

I. Organizational Structure of the Ministry of Interior

See below

Organizational Structure of the Ministry of Interior as per Decree n ° 2007-246 dated



II. Political police organ

The two administrations of the *Specialized services* and *Technical services* constitute the central body of the **political police** who used to decide what to do with the lives and livelihoods of Tunisians opposing the regime.

TDC (IVD) relied on the following definition of the concept of political police: Political police is a parallel security network infiltrated within the official structures of the security apparatus and used to serve the policy of a governmental group (usually the head of state) to implement its specific agenda.

This body carries out acts outside the framework of the law with complete impunity which is matched by privileges that ensure loyalty. This apparatus has influence within the security establishment that makes it influence the state's policy and diverts it from serving the public interest to serving the narrow interests of a ruling body.

This network is based on leading elements within the administration and who receive orders from the loyalty group and deviates with power to execute its specific policy. The elements of this network were present in all branches of the security institution administration, intertwined specialized and technical services from the state security apparatus and general information body and inquiry services and presidential security and other security apparatuses which lost their main mission consisting in the protection of homeland and people and served and protected a governing group instead. This apparatus executes a specific policy and its actions are secret and not subjected to institutional control. Moreover, it uses a black box to finance its illegal actions (check the chapter on black box). French literature used the term to describe deviation in power in the Mitterrand and Sarkozy systems.¹⁵¹

The *General administration of Technical Services* was specialized in the surveillance of correspondences, telephones, Internet; and "Ammar 404"¹⁵² was part of its prerogatives.¹⁵³ Whereas, the *State Security apparatus* was under the supervision of the *General administration of Specialized Services* which had special responsibility for:

- Insuring state security.
- Police of borders and foreigners.
- Intelligence.

Its structures consisted of:

-Structures directly related to the General Director.

151 We can mention among these : Olivia Recassens, Didier Hassoux et 2012 *L'espion du président : au cœur de la police politique de Sarkozy*. Ed Robert Laffont. Ed Albin Michel, 1996. Un livre de témoignage d'un ex) capitaine du GIGN et *Guerres secrètes à l'Elysée*, du Capitaine Paul Barril, Christophe Labbé. Et de la cellule antiterroriste de l'Elysée, qui servait surtout de police politique à François Mitterrand ?

152 See the chapter related to Internet.

153 See annexes: the record of investigation of the Colonel President of the Secondary administration for computing services in the General Administration of the technical services on May 27th, 2013.

- Anti-terrorism Central Administration
- Administration of documentation and automated information
- State Security Department, which had been dissolved after the revolution.
- Central Administration of general queries.
- Administration of external security.
- Administration of borders and foreigners.
- Administration of the police of airports and ports.

In addition to the central structures, the *General administration of Specialized Services* includes national and regional active groups and units and other external units.

It is worth mentioning that the operations carried out by these units and departments are financed by the "black box", which was managed from 1983 to 2011, by Mr. Sadek Ouni¹⁵⁴, who was in charge of "exceptional grants" in the *General administration of Specialized Services* then joined the Cabinet of the Minister from 1987 until his retirement. The General administrator of this administration was in direct relationship with the President of the Republic (Ben Ali). In some cases, his influence could exceed the minister's. Note that this fund was not under the control of the Accounting Department.

Nevertheless, accessing the archives of the political police still in the hands of this administration would allow Tunisians to know the truth and look carefully into its dirty work (fabrication of rumors, fake news, photos and videos montage, raiding houses and offices etc..) which were targeting dissidents and non-cooperative businessmen.

1. Secret prisons

The places of occurrence of human rights violations were not limited to the official places related to different security bodies such as detention centers, prisons, and police districts. Indeed, some of them were installed in irregular places such as private houses and agricultural farms like "Naassan"¹⁵⁵ "Mabrouka 1" and "Mabrouka 2" as well as the functional and administrative cars either after the raiding and arrest or during the transfer of the victim between different police stations. Indeed, these irregular places witnessed gross human rights violations, the most important of which are: sexual violence, rape and torture. Although such abuses frequently occurred in regular settings, such abuses reflected the despotism of the political system.

2. Parallel security body

The parallel police are anybody assigned with security missions outside the framework of laws. The two former political regimes relied on different bodies and groups parallel to the official security structures to control political dissidents and social actors. These include:

¹⁵⁴ See annexes records of investigation of Mr. Sadek Ouni in the Administration of Investigation of the National Guard in April 2011.

¹⁵⁵ The Commission (IVD) attempted to find the locations of these secret prisons but didn't succeed in this.

▪ **Network of informants**

The regimes of Bourguiba and Ben Ali established a network of informants in all the neighborhoods, communities, and villages with a main mission consisting in the surveillance of all political dissidents and human rights activists in addition to monitoring all social movements. Indeed, this network works on providing direct and real-time information to regional and local security services.

Some official correspondences between different governors and the Ministry of Interior included an important amount of security data originating from the denunciations of one of the secret informants.

The extension of the network of informants was not limited to the service of political affairs in the governorate, but it also included other elements working in coordination with the delegates, police stations and the National Guard directly. Accordingly, the campaign of raids, arrests and violations by the security services is carried out without investigating and deciding on their veracity and that it does not hide personal goals from the part of the informant.

▪ **Coordination Committees**

The coordination committees related to the Socialist Destourian Party (PSD) and the Democratic Constitutional Rally (RCD) are one of the most salient examples of the parallel and irregular security bodies. The archival documents revealed the extent of the reliance of the regime of Bourguiba on several elements organized within the *Welfare committees* (Lijan Al-Riâaya) in several social and trade-unionist events. During the events of Gafsa 1980, the **security plan**¹⁵⁶, issued by the general administration of National Security on April 4th, 1980, included the use of a group of armed agents from the *Welfare committees* (Lijan Al-Riâaya) wearing combat uniforms in the goal of strengthening the security capacities of the official structures and bodies in the fear of the renewal of the social protests in the different regions. This reflects the security role assigned to *Welfare committees* (Lijan Al-Riâaya) under the supervision of the Socialist Destourian Party (PSD) and in coordination with the official security structures and bodies.

This use continued with the democratic constitutional rally (RCD) since its establishment. Thus, the security and supervisory missions became one of the strategic points on which the regime relied. Indeed, the local *Coordination committees* constituted a nominal list of the elements registered in the party and they are tasked with surveillance and control at all times. Then all the information is sent to the security services in the framework of “security information” to allow them to intervene in the field.

▪ **Vigilance committees**

These committees were launched on different occasions and national celebrations and holidays with coordination between the *Coordinating committees* of the Democratic Constitutional Party (RCD) and the Security Services. Their main mission had to do directly with security and it ended with the end of the event. It monitors all neighborhoods and public spaces and informs the local security services in real time. Furthermore, archival documents and investigations within TDC (IVD) revealed that the source of several of the violations, which had been

¹⁵⁶ See the document in the annex.

recorded, was a mere suspicion or doubts in the form of written reports or verbal notices by the *Vigilance committees*.

III. Reforms for a republican security

The security institution needs fundamental and comprehensive reform to be an active partner in the democratic transition process, build the state of law, and guarantee that its performance would be in harmony with the principles of article 19 of the Tunisian Constitution which states that: **“The national security forces are republican; they are responsible for maintaining security and public order, ensuring the protection of individuals, institutions, and property, and ensuring the enforcement of the law while ensuring that freedoms are respected, with complete impartiality.”**

This reform is a national matter in which the political authority assumes the great part of responsibility. It would not succeed without the involvement of all security agents and officers in all security branches and at all levels.

This comprehensive reform needs big revisions consisting mainly in:

1. Breaking with the belief linking security behavior to persecution.
2. Structural reform of the security institution to conform with the spirit of the constitution.
3. Professional reform of the security institution and its purification from the elements that harmed the institution.
4. Reviewing the special legislations of the security system and focusing on the individual responsibility and the protection of security officers when they refuse to execute outlawed instructions.
5. Developing the health and social care system for the agents of the internal security forces.
6. Adoption of a framework law that regulates the rules of conduct and practices of security unions and deters unions that exceed the function for which they have been established by engaging in political tensions.

I. Reviewing legislation's specific to the security system

- Abolition of the law n°4 of January 24th, 1969 related to public meetings, processions, parades, demonstrations and gatherings.
- Abolition of all provisions allowing the administrative authority to impose limits or prohibit public meetings and demonstrations on the basis of their contents, slogans, and the banners that will be raised.
- Requiring the administrative authority taking decisions about meetings and demonstrations with the application of transparent standards.

- Clearly emphasizing in the law and practice on the duty of internal security forces of protecting demonstrators and journalists from the violence of the participants in the demonstrations and counter demonstrations and instigators.
- Prohibiting the use of firearms against demonstrators except in exceptional cases clearly defined by law and with the condition of issuing several warnings to give the demonstrators the opportunity to voluntarily disperse, and that the goal of the use of firearms is paralyzing movement and not killing.
- Revising the law n°70 of 1982 issued in August 6th 1982 on the adjustment of the general statute of the agents of the Internal Security Forces, especially by the abolition of article 8 on the necessity of obtaining **an administrative permit to sign a marriage contract** as marriage is a civil right which cannot be restricted under article 23 of the International Covenant on Economic, Social and Cultural Rights and which legislates the freedom of marriage and establishment of a family. And the abolition of the sentence of the severe arrest in the security barracks provided for in Article 50 of the same law as contrary to the spirit of the Constitution.

2. Developing health and social care system for the agents of internal forces

This implies:

Activating Law n°50 of 2013 dated December 19th 2013, fixing the special system of compensation for the damages resulting from work accidents and occupational diseases touching the agents of the internal security forces. Developing the treatment system and withdrawing it from the purview of the cooperative of the employees of national security and prison and reform and establishing a specific health system as the mentioned cooperative is totally corrupted, manipulates the contributions of its members and engages in suspicious drug deals.

3. Adopting a framework law regulating the rules of conduct of security unions

The right to constitute trade unions is a right guaranteed to every citizen by the article 35 of the Tunisian constitution. Accordingly, in Tunisia, professional security unions were formed through telegram number 123/07 dated February 24th, 2011, in which the Minister of Interior allowed the exercise of this right.

However, professional security unions must abide by the ratified international conventions and national laws, especially the provisions of article 243 of the Labor Code, which states that **"the task of professional unions is limited to the study and defense of the economic and social interests of their members."**

They must remain fully neutral, not engage in political rivalries, disrupt transitional justice, and be an active partner in the transition from tyranny to democracy. Each trade unionist is responsible and assumes the results of his actions within the framework of trade union

functions and tasks. Like his colleagues in the course of his work, he is subject to legal scrutiny and accountability from the state, leaders and supreme organs.

Chapter Nine

Propaganda and disinformation system _____

TDC (IVD) received 107 files related to violations of freedom of media. On December 14th, 2018, TDC (IVD) organized a public hearing¹⁵⁷ related to disinformation, during which some journalists¹⁵⁸ presented their testimonies about the suffering of the sector based on their own professional experience. It is noteworthy that the Tunisian media landscape has always been characterized by an almost total censorship from the executive authority since the independence. Although there were bright pages in the history of Tunisia in which independent media played the role of a loophole, the guided media, which used to be totally run by security and police laboratories, dominated the landscape. Media were employed to complement pillars of the despotic and authoritarian regime.

Security dealings with media did not start with Bourguiba or Ben Ali. On the contrary, it goes back to the protectorate period. Indeed, after the trial of Ali Bach Hamba and the group of the *Tunisian Youth Movement* following the events of Djallaz in 1911, the colonial authorities used to seize Arabic language newspapers with the exception of one newspaper: “Arraid Attounssi”, issued by the general residency.

I. Security dealings with media

The state of independence inherited security dealings with press. Thus, an important part of the published press used to be brought ready from the Ministry of Interior.¹⁵⁹ Moreover the archives of TV and radio were run by a security system. Ben Ali developed this system and it continued with the same mechanisms. Media landscape witnessed three stages:

1. The stage of the foundation of the state of independence

The period of the foundation of the state of independence was characterized by a total informational desertification after the impetus which distinguished the national liberation movement. All the potentialities and resources of the state were harnessed to abolish any possibility of coexistence between the diverse orientations and visions. In the opposite, there was the unique opinion, the unique discourse, the unique voice. The voice of the « Supreme Combatant », Habib Bourguiba was the dominant voice.

The regime instrumentalized the public sector, starting by the radio which obtained its tunisification in 1956 going to the National TV, founded in 1966. It became, thus, the first space for the official propaganda through the speeches “directives of the president” which used to be broadcast daily on national radio and TV. Moreover, the informational product of Tunis

157 <http://www.ivd.tn/timeline/> جلسة الاستماع العلنية الرابعة عشر - الخ

158 <https://www.youtube.com/watch?v=eQUZHF3QdnQ>

159 The testimony of Abdelaziz Jeridi, head of Al Hadath newspaper: “The first, third, and fifth pages used to be brought directly from the Ministry of Interior”.

Africa press agency (TAP), established in 1961, or the national radio and TV included daily content dealing with presidential activities.

Following the shocks experienced by the regime and the clashes with the different social and political groups (students, trade-unionists, destourian family...) it was forced to open up to voices different to its orientations. Thus, Tunisia witnessed the flourishing of an independent and dissident press towards the end of the 1970s and the 1980s.

To confront this informational wave opposing the regime, the latter resorted to the publication of newspapers and magazines under its control including: Al Eaaln, AChourouk, Hadath, Likol Annas ...

2. Ben Ali and control of media through advertisement and fake pluralism

Ben Ali inherited a media landscape including a fragile pluralistic margin. However, it soon became a landscape with a unique voice in its different expressions. The first clue for the imposition of a unique landscape had been the imprisonment of the editor in chief of the newspaper “Al Aaalan”, Abdelaziz Jeridi for publishing a caricature criticizing the continuity of the system /regime between November 6th and 7th in 1987. After the imprisonment of its editor in chief, this newspaper surrendered to the regime and played dirty roles in denigrating the dissidents starting from 1991.¹⁶⁰

After that “Assabah” newspaper, which used to be considered independent despite its closeness from the regime, had been censored through its deprivation from advertisement. It, then, joined the house of obedience.

At the same time that Ben Ali’s regime was building its political legitimacy on democracy which he introduced in the political landscape, it had been working on another kind of desertification through the flow of advertisement and financial control.

To reach his goals, Ben Ali founded the Tunisian Agency for External Communication (ATCE) in 1990 and entrusted it with the mission of the management of the distribution of public advertisement according to the degree of loyalty to the regime and the execution of its orders.¹⁶¹

Starting from 2000 he started to work on the development of official media parallel to the public service namely the private media loyal to the president and his relatives like: Shams FM, Mosaique FM, Jawhara FM, Hannibal TV, Nessma, Businessnews, Kapitalis, and Leaders.¹⁶²

3. Post-revolution and monopoly of the media through polling agencies

When Ben Ali’s regime fell and the Tunisian Agency for External Communication (ATCE) was dissolved, the media control machine was a little bit confused especially during the revolution when social media networks played the role of alternative media. However, the “Machine” quickly succeeded in reestablishing its structure outside the state institutions, using private

¹⁶⁰ See annexes .

¹⁶¹ The subject of a reference decision to the specialized judicial chambers in the court of first instance in Tunis in December 31st, 2018.

¹⁶² See annexes.

communication and consulting agencies which absorbed and recycled ‘misinformation experts’. Polling agencies like **Sigma Conseil** undertook the mission of the distribution of advertisements according to the degree of the integration of the enterprise or institution in the **media-security-finance complex**.

After the revolution, despite the establishment of a media regulatory authority namely the Independent High Authority for Audiovisual Communication (HAICA), the misinformation “machine” has become powerful and sophisticated and has increased fogginess and complexity in the identity of decision centers.

This continued control of the same system on the landscape despite the change of methods and adaptation to modern technologies can be seen in some media institutions before and after the revolution.

4. Tamed media and one voice

By the tunisification of the radio, from August 13th, 1956 and the establishment of the Tunisian TV in 1966, the public service became the first space for the official propaganda through the speeches “directives of the president” which used to be broadcast daily on national radio and TV. On November 16th, 1955, Assabah newspaper was attacked by an armed group in its headquarters. The journalists had been assaulted and the writing machines had been smashed. On his part, the head of the newspaper “Al Balagh”, Othamen Guitouni, received a death threat on November 16th, 1955. Besides, on December 1st, 1955, the head of “Al Watan” newspaper received a death threat too.

Several newspapers like “Al Balagh” and “Al Balagh Aljadid”, “Sada Ewaytouna”, “Yakadha”, and “Al Ousbou” had been repeatedly banned and suspended. Furthermore, daily news of assaults on paper boys, news agents, and newspapers readers multiplied.

In this atmosphere of absolute power, the state issued on January 1st, 1963 an order banning the Tunisian Communist Party and suspending its newspaper “La Tribune du Progrès”. Moreover, the literary intellectual magazine “Attajdid” was not published anymore as the general intellectual climate didn’t allow any free intellectual or journalistic activity anymore.

When the ruling party adopted absolute power and tamed all the national social organizations and considered them as mere cells belonging to the ruling party in the 1960s and 1970s, an absolute power was in place. It resorted to silencing all the dissenting voices and to mass political trials.

5. A unique alternative: secret newspapers and leaflets

Faced with this policy, some free voices found alternatives in secret newspapers and leaflets to express themselves. Secret newspapers published by student groups represented the exception in the media landscape, in particular in the 1970s. But the regime faced them with torture, arrest campaigns, and unfair trials and heavy imprisonment sentences for **“defaming the head of state and promoting false news,”**¹⁶³ according to the press code.¹⁶⁴

163 <https://www.youtube.com/watch?v=q0EVAvKF4AI> Documentary : The System of propaganda and disinformation

164 See the testimony of Mohamed Maali.

Press law, known as Press code, was issued on April 28th, 1975 and it was exploited to persecute freedom of press, speech and expression. The procedure of legal deposit provided by the press code represented a tool which allowed the ruling regime to control publications and periodicals, review their content before publication, and tighten their censorship.

Following the split of the ruling party after the congress of Monastir in 1971, one of its divided wings established the Socialist Democrats Movement and got a permit to publish the two newspapers: “Araay” (opinion) and “La Démocratie” in 1977.

After the incidents of the general strike and the collision with the central trade-union and the easing of the crisis with the labor union, the congress of the ruling party which approved political plurality took place in 1981. The ban on the Tunisian Communist Party was lifted in July of the same year. Moreover, the Popular Unity Movement was recognized in November 1983 and published its newspaper “Al Wehda”. The Movement of Islamic Tendency re-published AL Maarefa magazine on November 1st, 1982. In May 1984, Al Mawkaf newspaper started to be published by the Socialist Progressive Rally.

Other independent newspapers made their apparition like “Le Phare” in 1980, “Al Maghreb Al Arabi” in 1982, and “Hakaek” in 1982, but they were subjected to seizure and continuous hindering from the Ministry of Interior which used the procedure of legal deposit to hamper newspapers.

The national institution of radio and TV used to monopolize the landscape. It used to be under the total guidance of the regime which made it the object of fierce criticism. Indeed, during the bread incidents, demonstrators gathered outside its headquarters in “Al Horria”(Liberty) Avenue shouting: “O Press O Liar”. From that time, the regime fenced the building and banned access to it.

II. The stage of Ben Ali

Ben Ali mastered the art of killing free press without using any administrative or judicial weapons for the purpose. Indeed, he pushed free press to suicide using financial weapons he developed through the establishment of the Tunisian Agency for External Communication (ATCE). It was based on the carrot-and-stick approach and exploited the mechanism of public advertising.

“**Arraay**” newspaper was one of those newspapers which opened its columns to all legal and illegal political movements and which ceased to be published in 1987 after deciding to resume its publication in the form of a magazine. However, all its printed numbers were crushed with the permission of its head, Mr. Hassib Ben Ammar, under Ben Ali's threat, because of a critical article titled “Nachaz” written by Om Ziad. Indeed, she considered her article as a “test or examination of the tolerance and openness of the new era and a polling to the extent of its readiness to accept criticism as well as a test for the capacity of media, including this newspaper, to exploit the promises of the new era to free words and expression and to get rid of the repulsive habit of self-censorship.”

The regime had also relied on fines and livelihoods cutting. Thus, the magazine “**Hakaek**” was seized in 1988. Furthermore, the historian Hichem Djait appeared in court for writing an article.

Ben Ali’s apparatuses and mechanisms used to tighten control on the content of the independent and opposition newspapers through the mechanism of legal deposit and the control before publication, at the printing press, after printing and at the distributor, and even readers were intimidated and punished when they are found in possession of one of these newspapers. Moreover, the regime exercised security control over the headquarters of opposition newspapers such as “Al-Mawkif”, “Al-Tariq Al-Jadeed” and “Mouwatinoun.”

This period witnessed a rise in the number of periodicals with the shrinking margin of freedom and the multiplicity of yellow newspapers (Al Eaalan, Kol Annas, Belmakchouf, Assarih, and Al Hadath). Achourouk, published by Dar Al Anwar, followed this tendency and became a daily newspaper starting from November 7th, 1988. All these newspapers had been mobilized to defame dissidents and human rights defenders.

“La Presse” published an evening newspaper in the French language then it turned it into an Arabic-language daily newspaper “Assahafa” in 1989. It became a nest for fictitious employment and a management that awards denounciators.¹⁶⁵

Abderrahim Zouari, secretary-general of the Democratic Constitutional Rally (RCD) planted a spy cell in Dar Assabah under the name of “Media Follow-up Cell”. It used to draft reports about journalists and their editorial orientations. Jamal Eddine Karmaoui and Kamal Ayadi used to prepare these reports and send them to Ben Ali like the report they had prepared on December 14th, 1990.¹⁶⁶ It included the position of the newspapers published by Dar Assabah in the period between 15 and 25 November. It also accused Dar Assabah of peacefulness towards the Islamist trend and that it is “hunting” the news of dissidents and not covering the news of the party (RCD). It denounced Assabah newspaper editor in chief and revealed the reality of the internal conflict within the newspaper.

I. Ban through choking distribution

The distribution network owned by Daadaa used to be the most important tool employed by the regime starting from the 1980s to diminish and reduce a newspaper media presence or to promote and support its distribution. It used to be a control tool of the dissident and independent written press which was subjected to the total authority of this distribution network through the limitation of the distribution of an edition or even its censorship in some cases according to the dictates of Abdallah Kallal, the Presidential Information Officer. Dadadaa’s company manages the biggest distribution network in the country. It includes more than 148 distributors and points of sale throughout the country. After the revolution, Daadaa himself acknowledged the practices of censorship and the reducing of distribution by pretending that the edition had run out from markets.¹⁶⁷

¹⁶⁵ Watch the documentary produced by the commission IVD for the Public hearing related to the subject (MN 15).

¹⁶⁶ See annexes.

¹⁶⁷ See annexes.

2. Legal deposit

Ben Ali's regime restricted freedom of press and publishing using the legal deposit mechanism. Indeed, article 2 from the press code issued on April 28th, 1975, stipulates that printed works of all kinds, including books, periodicals, volumes, drawings, photo engravings, postcards decorated with drawings, posters and maps, calendars, music, audio and video recordings, photographs and information programs which are made available to the public for money or free of charge, or for the purpose of republishing and others shall be subject to legal deposit procedures.

3. The police of books

Ben Ali had devoted a service in the Ministry of Interior for the control of books published in Tunisia or imported from foreign countries. This service was supervised by Anas Chabbi¹⁶⁸ who mastered the art of censoring and seizing books with and without reason, in particular the books mentioning the word "Islam" in their titles, even if the book is critical. He used to frighten publishers and bookshops especially during the different editions of Tunis book fair. Several intellectuals and thinkers were subjected to his authority and dominance like DR. Mohamed Talbi and Dr. Hichem Djait.

4. Tunisian Agency for External Communication (ATCE) Ben Ali's arm to control media ¹⁶⁹

The Tunisian Agency for External Communication (ATCE) was established on August 7th, 1990. It was under the direct control of the president of the republic, who defined its missions and appointed its general manager.

Its objectives were: "strengthening the media presence of Tunisia abroad and presenting Tunisia's national policy in all fields". Then, it included the distribution of public advertising which had been used as a control tool on media performance by rewarding loyalists and punishing independents.

The Agency (ATCE) spent huge amounts of money to hide the truth of systematic violations of human rights and public money abuse as well as to show the regime in the image of the defender and protector of human rights and freedoms at home and abroad.

Several foreign communication agencies like: Image 7, Arab Media and others took advantage of these promotion campaigns. They received amounts of 10.154.457 million TD between 1998 and 2001.

The Agency resorted to dealing with foreign communication agencies since 1998 after the closure of its missions abroad, which had been established earlier under the orders of the former president of the republic, (10 missions in Paris, Brussels, Washington, Geneva, Roma, Moscow, Cairo, Bonn, London and Tokyo). Before abolishing them in 1996 and replacing them

168 See annexes.

169 The subject of a reference decision to the specialized judicial chamber in the court of first instance in Tunis in December 31st, 2018.

with foreign communication agencies serving the same missions but for a huge fee, the order originally organizing the agency did not stipulate the possibility of establishing such missions.

Contracts between the Tunisian Agency for External Communication (ATCE) and these foreign communication agencies to embellish Ben Ali's regime cost huge amounts of money as it is shown in the following table:

Foreign agency contracted with	Date of beginning of the cooperation	Geographical domain of interference	Total of the amounts spent (TND)
Image7	1997	France	3.851.718.021
PRP	1997	Belgium	3.233.477.330
ARAB MEDIA	1998	Middle East	1.618.574.022
AZ Consulting	2001	Switzerland	1.450.688.553
Total			10.154.457.926

The missions entrusted to those foreign communication agencies with which the Tunisian Agency for External Communication (ATCE) made contracts were for the promotion of the image of Tunisia and the establishment of relationships with foreign press and its followers. It is essential to explain here that promoting the image of Tunisia means polishing Ben Ali's regime. The cooperation with these foreign agencies continued until February 2011. Their contracts reveal several breaches. Indeed, when the former financial and administrative manager of the Agency was interrogated by the team of TDC of control of the public service related to the prime ministry in 2011 regarding resorting to the same provider in procurement without activating competition, he answered that this was due to the lack of clarity of the legislation and the absence of a deal committee since the establishment of the Agency (ATCE).

He added in the report of TDC of control that contraction with the mentioned companies was concluded according to the instructions and decisions of the former president. He stressed that "the presidency of the republic follows the work of these companies and assesses it. Indeed, in 2007 and 2008, two ministerial councils were held under the supervision of the former president to review the results of cooperation with these companies, its costs and to accomplish the communicational missions with a group of journalists and communicators according to needs and without concluding contracts with them. In 2010, the value of the cooperation and deals reached 4.167 million TD.

In the same context, a one-year contract (from February 1st, 1998 to January 31st, 1999) with the Arab Agency for Media and Communication, an Egyptian agency, cost the Tunisian state treasury \$70.000 for publishing and spreading media declarations of Ben Ali. Meanwhile, the contract with Az Consulting cost the amount of 151.200 thousand TD in 2004-2005 for ensuring the media coverage of the World Summit on the Information Society (*WSIS*) in 2005 and contacting foreign journalists to organize trips to Tunisia as well as reviewing and following up

the articles on Tunisian affairs.¹⁷⁰ The funds transfers to local and foreign media reached 43.645 million TND in 2009 and 2010.

The transfers to the newspapers and magazines of the “friendly” opposition parties, which abide by the dictates of media department in misinformation in Tunisia and abroad, reached 242 thousand TND in 2009-2010. An amount of 4.167 million TND was spent to bribe foreign journalists loyal to Ben Ali without concluding contracts with them.

According to the documents related to the distribution of the amounts of the yearly funds transfers (according to the system of management of advertising) in 2009 and 2010, 14 foreign newspapers and magazines accounted for 67% of the total funds transfers. The companies: Afrique Asie, Afrique Report, Jeune Afrique, Arabies Trends, Afrique Magazine, Dialogo, Publication II, Les éditions Jaguar as well as the companies Al hawadeth, Al Arab International, Al Wifak Al Arabi, and Assayad magazine received an amount of 11.777 million TD.

Some foreign magazines received additional financial support in the form of annual subscriptions amounting to 587 thousand TND between 2008 and 2010. The largest part of which, estimated at 453.960 TND, was dedicated to Jeune Afrique owned by Bechir Ben Yahmed. In February 8th, 1996¹⁷¹ the CEO of the Group Jeune Afrique addressed a letter to thank Ben Ali and M.J for their help and support. The letter was accompanied by samples of signed share transfer agreement.

According to a document in the archives of TDC (IVD), Ben Yahmed proposed the idea of establishing a Carthage Club. It consisted of a list of 41 businessmen in the goal of mobilizing 2million TND, with a contribution of 50.000 TND per person, including Youssef Mzabi who expressed his readiness for the initiative. Ben Ali recommended his agreement on the condition that this should happen before January 1st. 1997.¹⁷²

In 2004 the Tunisian Agency of External Communication allocated the Group Jeune Afrique the amount of 640 thousand TND. Indeed, the general manager of the group, Danielle Ben Yahmed, presented collaboration proposals with the value of 1 million and 370 thousand TD in February 2007. It provides for the preparation of a special feature about “Tunisia and the challenge of modernity” and the completion of a special file about the 50th Anniversary of the proclamation of the Tunisian Republic as well as the completion of a 100-page special issue on the twentieth anniversary of the “transformation”, in addition to the completion of an economic guide on investment in Tunisia. Ben Ali recommended the submission of the proposals to the council of the cabinet for an opinion.¹⁷³

5. Corruption in the support dedicated to the institutions of audio-visual media¹⁷⁴

The value of public advertising dedicated to national audio-visual media amounted to 10.604 million TD in 2009 and 2010. Besides, they could enjoy other privileges in exchange for propaganda and misinformation.

170 See annexes

171 See annexes.

172 See annexes

173 See annexes.

174 See annexes.

Channel	Owner	Amount received in TND	
		2009	2010
National TV	public	548.126.714	785.477.122
Hannibal TV	Arbi Nasra	673.430	
National Radio	Public	1.734.129	1.375.119
Mosaique FM	Belhssan Trabelsi/Noureddine Boutar	1.199.922	1.535.348
Jawhara FM	Ali Belhaj Youssef	639.606	1.613.39
Zitouna FM	Sakhr Materi	250	250

Source: *The System of management of advertising within the Agency ATCE*

Granting licenses to launch TV and radio channels was not a liberation of the media as it seemed to be. It was rather an opportunity to win new friendly channels on the one hand and a manipulation of the international public opinion criticizing violations of freedom of speech and opinion in Tunisia on the other hand. Indeed, the channels from which benefited the members of the family of the former president and those close to them had been getting the largest part of financial support.

According to a report of inspection targeting the Tunisian Agency of External Communication (ATCE) in 2011¹⁷⁵, the funds transfers dedicated to Mosaique FM and Jawhara FM were disbursed against publicity flashes of Tunisie Telecom and Tunisair. Mosaique FM benefited of 4.587 million TD and Jawhara FM from 3.398 million TD.

▪ Nessma TV

Ben Ali had recommended the support of Nessma TV, which started broadcasting on March 23rd, 2009. Indeed, he had instructed a high official of those belonging to the system of the 7th of November and active in the Tunisian media landscape to contribute to the success of the TV channels. This is why Nessma TV had been headed by the former minister of information, “Fathi Houidi”.

In the framework of the development of the cooperation between the Agency (ATCE) and Nessma TV, Ben Ali recommended in one of his memorandums¹⁷⁶ to help Nessma TV get a 5 million TD loan. He also authorized banks to contribute with long-term loans to finance the complex Nessma, then to deduct part of the publicity for the benefit of Nessma TV with an amount of 328.8 thousand TD. Moreover, Nessma TV could benefit from the exemption of

¹⁷⁵ See annexes.

¹⁷⁶ See annexes.

taxes levied on the channel reaching an amount of 6 million TD. Furthermore, on the recommendation of the president of the republic, Nessma was able to exploit a studio at the new National TV headquarters for 4 months in 2007 for an amount of 400 thousand TD instead of 2.8 million TD. Nessma TV social fees and fiscal taxes had been rescheduled as well. The Central Bank had been authorized to call agent banks to grant long-term loans to finance the group Nessma. Besides, Nessma could benefit from the exemption of taxes levied on the channel reaching an amount of 6 million TD.

- **Zitouna Radio**

Between 2007 and 2010, the Agency (ATCE) granted Zitouna FM, owned by Sakhr Materi, an amount of 1 million TD at a rate of 250 thousand dinars each year without asking him to provide advertising services in return. According to a memorandum addressed by the general manager of the Agency (ATCE), Mongi Zidi, to the Minister of Information, this grant represented 50% of its expenses.

- **Cactus Prod**

The cooperation between the company Cactus Prod, which 51% of its shares were owned by Belhassen Trabelsi, brother-in-law of Ben Ali, and the institution of the National Tunisian TV caused heavy losses to the latter through signing direct contracts without going through a tender, whereby the programs "Akher Karar" in 2003, 2004 and 2005 and "Ahna hakka" in 2008 worth 18.045 million TD were produced. The swap formula with Cactus Prod for the production of 140 episodes of the TV program "Dilek Mlak" for 16.5 minutes from advertising revenues for each episode caused to the National TV a loss of 80% of the expected advertising revenues from the above mentioned TV program because it exceeded the mentioned timing. Moreover, the company used to exploit the human resources and equipment of the National TV by using the technicians working there as well as the bus for external broadcasting which was always used as a control room free of charge.

- **Hannibal TV**

When it comes to Hannibal TV, 9 decisions were issued to its benefit on April 27th, 2005 including: exempting the channel from the tax stipulated in the agreement concluded with the state on February 13th, 2004 for 3 years and which was evaluated at 2 million dinars per year, allowing it to use the terrestrial TV channel which used to be dedicated to Horizon channel as well as enabling it to use plays and soap operas which are considered as part of the national public heritage for a price which only covered the preparation of the copy. Besides, it had been decided to transfer some of the officials from the establishment of the Tunisian Radio and TV on non-operation for exceptional circumstances for a renewable one year to allow them to work for Hannibal TV. For instance, a 7th grade production assistant was transferred to Hannibal TV under a **top secret order**¹⁷⁷ from the former president of the republic, Zine Al Abidine Ben Ali, on May 20th, 2005 in a contradiction with the article 61 from the law n° 112 of 1983 dated December 12th, 1983, which regulates the statute for the employees of the state, local communities and public institutions with administrative nature, or in an administration, public community, public enterprise or national company, or a joint venture company. This happened

¹⁷⁷ See annexes .

after a request by the general manager of Tunimedia and the owner of Hannibal TV to the head of the Tunisian Radio and Television on May 7th, 2007 explaining his need for two experts in cinema archives, 2 electrical lighting experts, 4 camera operators, audio engineers and digital imaging technicians. But, these requests were not satisfied by the employees of the Tunisian TV. In a response to the “help calls” issued by the channel owner, Ben Ali instructed to grant the TV channel “**an important part of public advertising**”, without indicating the amount of this part.

Moreover, Hannibal TV had the opportunity to exploit several of the programs produced by the National TV to enrich its own broadcast. Arbi Nasra, the TV channel owner, exploited a unit of external filming unit under a direct order from the former president of the republic against paying half of the price set for this equipment. Hannibal TV was granted a tax exemption during the second half of 2008 and exemption from the payment of the charges of terrestrial broadcasting starting from November 2007.

In April 2007, Arbi Nasra recruited a group of holders of certificates of higher education as a means for extortion and to demand his exemption from paying the amount he is indebted with to the state treasury. On April 22nd, 2005, the owner of the channel sent a request on broadcasting the speeches of the president of the republic. Indeed, he insisted on the fact that the TV channel is facing technical and organizational problems, “**despite the concern to actively participate in the coverage of the activities of the president and his speeches**”. It was stated in the letter of the channel owner, “**the young TV channel Hannibal is greatly honored to engage in the pioneering media policy of his Excellency the President and to put its full resources and potential at your disposal.**”

III. Persistence of the “Machine” following the revolution

The propaganda “Machine” for Ben Ali persisted during and after the Freedom and Dignity revolution. It has continued to be active against the revolution while raising the banner of the revolution. In this context, Hannibal TV played a dirty role in igniting civil strife. Thus, it broadcast on the days of 14, 15, 16 and 17 January 2011 programs showing the protests and demonstrations throughout the country mainly based on the reception of fabricated phone calls to frighten and terrify citizens. This was admitted by Arbi Nasra, the channel owner, in his record when he was interrogated by the judicial police on January 23rd, 2011. He admitted to the initial investigator¹⁷⁸ that “he had spread false information on the abuses committed by some people and broadcast fake distress calls to further frighten people”.

Nevertheless, Hannibal TV continued to operate and justice did not take its due course. Moreover, Hannibal TV resumed broadcasting on Sunday 23rd of January after an interruption of about 4 hours following the appearance of a minister in the government of national unity, namely Ahmed Nejib Chebbi, on the TV channel and his apologies for the mistake and the resuming of the broadcasting.

¹⁷⁸ See the annex including the report of the investigation of Arbi Nasra in the Secondary Administration of the Criminal Cases.

Furthermore, a part of the archives of the presidency of the republic have been destroyed before the October 23rd. 2011 elections. Besides an important part of the archives of the Tunisian Agency for External Communication (ATCE) were destroyed in suspicious circumstances and the icons of the old system invaded the media landscape again, under the auspices of suspicious financial lobbies. Examples include, the sit-in of Chafik Jarraya outside the headquarters of the Société Tunisienne de Banque (STB) to force the bank to allocate him a loan approved under the regime of Ben Ali, then the bank reversed its decision after the revolution. The sit-in was covered by 7 of the heads of his newspapers including Nedhir Azouz, the head of “Al Massa” newspaper, the heads of “Ourabia”, “Thawra News”, “Akhbar Al Joumhouria”, “Hakaek Online”, etc. On October 23rd, 2016. During the TV program “LimAn yajrou Fakat”, Chafik Jarraya admitted that he had collaborators in media.

All the attempts to assess and evaluate media under the dictatorship, to establish the list of the media collaborators with the regime of Ben Ali or to monitor professional breaches were to no avail. They were met with extensive defamation campaigns. The efforts to reform the media failed despite the fact that the opportunity was ripe for this step between 2011 and 2012 as the documents and the legal texts for conviction were available.

In the same context, TDC was targeted by defamation campaigns from the same “machine”, in particular with the organization of the first public hearing. Indeed, 95 defamation press articles were published in December 2016. The frequency of publication of this kind of articles rose each time TDC (IVD) published new documents and information opposed to the official discourse such as the publication of the documents of the independence and the battle of Agri Mount.

Some people believe that the coverage of the mainstream media of the activities of TDC summarizes the deviations in the media landscape.

During a conference organized in the National Library in July 2018, Mr. Larbi Chouikha, the researcher in media sciences, declared in this context: “Those who are blaming transitional justice are striving to create a public opinion which is hostile to this process”. Usually the minimum professional ethics like verification, editorial independence, professional accuracy, different sources, separation between opinion and news and issues of the professional ethics are transgressed. Media presenters tend to become part of the debate while trying to disproportionately distribute the interventions among the guests and ignoring the principle of confrontation between the participants and directing the debate in order to confuse guests. Usually, the sources who are opposed to the prevailing opinion are ignored and, if any, form a minority facing the interventions of the program host to control, influence and even provoke the guest. Then personal attacks and misinformation continue on social media networks.”

Dominant media also sought to demonize the revolution and its symbols, who were labeled as disordered and conspirators. The repetition of this turns it into facts for public opinion, which does not serve the transition towards democracy and is not in line with the challenges of the stage.

The Independent Authority charged with the regulation and organization of the audio-visual media sector (HAICA), did not succeed in imposing the principle of transparency on the

licensed channels. Indeed, 10 private TV channels and 19 radio stations in Tunisia did not declare their capital and necessary information about them.

Today, it is really hard to verify the list of TV channels and radio stations which have changed the propriety of licenses and shifted from one user to another and those that have changed their character (from social to for profit) and the scope of their activity and the additional waves they have enjoyed since their establishment and the requirements that have prevailed over these changes.

IV. Conclusion

The lack of a clear and well-defined strategy for post-revolution governments in dealing with the media dossier led to the failure of the reform attempts and the building of a balanced landscape based on neutrality, objectivity, impartiality and independence. It was replaced by media phenomena which deviate from its primary and main role, such as: yellow press, fallacious expert, rumor, masked political and commercial propaganda. All these factors affected the media content, the relationship between media and the receiver as well as the lack of political will and the absence of a clear vision of the role of the media in the stage of democratic transition, which enabled the involvement of some television and radio channels in the agendas of the political parties and turned into an extension to them in the political arena.

Chapter Ten

Violation of freedom of Internet

Although Tunisia had been the first Arab and African country to connect to Internet since 1991, it became known as one of the fiercest countries in practicing censorship and confiscation of freedoms.

1. Internet censorship ¹⁷⁹

The regime employed huge resources and used foreign companies, which cost the state treasury huge amounts of money, to tighten its grip on the Internet. Indeed, a special computer system was set up for censorship, monitoring, tracing and enforcing an arsenal of laws to justify the practice of confiscation and censorship. The Internet cell in the Tunisian Agency for External Communication (ATCE) used to prepare daily, morning and evening reports on all electronic links related to what is issued in Tunisia and about Tunisian affairs.

2. Monitoring and censorship techniques

The regime's techniques to confiscate Tunisians' right to freely navigate the Internet were numerous and knew several stages.

Tunisian police used the Chinese or Vietnamese model or benchmark to hide information then destroy its source and hack websites which send the information. Then comes the passage to the so-called deep-pocket inspection or the deep investigation of the electronic information, passing through a special network in electronic mails, then through Facebook correspondences and private messages in Twitter and other social media networks.

At first, locking and censorship were simple by blocking of the domain name through a series of characters or symbols which used to be added to a particular filter and worked to block visitors from entering a specific website and made them stumble on the known page Error 404, which is false because it is technically Error 403.

Then censorship developed with the development of the Internet and the consciousness of the Tunisian regime that censoring the website does not necessarily lead to the censorship of information which can be sent using electronic mail, or via other encoders such as RSS and others. It used keywords technique for any link and any URL containing a certain word such as "Tunisia News" or "Nawaat" or other. These sites cannot be accessed at all from Tunisia.

Content sorting, which is a blocking method, consists of transferring all web page requests to a checkpoint charged with allowing or blocking requests. The regime also relied on the keylogger technology, which stealthily records everything that is clicked on a computer's keyboard, and sends the data to the source.

¹⁷⁹ Public hearing of the Truth and Dignity Commission (IVD) on March 11th, 2017.

The regime has also worked on controlling and blocking mail through the use of viruses and Trojans. Indeed, the Internet police used to hide and obstruct the files linked to it. When the required message is opened, it disappears and is replaced by spam and sexual content. It is a breakthrough and infiltration of the privacy of correspondence in opposition to the international treaties ratified by the state and which are requiring the respect of the secrecy of paper and electronic correspondences.

In the same context, some independent organizations including the Tunisian League for the Defense of Human Rights (LTDH) and the Tunisian Association of Democrat Women (ATFD) raised an outcry in response to this situation in September 2008: “We have been severely disrupted in our work for months. We cannot access our electronic mail anymore. When we succeed in that, our messages disappear or become unreadable and are swollen. This has nothing to do with technical problems or network problems, but clearly, it has to do with the control imposed on independent Tunisian civil society.”

The regime has also repeatedly cut Internet connectivity even though the subscriber pays his subscription on a regular basis. Two organizations were subjected to this. Namely: The Observatory of Freedom of Press, Publication and Creativity and the National Council of Liberties in Tunisia who used to share the same headquarter. Within 9 months in 2008, the two organizations submitted 16 complaints due to connectivity cutting.

In 2008, the Ben Ali regime resorted to hacking Tunisian websites, which is a crime punishable internationally as it is an assault on a technical infrastructure outside Tunisian borders. The regime used to rely in this hacking which was targeting 15 websites and blogs simultaneously with a team of electronic mercenaries including Russian and Turkish hackers living in Tunisia and who were receiving money from the Tunisian Agency for External Communication (ATCE).

Besides censorship and blocking, the regime of Ben Ali tightened its grip on the Internet through control and tracking Internet surfers. During the elections of 2009, it resorted to surrounding the cyberspace through censorship and tracking by concentrating local cells under the supervision of the coordination committees and they took several names including:

Name	Location
Local Committee for Electronic Support and Assistance	La Marsa
Regional Committee in charge of monitoring and tracking the Internet	Sfax/Gafsa
The Cell of the Regional Committee for the electronic and digital vigilance	Beja/ Bizerte
The Regional Cell for Internet and Computing	Kairouan
The Regional Committee for the Coordination of the Mobilization on Internet	Kebili
The Regional Committee charged with the following up of Internet	Gafsa
The Digital Unit in the Coordination Committee	Nabeul

3. The digital struggle

Despite the crackdown on freedoms, activists defending human rights worked on exploiting the cyberspace to break the censorship imposed on the public space, through the launching of several websites aimed at breaking the wall of silence imposed on abuses and violations practiced by the “machine” of despotism and tyranny. This system was based on the trilogy of political awareness, ethical awareness and technical awareness.

In August 1999, the National Council of Liberties in Tunisia launched its website and forum which had become rapidly a largely popular space for discussion and debate, before being censored in a very short period after its launch.

We can also mention the website “*Takriz*” which started to be active in 1998 to become in 2000, a large forum for young Tunisians.

In 2000, a web magazine, “*Kalima*”, was born despite the refusal of giving it license, but it had been censored few weeks after its launching too.

The number of exiled dissidents also increased in this period.

Such initiatives multiplied thanks to websites of news aggregation which made their appearance such as “Tunisia News” in 2000 and “TN Blogs” in 2005.

Websites represented free spaces available at the time. Internet became a space which influences reality. This period witnessed the kickoff of activism using nicknames hiding the real identities of their owners to avoid the persecution from the regime. It was a catalyst for youth activism through blogs later.

The website “*Tunizine*” distinguished itself for being audacious by the publication of critical statements and satirical texts about the practices of the regime. It was one of the first websites which had been active in a clear defiance to the authority of the despotic state. Zouhair Yhayaoui¹⁸⁰ was the one who launched the website in 2001 until he was arrested in June 2002 in the cybercafé where he was working. He was sentenced to two years in prison for “spreading false news”. He was released only in November 2003 and later died in March 2005 from the aftereffects of the torture he had been exposed to.

After this experience, the website “*Nawaat*”, which was launched in 2004, picked up the burden. It was managed by Sami Ben Gharbia¹⁸¹ who presented a testimony in the public hearing on March 11th, 2017.

Later on, the battles and struggles of the youth continued through blogs to express their free opinions despite the regime control and censorship.

Control intensified starting from 2005, the date of the organization of the World Summit of Information Society in Tunisia. The General, Habib Ammar, headed “the Permanent Committee charged with the organizational and logistical preparation”, thus the grip had been tightened on the cyberspace. Blogs had been censored and their owners had been prosecuted and arrested.

180 <https://www.youtube.com/watch?v=0UsqKPj7Bb8>

181 <https://www.youtube.com/watch?v=ZOC3Rp9Zvks>

The turning point happened when cyber activists took to the streets. Indeed, Tunisian bloggers used different tools and means to express their refusal of the censorship policy and prosecution of bloggers through the publication of caricatures and satirical texts... To express their protest, they called for the organization of a campaign known as the “white blog post” which consisted in stopping blogging for one day on December 25th, 2007 and they raised slogans against censorship and control. On June 8th, 2008 they have also organized another online campaign entitled “Red blog post” to protest the repression targeting people in the mining basin in Gafsa.

After that, online campaigns intensified such as: “No to Censorship”, especially after blocking Facebook in 2008, as well as Yezzi Fokk and Sayeb Salah / Nhar Ala Ammar campaigns. The latter was organized on May 22nd, 2010. Indeed, the two bloggers Slim Amamou and Yassine Ayari presented a notification to the Ministry of Interior to organize a demonstration. But the police services then confronted bloggers and surrounded them and arrested some of them.

The bloggers had also launched the campaign “letter to a deputy” to request the discussion of the issue of censorship in the parliament...

In the summer of 2010, they organized a flash mob in Sidi Bou Said to denounce the policy of censorship. Both Civilian security officers and security officers in uniforms chased the bloggers away and banned their flash mob and arrested some of them.

Prior to the Revolution of Freedom and Dignity, Tunileaks published documents relating to the US Embassy in Tunis on November 28th, 2010, which included criticism of the Ben Ali regime. This affected the authoritarian system and created confusion within the ruling regime.

4. The Internet and the revolution of freedom and dignity

The cyberspace played a crucial role in the revolution of December 17th, 2010-January 14th, 2011. Indeed, young people exploited it to share the development of the rhythm of demonstrations and protests. Video sequences of the repression of the protesters by security forces were published on the Internet. The hashtag, Sidi Bouzid, invaded Twitter throughout the days of revolutionary protest.

Social media helped in spreading the events of the revolution to the world despite the arrests and torture in the Ministry of Interior in parallel with the official media blackout.

The regime was not able to face this electronic battle, perhaps this is why the last card played by the ousted president on January 13th, 2011, was the announcement of the lift of censorship on the Internet. But the Tunisian people had the last word on January 14th, 2011. The information on the Internet was liberated face to the regime’s inability to stop its propagation whether it was a word, a picture or a voice. It contributed in the fall of the mask of the regime and lifted the fear barrier on Tunisians.

TDC received several complaints asking the Tunisian Internet Agency (ATI) to reveal the dossier of censorship and those responsible for the destruction of the national collective memory for 10 years as well as the confiscation of freedom of expression and opinion.

Despite the liberation of information and cyberactivity in Tunisia after the revolution, some sophisticated attempts and developed censorship attempts or what is so called thronging by making the access to the website impossible have been recorded such as the ones which targeted Nawaat each time the website published leaks.

Furthermore, Internet censorship is considered as one of the most important dangers and threats targeting individual freedoms and protection of personal data of Tunisian citizens under the pretexts of fighting terrorism and national security.

Chapter Eleven

Confiscating Freedom of Association

Among the 32 violations of transitional justice specific to political and civil rights, the Commission (IVD) identified one violation related to the right to constituting associations and legal activity.

TDC received 74 files on the violation of the right to legal activity of associations and freedom to constitute associations. These violations consisted of:

1. **Restriction of the activity despite legal recognition, attempts to domesticate, and prosecution.**
2. **Exploitation of influence to make pressure, interference in the management of associations, dictation of the orientations and decisions, imposition of intruders in leadership or sensitive positions, and planning of coups.**
3. **Arbitrary and unjustified refusal of the constitution requests from the ministry of interior.**
4. **Deliberately invalidating the constitution procedures and not delivering the deposit receipt.**
5. **Fabricating a loyal formal civil society and constitution of parallel associations.**
6. **Security harassment targeting the members active in these associations : control, surveillance, arrest and prison as well as arbitrary transfer, security sorting in employment, and different forms of deprivation of earning a living.**

I. Files received by TDC (IVD)

These files encompass several organizations, trade-unions, and political parties. These include professional unions such as the Tunisian General Labor Union (UGTT), Tunisian Order of Lawyers, Association of Tunisian Magistrates, Tunisian Union for Agriculture and Fishing (UTAP), Tunisian Union for Agricultural Engineers (ATIA), and the Tunisian Journalist Union (SNJT).

TDC has also received files from human rights associations and organizations like the Tunisian League for the Defense of Human Rights (LTDH), National Council for Liberties in Tunisia (CNLT), International Association for the Support of Political Prisoners (AISPP), Tunisian Association of Democratic Women (ATFD), Association of Tunisian Women for Research and Development (AFTURD), Organization of Freedom and Equity (LE), Tunisian Organization Against Torture (OCTT), and the League of Free Tunisian Writers (LEL).

Furthermore, TDC received the files of youth associations including: The General Union of Tunisian Students (UGET), The General Tunisian Union of Students (UGTE), Tunisian Association of Young Magistrates (ATJM), Tunisian Association of Young Lawyers (ATJA), and the Union of Unemployed Graduates (UDC).

II. Using laws to confiscate freedom of association

TDC concluded from the investigation in these files that the successive despotic regimes worked on the desertification of public space and the ban of an independent associative fabric. The goal of the authority was to avoid the emergence of a civil society and an independent elite expressing views and opinions which are different to the official policy and competing with loyal elites on whom the regime relied.

But under national and international pressure, the regime accepted to relatively liberate public space and gave a margin of independence to some of the organizations of the civil society as was the case in the late 1970s. Nevertheless, the goal was to surround and besiege the out-of-control organizations. It is worth noticing here that the existence of such associations doesn't mean that public freedoms flourished.

Both the regimes of Bourguiba and Ben Ali exploited laws to restrict public freedoms and confiscate the freedom of formation of associations and free activity within it. They issued an arsenal of punitive laws, once transcended, you go to jail.¹⁸²

Even if the 1959 Constitution text grants the right of association in its article 8 and refers to laws to determine the framework of its practice: **“Citizens exercise all their rights in the forms and according to the terms provided for by law.”**, the article 7 allows the introduction of restrictions on them. **“The exercise of these rights can be limited only by laws enacted to protect the rights of others, the respect of public order, national defense, the development of the economy and social progress.”**

If, **“Freedom of opinion, expression, the press, publication, assembly and association are guaranteed”**, they are, according to the expressions of the Constitution, **“exercised according to the terms defined by the law.” (Article 8 of the Tunisian Constitution of 1959).**

In line with unilateralism of political thought, the laws governing freedoms of all kinds are laws that have emptied this freedom of its substance. Indeed, when you go back to the law on associations (The law of November 7th, 1959), it becomes clear that their formation is subject to **a concealed system of prior authorization/permit and gives the Minister of Interior the discretion to challenge their legal existence.** It also obliges it to join one of the eight categories brought about by the April 2nd, 1992 amendment, which was put in place to domesticate the Tunisian League for the Defense of Human Rights (LTDH). Violations of its provisions are severely punishable. Indeed, it includes administrative and penal sanctions of up to five years imprisonment.

This is what turned the procedure of receipt delivery from a mere administrative procedure, which the administration must hand over in exchange for filing the file, to a disguised license reality.

The pretexts of refusal, if any, are limited to hollow formulas “noncompliance of the association with the requirements of the law”.

If we add to these provisions law No. 04 of 1969 of January 24th, 1969 on public meetings, processions, parades, demonstrations and gatherings, these legislations and practices are

¹⁸² See the part on the violations of human rights (second part).

considered means to combat a fundamental right and to prevent the effective exercise of citizenship.

III. Attempts of Taming and activity *restriction* despite legal recognition¹⁸³

Tunisia witnessed a paradigm shift following the 1960s, which had been characterized by the one-party-system adopted by the “Fate Congress” of the Socialist Destourian (Constitutional) Party (PSD) in 1964. The congress was held after the freezing of the activities of the Tunisian Communist Party in January 1963. This period witnessed the adoption of a number of laws and procedures aimed at extending the influence of the ruling party on the joints and articulations of the state and subjugating all the social, cultural, sporting and professional structures. Indeed, the latest became administrative entities lacking minimal autonomy and representativeness.

Nevertheless, this situation led to the eruption of a crisis with the end of the 1960s and the emergence of the aspirations of liberation and emancipation as well as initiatives conflicting with the ruling party over the dominance on old popular organizations like the General Union of Tunisian Students (UGET). Indeed, the regime resorted to a coup in 1971 at the Korba Congress. For its part, the UGTT witnessed accumulated conflicts within its structures that led to the decision of the National Council to secede from the ruling party at the end of 1977. As a result, the ruling party launched successive attacks on its premises and structures, the most severe of which was the crackdown on hundreds of trades unionists on the occasion of the general strike on January 26th, 1978.¹⁸⁴

1. The Tunisian League for the Defense of Human Rights as an example

In the late 1970s, Tunisia witnessed a period of relative emancipation of the public space after the violent clash with the Tunisian General Labor Union in 1978, and which affected the whole society. In this context, the first independent and recognized human rights organization in Tunisia, the Tunisian League for the Defense of Human Rights (LTDH, 1977), emerged.

The league received its legal permit following a compromise between Tahar Belkhodja, Minister of Interior, Hassib Ben Ammar and Beji Caid Essebsi, one of the leaders of the liberal wing stemming from the ruling party, which had been dismissed after demanding pluralism within the Socialist Destourian Party (PSD) and change of the ruling system in a more liberal direction. This group had been dismissed following its victory in the Monastir Congress in 1971. Before that, Bourguiba cancelled its results and appointed a loyal leadership from the supporters of toughness. These developments led to the establishment of the Socialist Democrats Movement.

On the other hand, the President of the United States, Jimmy Carter, who employed the philosophy of human rights as a title for his foreign policy following America’s defeat in Vietnam War, played an important role in persuading Bourguiba to recognize it.

¹⁸³ See the part on the Party of the state.

¹⁸⁴ See the part on the Events of the Black Thursday.

The group of the Socialist Democrats (15 members) presented a license request in 1976 to constitute a human rights association but they faced refusal of the authority. So, they issued “Appeal for the respect of public freedoms in Tunisia” on April 12th, 1977. It was signed by more than 500 Tunisian intellectuals to condemn the continuous violations of freedoms. Hassib Ben Ammar, Abdelahy Chouikha, and Mustapha Ben Jaafar toured abroad (France, UK, USA,) to invite the personalities and organizations of the defense of human rights to attend a conference on liberties in Tunisia. Ramsey Clark, U.S Minister of Justice, came to attend it, but the conference was banned. These moves affected the regime policy. Indeed, the latter had to concede. Following negotiations, the founding group accepted the integration of 7 members belonging to the Free Destourian Party, who had applied for the establishment of a parallel human rights association at the behest of the Minister of Interior.

This was the requirement of the integration of the two associations, which Taher BelKhoudja set up for the granting of the visa and which was accepted by the Hassib Ben Ammar’s group. The Tunisian League was founded in May 1977.

In the absence of the legal framework for the activity of the opposition parties, the league (LTDH) played the role of the space of expression and activity for dissidents, who found in it a space of coexistence for all political families: Baathists, radical left, Communist Party, Islamic Trend Movement, Islamic Left, independents, beside the presence of the Destourian family especially in the second congress in 1985.

In the beginning, the Social Democrats Movement used to exercise a kind of guardianship which gradually diminished. This allowed increasing numbers of members to join the league with continuous attempts of taming from the ruling party despite the dominance of the Social Democrats by virtue of their control of memberships.

Later on, the league consolidated its presence in different regions of the country and established sections in the most important governorates. Indeed, in the late 1980s its members reached 4000 persons distributed on 40 sections.

The League (LTDH) played a crucial role in the documentation of human rights violations, in particular during the events of January 1978.

The League (LTDH) had had a vacillating position during an armed group attack on the city of Gafsa in 1980. Indeed, its refusal to resort to political violence led it to issuing a statement of support for the execution of 13 defendants without the minimum standards of fair justice and minimum guarantees for the accused. It is worth mentioning that the league (LTDH) spaces witnessed, on this occasion, deep and rich debates and discussions about the death penalty, which helped in anchoring the universal human rights reference. Then, the debates, which resulted in issuing the League’s charter, came as a turn which helped in consolidating the independence of the organization and the credibility of its decisions.

On the other hand, the League (LTDH) played an important role during the “Bread events” in 1984. Kahdija Cherif, a member in the executive board, declared during a hearing in TDC (IVD) that “The League (LTDH) played a big role during the “Bread events”, especially that some of its members were linked by friendship to some physicians, which had facilitated to them the investigation missions on the different events and the delimitation of the number of casualties, then drafting reports.” She added, “Committees for the defense of those arrested in

the events as well as other committees to counter death sentences targeting some of the detainees had been formed. The “Women“ committee was one of them and it played an important role in making pressure on the president to release detainees or to commute death sentences into other forms of punishment.

The presence of the League (LTDH) in different political stages and its leading role in revealing violations committed by the regime against citizens made it the focus of attention of the ruling regime, which started to seriously considering the way to tame it.

In this framework, Mr. Taher Chagrouch, member of the executive board of the League (LTDH), mentioned during a hearing in TDC) that: “Habib Bourguiba tasked the Minister of Interior, Zine Al Abidine Ben Ali with the mission of the dissolution of the organization in 1986”. As it was difficult to do that, especially that the League (LTDH) started to be renowned on an international level, he resorted to the constitution of a parallel league, bearing the same name, in order to weaken and belittle the role of the original organization. He named Dhaoui Hanablia, who used to be minister of interior during the January 1978 events, as its head.

Following his seizure of power in November 1987, Ben Ali responded to a number of reforms risen by the League (LTDH) including: setting the time limits for pre-trial detention, abolishing the State Security Court and ratifying the International Convention against Torture.

After that, Ben Ali attracted some of the leaders of the League (LTDH) and appointed them in the government such as: Saad Eddine Zmerli, President of the League, who was appointed minister of health; Dali Djezi, Secretary General of the League (LTDH), who became minister of health then minister of higher education, after that, minister of Defense; and then the following president of the League (LTDH), Mohamed Charfi, who was nominated as minister of national education in 1989.

After the general elections of 1989, the regime of Ben Ali started a ferocious and widespread crackdown on the Islamic movement in mid-1991. This campaign marked a turning point in the history of the League (LTDH). Indeed, Ben Ali’s regime considered the league’s statements, especially those which examined and denounced dozens of deaths under torture in custody (from June 1991 to December 91), as a declaration of war on the regime.

To silence the League (LTDH), the authority tried to encompass it under the cover of the law. Indeed, it started to revise the law on associations (the revision of April 2nd, 1992). The goal was to subject the League (LTDH) to a set of coercions against the independence of its decisions. These revisions included: firstly, accepting the membership of every person applying for membership¹⁸⁵ by subjecting them to a system specific to the associations of “public character”. Secondly, by banning the possibility of belonging both to the leadership of the League and the leadership of political party in order to remove two members of the executive board who were categorized as radicals in their defense of human rights. These members were: Mustapha Ben Jaafar and Sihem Bensedrine. Indeed, the Minister of Interior claimed their resignation from the executive board as a compromise because of their role in documenting

¹⁸⁵ Hundreds of collective demands of membership from the cells of the ruling party reached the League through a bailiff.

violations. This issue created a division within the executive board of the League (LTDH) between those who are biased¹⁸⁶ to the regime solution and those who are against it.¹⁸⁷

To resolve the position of the League (LTDH) as to the agreement of this sword of Damocles hanging over its independence or not, its national council met on June 13th, 1991 and resulted in a majority which refused the subjugation to the dictations of the authority, even under the cover of law, which were considered as unfair and unconstitutional.¹⁸⁸

Immediately after the vote and while the council was still in meeting, the Minister of Interior contacted the League leadership saying: “the League is now dissolved”. Abdallah Kallel granted the executive board two hours before sealing their headquarters. Things went like that. The executive board decided to secure its archives in the Arab Institute of Human Rights (IADH), but it has not yet retrieved it.

In 1991, Ben Ali established the High Committee for Human Rights and Fundamental Freedoms (CSDHLF) and appointed Mr. Rachid Idriss as its new president. He remained in this position until 2000. He sought to make this committee a substitute for the League (LTDH) when the grip was tightened on it and it was dissolved. The reports of the committee used to be submitted to the president of the republic and they had not been published to the public.

The League (LTDH) had been dissolved for a year before the date of the United Nations Human Rights Summit, which took place in Vienna on June 14th, 1993.

The cost of the dissolution of the League (LTDH) was high for the regime. Indeed, the discourse of human rights was at the heart of the political legitimacy of the regime of Ben Ali on an international level. Thus, the Tunisian participation in the United Nations summit while the League (LTDH) was dissolved was a really hard equation. This is why the regime started negotiations with the executive board to reach a compromise consisting in suspending the categorization of the League (LTDH) within the associations submitted to the law article on “general category” associations and later on issuing a fair verdict for the League (LTDH) from the administrative court as to the automatic membership. As a counterpart, the League (LTDH) committed to organize an extraordinary assembly in February 1994. The League (LTDH) accepted this solution and legally took part in the Human Rights Summit. During the preparation of the assembly, the regime resorted to “moderate” members from within the executive board to change its leadership. They succeeded in facilitating the membership of members who were loyal to the regime (1300 new members). This guaranteed the victory of a loyal team headed by Taoufik Bouderbala who accepted the congratulations of Zine Al Abidine Ben Ali. Thus, the regime succeeded in taming the League (LTDH). The salient characteristic of the new leadership had been the decline of activities and presence amidst the increasing repression and the crashing down of a leaden shroud on public space.

186 With the leadership of Khmaies Chamari, Hichem Gribaa, Taoufik Bouderbala, Frej Fenniche, Slaheddine Jourchi and Khmaies Ksila.

187 With the leadership of Moncef Marzouki, Sihem Bensedrine, Mustpha Ben Jaafer, Khediya Cherif and Taher Chagrouch.

188 The National Council refused to sell membership cards to people loyal to the regime who were trying to form a majority in the League in order to change its constitution and have monopoly on it.

Since then, the critical capacity of the League (LTDH) as a watchdog on human rights violations had been silenced. Following that, the majority of those who served Ben Ali's regime during this crisis had been self-critical or joined the ranks of human rights opposition.¹⁸⁹

The weakness of the presence of the League (LTDH) in human rights issues led to the emergence of new independent human rights organizations on the initiative of the human rights defenders who had been dismissed during the "Taming assembly", like the National Council for Liberties in Tunisia (CNLT) in 1998.

Things went like this until October 2000 when the League held its fifth assembly, which was a reaction of its members to its taming. The assembly witnessed the victory of the independent current and the radical left with the election of the lawyer Mokhtar Trifi, as the head of the League, as well as the election of 4 members¹⁹⁰ from the National Council for Liberties in Tunisia (CNLT). It had also witnessed the dismissal of all the members belonging to the ruling party.

This led the regime to take a series of repressive measures to neutralize the League (LTDH) following its failure in controlling it such as: permanent security surveillance targeting its headquarters, prevention of the victims and plaintiffs from reaching it, pursuing a policy of financial strangulation and banning it from receiving funds, in particular those allocated by the European Union after the state's approval.

The regime resorted to a policy of judicial harassment too. To achieve this, it relied on people belonging to the Democratic Constitutional Rally (RCD) and their supporters within the League (LTDH)¹⁹¹; Thus, more than 34 judgements were issued against the League in 5 years and it was prevented from operating inside its premises.

To find a compromise, the League tried to hold its sixth assembly, but it was confronted with a security ban until February 2007. Indeed, the regime "obtained" a cancellation ruling from the Tunis Court of First Instance.

The League (LTDH) succeed in holding its Sixth assembly only after the revolution and after 11 years of resistance for its independence.

IV. Trimming coups and harassing active members:

I. The Association of Tunisian Magistrates as an example

The coup trimmed by the regime against the Tunisian Association of Magistrates is considered as an example of the regime's practices to subjugate associations to its political agenda.

▪ Facts

The Association of Tunisian Magistrates presented a complaint to TDC in which it exposed the main stages of the regime of Ben Ali to steal it. TDC organized a confidential hearing for

¹⁸⁹ Like Khmaies Chamari and Frej Fenniche

¹⁹⁰ Adel Arfaoui, Khalil Zaouia, Ahmed Kalai, and Ali zedini were all former members of the League.

¹⁹¹ Kamel Ben Younes, Arbia Ben Ammar, Abderraouf Jmal, and Shoui in a first case, followed by a series of cases initiated by Ridha Mallouli, Sofiane Ben Hmida, and Chedli Ben Younes and others from those loyal to the regime.

the members of the associations who gave their testimonies about these events. The facts can be summarized as follows:

- Following violence incidents committed by the political police inside the Justice Palace in Tunis on March 2nd, 2005, during the appearance of lawyer Mohamed Abbou before the investigation, the Association issued a statement condemning the attack on the inviolability of the court and the violation of the judicial authority.
- The official reaction came in the form of the drafting of a text outside the general assembly to which had called the executive bureau and which was held on July 3rd, 2005 in the Club of Magistrates in La Soukra. The text announced the impeachment of the executive bureau members and the appointment of an interim committee, headed by Mr Khaled Abbes and including the memberships of: Chedli Boukhris, Mohamed Boulila and a call for an extraordinary assembly on December 14th, 2005.
- Whereas, that text was a support to the Minister of Justice, Bechir Tekari, to authorize Khaled Abbas to seize the headquarters of the Association at the Palace of Justice and his entry by force by dislocation and to replace its locks on August 31st, 2005, according to the inspection conducted by the legitimate bureau.
- The seizure of the headquarters of the Association lasted from August 31st, 2005 to the date of its reacquirement after the revolution on January 18th, 2011.
- Moreover, a document signed by 183 judges and which included their request for holding an extraordinary assembly in December 2005 was presented. This happened in a manner that constitutes a flagrant violation of the provisions of article 26 of the statutes of the association which requires that the request should issue by two thirds of the judges. It is worth noting, that this bylaw was generalized on all courts on July 4th, 2005 by a fax from the Ministry of Justice.
- Indeed, some judges, whose names had been mentioned on what is known as the petition of impeachment, declared that they had signed on a presence document and not on an impeachment document and that this document was exploited for a purpose other than intended, which makes it false and fraudulent.
- Since July 2005 and on the occasion of the extraordinary plenary session called to by the elected executive bureau, the execution of the plan for the coup started including the invitation of the judges outside the framework of the plenary session and even before the completion of its work, to sign on white papers entitled registration of attendance. The total of signatures collected in a fraudulent way (as the judges believed that they were signing their presence) were attached to a text which was drafted in the name of Tunisian judges. The text included an attack on its legitimate structures and the impeachment of its executive bureau and the designation of an extraordinary assembly on February 4th, 2005. It was the same text that was exploited to form a committee named temporary, headed by the former head of the Association, Khaled Abbas. To allow the latter to occupy

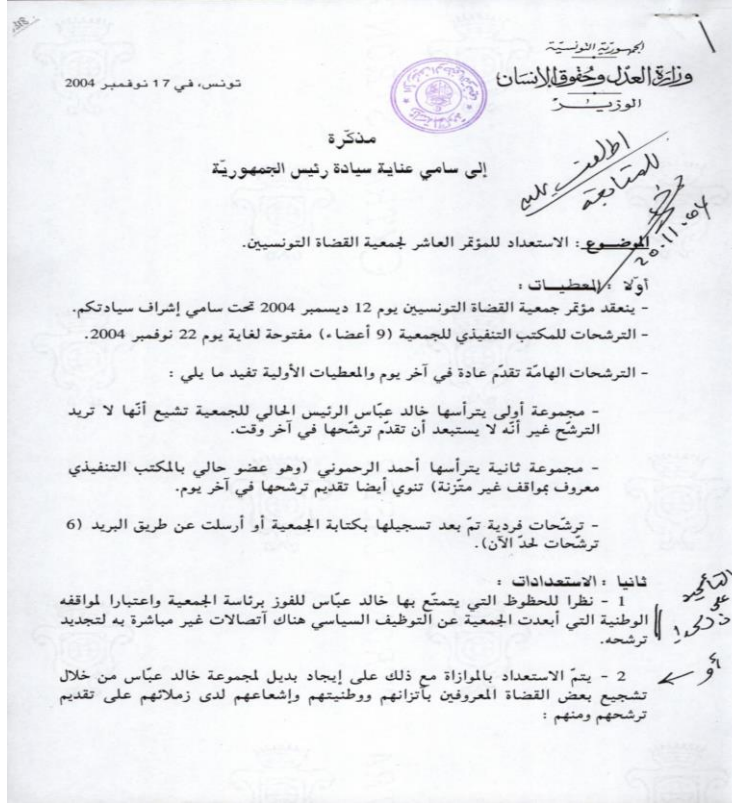
the position of the elected judges, the headquarters of the Association were stolen by forcing doors and replacing locks. Later on, the headquarters were opened to the committee constituted by the regime and an extraordinary assembly was announced on February 2nd, 2005.

- The legitimate board filed a complaint to the judiciary in which it raised legal breaches that affected the work of the Interim Committee. The judiciary did not do justice to the Association until after the revolution.
- Simultaneously with the preparation of the coup, the High Council of Justice presided by Ben Ali decided the transfer of members belonging to the executive bureau of the association from the capital to remote areas (including: Ahmed Rahmouni, Kalthoum Kennou, Leila Bahria, Raoudha Karafi, Wassila Kaabi, Hamadi Rahmani, Noura Hamdi etc....) to scatter its members. Moreover 15 members from the administrative body, which is the middle structure that includes the representatives of the courts, were transferred. **This resulted in the loss of the judges concerned for their membership in the executive board of the Association and their status in the assembly.**

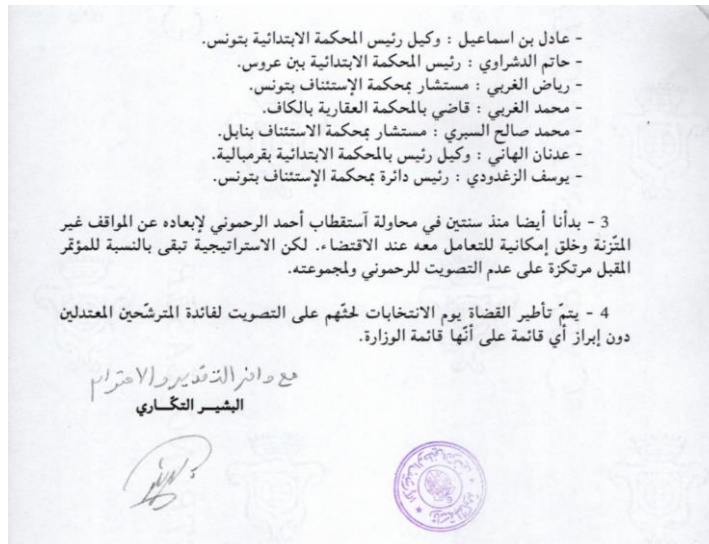
After the exclusion of the independent elements, an extraordinary assembly was held on December 4th, 2005 and produced a loyal leadership headed by Khaled Abbas. The coup did not stop there. The appointed bureau significantly altered the statute of the Association. It was seriously flawed. This modification consisted in reducing the number of members of the executive bureau to seven instead of nine. Then restricting nomination to the Appeals Chambers of Tunisia, Nabeul and Bizerte after all members of the legitimate Bureau were transferred outside these Chambers. It is clear that the modification came at the time to exclude the members of the legitimate bureau and the administrative body and prevent them from running again for membership of the Bureau after all were transferred without exception to the interior areas of Tunisia.

After the investigation, TDC (IVD) discovered in the presidential archive documents confirming the extent of the executive's interference in the management of the coup against the leadership elected at the tenth conference of the Association of magistrates against the background of a bylaw calling for the independence of the judiciary.

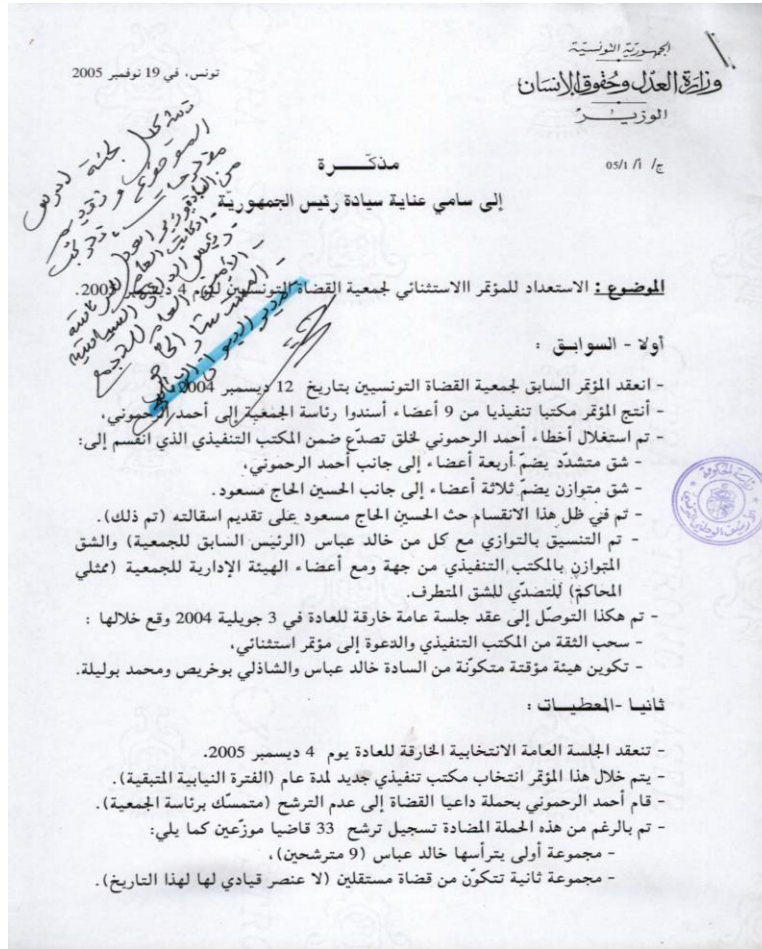
It consists of two memorandums. The first was by Minister of Justice Bachir Tekari on November 17th, 2004, on the "Preparation for the Tenth Congress of the Association of Tunisian Magistrates" and which evokes the efforts to "attract and polarize judges" without highlighting any list as the list of the ministry".



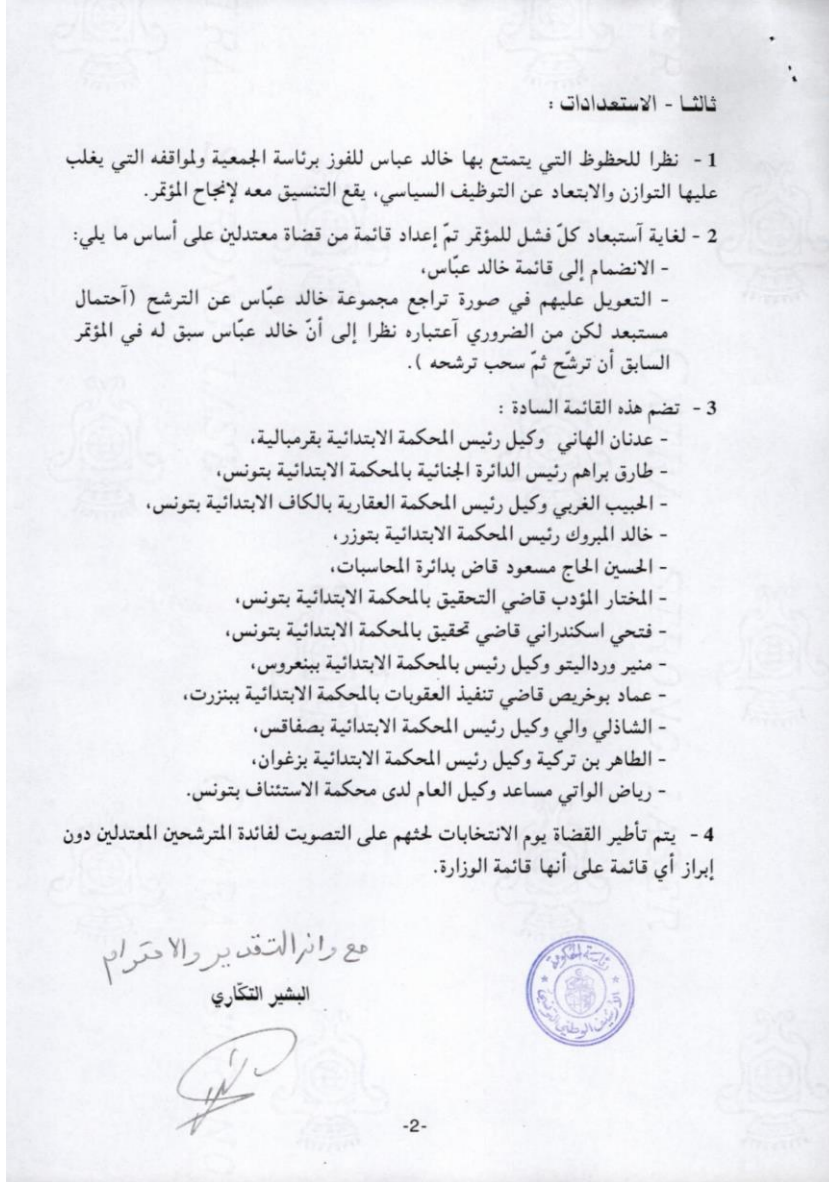
Memorandum 1:



The second memorandum by the Minister of Justice, Bechir Tekari, on November 25th, 2005, about the preparations for the extraordinary congress of the Tunisian Magistrates (AMT) on December 4th, 2005. The magistrates were divided between an extremist wing and a moderate one. The Memorandum included Ben Ali's recommendations to form a follow-up committee.



Memorandum 2:



The crisis experienced by the Association of Tunisian Magistrates (AMT) along six years (from 2005 to 2011) represents one of the most dangerous coups witnessed by an independent association in Tunisia.

2. The National Union of Tunisian Journalists (SNJT) as an example

The National Union of Tunisian Journalists presented a complaint to TDC (IVD) about the taming attempts and the coup. TDC (IVD) organized a public hearing¹⁹², during which some journalists presented their testimonies about the different periods which constituted various violations axes. Facts can be summarized as following:

The National Union of Tunisian Journalists (SNJT) has been constituted as a reaction on the taming of the Association of Tunisian Journalists (AJT), which was founded in 1962. The latter used to be an association which witnessed a prosperous period in the late 1970s and the 1980s in parallel with the emergence of an independent press in Tunisia¹⁹³. Nevertheless, the Association (AJT) experienced taming in 1994 following the withdrawal of membership cards of the independent journalists, the decay of independent press, and allowing the ruling party to dominate and control the association to become, since then, a kind of political cell of the Democratic Constitutional Rally under the supervision of Mohamed Ben Salah.¹⁹⁴

A number of journalists sought to form a union independent from that association which did not respond to the aspirations of journalists anymore whether on the trade union or freedoms matters.

As a result, the union was formed by Lotfi Hajji, Mahmoud Dhaouadi, Mohamed Maali, Salah Attaia, Amel Bjaoui, etc. ...in May 2004;

Lotfi Hajji ¹⁹⁵ says in his testimony for TDC (IVD) “When we wanted to hold the founding congress in 2005, we contacted some hotels and agreed with their owners to hold the conference there and gave them a cash advance. But we were surprised to receive calls from them asking us to take the cash advance back as the hotel room had been destroyed. I was arrested in the Bouchoucha district. The person who interrogated me, later became the director of the Public Security. They wanted us to admit that the congress was illegal.

Then the Union was founded by the exploitation of a legal loophole. We resorted to the Code of Labor which allows 50 workers from the same sector to found a union. (Article 240 of the Code of Labor). This allowed us to avoid obstacles included in the law of associations.

Nevertheless, the founding was not easy. Indeed, the framework of the procedures stipulated for the formation of a union, it was necessary to hand over the necessary documents to the service of the formation of parties and unions in the governorate. The regime started to mobilize its mechanisms to prevent the founding of the union of journalists. Under pretexts, the founding members could not hand over their documents and receive a receipt. Since then, confrontations with the regime which initially used the soft approach with the founding members started. The regime resorted rapidly to arrests and the use of force on many occasions to prevent the union from holding its meetings. For example, in the context of the celebration of the World Press Freedom Day (May 3rd), the founding members invited several organizations to the headquarters of the Union (SNJT) (The Office of the lawyer Chawki

192 <http://www.ivd.tn/timeline/الخب-عشر-الرابعة-العلنية-الاستماع-جلسة/>

193 See the part on media misinformation.

194 See in the annexes the reports which used to be sent to Ben Ali.

195 https://www.youtube.com/watch?v=VZjoUugY_QA

Tabib) to present a report about press freedom in Tunisia. But the place had been besieged by security forces and nor the meeting could be hold neither the first congress of the Union (SNJT) on September 5th, 2005.”

Hajji adds: “After insisting on the establishment of the union, a new stage of soft repression started until it reached the known repression: Soft repression began with pressures on colleagues through their bosses. Then arrests among the founding body began. The first persons to be summoned were Mahmoud Dhaouadi from the political affairs committees and I. The investigator was an old journalist and the investigation began. We thought that it was a mere warning. Meanwhile we noticed the presence of another person assisting him. He turned out to be a police officer and he was writing reports. They wanted us to sign a declaration that we would not publish any statements or reports in the name of the union. We did not sign it and we issued a statement to denounce this.

Then the regime had the idea to turn the association of journalists into a union to stop us but the magic turned on the magician as we had created a movement for 4 years from 2004 to January 2008, date of the unification congress. Moreover, members of the union were also members of the association and this helped in the election of an independent stream. Indeed, we joined the new union and published the first report on freedoms and this was a reason to prepare a coup against it.”

Mahmoud Dhaouadi adds in his testimony: “When we (young journalists) used to speak during general assemblies, our speeches used to be recorded and sent by our bosses who used to blame and threaten us with the fabrication of security files. In 2008, when we were banned in our congress in the headquarters of the UGTT and a new union, which is the present union, was recognized and it is the present union, we decided to associate with the new union through an agreement signed by the two unions to merge into one union.”

Soukeina Abdessamed¹⁹⁶ says about the coup: “There had been attempts to recruit us. Indeed Rafea Dekhil, minister of communication, summoned us. We discussed several issues and he tried to lure some of us, but he did not succeed in that. We continued our work and activities and when he failed in containing us, the coup against the union was initiated. In the beginning, they tried to collect a number of signatures¹⁹⁷ (about 500) to impeach the executive bureau. But, this attempt did not succeed because some of the signatures were not clear. Moreover, some colleagues had signed under pressure but came to the union premises and signed a support petition for the executive board. The harassment was increasing on the date of the publication of freedoms report and I was carrying the report with me in the car and evaded all the security follow-ups. ”

In October 2008, the members of the large executive board who were close to the regime, tried to impose a bylaw supporting the candidacy of the President Ben Ali to the presidential elections in 2009. But the majority of the members of the executive board refused this and supported a neutral stance as to all candidates.

¹⁹⁶ <https://www.youtube.com/watch?v=eQUZHF3QdnQ>

¹⁹⁷ Including: Kamel Ben Younes, Afifi Frigi, Taoufik Abidi, Sonya Attar, Abdelkarim Jaouadi, Mohamed Hmida, Jamel Eddine Karmaoui, Sarra Hattab, Mohamed ben Salah, Raoudha Rakiw, Rachida Ghribi, Mohamed Sami Kehou, Bachir Tenabri, Najm Eddine Akkari, Adel Sammali, Samira Ghannouchi.

On May 3rd, 2008, the executive bureau decided to hold a conference to present the results of its report on freedoms. The conference had been the starting point for the attempted coup against the union.

The pressure on the members of the executive bureau continued to push them to resignation. These ultimately paid off: 4 out of 9 members of the executive board resigned in May 2009¹⁹⁸. This led to a vacancy in the leadership of the union which required an extraordinary congress and the election of a new office.

On the other hand, the legitimate executive bureau decided to comply with the union's statute and set September 12th, 2009 as the date of the extraordinary congress and filed an urgent judicial appeal to invalidate the date of August 15th. However, the court set the date of the hearing in the case on October 26th, 2009, i.e., after the coup congress.

Despite the numerous documents showing breaches in the procedures raised by about 50 lawyers who formed themselves as a defense committee against the syndicate's legitimate office, the court of first instance in Tunis rejected the request for interim measures and on August 14th, issued a ruling against the legitimate executive bureau, giving the green light to the government to accomplish the coup and regain control on rebelling union.

Soukeina Abdessamed adds: "They turned a conference for the presentation of the freedoms report to a battle during which they were able to attack the President, Neji Bghouri, and the other members.¹⁹⁹ Despite this, we continued our conference and distributed the report. There had been several attempts to stop our activity, the last of which was the organization of an extraordinary coup congress on August 15th, 2009 at the invitation of the members of the Expanded Executive Bureau, which was in violation of all legal procedures, but we remained in the syndicate and completed our activity. The International Confederation of Journalists was supporting us. Then, we were asked to leave our premises on August 28th. On September 8th, political police besieged the headquarters, while the two colleagues Nejiba Hamrouni and Lotfi Hajji were inside. A complaint for corruption was filed against us. We appeared before the economic police and testified. Our hands were clean. We withdrew the small balance that was in the account of the union and deposited it in another account in the name of the union. We kept on corresponding and making our cause international until the revolution, which allowed us to reenter our headquarters. We led the protests from our premises and the bureau completed its mandate in July 2011. It was presided by the late Nejiba Hamrouni. "

3. Unexplained and arbitrary refusal of the requests for the establishment of associations:

The National Council for Liberties in Tunisia (CNLT) as an Example

The Council (CNLT) presented a file to TDC (IVD), who organized a secret hearing to hear the testimonies of the leaders of the association.

¹⁹⁸ Sofiene Rejeb, Samira Ghannouchi, Adel Samaali, Habib Chebi.

¹⁹⁹ Kamel Ben Younes, Jamel Eddine Karmaoui, and Sofiene Ben Hmida.

Following the stalemate that has dominated Tunisian civil society, in particular the Tunisian League for the Defense of Human Rights (LTDH) after the 1994 congress, and in the face of the intensification of the grip of the police on public space, 36 activists in the human rights field announced on December 10th, 1998 the establishment of the National Council for Liberties in Tunisia (CNLT).

Omar Mestiri says in his testimony for TDC (IVD): “The Council (CNLT) fought two battles under the regime of Ben Ali. The first one had to do with the monitoring of human rights violations and denouncing them as well as working on sensitizing public opinion to the importance of establishing a dialogue on the reform of the institutional breaches that have resulted in these violations. It is worth mentioning that the Council (CNLT) had a great impact when it published a list of the members of the security apparatus suspected in torture. The list was published in its report about “the Reality of Prisons”, published on October 20th, 1999. The list was updated in the following reports (The list was officially handed over to the Ministry of Interior in February 2011). The second was the battle to prove its existence after the restriction of its activities by the ruling regime and the attempts to control it. ”

On December 15th, 1998, the founding members of the National Council for Liberties in Tunisia (CNLT) submitted a request to obtain the legal permit and to end all the administrative procedures for that but, they had to wait until February 26th, 1999 to receive the deposit receipt. On March 2nd, they received an unjustified “Refusal” decision of the formation of the association from the Minister of Interior: “Because the association did not meet the legal requirements and violated in its laws the provisions of Law 154 of November 7th, 1959 on associations.”

On April 29th, 1999, the Council (CNLT), represented by his Secretary General, appealed this decision and filed a complaint against the Minister of Interior in the administrative court for: “misuse of power” (article 37 from law n°40 of January 1st, 1972 on the establishment of the administrative court), according to paragraph 2 of the article 5 from the law n°154-59 of November 7th, 1959 on associations.

The lawyers of the Council (CNLT) specifically cited the "absence of justification “ in the decision of the minister of interior, as well as the violation of the freedom to constitute associations guaranteed by article 22 of the International Covenant on Civil and Political Rights, which was ratified by Tunisia on November 29th, 1968, and the article 32 of the Tunisian constitution which stipulates that “Treaties ratified by the President of the Republic and approved by the Chamber of Deputies have a higher authority than that of laws.”

The minister of interior answered to this and justified his refusal as follows:

- The complainant “has no legal existence”, because “he speaks on behalf of a non-existent association”!!!
- The legislative power does not oblige the administration to justify its decision and is not obliged to include all the details that justified the refusal.
- The name “national Council” refers to a monopoly of activity.

The administrative court withheld its verdict from March 1999 until after the revolution; In fact, it pronounced its verdict in February 2011, after about 12 years, accepting the appeal to cancel the decision of the Minister of Interior and the right of the council to legal activity.

It is worth mentioning that laws do not limit the court with a deadline to deal with cases which turned this loophole into a mechanism to freeze appeals against the administration and turning them into immunization for their excesses. Thus, for years lawyers did not succeed in knowing the fate of the case of the National Council for Liberties in Tunisia (CNLT) in the administrative court, were deprived of proving the right of the association and couldn't work on obtaining a decision in its favor. They had proof that the First President of the court used to withdraw some files from their normal course and ensured that they were locked in a special treasury.

On October 21st, 2008, the Council (CNLT) deliberately internationalized the cause by filing a complaint to the African Commission on Human and People's Rights on the deprivation from the right to form associations in Tunisia.

When the members of the Council (CNLT) insisted on "the exercise of their rights", they were subjected to harassment. Indeed, political police tested sophisticated methods of harassment and repression. It worked on the destruction of their professional interests, such as firing its president, Moncef Marzouki, banning him from traveling and the withdrawal of his passport as well as Sadri Khiari who went on a hunger strike to have his passport. Moreover, some of the members had been under house arrest such as Omar Mestiri (for 2 years) whom 3 of his cars were stolen by political police. They were prevented from travelling across the country and prevented from communication by cutting off telephone, Internet and mail, besieging houses and offices and harassing visitors. They had been targeted by different kinds of police abuses and they were subjected to physical violence several times. Furthermore, misinformation laboratories and their media arms mastered dirty and slander defamation campaigns to undermine the reputation and honor of the Council's (CNLT) activists. Some of the prominent activists of the Council (CNLT) had been imprisoned like, Mohamed Nejib Hosni. Moncef Marzouki was tried and sentenced in 2000. Sihem Bensedrine and Mohamed Abbou were imprisoned respectively in 2001 and 2005.

4. Authorities do not allow the association to accomplish the legal constitution of the association and refuse to deliver the submission receipt

To avoid appeals which might be provided by the procedures of the submission of the documents for the formation of associations and especially handing over the submission receipt, as was the case with the National Council for Liberties in Tunisia (CNLT), authorities resorted to preventing by force the founders of the associations from access to the specialized administrative services to carry out the deposit procedures.

This was repeated with several human rights associations which wanted to form independent associations in the same scenario: security forces prevent the members from reaching the governorate headquarters to hand over the documents, by force. When they resorted to the post service to send the file, as a registered correspondence as it is allowed by law, the post services did not deliver the receipt of registered correspondence.

Thus, there is no trace of the documents of an association that had completed the establishment procedures and appeals to the courts cannot be made to be used as arguments against the Ministry of Interior. This happened with the Tunis Center for the Independence of the Judiciary and the Legal Profession (2001), League of Free Tunisian Writers (2001), International Association for the Support of Political Prisoners (2002), The Tunisian Organization Against Torture (2003), Liberty and Equity Organization (2007).

Nevertheless, these organizations continued their activities openly but illegally, which exposed their members and activities to different kinds of repression.

4.1. League of Free Tunisian Writers

Following the domination of writers loyal to the regime on the writers' union and which led them even to make an earnest appeal to Ben Ali to present his candidacy in the presidential elections, a group of independent writers decided to withdraw from the union which became an instrument of propaganda for the regime and decided to form the League of Free Tunisian Writers in October 2001. They submitted a request to deposit documents to legally register the association but, it was rejected by the Ministry of Interior. This did not stop the founders, headed by the writer Jalloul Azzouna, from working. They continued their path in the name of legitimacy in imposing and achieving the goals set by the League, especially the documentation of the violations in the cultural field, namely in books' sector. Indeed, the League published a list of the books seized by the Ministry of Interior.

Political police used to harass them at every meeting. Nevertheless, they succeeded in the organization of several conferences in the name of the League of Free Tunisian Writers, during which they tackled the problems of Tunisian books.

4.2. The International Organization for the Support of Political Prisoners

A founding assembly was held on November 14th, 2002 and the founding members prepared all the documents necessary for the association. Then, Mohamed Nouri, Samir Ben Amor, Saïda Akermi, Noureddine Bhiri and Samir Dilou went to the governorate to deliver them but security forces prevented them from entering the premises.

The International Organization for the Support of Political Prisoners faced several obstacles and its members had been frequently harassed by political police to the point of being kidnapped, and physically abused along with their family members. They also had to face security surveillance, livelihood cutting, and deprivation of passports. Furthermore, Lassad Jaouhari was prevented from his right in obtaining a national identity card.

Despite these restrictions, the association succeeded in documenting human rights abuses and violations and publishing many reports about them. It also produced a documentary entitled "slow death", in which the association documented violations related to administrative surveillance facing the prisoners who have completed their sentences. It also issued a report about solitary confinement.

4.3. Tunisian Organization against Torture

The Tunisian Organization against Torture, which was established on June 26th, 2003 by a group of activists including the lawyer Mondher Cherni and the teacher Ridha Brakati and

which was headed by the lawyer and human rights activist Radhia Nasraoui, the same practices to prevent it from legal activity.

This association produced reports about torture to denounce it as a systematic practice of the regime. The President of the association monitored the majority of trials involving perpetrators who were tortured.

On the other hand, the members of the association faced different kinds of harassment, especially lawyer Radhia Nasraoui. Indeed, political police abused her in her office. They searched it and stole its contents and all the documents that were there including contracts and documents belonging to her clients, and her office was once burned.

The organization obtained the visa in 2011 and its name became the Tunisian Organization against Torture (OTCT).

4.4. Liberty and Equity Organization

The Organization Liberty and Equity tried to deliver a file to obtain the legal visa in October 2007, under the chairmanship of Mr. Mohamed Nouri. The founding members headed to the headquarters of the governorate but security forces closed the roads close to the governorate to prevent any member from entering and presenting the establishment request. The Association implemented its activities without visa. It issued several statements documenting violations of human rights. But it had to face persecution and harassment of its members.

Mohamed Nouri faced an attempt of livelihood cutting: he used to own a project of quail breeding in Soliman. But the governor issued a decision to close it and stop it from work. He lost about 350.000.000 TD besides what he had paid as combing taxes.

Moreover, his son's car had been smashed. Some accusations were fabricated against him and he was sentenced to 4 years in prison. This drove him to forced migration.

5. Security harassment targeting active members

Tunisian Association of Democrat Women as example

The Tunisian Association of Democrat Women (ATFD) presented a file in TDC (IVD), which organized a secret hearing during which members of the association presented their testimonies about the security harassment they had faced.

Despite granting it the visa to be active on August 6th, 1989 the Association (ATFD) faced the abuse of its right in associative activity by restrictions on its meetings, conferences, the printing of its publications as well as its activities.

The Association (ATFD) faced security surveillance and daily harassment from police officers besides defamation of its members by publishing articles, caricatures in newspapers, their psychological harassment and deliberately tapping phone calls. This practice went from 1990 to 2011. Moreover, the Association faced other obstacles like the obstruction of access to the amounts of support allocated by the European Union by freezing them.

In a public hearing on violations against women, Mrs. Ahlem Belhaj²⁰⁰, former president of the Association (ATFD), presented her testimony: “There was not a confrontation about women rights but the independent feminist movement was not accepted at the beginning. Why an independent movement when the government is supporting women’s cause?”

Indeed, the state had been, both under the regimes of Bourguiba and Ben Ali, the speaker on women rights. This is what we call state feminism. Under the regime of Ben Ali, it became a democratic showcase for Tunisia. Whenever he was asked about the country, he mentioned women rights and freedom.

But the independent feminist movement said that there was no real equality neither effective citizenship, this is why it found itself in clash with the regime. When the Association accompanies a violence victim, it found itself in a confrontation with the state apparatuses, which were not democratic and did not respect human rights in general. We organized a campaign against violence targeting women and we printed posters. But the Ministry of Interior seized them because “there was no violence against women in our country”. In the same context, the Association organized in 1993 an international conference on violence against women and we collected the proceedings in a book, which had been seized in the Ministry of Interior for 14 years”.

“Political violence involved all the activities of the Association and the activists of the Association were targeted”, added Ahlem Belhaj. The clashes were expressed in the form of continuous police presence, ban of normal activity, tapping phone calls of activists, cutting Internet, exposing private life ... Our life was not easy, it was a daily harassment at work, in professional hierarchy, in contests, in obtaining a passport. This authority was not ashamed. It did not respect neither death nor illness. It did not respect neither a child, nor the elderly ...they stole from me, they besieged my house, banned me from entry and exit, and harassed my children. My husband was accused in 13 cases and was imprisoned. All the family used to be harassed.”

200 The testimony of Ahlem belhaj . Public hearing on March 10th, 2017.
<https://www.youtube.com/watch?v=xFARFLEERX0>

Chapter Twelve

Election Rigging

Election rigging or electoral fraud is among the violations of human rights treated and examined by TDC (IVD). It is an abuse stated in article 8 from the law on transitional justice. TDC (IVD) received 620 files about the violation of the right to free and fair elections. Indeed, for more than half a century, Tunisian people were denied their sovereignty during the elections which the country had known since 1956. TDC (IVD) devoted a public hearing ²⁰¹ to this subject:

Tunisia has known 36 electoral dates from the independence until the revolution:

- 9 presidential elections.
- 12 legislative elections.
- 13 municipal elections.
- 1 election for a National Constituent Assembly.
- 1 single referendum

I. An electoral system paving the way for despotism

The Cabinet of Ministers of the Government for the negotiation of Internal Independence, headed by Tahar Ben Ammar, approved the electoral system for the selection of the members of the National Constituent Assembly according to a law stamped by Lamine Bey on January 5th, 1956. This came amid widespread violence and involvement of welfare committees (Lijan Al-Riâaya) in assassinations and torture to resolve the political conflict between the wings of the national movement.

The system of majoritarian lists in a single round with no mixing of competing list candidates was used. This choice led to the exclusion of all formations and personalities who were not loyal to the new authority from the composition of the National Constituent Assembly in a break with the pluralistic and diverse path of the national movement.

The lists of the National Front competed with some lists of the Tunisian Communist Party, which stated in one electoral poster: “On March 25th you will elect a National Constituent Assembly for your country, but the electoral law drawn up by the government and the atmosphere in the country do not allow the elections to be held democratically”.

For half a century, this choice of electoral pattern led to representative bodies emptied from the participation of independent or opposition political formations. Thus, the ballot was emptied from any bet despite the changes made to it and this resulted in the deprivation of Tunisian people from their sovereignty. This path led to the codification of the one-party system in 1964, after effective elimination of all the political expressions opposing the regime.

²⁰¹ Documentary about the falsification of the people’s will in the elections. Public Hearing on July 21st, 2017 <https://www.youtube.com/watch?v=90h5wUyQUd4>

During all the presidential elections: 1959, 1964, 1969, and 1974, Bourguiba did not face any rival and his performance was not evaluated even when he admitted serious mistakes in the conduct of the country in the 1970s, with the experience of cooperatives. This conduct led to the amendment of the Constitution in 1975 and Bourguiba was granted presidency for life.

II. Electoral events from the independence till 2009

1956

Tunisia witnessed its first elections a few days after the independence. These were the elections of a National Constituent Assembly. It was held on the basis of the ballot on closed lists that win the relative majority in one round. The statute of voters was only granted to men. Going back to the demographic statistics of 56, we can notice that the male voters represented only 20% of the population. Female militants considered this exclusion a denial of the struggles of Tunisian women during French colonialism. Women had to wait until 1957 to acquire their right to vote.

Starting from 1956, some newspapers were banned such as: “Sada Ez zitouna”, “Al Ousbou” and “AlYakadha” ...

Some regions of Tunisia, especially in the South, were witnessing fierce battles. The National Front finally won all 108 seats of the Constituent Assembly.

1957

When it comes to municipal elections in 1957, independent lists were allowed to take part in it in addition to the candidacy of the lists of the Free Destourian Party. For example, in Nabeul, the red card represented the Free Destourian Party; whereas the green card represented an independent list headed by Mohamed Saad, the yellow card in the city of Dar Chaabane Fehri represented an independent list headed by Mohamed Salah Ghodhbane.

The results of the elections led to the victory of these two independent lists and the Cap-bon became a capital hostile to Bourguiba. Habib Bourguiba punished Maamouri, who used to be the secretary general of the Destourian federation in the governorate, “For the Destourian list you chose people coming from other areas and who don’t have neither credibility nor popularity”, he said, by dismissing and transferring him as well as by moving the capital of the governorate to Grombalia (from 1957 to 1966), to punish the inhabitants of Nabeul after he dissolved the elected municipal council.

In the 1960 elections, there was no longer room for the candidacy of lists and the slogan was: “vote for the red card no abstention no crossing”. This practice came within the framework of training citizens on how to vote beside to fraud at the level of voting offices, lack of impartiality of its members, and their involvement with the ruling party as well as the absence of observers. Moreover, heads of voting offices used to sign as citizens as a sign of diligence for the success of the office. The results were announced in the second half of the day even before the closing of voting offices.

1964

In January 1963, the regime banned the Tunisian Communist Party, which used to be the unique legitimate party. The one-party system was established for the benefit of the

Destourian party who took a new name one year after to become the Socialist Destourian Party. The party participated alone in the legislative elections in 1964 to win all the seats in the Nation's Assembly. Furthermore, the same year, the Leader Bourguiba was the unique candidate for the presidential elections to win by 96.6%, which was repeated successively in the presidential and legislative elections in the years 1969 and 1974. In September 1974, the 9th congress of the Destourian party elected Bourguiba president for life. In November of the same year, Bourguiba was again elected president for life. The businessman Chedli Zouiten dared to run against Bourguiba and was subjected to a defamation press campaign "craziness hits businessmen". He was also distorted in the scope of his activity as a businessman. He was accused of meeting Zionist businessmen in international meetings.

1981

The events of January 1978 led to a rupture between the ruling party and the Tunisian General Labor Union (UGTT). Moreover, the events of Gafsa in 1980 contributed in establishing a new context that forced the regime to liberate the political scene, albeit slightly. The ban targeting the Tunisian Communist Party had been lifted and the parties dissociated from the Socialist Destourian Party like the Socialist Democrats Movement and the Popular Union Party have received tacit acceptance of their activities.

In this framework, a decision of the organization of premature elections in 1981 was announced after the dissolution of the Parliament and giving rival lists of the Destourian party the opportunity to run for the elections. This decision raised hope in the hearts of Tunisians before they felt disappointed following elections rigging. The ruling party made Tunisians lose a big opportunity to establish a pluralistic parliament.

The electoral campaign took place in an improper and unhealthy atmosphere. Indeed, the ruling party's militia used violence to prevent meetings of the opposition parties. Moreover, the regime refused to register lists of observers which forced the Socialist Democrats Movement²⁰² to announce the withdrawal of its observers from voting offices.

Ultimately, the regime announced the victory of the National Front constituted of the Socialist Destourian Party and the Tunisian General Labor Union (UGTT) by 94.2% to win all seats in the Parliament.

The testimony of a former first delegate, Salem Maghroum,²⁰³ at the time of the organization of these elections, received by TDC (IVD) reveals that before finishing the process of votes counting in the governorate of Jendouba, instructions came that the number of votes granted to the list of Socialist Democrats be below 15% and then below 3% with the increase of the participation rate. The National Front was officially declared winner by 95.53% with the Socialist Democrats Movement gaining 1.91% . But, by collecting all the polling station minutes, regardless of their conformity with the truth of the votes declared in the various offices, the result gives 52.5 % of the votes to the National Front versus 46.3% for the Socialist Democrats.

202 The testimony of Abderrahmen Ladgham - Public hearing July 11_21,2017.
https://www.youtube.com/watch?v=e_mgaXiatDw

203 The testimony of Salem Maghroum. Public hearing July 11_21,2017.
<https://www.youtube.com/watch?v=cnofSgzqj5c>

1988

In 1988, partial legislative elections were organized in the first test for the new president after the coup of November 7th. These elections revealed the first indices of the ruling party to falsify the popular will again and monopolize power. At the beginning, the healthy atmosphere to organize fair elections was absent. This was conveyed by an overlap between the ruling party and the state, and the control of media. The 1988 elections were in fact a prelude to the regime to rig the 1989 elections.

When he was invited to Tunisia in 1989, Rémy Leveau, the Professor of political sciences wrote: "Ben Ali is back to the hard line. He is directly supported by the security apparatus and the young officials of the Democratic Constitutional Rally (RCD) who helped him to control the party. The first indices of the reactions of the security apparatus emerged with the organization of the partial elections in January 1988. Indeed, the rigging practices of the RCD were not different from those of the former practices."

1989

After taking over power, a November 7th, 1987, the Constitution was revised in July 1988 to fulfill promises announced in the November 7th declaration. After that, the regime announced the organization of premature legislative elections. At the time, the Democratic Constitutional Rally (RCD) proposed the constitution of a united front with the opposition for noncompetitive elections, but the Socialist Democrats Movement refused this.

While Tunisians had been relying on these elections to open a new page with democracy and embark on the exercise of their citizenship, they woke up with a new setback consisting of the falsification of the popular will. Thus, the Democratic Constitutional Rally (RCD) continued the path of monopolization of power.

The regime initially refused to respond to opposition calls for the adoption of the election relative system and the adoption of the principle of democratic transfer of power, yet the majority of parties participated either through party lists or independent lists. The old practices persisted on the voting day starting from restrictions on electoral campaign, ban of the registration of observers and change of cards during the counting...

Moreover, the administrative apparatuses did not comply with the duty of neutrality and the opposition was denied presence in the media.

The usual harassment continued on polling day including: not providing observers' cards until the last time making it impossible to deliver them to their owners.

The regime agents changed the cards during counting with the exclusion of observers. The boxes had been changed on the road between the voting center and the counting center, which made rigging a systematic practice of the regime. The envelopes where the ballot cards were put were transparent, thus reflecting the color of the card inside, which broke the principle of secrecy of the election.

As was the case in the previous elections, the ruling party won all the 141 seats in the Parliament and its candidate for presidential elections won by 99.2%.

1994

The 1994 elections were marked by the amendment of the electoral code and the introduction of a dose of relativity. However, it was characterized by a more closed and tense atmosphere after a campaign of arrests targeting the opposition, especially those belonging to the Islamist movement. Moreover, the Tunisian League for the Defense of Human rights (LTDH) had been dissolved in 1992.

On the other hand, the ruling party supported loyal opposition parties to take part in elections, in which a dose of plurality had been introduced for the first time and granted them controlled seats through the relative system.

Ben Ali ran alone without a rival for the 1994 presidential elections, following the exclusion of all those who announced their intentions to run for the elections, namely Dr. Moncef Marzouki, President of the Tunisian League for the Defense of Human Rights (LTDH), and Lawyers Abderrahmen Heni and Fethi Triki who were sentenced to imprisonment in fabricated cases.

In the absence of a rival, the victory of Ben Ali was announced by 99.9%. The opposition could access the Parliament for the first time, but the ruling party preserved 88% of the parliament seats.

2002

Ben Ali discovered constitutional obstacles preventing him from running for a new presidential term due to the restriction of the number of terms besides the age restriction as he was 70 years old. He announced an amendment of the Constitution which included the removal of these obstacles and granted judicial immunity to the president even after the end of his duties.

A first of its kind in the country, a popular referendum had been organized and the result was the approval of the amendments by 99.5% ...

On behalf of a number of human rights activists, Lawyer Abdul Wahab Maatar filed an administrative case to cancel the call for a referendum for transgressing authority, but the administrative court buried the case in its closets and examined it only 9 months after the referendum. The court rejected the case for non-competence. Furthermore, the ruling party issued a law in November 2002 limiting the competence of the administrative court in the control of the ordinances issued by the Constitutional Council in order to block appeals. Abdelwaheb Maatter was subjected to harassment from the regime using different means including a malicious tax review.²⁰⁴

2004

In 2004, the ruling party anticipated the elections by preparing mock lists appealing the President to run for the elections.

The human rights reports about the control of the elections revealed the extent of violations which took place. Despite the fact that article 37 of the electoral code allows the candidates to exploit public media, the duration of the allocated time and the method of appeal in dispute were not determined. This murkiness allowed the ruling regime to tighten its grip on the media landscape.

²⁰⁴See annexes.

Indeed, media coverage focused on the ruling party and its candidates and several of the spots of the electoral campaigns of the opposition candidates in the legislative elections were not broadcast despite recording them.

Furthermore, opposition newspapers such as “Al Mawkef” and “Attarik Al Jadid” were seized and printing press owners were forced to wait for permission from the Ministry of Interior.

Instructions were issued by Abdelwaheb Abdallah to journalists in newspapers not to cover the opposition activities, but also not to use pictures of the candidates having the same size as the president's photos. Indeed, the candidate of the Democratic Initiative Coalition, Mohamed Halouani, was subjected to many violations. Indeed, the regime banned the distribution of his electoral statement after seizing it in the printing press.

A document from the Tunisian Agency for External Communication (ATCE) reveals proposals for media activities abroad on the occasion of these elections which reflects the employment of public institutions in favor of the regime candidate, who eventually won by 99.4% ...

2009

In the general elections of 2009, the regime continued to falsify the people's will.

The comedy of appeals for the candidacy of Ben Ali continued and reached the degree of exploiting the spaces of public schools by forcing students to sign appeal letters.

In these elections, the regime drafted a new electoral law fitting its will which led to the exclusion of Dr Mustapha Ben Jaafar, Secretary General of Democratic Forum for Labor and Liberties and also Mr. Ahmed Nejib Chebbi, leader of Democratic Progressive Party. Furthermore, the regime excluded the engineer Alaya Kouki who wanted to exercise his right in running for the presidential elections and he was subjected to harassment that ended with him being housed in a psychiatric hospital.

As usual, the regime practiced restrictions on the opposition newspapers especially “Atatrik Al Jadid” and “Mouwatinoun”. Indeed, printing press owners were forced to sign an obligation not to hand over newspapers until they received permission from the Ministry of Interior.

Electoral statements had also been confiscated, for example, the Ministry of Interior did not allow the distribution of the electoral statement of “Atatjdid” Movement until only five days before the end of the campaign and after the movement was obliged to delete 5 paragraphs of it.

A report for the control of the media coverage reveals the domination of the ruling party and the former president. Indeed, they had the lion's share of coverage in the written press and it amounted to 97 %... and both Tunisian and foreign journalists were harassed. “Serious” opposition parties and independent lists could participate in the legislative elections only with a small number of lists due to the dropping of lists. The ruling party won three quarters of the seats, giving the rest to “loyal” opposition parties, while the party's candidate won the presidencies by 89.6% ...

III. Electoral Crimes

Rigging popular will

All illegal interference in the election process in order to cast votes in favor of one candidate or rob them of another candidate is considered electoral fraud.

1. Restrictions on the candidates for the municipal elections in 2010

Some security services provided the political authorities with correspondence and reports detailing the profiles of the candidates for the municipal to indicate their political and party affiliations opposing the ruling party and provide an idea about their religious beliefs. Security investigation and collecting information about a candidate is considered a blatant interference in personal data of the candidate and is contrary to international conventions and the electoral code which does not state that the candidate must belong to a particular party or wear a certain clothing or carry a certain ideology. These were restrictions imagined by the ruling party to deny candidates their rights in running for elections legally.

In this framework, TDC obtained a correspondence issued by First police officer, head of National Security Department in North Sfax, Samir Ben Mansour, to the head of the national security district in Sfax under the n° 2062 on April 4th, 2010, which reports, the security indications and information about the candidates of the Democratic Constitutional Rally in the municipality of Sakiat Ezzit for the municipal elections of 2010. It stated for example: "Rahma Triki was caught wearing Hijab".

TDC (IVD) received another correspondence, issued by High security officer, Atef Omrani, head of the regional specialized Department in Sfax and addressed to the Governor of Sfax about inquiry about the candidates for the municipal elections in 2010. This correspondence included a list of female and male candidates on a number of municipalities with a glance on their political and/or religious affiliation: "is from a religiously militant family" or "a released Nahdhaoui".

2. Political money

Throughout the different previous electoral events, political money played an important role in influencing the process and results of the electoral process and thus in falsifying popular will.

For example, the list of funding for the presidential elections in 2009, which amounted to 14.8 million TD, reveals that the proportion of funding coming from private companies and businessmen exceeded 11.3 million TD, i.e. more than three quarters of the funding of the campaign. The total funding of the private sector reached about 90% of this funding. This reflects the clientelism relationship between businessmen and political decision-makers, and reveals the overlap between money and politics. This leads to a conflict of interests between public decisions and personal private benefits as well as to inequality between candidates.

The expenditure for the campaign amounted to 2.5 million TD just in Paris. Moreover, the list of expenses included granting financial rewards to many journalists...

We also find in the list of expenses: the payment of cash amounts of 100.000 TD to the licensed opposition parties, such as the Social Liberal Party, the Green Party for Progress, the

Movement of Socialist Democrats ... The question is, how were the election campaigns for these rival parties financed?

The list also reveals that the former President, Ben Ali, received a cash amount of 500.000 TD in one day. The same day, his Advisor Abdelaziz Ben Dhia, received an amount of 300.000TD. Ali Suriati, the Chairman of the Presidential Security, received 60.000TD, without mentioning the way this money had to be spent.

On this basis, money represents one of the most important entry points to influence the electoral process and its results. The financial excesses are particularly evident in:

- Ways of raising the necessary financial resources.
- Methods of spending the budget of the electoral process.
- Monitoring and closing of the campaign budgets.

▪ **Resource Collection**

Over the past decades, money used to be raised among businessmen, companies, associations, parties, and personalities in varying amounts depending on the degree of closeness to the regime or the degree of clientelism. Indeed, the amounts received to finance the presidential election campaign in 2009 were estimated at 14 874 581.103TD.²⁰⁵

From the chart of the distribution of funding sources for the 2009²⁰⁶ presidential election campaign, we conclude that the important part was brought from the private sector (more than 89%). This has specific indications on:

- The organic and clientelism link between private actors in the economic sphere and decision-makers and the overlap between money and politics.
- The parallel levy or taxing system by the regime to collect the necessary funds for the electoral process and the corresponding conflict of interest. Indeed, to deny a number of charges in a case in 2012, some campaign's financiers reported that they had been under pressure to make these contributions.

We can also notice from the follow-up of the lists of the businessmen who donated cash amounts for the presidential electoral campaign that some of these donations amounted to 500 000.000 TD, exceeding a total of 11.300 million TD.

This overlap between the political and the private economic leads to the following risks:

- Conflict of interests between the interests of public decision and private personal interests.
- Inequality of opportunities between the candidates and influence on the results of the elections.
- Economic climate which discourages creation and leaves the investor under the authority of the political decision maker.

²⁰⁵ See annexes.

²⁰⁶ See annexes.

3. Use of the budget of the electoral campaign

Through the documents related to the presidential campaign for 2009, 2010, and 2011, we were able to summarize the expenses through the following tables.²⁰⁷

Through the tables related to the expense data allocated from the budget of the election campaign we note:

- Failure to close and control the funds allocated to finance an election campaign held in 2009 until 2011. This represents misuse of funds and their absence from the control system.
- Exceeding the requirements of the foreign exchange current market and dealing with it and keeping it outside the legal frameworks.
- Using the money dedicated to the electoral campaign to corrupt agents, journalists, associations, and political parties.
- The absence of a trace of the balance (100 thousand euros).

On this basis, we can indicate a number of points that may affect the integrity of the electoral process by following the methods in which the money was spent:

- Money dedicated to the electoral campaign was used to corrupt local and foreign journalists.
- Absence of control and follow-up of the electoral budget and its transfer to a parallel treasury and bribes' account (black box).
- Using the money dedicated to the electoral campaign to corrupt votes through the distribution of various amounts of money.
- Granting various amounts of money to services and administrations in the presidential palace to use public resources for personal goals and interests.

4. Use of public resources and institutions

During electoral campaigns, the dictatorship used public institutions to polish its image and promote it among the ranks of voters and observers. This transgression was particularly evident in:

- the use of the financial, human and logistical resources, which were allocated to the Tunisian Agency for External Communication (ATCE) during the electoral campaign. (470.000 TD in 2009).
- The use of public media (newspapers, radios, TV) for the promotion of one candidate at the expense of others.
- The use of public institutions and establishments for the promotion of electoral campaigns

²⁰⁷ See annexes .

5. Confiscation of electoral statements

The electoral statements of a number of candidates were confiscated in printing presses without any written notification from the Ministry of Interior. As was the case with the independent list, Ettakatol, and Attajdid who were forced to start their campaign one week later than originally planned.

6. Confiscation of broadcast space allocated to opposition candidates

The candidates of the opposition were subjected to automatic pre-confiscation of their broadcast time. Ahmed Ibrahim was denied 22 minutes of broadcasting time. The time and date of his broadcast space on TV and Public radio had been changed without informing him. While it was announced at 8:30 pm, he was informed that it will be broadcast at 6:30 pm, 15 minutes before the broadcast and was interrupted by the call for prayer.

Candidates were given 3 minutes of broadcast on each president's list. Their broadcast schedules were also scheduled at low-listening times (between 5 pm and 6 pm) as people left administrations; although the dates were decided by ballot, some candidates did not pass at the appointed time, as was the case for the candidates of Ettakatol and Attajdid.

The broadcast was also recorded in the presence of the Chairman of the Supreme Council of Communication, Abelbaki Hermassi, who was entitled to force the candidate to withdraw immediately some of the phrases that the first considered illegal and he used his powers to practice a political confiscation, according to the statements of the representatives of the parties, imposing the withdrawal of some paragraphs related "general amnesty", "Gafsa mining basin" or "Journalists Union" for example. Candidates who refused to comply noticed that their speeches had been "reduced" after the confiscated paragraphs had been withdrawn. Whereas some other interventions were not broadcast at all, as was the case with Raouf Mahjoubi, Attajdid candidate in Beja.

7. Media Blackout

Media coverage had been characterized by:

- **Domination of the presidential elections over the legislative elections:** There is no doubt that written press had dedicated a special margin to the presidential elections which was granted an important coverage in comparison with the legislative elections (70.20% vs 29.80%).
- **Domination of the leaving President on the media landscape** where he won the lion's share (97.14% of the written press and 75.83% of the radio and television space), which clearly and decisively reflected the imbalance and impartiality that characterized these elections.
- **The domination of the ruling party** The Democratic Constitutional rally (RCD) in all media.
- **The prominent presence of Mrs. Leila Ben Ali**, who penetrated the political field and got involved in her husband's campaign.
- **The low presence of women candidates for the legislative elections:** Indeed, press dedicate to them only a small space (0.73%)
- **The use of new support media for the campaign** and new mobilization methods which invaded public space (including use of SMS). Some associations renewed their intervention in the

campaign by sending SMS messages on mobile phones such what the Tunisian Union of Youth Organizations (UTOJ): "The Tunisian Union of Youth Organizations salutes you and invites you to send a short (free) letter to support President Ben Ali on 77777".

8. Not respecting the electoral period

The electoral period was not respected. Despite the fact that the electoral code states in Article 37 bis that: "the electoral campaign shall end in all cases 24 hours before polling day", the ousted president addressed the people on October 24th, i.e. on the eve of the polling day. His speech was broadcast by all audio-visual media on the same night and was published on newspapers on the polling day.

Only 5 days after, the journalist Taoufik Ben Brik, who published critical articles in foreign press during the electoral campaign, was arrested and sentenced to 6 months in prison following an unfair trial.

9. Electoral appeals

The structures for the examination of the election appeals witnessed several changes, but, in essence, they remained contrary to international norms in terms of impartiality and independence of their members. For example, a committee whose members were appointed from ministers, judges, and governors who were loyal to the executive authority by nature in disputes concerning the registration and crossing of voters...

The Constitutional Council, whose the majority of members were appointed by the executive power, decides on appeals related to the election of the members of the two legislative parliaments (the Chamber of Deputies and the Chamber of Advisors) and issues final decisions.

The administrative Court presented a solution for appeals as was the case the 2002 referendum, but it did not play its role impartially.

IV. The Structure supervising the organization of elections

From Independence and until 2011, all elections were organized under the supervision of the Ministry of Interior and the executive apparatuses of the state, which were biased by nature to the regime and its candidate. Tunisia did not witness the presence of anybody to monitor and control elections until the regime established the "National Observatory for Monitoring Elections" in 2009. The President of the Republic appointed Abdelwaheb Behi at its head. It is worth mentioning that the observatory was reporting only to the President of the Republic. The opposition addressed complaints and testimonies to this observatory in vain, as it was a means to legitimize the electoral process.

1. International Standards adopted in the electoral field

In this framework, international conventions include 5 major criteria to qualify the elections as fair or not:

1. Standards related to the ballot itself. Indeed, the ballot should include 5 principles: generality, equality, freedom and periodicity, and that the ballot shall be secret and direct.
2. Standards related to the voting system and the right to appeal which guarantees the right of all citizens to be represented in the elected structures. They also have the right to challenge procedures and results.
3. Standards related to the organizational aspects and the electoral process which presupposes the impartiality and independence of the body that organizes and supervises the elections.
4. Standards related to financial and logistical aspects such as the prohibition of the exploitation of state resources in elections and the impartiality of media coverage.
5. Standards related to the general atmosphere environment in which freedoms, especially freedom of expression, must be respected. This means ensuring that people are not subjected to violence, intimidation, corruption and retaliation for their electoral choices.

TDC (IVD) investigated the degree of compliance of the different electoral events witnessed by Tunisia with these 5 standards, especially the electoral events which represented a milestone in political life in Tunisia. The following is a summary of the main stages which characterized the electoral process before 2011.²⁰⁸

The establishment of a clear and effective declaration of principles and code of conduct to control the impartiality of elections by civil organizations represented a giant step on the path of the development of the control and monitoring of elections throughout the world. Indeed, the declaration of principles for international election observation and code for international election observer go in this direction. The regional network active in this field encourages all its members to adopt and implement the Declaration.

The declaration states an important number of standards to promote self-awareness and accountability within the impartial organizations for the control of elections. It provides a platform for understanding on which rely impartial organizations²⁰⁹ to deal with the electoral officials and other governmental authorities. It is also allowed to citizens, news media and members of international society involved with this issue to value the role and commitment of organizations that ratify the International Declaration of Principles.

The International declaration of principles for international election observation addresses the main rules and causes which lead citizens to control and monitor elections and promote their integrity. It indicates the activities and the ethical duties related to the principles of impartiality, independence, accuracy, transparency, non-discrimination, observance of the rule of law and cooperation with electoral stakeholders and international election observers. It also deals with the conduct of controlled operations and the conditions required for the impartial

²⁰⁸ Documentary on counterfeiting popular will during the election - Public Hearing of the Truth and Dignity Commission on July 21, 2017

²⁰⁹ Among the reference principles of the Venice Commission related to elections and referendum: For more in-depth review the following website: <https://gndem.org/ar/declaration-of-global-principles/>

monitoring of civilian organizations to succeed. The Declaration also deals with the specific commitments with which are committed the organizations which ratified it. It provides a new kind of “the Declaration’s supporters” support to international organizations which support the control and monitoring of impartial civil organization of elections. The Code of Conduct annexed to the Declaration translates it into practice and serves as a model for the parties’ commitment to neutrality.

The International Declaration of principles was born as a result of a consensus process among representatives of active and emerging regional networks including neutral election observation organizations from Africa, Asia, Central and Eastern Europe, Russia, Latin America and the Caribbean, and the Middle East and North Africa, which joined the network.

The European Commission for Democracy through Law, which is known as ‘the Venice Commission’ is considered a basic actor and it played, since its establishment in 1990, an effective role in the adoption of constitutions conforming to the standards of the European constitutional heritage. It has played an important role in setting standards for elections and referendums and counseling in the constitutional field. In general, impartial election observation by civic organizations contributes significantly to reducing the likelihood of violence during elections and preventing them, and the activities of election observation organizations contribute significantly to improving the legal frameworks of the elections in terms of their democratic nature and process, electoral and democratic development in its broader context.

TDC used the different standards and norms of reference set forth in international treaties and conventions, which have been ratified by the Tunisian State, in particular, the principles and rules adopted by the Venice Commission, which are considered among the bases of reference in the field of fair election management.

2. Conclusion and recommendations

The democratic transition is an exceptional complex political process as well as an institutional process based on procedures and techniques for a transient phase. It forms a path between the old and the new, between demolition and construction. It also requires a legal and institutional intermediary system between a legal system in which it has been discontinued and another that has not been or is in the process of being formed.

Elections represent an occasion to express the sovereignty of people and the legitimacy of public powers. Despite the fact that Tunisia has witnessed dozens of electoral events, elections held on October 23rd, 2011 have been the first real elections during which the majority of international standards for fairness and transparency were respected despite some flaws noticed by observers.

However, the popular will is falsified not only by physical forgery of the records of counting, but also by the existence of an unhealthy atmosphere in which the logic of attraction and exclusion prevails and in which political money is prevalent, electoral bribery and the temptations that exploit the social and cultural situation of citizens prevail and blackmail them. This must be confronted by free and fair elections that reflect genuine popular will. Despite the post-revolution gains, mainly the creation of an independent body overseeing the organization of elections, political money remains the greatest threat to the integrity of the

electoral process and affects the conduct and results of the electoral process and thus contributes to falsifying popular will. Therefore, the State must establish within the Court of Accountancy a pole with exclusive restraining prerogatives which takes care of ensuring the application of law and monitoring those who use illegal sources of money in the public space during elections and in public space outside electoral periods; whether parties or associations.

TDC (IVD) therefore recommends:

- The establishment of a pole within the Court of Accountancy to take care of ensuring the application of law and monitoring those who use illegal sources of money in the public space during elections and in public space outside electoral periods; whether parties or associations.
- It should be clearly stated that paid advertising is so and they should be organized. Financial transparency must be ensured, both in terms of party financing and campaigning, so as to ensure fairness among competitors.
- Election programs should be clearly separated from other programs. Non-election programs should not advertise for a political party.
- The current electoral law did not allow for the proper disposal of public funds. Indeed, some parties with less than 3% of the votes in the legislative and municipal elections do not return the public grant. Indeed, it is imperative and urgent that the electoral law accommodate the principles of good governance of public finance. In this context, the electoral law must be revised to provide effective guarantees of transparency and establish the criminal responsibility of the head of the list, which has not returned the full amount of the public grant in legal terms.
- Tunisian legislation on the media should be revised to allow Tunisian citizens to be better informed through multimedia, which should work away from any political subordination or bias.
- While equal access to media is important, other means and formats must be developed in order to encourage good coverage of elections. To ensure that citizens have access to detailed information about candidates and parties, measures must be taken to provide the voter with the widest information.
- Self-regulatory procedures for journalists must be developed to ensure that professional journalistic standards are respected and must be codified in a code of ethics and respected by all parties.



Part Three
Human rights violations
From 1955 to 2013

Introduction

The legislator granted to the Truth and Dignity committee, in Article 39 of Transitional Justice Law, the mission of investigating in cases of forced disappearance with unknown outcome, based on reports and complaints submitted to the committee, and identifying the victims' fate, collecting data, pointing violations, counting, tracing and documenting them, in order to set a data base and prepare a unified register for all victims, as well as to identify the responsibilities of state organisms or other perpetrators of violations covered by the provisions of this law and clarify the causes and propose remedies that would prevent future recurrence.

The Tunisian legislator stipulated in Article 8 the necessity of investigating the gross human rights violations. Then, in Article 39, they entrusted this mission to the Transitional Justice Law which is required not only to investigate cases of enforced disappearances according to the reports and complaints to be submitted to them, but also to determine the fate of the victims, to collect data, to monitor the offenses, to count and document violations, in order to set a database and prepare a unified register of victims, as well as to establish the responsibilities of state agencies or other parties for the offenses of premeditated murder, rape and any other forms of sexual abuse, torture, enforced disappearance, death sentence without due fair trial.

The legislator defined the concept of disclosure of truth in Article 4 as being a set of means, procedures and researches adopted to dismantle the tyranny system by identifying all violations; their causes, circumstances, sources, and consequences. In cases of death, loss, or forced disappearance, the victims have to be found, located, their fate determined and the people liable for their sufferings together with the perpetrators identified. When uncovering the truth, the particularity of the impact of violations on some specific groups of people such as the elderly, women, children, the disabled, people with special needs, the sick and other vulnerable groups should be taken into account.

Article 17 also specifies the duration of its mandate: "The work of TDC shall cover the period starting from the first of July 1955 until the issuance of this law which means from July 1955 to December 2013."

Since the commencement of the recording of the files, in December 2014, the TDC has been working on developing its own database (a set of statements): as a showcase to identify the victim and truthful information in the period in which the violation occurred, as required by articles 39 and 56 of the Organic law on Transitional Justice. The testimony was developed for reconstruction during secret and private hearings of the victims.

In the procedure, TDC sought to identify the causes and context of the violations. It conducted an in-depth survey of the most important events in the country during which violations were committed.

Research into the files recorded with TDC - which totaled 62,720 - and the secret hearings of 49,654 victims - which lasted 61,000 hours - revealed the seriousness of state violence against

individuals and groups. This institutionalized and systematic violence was equally inflicted on adults and children, the elderly and the young and men and women, which crushed entire families and regions. It also did not distinguish between left, right, nationalist, trade unionist or ordinary citizen who intercepted the "machine". After examining the archives, the Truth and Dignity Commission was able to begin dismantling the authoritarian regime that ruled Tunisia for six decades.

This section deals with the most important historical stations when the collision with the central authority had resulted in victims.

Chapter One

Violations in the Context of the Colonial Exit

General Context

When the human rights violations that accompanied the exit of the French occupation out of Tunisian territory were highlighted, TDC received 1782 files of resistance fighters, including 367 women's cases, along with files proving the existence of human remains of resistance fighters in mountainous regions in the South of Tunisia.

January 1952 marked the beginning of the confrontations between the Tunisian National Movement and the French protectionism, which adopted a repressive policy in response to their demands –hence their addressing a complaint to the United Nations, which demanded France to continue negotiations in a way that guarantees Tunisia's right to self-determination.

In response to the actions of the National Movement, the French occupation resorted on the morning of January 18 to stop the leader Habib Bourguiba and many other leaders from whence came a massive popular response in the form of demonstrations in various regions of the country which led the French occupation to order a curfew to prevent further rioting.

Between the years of 1952 and 1955, the French army committed war crimes and massacres in various areas of the Tunisian territory. It carried out random executions, raped women, assaulted and killed infants, plundered and confiscated property, robbed supplies in the countryside, attacked mosques and bulldozed houses.

In the meantime, armed resistance erupted in various regions of the country against colonial interests under the supervision of the Destourian (Constitutional) local units. Thus, many battles took place in various regions of Tunisia resulting, by the end of 1954, in hundreds of deaths among rebels.

On the other hand, there were frequent assassinations among the leaders of the National Movement, such as the leader Farhat Hached which occurred on December 5, 1952, Hedi Chaker on September 13, 1953, and Abdel Rahman Mami on July 13, 1954.

On July 31, 1954, the French Prime Minister Mendes France announced that France was ready to grant Tunisia its internal independence. On August 7, 1954, a negotiating government was formed, headed by Tahar Ben Ammar, after reversing the decision to dissolve the new Free Constitutional Party.

To continue the negotiations, which began on September 13, 1954, France stipulated an end to armed resistance and a surrender of weapons in return of being given safety and not being tracked, to which the leaders of the Free Constitutional Party responded positively. Despite the disagreements between the two parties due to the absence of a real will of the French side to grant full independence to Tunisia, negotiations ended with the official signing of the self-determination and autonomous statehood agreement in Paris on June 03, 1955 by the two

heads of government, Tahar Ben Ammar and Edgar Faure. This agreement had caused controversy over its content and ignited an open conflict within the National Movement.

Whereas the agreements of June 3, 1955 and signed by the government of "Tahar Ben Ammar" were within the scope of a contract between two governments that abide by what they agreed upon and the contents were as follows:

Article 1 states that the provisions of this Agreement are indivisible, that is, applying one part of the Conventions and rejecting others.

The second article retains the provisions of the Bardo Treaty of 12 May 1881 at the Palace of Said and the agreements concluded between the French Republic and the Bey since that date, but abrogated the first article of the Marsa agreement signed on November 10, 1884, which removed the authority of the Bey and held its decisions under the control and approval of the French General Resident .

In Article 3, The two governments recognize the supremacy of international conventions and treaties over domestic legislation, which limits the effectiveness of any national legislative authority to enact legislation contrary to the provisions of the Convention.

Article 4 recognizes the internal independence of Tunisia and the right to form a national government composed only of Tunisians, but this government is devoid of two sovereign ministries, namely defense and foreign affairs.

Article 5 includes Tunisia's obligation to grant the rights of those living on its soil, as stipulated in the Universal Declaration of Human Rights and to guarantee the rights of foreigners within its domestic legislation, the freedom to dispose of their cultural, religious, economic, professional and social activities. This article also obliges Tunisia to ensure, in accordance with its traditions, equality between its citizens, whatever their origin Sex or religious belief, and to make sure they enjoy their political rights and individual freedoms adopted in Western countries.

Article 6: This article is designed to guarantee the rights of the French who are settled in Tunisia. It states that France and Tunisia recognize their respective rights as distinct from those given to other foreigners.

Article 7: While the Arabic language is considered the official language of the Tunisian country, the conventions stipulate that French should not be considered a foreign language in the Tunisian country.

By force of Article 8, France is obliged to consult the Bey during international negotiations concerning Tunisian interests, and to inform him of other international negotiations regarding Tunisia.

Article 9 organises the relationship of Tunisia with other international organizations in such a way that makes Tunisia unable to join in these organizations without the consent of France. Thus, any Tunisian delegation participating in the work of any international organization is bound to consult the French delegation in order to take a common position to ensure the interests of the two countries.

Article 10 determines the responsibility of France for the conduct of security and defense affairs and provides that the situation remains unchanged. Legislation regulating these interests may be changed only by mutual agreement.

These chapters are regulated by conventions, written separately in the second part of the conventions. In the Security Field for example, the agreement stipulates that security matters remain under the French authority for twenty years, and then gradually be transferred to the Tunisians under French supervision.

As for the Convention on Judicial Affairs, France can still regulate the conduct of its affairs, by limiting the powers of the Tunisian judiciary in such a way that allows the French courts to remain to hear cases of the French, and postponing the nationalization of the Tunisian judiciary until after 15 years.

In terms of administrative and technical cooperation, the agreements explain the French representation in municipal districts which requires that the French be represented along quota of 3/7 in cities with a significant proportion of the French population, such as Tunis, Ben Arous, Ezzahra, Sousse, Sfax, Bizerte, Menzel Bourguiba (Ferryville), Megrine, Ain Draham and Tabarka. In the rest of the districts, if the French population reaches 10% of the total population of the district, their municipal representation shall be one third (1/3) of the members of the council. As for the other districts, every 100 French residents are to have 1 French representative.

In the field of culture and administration, the French language has been established as the official language of communication. Although the agreements in Article 7 stipulate that Arabic is the official language of the Tunisian country, French is the official language of the Tunisian administration and legal texts. It should, also, remain the official language in schools and all educational and cultural institutions. French educational and cultural institutions as well as the Institute of Higher Studies in Tunisia should be kept directly linked to France.

The economic and financial agreement provides for the creation of a customs union guaranteeing the free entry of French goods into the internal markets, provided that they enjoy the same advantages as national goods. Financially speaking, the agreement maintains the dominance of the French Franc.

While these agreements abolished the mission of the General Resident, they indirectly substituted him with the plan of the High Commissioner, who was entrusted with the task of coordinating between the French government and the Tunisian authorities, and charged him with the responsibility of security, defense and the management of air and civil aviation interests in Tunisia, which should remain under French supervision for 25 years.

The agreement included the recognition of partial sovereignty to keep the defense and foreign affairs in the hands of the French colonial system, while maintaining a military presence in Tunisia, which formed the main reason of the dispute within the National Movement, represented in the new Constitutional Party, resulting in a split between its leaders; on the one hand, Habib Bourguiba, supported by The UGTT, The Tunisian Labor Union and the Tunisian Communist Party, who deemed the agreement an accomplishment and a positive

step forward, and, on the other hand, Salah Ben Youssef, who opposed it, backed by the Voice of Zaitouni Students and the General Union of Tunisian Agriculture.

In November 1955, these disputes led to the isolation of the Youssefis from the party during the Sfax Conference. For their part, the Youssefis sought to continue the armed struggle, as resistance operations resumed in southern Tunisia.

Immediately after the isolation of the Youssefis, the Bourguiba part, just after the Sfax Conference, began the process of liquidating them through the events of militias called the "Welfare Committees (Lijan Al-Riâaya)," which had its headquarters at some downtown constitutional divisions, such as the Sabbath Edhalem in the old city of the capital, Zaouit Sidi Issa Marabout in Beni Khallad in the North East of Tunisia, in Hwarab, Kairouan, and in Bir Tarraz, Rades. Those militias have launched raids and arrests, accompanied by numerous human rights abuses, including kidnapping, torture and murder.

On March 20, 1956, negotiations granted full independence for Tunisia, meanwhile, the Youssefi resistance continued in southern Tunisia.

As the French army was still seated in the bases of Bizerte, El-Aouina, Ramada, Gabes, Gafsa and Sfax, the Truth and Dignity Commission has got proof that the French colonist had provided support to the Bourguiba fissure in its conflict with the Youssefis by randomly bombing them by French Air Force that worked hand in hand with the Welfare Committees (Lijan Al-Riâaya) whence the liquidation of a number of rebels. Mountain Akary Battle was one of the incidents which resulted in hundred of casualties and this was considered a breach of the Tunisian sovereignty.

France continued to intervene in Tunisian affairs by using Tunisian soil to wage its war against Algeria like the Meryj incident in Dirham on May 31, 1957 and the events of Sakiet Sidi Youssef on 08 February 1958. Retreat from many sites didn't happen until a Convention was signed on 17 June 1958 except from the Bizerte base, where French Forces remained seated until the battle of 1961.

The High Court of Justice, established on January 28, 1956, not only tried cases of Youssefis and dissidents, but also tried some members of the Bayat family and the politicians and administrators working under it, as well as a number of "Quayad" and members of the Grand Council charged with cooperating with the colonial regime. With the proclamation of the Republic on July 25, 1957, the Bourguiba regime arrested the Bayat family, confiscated their property, harassed them and damaged their children.

In the context of the events, TDC's work focused on examining the files of the violations that accompanied this historical stage, especially those occurring in the context of the exit of the French colonial regime and the battles that took place in the mountains of "Agri" in the southeast and Mount Bou Hilal in the southwest. Also violations that took place during the Bourguiba vs. Ben Youssef conflict, during the battle of "Jalaa" to evacuate Bizerte from the French Army, the violations inflicted on the Husseini family, the file of the assassination of Saleh ben Youssef and the violations that accompanied the coup attempt of 1962.

I. Course of events and violations of the French colonizer

The Truth and Dignity Commission held a public hearing ²¹⁰ on the violations that took place in the context of the colonial exit²¹¹, during which victims who were abused in the course of this period presented their testimonies.

The period starting from when an agreement with the French Government, regarding the protocol of internal independence was reached on 3 June 1955, until the final agreement on full independence was signed, was a very tense stage of Tunisian history, either in relation with the French occupier or in line with the internal affairs of the Tunisian resistance. Actually, the occupying army deliberately started physical liquidation among the national resistant personalities so as to weaken the negotiating front along with brutal military attacks on unarmed and resisting civilians even after the signing of the document of full independence. The division and conflict between both leaders Bourguiba and Ben Youssef because of the differences about the terms of the signing of the agreement on internal independence and the resulting split in the ranks of the Tunisian resistance, led to mutual violence between supporters of the two parties which can be described as a kind of a civil war.

Before representatives of the National Movement and the French colonial powers entered into direct negotiations, the French regime engaged in physical liquidation of a number of constitutional leaders, because of their symbolism and weight in the national militancy scene.

Just before independence, France adopted a policy of elimination of national leaders through assassinations of leaders of the National Movement which were carried out through the Red Hand Organization, a French intelligence operations wing that liquidated Farhat Hached on 5 December 1952 in Chouchat Radès. He was one of the founding fathers of the UGTT Tunisian Labor Union and one of the most prominent leaders of the National Movement. He led the national trade union movement against the colonizer. This sparked massive protests inside and outside Tunis. The union leader was instrumental in consolidating the ranks of the Tunisian resistance on four levels:

The first was to benefit from the legitimacy of the existing authority of the Bey, which who headed towards supporting the Tunisian resistance.

The second was to politically support the New Free Constitutional Party,

The third was to make the trade unions support the national movement, and mainly to seek the support of the international unions to the Tunisian resistance movement.

The fourth was to foster Tunisian diplomatic efforts provided by Tunisian political figures that have spread throughout the world to rally support for the Tunisian cause and defame the colonial policies that violate international conventions.

²¹⁰ Truth and Dignity Commission documents on violations of the French occupation and its historical context: <https://www.youtube.com/watch?v=8ktHA5LnWk8>

²¹¹ See the attached appendices that TDC's Council decided to address to the President of the French Republic regarding compensation due to Tunisian victims of violations of human, economic and social rights that are partly the responsibility of the French state.

The French colonial regime also assassinated the leader Hedi Chaker on September 13, 1953 in Nabeul. Hedi Chaker was not only the treasurer of the Constitutional Free Party, but he also presided its secret Conference in January 1952, which witnessed the starting point of the armed resistance.

During the three years between 1952 and 1955, the occupation army committed war crimes and massacres in different areas of the Tunisian territory, where it carried out random executions, raping women, assaulting and killing infants, assaulting and confiscating property, burglary in rural areas, assaulting mosques in addition to bulldozing houses as what happened in the massacre of Tazarka in the North East (Cap Bon).

The Red Hand organization also assassinated Abderrahmane Mami, a member of the nationalist movement and a member of the committee set up by the Bey in the summer of 1952 to study French reforms rejected by Tunisia, due to France's failure to comply with the demands of independence and Tunisian national sovereignty. He was killed in front of his house in Marsa, on July 13th, 1954 prior to commencing the negotiations for internal independence.

The policy of assassinations and liquidations was adopted by the French colonialist regime to spread terror among the national leaders. What is striking is that these assassinations remained unaccounted for, despite the statement of the perpetrators and all who were involved or responsible them. What was even stranger, was what resistance fighter Hmadi Ghars stated that **members of the Red Hand organization were released by the Tunisian Authorities just after independence.**

Meanwhile, in accordance with the decision of the new Constitutional Free Party, armed resistance erupted in various regions of the country in which some 3000 resistance fighters enrolled in cities and mountains led by urban leaders such as Ridha Ben Ammar, Hammadi Ghars, Salah Bouderbala, Nouredine Ben Jemia, Taher Mekkawi, Hassan Ben Abdel Aziz, Abdellatif Zouhair, Mokhtar Belaid, Mohamed Salah Baratli, and leaders in the mountains such as Taher Lassoued, Lazhar Chraiti, Mesbah Enneyfer, Sassi Lassoued, Tayeb Zallag, Belkacem Bazmi, Ajimi Ben Mabrouk, Ammar Salouga, Helal Ferchichi, Mesbah Jarbou, Ajmi M'dawar, Ahmed Lazrag, Ahmed Saghir and other leaders of armed resistance.

Resistance operations were concentrated against barracks, military posts, police stations and interests of the colonial authorities under the supervision of the Constitutional Committees. Armed resistance represented a good platform that pushed the occupying power to return to the negotiating table in mid-1954, especially after the defeat of the French armies in Indochina and the outbreak of armed resistance in the Morocco.

On July 31, 1954, the French Prime Minister, Mendès France, arrived in Carthage and declared in Carthage before Mohamed Lamine Bey that France was ready to grant Tunisia its internal independence.

To continue the negotiations, France stipulated an end to armed resistance. The New Constitutional Free Party responded positively further to Bourguiba's instructions to the rebels to surrender and turn their arms in. He also promised they would be recruited in the Tunisian army which was about to be constituted. Most of the fighters answered to this appeal as they trusted the Tunisian government and believed that independence was very

close. Every resistant fighter who gave his arms was given a certificate by General De Latour, on which was written “holder of this document shall never be subject of tracking for what he committed before ...”

Twenty-two Destourians or members of the New Constitutional Free Party were mandated to collect weapons by the Tunisian government, but documents and testimonies prove that the assembly was carried out by French forces, leading to anger among the resistant fighters who felt tricked.

The crimes of the French occupation continued, including the killing and intimidation of Tunisians at the time of negotiations. On the other hand, armed resistance operations against the occupation continued in 1955 and 1956, but these operations were without the support of the Free Constitutional Party as they opposed the political line taken by Bourguiba. In September 1955, Salah Ben Youssef called for the continuation of armed resistance rejecting the agreements of internal independence.

Through the interrogation records of 12 prisoners of the battle of Agri, including Ajami M'daouer, and carried out by the Truth and Dignity Commission in the balances of the Center for Diplomatic Archives in Nantes, France, which was an investigation made by the High Command of the French forces in the southern section of Tunis, which shows the danger posed by Tataouine on French colonialism as a transit and supply of weapons to the Tunisian and Algerian resistance. As it occurred in the interrogation of Ajmi, a military school supervised by Ali Zlitni and Abdelaziz Chouchane was founded by order of Bourguiba in 1953, was located in the south-west of Libya and later contributed to the training of Tunisian resistance by trainers formed in Cairo. Thus, Tataouine served as the backbone of the Youssefi armed resistance and then a direct support for the Algerian revolution during its outbreak, and hundreds of deaths resulted from these battles.

1. Battles of the Agri and Ghar Jani mountains

At the beginning of March 1956, the mountains of the south-east witnessed a series of battles in the form of tracking and chasing by the French colonists of the resistance pockets, which had increased since the return of the resistance fighters to the mountains following the so-called internal governance agreements. Resistance fighters flocked to the mountains at the frontiers of Dahabeh, Remada, Tataouine, and Beni Khaddach in what is known as the Tunisian mountain range dhaher and the White mountain.

Mount Agri is located in the Tunisian mountain range dhaher in the west of the village of Chenini, a mountain village inhabited by an ancient Amazigh tribe known as the people of Chenini. The mountain of Agri is about 400 meters above sea level and consists of two parts in the form of a angle opening arms north, with a deep canyon in the middle. At the top of the mountain there are vast and deep caves the shepherds used a shelter for them and their cattle and in the slopes at the foot of the mountain, there are great stones that are separated from the Cuesta over the years due to various natural phenomena. Rugged and twisted paths lead to the mountain through hard and winding lanes no one could reach except via two remote exits. The first lane passes through the mountains of Qarmasa and the second from the south through the deep canyon Oqla through a path relating the down part of the valley

to the top of the flat mountain chain Along the mountains of the Tunisian Dhaher ,from Matmata and Domor west to the lybian mountain of N'fousah south.

These battles took place in the form of what is known as "guerrilla warfare" and their results differed from one battle to another. The battles of Agri and Ghar El Jani, which took place on May 29, 1956 and June 1, 1956, are the most important battles recorded in the region of Tataouine, as they occurred more than a month after the declaration of independence on March 20, 1956. They witnessed the participation of the “the Gomeyah”, the “M'khzeniah”, the Roving Guard and the welfare committees (Lijan Al-Riâaya) with the deliberate and explicit participation of the government of independence led by Habib Bourguiba.

During the hearing, Ahmed ben Omran Masoudi²¹² gave testimony about his detention in Tataouine barracks in poor conditions where he was beaten, tortured and abused. Indeed, a big quantity of salt was added to his water and food.

When the battle got fierce and the resistance knew that they could not fight against a heavily armed enemy, the crowd dispersed in every direction, but Naser Madani, who felt the heavy responsibility, tried to guide the group of resistance with him and ordered them to be distributed in groups of 20 or 30 people in each one and he was accompanied by about 30 or 40 men²¹³ to cave El jani where French aircraft and heavy artillery barricaded and obliterated them²¹⁴. According to most narratives, none of them survived except Belkasem Sediri²¹⁵ who took part in both battles with his comrades and was the only one to be arrested and jailed in Tataouine barrack after being questioned. Later on, he was released along with others by Bourguiba on the occasion of his visit to Tataouine on june 18th,1956.

▪ **Effects of both battles**

The outcome of the battles of Agri and Ghar Jani was heavy on the resistance. The number of martyrs was a matter of controversy; the poet Ahmad ibn Shafi 'al-Atrash mentioned sixty martyrs along with the prisoners and missing persons, while Ajmi M'dwar estimated in his memoirs the battle outcome of 100 martyrs ,120 prisoners and 100 missing. One of those interested in the local history of Tataouine²¹⁶ told us that he visited the site of the battle since the beginning of the nineties and met with the late photographer Ibrahim Haddad, the only photographer in Tataouine .He said that after the battle, he was invited to take pictures of the corpses. He told his interlocutor that he counted on the first day 65 casualties and 25 on the second and that submitted all the pictures to the local authorities in Tataouine .The

212 Testimony of Ahmed Al Masoudi: Public Hearing: March 24, 2017 : <https://www.youtube.com/watch?v=qP-sTOHyCew>

213 The testimony of Ali ben Chetioui Bou Al Sennoun dated 03-04-2012. As for the eyewitness and the only survivor of the battle of Ghar al-Jani, the militant fighter, Belkacem Essdiri, he stated that the companions of Al-Nasser were 25 men (his testimony dated 10/07/2017 on Tataouine Radio)

214 Ali ben Chetioui Bou Al Sennoun's testimony mentioned a strange and weak piece of information that says that Al-Nasir kept a bullet in his pistol after he lost all his ammunition and that the enemy asked him to surrender, so he refused and prepared himself with the last bullet that remained with him.

215 Belkacem ben Said ben Mohamed Essdiri was born in 1933. We were able to meet the man and testify on 04-07-2017.

216 Mr. Dhaou El Dhib, a retired employee from the Employment Office in Tataouine, who is interested in history and heritage and has many important documents relating to the colonial period.

respective number of martyrs of each battle is also subject of debate, we have been able to collect a number of martyrs names based on the testimonies of some tribal symbols such as: Alhosh Sadiri tribe of Omarna, Ahmed ben Othman of tribe Zarqan , Ahmed ben Omran of Aldhahibet tribe, Alhaj Ali Alabbar from Hamidiya , Haj Abdul Hamid Kershawi from tribe Al-Karawashe, Khalifa Hawat from Sidra tribe, Shaibani ben Nasr from tribe Awled Shahidah. We also counted 72 martyrs, 3 missing and Seventeen injured who moved to Libyan soil and were treated with the help Abdullah Haddad.²¹⁷

According to a report in the Tunisian newspaper Sabah²¹⁸ on its internal page under the title of "Operation Chasing Resistance", the battle resulted in the killing of 53 people, the wounding of 11 , the capture of the head of the gang called Ajami Medawar and the seizure of 60 pieces of weapons, including 43 guns, 3 pistols, an automatic pistol and a quantity of ammunition.

On the part of the Tunisian agents of the warehouse, two people were killed and another wounded.

The total number of prisoners in this battle was 125²¹⁹, of whom Bourguiba released 111 on the day of his visit to Tataouine, while 14 of them were kept and remained in the civil jail of Tataouine till august 30th, 1956 (more than two months) without due trial. Then they were moved to Tunis the capital as was stated in a French intelligence report dating back to September 4th, 1956.

2. Violations

▪ Execution of the resistance fighters on Mount Agri

There are frequent oral accounts of the shooting of a group of resistance fighters by some French officers, amongst them was the martyr Said ben Abdullah ben Ali Tonakti²²⁰. The resistance fighter Ahmad ben Omran from tribe Dhahibah testified about Said's conditions of arrest after a battle he conducted with a group of his comrades **"They stopped them in a row on the edge of the mountain, led by Mohamed ben Abdullah Amri. And after interrogating him about the reason of his participation in the battle, they were furious with him and started shooting him until he fell dead on the foot of the mountain. Then they took us to another place where we found another bunch of captives with their hands tied. We spent our night with them and likewise we were tied... In the morning, they took with them three prisoners: Mabrouk Shaikh, the leader of the Dhahibah group, a prisoner of Zarqani and another Hamidi. I understood from what the French officials were saying which Dhaif Allah ben Aoun translated to me that they will be executed, which was the case..."**.

In the same storekeeper Mohamed ben Said ben Omar Bouajila²²¹ testified that among the martyrs some were stoned on the head to death. Mr. Dhaou El-Dheeb, one of those interested in the local history of Tataouine, told us that an employee of the civil affairs office in

217 Testimony of Abdullah Al-Haddad on May 25, 2012.

218 Al-Sabah Number 1363 Sixth year On May 31, 1956 corresponding to Shawwal 21, 1375

219 It was reported in the Labor Journal on June 19, 1956 that they were 160.

220 The document written in the martyr's father's handwriting on his execution on Mount Akri. Appendix 4

221 Registered testimony at Tataouine Radio, within the program of Najoua Al-Badia

Tataouine, whose name he didn't reveal and who was a translator, accompanied the French officers on the day of the battle and that most of the resistance fighters didn't die only of plane bombing but the majority were just injured then executed by the "Sahrawi army" of Moroccan mercenaries.

On May 29th, 1956, some prisoners were shot in the battle of Agri or stoned to death²²² along with torture and various insults. The French army together with Bourguiba's followers (storekeepers, Gomyah and welfare committees (Lijan Al-Riâaya)) took part in these executions.

Prisoners among resistance fighters along with captives who were caught and jailed just because they were suspected of belonging Youssefi movement, were tortured, severely beaten, left without food, bed or water for more than twenty days and they were sprayed with insecticides by the Swahiliah.²²³

▪ **Unburied martyrs**

The bodies of many of the martyrs of Agri were torn apart in the caves, between the stones and the middle of the reefs. The days of the battle were very sad. Families organized mourning funerals, but they were not allowed to ask about the bodies, see them or even identify them. Many corpses were left to be scavenged by the wolves. However, some of the martyrs' families were brave and turned to bury their dead. One of the resistance fighters, Saad ben Hassan Bouchnak²²⁴, moved to the battlefield and buried his uncle, commander Ahmed ben Abdullah Lazrak²²⁵. Ahmed Ghadiri²²⁶ testified that Sheikh Shanani asked the people to volunteer to bury the martyrs of Agri after two days from the battle and to bury the corpses either under stones or inside the caves. This story is confirmed by Said ben Salem Aloui²²⁷, a native of Shanani, who said in his testimony that the Sheikh of Shanani asked the people two days after the battle to help bury the dead and that three of those who participated in the burial are still alive (at the time of registration of the testimony). They were identified as Mohamed Tamimi, Hedi Nafaa and Omar Benchibani. Further investigation proved that Hedi nafaa wasn't with them for he said he was in Tunis capital by that time.

A witness called Mokhtar Boufnina²²⁸ told us that he had turned to Mount Agri months after the battle in search of what remained of the body of his uncle, Martyr Ali Boufnina, but he only found a pile of bones and a bunch of rags scorched by the sun and he identified his uncle

222 The testimony of Mohamed ben Said ben Omar Bouajila referred to earlier

223 A statement that was received by Alson most of the people who were interrogated in Tataouine barracks after their arrest.

224 Saad ben Hassan Bouchnak (1909/2001), one of the rebels' providers of food, water and weapons, lived in my country and accompanied the name Mohamed Boukkesra, who was known to transport the supplies to the rebels in his car.

225 The testimony of Abdelwahab ben Saad ben Hassan Bouchnak, born in 1951 on the authority of his father, during a meeting on 07-08-2016 in Tataouine.

226 Testimony dated 06-04-2011

227 Said ben Salem Aloui, from the village of Chennini, born in 1950 - heard from the narrators - a certificate recorded on Radio Tataouine on 18-09-2011.

228 El Mokhtar ben Ali Boufneh (1930) testimony dated 28/2017.

with a talisman his mother had hung on his neck to protect him from reptile toxins. He also said that the bones were scattered after the beasts devoured all their flesh.

But many families of the martyrs were forced to remain silent and bare the trauma with patience in fear of Bourguiba and his followers' tyranny. The bones of the dead remained scattered and efforts to gather some of them were only made by the members of the civil society at the break of the 2010/2011 Tunisian revolution. Resistance fighter Ahmed Ben Othman said in his testimony²²⁹ that he requested collecting the remains of the martyrs of Agri, both in the era of Bourguiba and the era of his successor Ben Ali, which were all rejected.

- **Unregistered deaths at the municipalities**

Referring to the books of the civil status in the municipalities of Tataouine, Dhahiba, and Sammar, we found that a few martyrs were scored in death books by some relatives or patriots, such as in the registering of Al Maktouf Bakay, Nasser Madani, Ahmad Lazrak and approximately three others after the authorization of Mohamed Dabbash²³⁰ caïd of Tataouine. While others who were registered in the birth books were not officially registered in death records, according to the Civil Status Department, many of them did not found in the registration documents, neither by birth nor by death. Also the death of Maktouf Bekai was recorded in 1993; the year of the introduction of computing in the municipality of Tataouine in the name of Mohamed Mansri instead of Mohamed Maktouf, which confirms that the martyrs' families didn't care about their official registration.

- **Arbitrary imprisonment**

All those who were suspected of belonging or sympathizing with the General Secretariat of the youth of the region, during and after the battles of Agri and Ghar el-Jani were imprisoned in the barracks of Tataouine in harsh conditions about which many testified of bad health conditions and lack of the basic human rights such as nutrition, water and hygiene. In addition to the investigation²³¹ under beatings and humiliation, dozens of them were stacked inside the rooms of the military barracks without a mattress or blanket. Prisoners were sprayed with insecticides²³² to combat lice and ticks. Many testimonies sited that on the day of Bourguiba's release on June 1956, the prisoners were in a state of exhaustion, hunger and collapse, which made them unable to walk. One of them stated that he had traveled between the prison and the city center by 300 meters with great difficulty and had to sit down to rest five times.

²²⁹ The testimony is recorded on 02-02-2011 at Tataouine Radio, within the program of "Najoûu Al-Badia"

²³⁰ Witness Hadj Habib Junaidi, an employee of the Civil Status Department in the Municipality of Tataouine, told us in his verbal testimony on March 21, 2017 that he consulted with Hadj Shaybani ben Noureddine , head of the Civil Status Department in the Municipality of Tataouine.

²³¹ Many people who testified to us responded to the tongues of the "Swahleya" (from Sahel) group that was conducting interrogations of the detainees with great brutality.

²³² It was stated in the testimony of Mohamed ben Said ben Omar ben Salem Bouajila that the prisoners were given salty water and were being crammed into rooms inside the barracks at a rate of 40 or 50 in each room as their heads and bodies were sprayed with white powder that may be a drug for exterminating insects.

▪ **Discrimination and cruel and degrading treatment**

Bailiff Mohyeddine Tagaz²³³, who was an eyewitness when the welfare committees (Lijan Al-Riâaya) arrested the city's respected teacher Al Madani Ben Hachmi testified on how two of the welfare committee escorted him through the main street while pointing their guns at him.

Some of the people of Ghamrasen were fed up with the injustice imposed on them by the welfare committees (Lijan Al-Riâaya), henceforth they complained to the Bey to give them justice and insure their rights. In 1955, a delegation among them took the petition to the Bey which stated: "Your majesty, your people are being hunted in the main streets and inside houses, which terrified women and infants and ruined goods. In general, the situation of the south now seems like the situation before 1875, the days before the tribes dominated each other. The only difference is that nowadays government is siding with one part against the other due to ideological affiliation. This government has become unable to rule with justice, thus it is eligible to be removed²³⁴," but the Bey himself was left powerless and was unable to do them justice.

Injustice and marginalization continued on the Youssefis and their families, in such a way that they were deprived from development programs or aid. They were blockaded by the heads of the local units of the constitutional party (the omdas), who excluded them from any social security program, which meant they have been victims of poverty, dictatorship and deprivation²³⁵ till recently. It's the 2010/2011 revolution that gave them hope again.

It is known that Bourguiba's regime granted his followers collective transport licenses (Louage and taxi) and licenses to sell tobacco, open gas stations and some other trade items.

A list of those who have been granted transport permits or shops such as petrol stations or others is mentioned in a document of Ajami M'daouer, that they were well off or they are known to serve the colonizer, while there are real militants who should have more rights to these privileges.

A document written by the father of one of the martyrs

²³³ Interview with him on 26-07-2016.

²³⁴ Tunisian National Archives P2,100D. 1D (parish complaint to the Bey). Appendix No. 5

²³⁵ The widow of Naser Madani was deprived of the transportation license (Louage), which her husband owned and had bought from his own money before independence (testimony dated 03/06/2012)



II. Abuses inflicted on the Husainid family

The period of independence was characterized by frequent political movement within the framework of building a modern state at the heart of the Kingdom of Tunisia. However, the part headed by Habib Bourguiba was thinking of establishing a republican system on the ruins of the Kingdom, which was approved by the Constituent Assembly on July 25, 1957. However, the transition to the republican regime was accompanied by serious violations of the human rights of the Husainid family, especially since many of its members are in line with the constitutional movement. It should be noted that Amin Bey's position was a supporter of the independence movement.

The removal of the Husseini family from the throne did not pass through the means and methods that preserve human dignity. For Bourguiba's regime intentionally used violence, degrading, and arbitrary imprisonment against the Husaini family. In this context, TDC received a number of files concerning the violation of the right of ownership in addition to a number of files related to the violation of physical sanctity and freedom of movement and torture.

1. Course of events

The political change that Tunisia experienced during the independence of March 20, 1956, through the declaration of the Republic on July 25, 1957, did not go without breaches contradicting the slogans raised by the Free Constitutional Party, especially the slogan of freedom and dignity. The stated goal of this change sought by President Habib Bourguiba was to move towards a republican system and build an independent state based on freedom of expression, press and publishing without falling into the trap of revenge.

Prior to independence, Tunisia had known political stations during the 252-year rule of the Husainid state, which had a negative impact, especially on the economic level, but this did not prevent some of the Bayes from being aware of the importance of the problems facing the Kingdom and pushed towards attempts to change, which did not succeed under the pressure of colonial power that headed towards the exploitation of the weak kingdoms that are economically dependent on foreign debt. The colonization of Algeria by the French colonial powers ushered an expansionist of which Tunisia wasn't exempted. For those reasons Sadoq Bey was forced to enable an international financial committee to manage the kingdom submerged in foreign debt and then the French government tried to force Sadoq Bey to sign the French protection agreement for Tunisia, but he refused to do so.

In April 1881, the French colonial forces used the intertwining of some Tunisian tribes with their forces on the Tunisian-Algerian border as a pretext to send a faction of their forces to the city of El Kef. On May 1, 1881, a second platoon was sent to Bizerte. On May 11th 1881, France brought its military forces and colonized Tunis to force Sadoq Bey on the next day to sign the protection convention.

On June 8, 1883 Ali Bey III was forced to sign the Treaty of La Marsa, in which he formally ceded his powers and retained only the power of appointment, thereby bringing all departments, army, police and foreign affairs into the hands of the French colonizer.

With Mohamed Nasser Bey taking power in the kingdom, he was driven by his son Hussein Bey to support the resistance movements, especially the Tunisian Youth Movement founded by Abdeljalil Zaouch in 1907 and pushed towards the ascension of Tunisians to the advisory body composed only of the French and succeeded in forming the Tunisian consultative branch, which included Sixteen Tunisian members comprising Tunisian Jews, during the month of February 1907. The sons of Mohamed Bey continued the support of national movements, pushing their father to meet with a delegation of constitutionalists to carry out their demands, namely the establishment of a national council to be elected with the right of Tunisians to vote and negotiate for its interests with the colonial power in Tunisia, which rejected these demands. This made Mohamed Nasser announce his intention to step down from the throne, which was rejected by the general public who led a demonstration in La Marsa to discourage him from his decision. And considering the difficult situation of Tunisia the population saw the Bey as the guarantee in the face of the colonial abuses, killing and exploitation of wealth throughout the country. This was followed by many attempts by the general resident to discourage him from his decision at times by intimidation and others by threatening till the Bey decided not to cede the throne.

Mohamed Bey continued, backed in this by his sons, to support the Tunisian people by submitting a list of 18 points representing the demands of Tunisians through Ahmed Safi, one of his close associates who published it in a Tunisian socialist journal on the 9th of April 1922. Then the general resident responded on the 15th of April by barricading the Bey's residence by the colonial army which led him to give up on this list. Nonetheless, the French forces took the decision to put his children under house arrest.

In the same context, the sons of Mohamed Nasser Bey were led by the general resident to accept the establishment of the Supreme Council, which continued to exist till 1951 and included 44 French members and 18 Tunisians, including 2 Tunisian Jews. The Tunisian representation developed from 29% to 42%. Among the council's tasks was to set the Budget of the Kingdom and compel the general resident to obtain the approval of the Council before disposing of the budget.

In 1943, Moncef Bey formed a Tunisian government without referring to the Resident General, who expressed outrage at the Bey, who should have consulted him before announcing it. The government consisted of :

- Mhamed Chenik: The Prime Minister
- Mahmoud Materi: Minister of Interior affairs
- Salah Farhat: Minister of Justice
- Aziz Jallouli: Minister of Awqaf.

This government, with the support of the Bey, tried to restore the authority of the "qoyad", the police and the municipalities under its authority and to force them to protect the interests of the citizens from the injustice of the colonial army. Meanwhile, a number of pro-French officials were changed and others loyal to the government were appointed. The same government abolished the decree of January 30th, 1888 which granted to the colonial forces the right to purchase property under the authority of the Awqaf.

Resident of the French occupation was forced to abolish the Supreme Council and restrict the movements of Hussein Bey to disengage the ruling family from the anti-colonial political forces until 1955.

Following Tunisia's independence, the government of Habib Bourguiba went to work on a new constitution for the country and the adoption of constitutional monarchy, which the Bey ratified. But in 1957, President Bourguiba, through the National Constituent Assembly, changed the regime towards the republican system, although it was not a popular demand for Tunisians, to announce on July 25th, 1957, the establishment of the republic and the abolition of the monarchy. On July 23rd the royal castle was besieged and all communication was cut.

On July 25, 1957, Jallouli Fares, Ali Belhwan, Idriss Guiga and Ahmed Mestiri went to the Bey to formally inform him of the decision of the Constituent Assembly.

On August 11, 1957, the governor of Tunisia went to his house in Manouba to inform Chadli Bey and Hussein Bey that they would be transferred to the Kairouan hwareb prison. The two remained in prison without trial for three years and were deprived of family visits.

2. Violations

The proclamation of the republic was a breakthrough for a series of grave violations against the Husainid family and senior state officials. The state issued decrees and laws²³⁶ confiscating all movable and real estate properties of the family without having the right to appeal.

2.1. Random confiscation of property

It is noteworthy that the laws of confiscation were far apart in time, which proves that the confiscation itself was linked to certain persons in the ruling authority at the time, and if we exclude the family of "Mohamed Lamine Bey" and his family as a direct ruler in Tunisia, the rest of the laws of confiscation was mainly based on financial motives. The fact that it was only directed to wealthy families was huge proof. In addition to that, these laws were issued two years after the declaration of the Republic for the family of "Ahmed Bey" and twelve years for the family of "Hussein Bey".

The confiscation also affected senior officials of the Kingdom by virtue of judicial rulings of the Supreme Court based on Law No. 13 of 1957, which is related to:

- Judgment No. 170 of 21/11/1957 issued by the Supreme Court of Justice concerning the confiscation of unlawful gains attributed to "Abdellaziz Ben Mohamed Saleh Menchari": a senior state officials: file No. 001393-0101
- Judgment No. 115 of 22/09/1958 issued by the Supreme Court of Justice concerning the confiscation of illegal property belonging to "Mohamed Tayeb Belkhiria" of senior state officials and his trial in order to gain a fortune unlawfully and confiscate his property in

236 Decree No. 02 of 1957 of July 29, 1957, concerning the confiscation of all movable and real estate property of Mohamed Lamine Bey, his children, the wives of his sons, and the wives of his daughters.

Law No. 13 of 1957 of August 17, 1957, concerning the confiscation of illicit property.

Law No. 136 and 137 of 1959 related to the confiscation of property of the heirs of Ahmed Bey.

Law No. 34 of 1969 related to the confiscation of the property of Hussein Ben Mohamed Nasser Bey.

accordance with articles 1, 2 and 26 of Law No. 13 Issued on 17/08/1957 corresponding to 20 Muharram 1377 Hegira, which shows that the bidder did counter work for the interest of the supreme homeland of that bribe according to the phases of the criminal case number 418, which shows that the bidder was bribed and has been characterized as such in all stages of the functions he held .In addition, he was a help to the colonial power in subduing the national movement.

- Judgment No. 179 of 18/08/1958 issued by the Supreme Court of Justice on the confiscation of illegal gains attributable to "Mohamed Attia" Director of Sadikia, and imprisonment for five years and the confiscation of all gains and stripped of his national rights for ten years.

A document issued by an observer²³⁷ from the Ministry of Finance in December 1970 proves that confiscated property was granted to bankers without contracts or book of conditions and the state did not have guarantees for holding them accountable for years, such as what happened with the bankers. The confiscation has seen wholesale losses, so the designated administrator takes and uses commercial assets and real estate without any guarantees to manage or sell them. Among them are:

- The commercial origin of the shop «quincaillerie moderne» was placed under the appointed administrator after the transfer of his management to the company «mine usine», which was at the disposal of the financial director Mr. "Almesghani".

In addition, assets were transferred to managers without specifying conditions or contract of agency or any guarantees for the interests of the state such as commercial assets the state confiscated to Henry Smadja

- TUNISIA PALACE under Nasser Malouche.

- Claridge Hotel under the management of Mohamed Boukhriss.

- La Presse newspaper «press journal de Tunisie» and the printing press «imprimerie rapide» under the management of Omar Belkhiria.

- Institutions of Ben Moussa «Les Etablissements Ben Moussa» under the management of Zanuni of the National Office for Fisheries.

Since the acquisition of the assets, no report on its management has been handed over. It should also be noted that the administrator and the manager are doing business which is completely incompatible with the interests of the state, causing great losses.

2.2. The jewelry and precious items case

The jewelry and precious objects belonging to the family were seized and confiscated for the benefit of the Tunisian State by the committee in charge of the confiscation file and placed at the disposal of the State Secretariat for Finance and Planning, which entrusted the public treasury of the Tunisian State with the task of physical preservation of those precious and jewelry items. In 1967, the Secretary of State for Finance and Planning authorized the Secretary General of the Tunisian State to transfer part of these golden coins and jewelry into gold bars and hand them over to the Central Bank of Tunisia for sale in order to support

²³⁷ See appendixes

the cooperative of jewelers “L’Etoile d’Or” and deposit its selling value in the public treasury account. Meanwhile, the public treasury of the country continues to hold pieces of jewelry containing precious stones or stones of high artistic value.

The Committee in charge of seizing, counting and valuing jewelry and various precious items held by the royal family prior to the proclamation of the Republic estimated the value of the jewelry at 1.789,037,600²³⁸ million dinars. From the 29th of April 1972 to the 28th of March 1996²³⁹, the value of the treasured pieces of jewelry was estimated to a variety of 18-carat, 9-carat gold and silver.

2.3. Serious violations of human rights

In addition to the confiscation, a number of members of the Husainid family were subjected to torture and imprisonment without trial or through unfair trial, where both "Mohamed Chedly ben Mohamed Lamine Bey" and "Hussein Bey" were tortured by beatings on their feet during their imprisonment in the “Hwareb” jail in Kairouan in 1957. We also received testimonies that the Bey’s son- in- law was severely tortured, likewise the crown prince “Hussein Bey” was subjected to cruel and inhuman treatment by beating him at the head level during the process of arrest.

Amin Bey's wife, Jenayna Bey, was arrested at the Ministry of Interior in 1958. She was tortured, leading to her death two days after her release, during which she remained dumb, unable to pronounce and suffering severe bleeding.

Additionally, according to all the testimonies of members of the Husseini family, Chedly Bey was tortured in Kairouan.

2.4. Conviction in extraordinary courts

Some members of the Husainid family, particularly members of the former Bey, Mohamed Lamine Bey, family, were tried by the Supreme Court of Justice in a case number 126 in which the verdict was issued on 06/10/1958 accused of hiding and embezzlement of funds and jewelry consigned by the Tunisian state.

As a result of the unfair trial, the Supreme Court of Justice issued a sentence of imprisonment number 126 on 06/10/1958 against each of the persons stated below:

Sons of Mohamed El Amin Bey:

- Chedly ben Mohamed Lamine Bey (05 years imprisonment).
- Rifaat ben Mohamed ben Mohamed Lamine Bey (04 months imprisonment).
- Kabira bint Mohamed Lamine Bey (two months imprisonment with delay).
- Khadija ben Mohamed Lamine Bey (two months imprisonment with delay).

²³⁸ Correspondence No. 11068 M. Z. No. 302 from the General Treasury of the Tunisian Countries to the Chair of the Truth and Dignity Commission on March 23, 2018. The correspondence contained the work of the Administrative and Technical Committee in Decision No. 3 dated 02/26/1990 issued by the Minister of Planning and Finance to assume various control, statistics and evaluation processes Booked on May 11, 1990.

²³⁹ Minutes of the committee in charge of the investigation by the bank’s governor on May 14, 1996.

- Sufiya bint Mohamed Lamine Bey (four months imprisonment with delay).

Mohamed Lamine Bey's in-laws:

- Habib Ben Mokhtar Kahia (04 months imprisonment).
- Safia Bint Rifaat Turki (04 months in prison)
- Jouda Bint Said Zakaria (04 months in prison).
- Kheireddine Ben Mustapha Ben Azouz (04 months in prison).
- Mamia bint Eltaher Kahia (two months imprisonment with delay).

The verdict against the Husainid family is considered to be of the least fair trial, given that the trials were issued by the Supreme Court of Justice, an exceptional court whose members are chosen by the President of the Republic and whose verdicts cannot be challenged.

2.5. Deprivation of the right to make a living

TDC has proved the existence of a number of systematic impediments inflicted on the Bayat family members in this area, such as the denial of the right of applying in the public service (file: "Mohamed Chedly Bey" / file: "Noureddine Ben Mohamed Bey") or slowing the job applications in other cases (File "Mohamed Rashid ben Sadeq Bey" and his wife, "Laila Hashaishi").

2.6. Violation of the right to an identity

The Bourguiba regime tended to arbitrarily change the family names of the members of the Bayat family. In fact they changed the family name of Raafat Bey together with his siblings Riadh, Habiba and Hela from "Bey" to Ben "Hussein". Likewise the same thing happened to Noureddine Bey whose family name changed to "Noureddine El Amin". His date of birth was changed too. The policy of moral and materiel harassment of all members of the Bey family remained for decades .

The denial to the Bey family of the right to an identity affected them negatively considering that they no longer have the same surname, while they all belong to the same royal family, which caused substantial moral and material damage and made it difficult for them to obtain administrative documents.

2.7. Violation of Home Privacy

On 25/07/1957 following the declaration of the republican regime Mohamed was evicted from the royal palace, the expulsion of "Mohamed Lamine Bey" notes that it is his own property as he bought it from the "Basis" with his own money after receiving a loan from the bank. At that time, the governor of Tunisia, Mohamed Zaouche, ordered the Bey to leave the palace within a 24 hours notice or else be evicted by force. Mohamed Lamine Bey, his wife and daughter were moved to an abandoned palace in Mannouba (current women prison) under house arrest for one year and a few months until they were forced to move to their confiscated land in Sokra and forced to live under house arrest in a warehouse lacking the most basic facilities. The children of Mohamed Lamine Bey, including Mohamed Bey, were imprisoned.

Raafat Bey's family moved to live for five months with his wife's family, the Kaheya family, and then had to rent an apartment.

2.8. House arrest and violation of freedom of movement within the country

Members of the royal family, especially Mohamed Lamine Bey, were subjected to close security surveillance and were prevented from contacting anyone except the family members only under the prior notification of the special authorities.

2.9. Forced Political exile

On July 25, 1962, Princess Taj el Molk, daughter of Mohamed Lamine Bey, was forced to emigrate to Morocco, accompanied by her husband, Mohamed Shelly, who was a doctor and had a private clinic at the time, fearing threats of imprisonment and torture. They settled in Morocco for 30 years.

The family of "Ali Ben Hussein Bey" was subjected to moral harassment, which pushed them to emigrate to France in the early sixties and then return to Tunisia in the early seventies when passing through health and psychological problems, especially after the death of his father and them withholding the news for three months.

2.10. Violation of freedom of movement abroad and the right to a passport

Amin Bey's grandson, Nouredine Bey, was prevented from obtaining his passport to continue his studies as an engineer in Belgium, resulting in a two-month delay in enrollment, which put him accountable by the Belgian college threatening him not to sit for the first semester's exams.

2.11. Violation of academic freedom

Nouredine Bey, the grandson of Lamine Bey, was denied a university scholarship, forcing him to work in all fields due to financial difficulties in the Diaspora.

3. The alleged perpetrators of the violation following the proclamation of the Republic of 1957

- Former President "Habib Bourguiba", who was President of the Republic after the abolition of the monarchy and the proclamation of the Republic. He is considered by those victims as liable for all violations and responsible for the issuance of laws of confiscation, and that all other violations were in his knowledge and in some instructions by him.
- "Wassila Bourguiba": to whom the victims among the members of the family of "Amin Bey" attributed the seizure of the family jewelry.
- "Mohamed Farhat", President of the High Court of Justice, who followed Habib Bourguiba's orders to the word and devised mock trials .
- "Ahmed Zaouch", governor of Tunis in that period, who supervised the removal of the "Bey" and his family from the Royal Palace.
- "Hammadi Benchaabane" police superintendent who executed instructions to remove the Bey family from the palace.

- "Mongi Bali," the mayor of La Marsa who conceded land belonging to the family of "Farouk Bey" for the benefit of "Slim Chiboub".

- "Amor Chachya" Governor of Kairouan, who supervised and practiced torture on Hussein Bey.

The Bourguiba regime and the newly established independent state have adopted a conduct that infringed the principles of freedom and justice stipulated in the Constitution the new republican regime should have treated all citizens equally regardless of their Origins and not focus on taking revenge, vindictiveness and liquidation of narrow accounts.

III. The Youssefi Bourguibi conflict

The internal independence agreements resulted in opposition to their content from the Old Constitutional Party, the Voice of the Zitouni Student Committee, the leaders of the General Union of Tunisian Agriculture and the departments of the Zitouna Mosque, especially a stream of the New Constitutional Free Party led by Secretary General Salah Ben Youssef.

1. Course of events

Upon his return to Tunisia on September 13, 1955, Salah Ben Youssef threatened to return to armed resistance until the complete evacuation of the occupation forces, if France did not respond to the recognition of the right of the Tunisian people to independence, considering the internal independence agreements "a step backwards." He stipulated a minimum that could not be waived in those negotiations, which was known as the Salah Ben Youssef project consisting of five points contained in his statement issued in January 1955:

- Set an expiry date for each agreement that involves limiting sovereignty.

Establish a monolithic Tunisian government, with full responsibility for public security being transferred to Tunisians so that no French military or civilian authority is involved.

- The restoration of all judicial powers of the French courts to the Tunisian judiciary without any discrimination, whether in terms of sex or religion.
- The Tunisian government should take over all the affairs of the educational institutions while allowing the presence of a French cultural mission, but on the same basis as it is authorized for other foreign missions.
- The Tunisian government should be free to pursue the policy it sees fit in the field of economy and customs matters, taking into account the compatibility with the policy of the French franc zone.

Ben Youssef supported a group of opponents of the Bourguiba project such as the resistance fighters who refused to surrender the weapons and considered that these agreements are a betrayal of Algeria in that circumstance and who were active on the border strip in the region of Kasserine (Committees of Frachich and H'mammah) and declared that they do not accept the surrender of arms while the leaders of the National Movement were exiled and military dominance could be seen around the country. Nevertheless some resistance leaders such as

Lazhar Chraïti, Sassi Lassouad, and Mesbah Jarbou have responded by accepting to turn in 2,713 weapons. After this agreement, part of the resistance were deceived, they suffered unemployment and lack of income, as well as marginalization and a sense of emptiness, so they protested in front of the royal palace in November 1955 demanding to improve their situation which were met with procrastination and neglect. Thus they resorted to the Youssefiya movement as the best refuge.

This split between Habib Bourguiba and Salah Ben Youssef came to a crisis after Ben Youssef returned from Cairo. The confrontation between the two sides of the dispute intensified, especially after the meeting that brought them together in Bourguiba's stronghold to find a basis for consensus, but the unbridled tendency to take power has overcome both sides of the dispute.

Following the escalation of the disagreement, Salah Ben Youssef sought to use the means of direct communication and persuasion with the citizens to resume their struggle against the colonizer in order to corrupt the Bourguiba project. He began to publish statements denouncing those agreements with the French, especially after his speech at the Zaytuna Mosque on 7 October 1955, which was the spark that ignited the conflict.

On his part, Bourguiba chose the policy of "stages" within the "autonomy agreements" and the total independence of the stages. Until the French authorities intervened and settled the dispute in favor of Bourguiba. Bourguiba seemed obliged to accept French intervention and chose the violent approach to solve the conflict. According to a testimony presented by the Ambassador of France (who was called during the period of internal independence High Commissioner) Roger Seydoux²⁴⁰ where he described as "small coup" the resolution taken by the two leaders, which Seydoux said in his testimony²⁴¹ with the management of the French Archive in 1983.

Then Bourguiba called for a meeting with the political committee of the political bureau of the party where "Ben Youssef" dismissed from the party and stripped of his membership. On November 15, 1955, the conference of Sfax was held, during which Bourguiba planned to secure his project and exclude his rival, Salah Ben Youssef, who did not attend for fear of a possible assassination plot against him. He also encouraged his supporters to boycott the conference, especially in the south-east where he toured to showcase his vision in (Medenine, Tataouine, Gabes, Djerba ...). His vision consisted mainly in the belief that there is no way to independence unless the constrained forces of the people are freed and the way to dignity inevitably passes through completely liberating the country from colonialism without resorting to agreements that he deemed worse than the ones signed in 1881. However, the Sfax Congress involved a radical transformation in its regulations contained in the agreements.

240 MAE. Direction des archives et de la documentation. Roger Seydoux, AO10 – Entretien N° 1 20 décembre 1983

241 Roger Seydoux, op cité "

2. Liquidation of the Youssefists

After Salah Ben Youssef's propaganda campaign in the south-east, which saw a large public support for his views on the internal independence issue he deemed humiliating, Bourguiba toured the southeast himself and organized a counter-propaganda against Salah Ben Youssef. This visit resulted in violence by the party's militias. In fact it caused three deaths from the General Secretariat of the party and 66 wounded from Ben Youssef's supporters. Moreover, as a matter of fact, Abdelkarim Najjari and Hammadi Hadj Salem were lynched and 28 people were arrested.

At the request of the head of government Habib Bourguiba, the French government attempted to assist him against his opponent, Salah Ben Youssef. Indeed, during the works of the French committee on North African affairs which was held on 26th November 1956, France specified the need of such a confrontation taking place between Bourguiba and the Youssefist Movement to reduce the pressure during the negotiations about complete independence. Therefore, France supported Bourguiba by military intervention against the Youssefi Resistance movement and by helping the Tunisian local authorities arrest Salah Ben Youssef.²⁴²

On December 20, 1955, about 500 French soldiers attacked the Zemmour palace in the Bani Khaddash area, terrorizing women, children and the elderly. Mohamed ben Issa Mahdawi was arrested. A gang of Sbayhiah and Gomeyah broke into the Youssefists General Secretariat headquarters. Mohamad Ben Ammar, a photographer of Essabeh newspaper was assassinated followed by the killing of Ali Ben Ismail at Ksar Hellal. Mokhtar Attia was assassinated on December 4th 1955 because of his resignation from the Free Tunisian Constitutional Party.

On January 28, 1956, Bourguiba issued a decision to arrest the Youssefists anywhere they could be found.

On February 10, 1956, the Governor of Medenine, by order of Bourguiba, arrested 19 members of the General Secretariat Division in Ghomrasen and arrested 08 members of the General Secretariat Division in Tataouine. Abdelaziz Ben Mokhtar Bel Haj Aoun was arrested, his feet and hands were tied as he was being tortured during 18 whole days, and his properties were confiscated. Several Youssefists were also liquidated after being tortured, including Saad Ba'ar, Al-Bashir Qureisia, Hassan Chandoul, and Mohamed Karfa, Mohamed Bennisser Tataouini, Ahmed Lazrag Tataouini, Abdallah Ben Amara Benguerdani and Ali Ben Ahmed H'wiri. Mohamed Hammami, member of the political bureau of the party had been tortured by General secretariat members before he was executed.

The violations lasted from January to the end of February 1956, as 10 loyalists of the General Secretariat in Tataouine, Gafsa, and Siliana were arrested for allegedly organizing an unauthorized coordination session (in the absence of a legal text criminalizing this). On top of that, a group of members of the General secretariat were arbitrarily arrested with their headquarters shut down as was the case for to Ali Zlitni. Others were tortured, such as Hedi

242 Silvera Victor, *Réflexions sur la crise des rapports franco-tunisien*. In : *Politique étrangère*, n° 2, 1958 (23^{ème} année). pp. 231-243.

Ben Nasr, who was inhumanly abused by members of the political bureau supported by the French forces. During arrest Youssefis were deprived of Water, food and bed sheets, their families were banned from visits and giving any Information on the circumstances of their arrest.

In the same period, a group of Youssefis were stopped by Hassan Ayadi gang composed of Ayashi Daoud, Mahchawi, Taher Boutara. Some of the victims were Mohamed Zaraa, Hafnawi and Said Debich who was tortured and killed in Sabbat Edhalem. Said Debich's wife never received his corpse till this day. The victim Abdel Sattar Hani also stated that he spent three days in the Sabbat Edhalem then was moved to Bir Terraz in Rades where they lived through the worst atrocities.

Sabbat Edhalem

The Sabbat Edhalem was known as a site of gross human rights abuses against Bourguiba's opponents, both Youssefis and Zitounis, by affiliated *Welfare Committees* (Lijan Al-Riâaya) or supervising politicians such as Tayeb Mehiri, Tayeb Sahbani, Omar Chachaia. Most of those field actors were former resistance leaders who chose to side with Bourguiba, such as Mahjoub Ben Ali, Sassi lasouad, Hassan ben Abdul Aziz, Ahmed Reddawi and Mohamed Tayeb Bouamrani.

Hassan Ayadi (the main supervisor of the *Welfare committees* (Lijan Al-Riâaya) and the headquarters of the Sabbat Edhalem) noted in his memoirs that: "*Ben Youssef held a meeting at Zaytuna Mosque and gave a speech where he maintained his position. He made various speeches while his gangs made great damage. Zaytuna Cheikh reacted at the order of Bourguiba by settling at the headquarters of the political bureau. Then he opened the Sabbat Edhalem and ordered his disciples to gather in teams and head towards the capital, its suburbs, the Cap Bon, the North of the capital, Souk el Erbiaa...He established units at each town where those teams started the elimination of the perpetrators of sabotaging. Things were going well and the principal headquarter was located in the Cap Bon. Actually most of the actions took place in Bani Khaled where Amor Chachia was in charge, and that period did not last long until Ben Youssef fled to Egypt and left the people fighting each other, thus committing an unforgivable felony. Sheikh struggled and dedicated himself to serve the state, which brought him acknowledgment either in the capital or throughout the Tunisian state. When sedition subsided and the Tunisian state took over public security affairs, he shut the Sabbat Edhalem and gave in its affairs to the Department of National Security.*"

Mr. Ahmed Messaoudi²⁴³ presented his testimony²⁴⁴ about the violations occurring in the context of the colonial exit from Tunisia. He talked about his links with Dwiret Unit and Sabbat Edhalem as well as the Boorguiba-Ben Youssef Conflict. He emphasized: "*They decided to remove Salah Ben Youssef from the party. Salah Ben Youssef was expelled from the party. He held on to his position in the general secretariat, he made the name of the party his own property, he organized a big meeting in Zitouna Mosque in the Capital. Then he set up a Bureau for the General secretariat in Nahj Jazira. The party was split between the General secretariat and*

²⁴³ Ahmad Masoudi's testimony - Public Hearing March 24 : <https://www.youtube.com/watch?v=qP-sTOHyCew>

²⁴⁴ During a public hearing held by the Truth and Dignity Commission on March 24, 2017

Mis en forme : Police :10 pt, Police de script complexe :+Titres CS (Times New Roman), 10 pt, Anglais (Royaume-Uni)

Mis en forme : Police :10 pt, Police de script complexe :+Titres CS (Times New Roman), 10 pt, Anglais (Royaume-Uni)

the political bureau. We had a Unit at Sabbat Edhalem. We received threatening telegrams ordering us to regain bureau in a 24 hour time notice or we would be punished and even killed. We took public transport and we fled to Dhahiba where there were no more plots nor killing nor assassination. Then Bourguiba's followers occupied our bureaus and turned them into jails and torture offices, where they used to bring the dissidents and beat them."

The witness A.T. reported that he wanted to uncover the relationship of Sheikh Ayadi to Sabbat Edhalem, because there were a lot of misconceptions. He clarified that the headquarters of Dwiret Unit was situated in a lane in Bab B'nat in the capital, and that it was used as an arrest and investigation center under the supervision of Tayeb Sahbeni, Ali W'raq and Said Kaaboura and when It was discovered and was in danger of being demolished, it was decided to create another center for the same purposes in a Branch of Bacha street lane known as Sabbat Edhalem Lane which was in reality a sort of a warehouse.

The witness M.H.A²⁴⁵ reported: *"The detention centers created for the torture of the dissidents were under the supervision of the Free Constitutional Party administration. The most important detention center in the capital was the headquarters of the Dark Sb'at division, which is directly supervised by Tayeb Sahabani and Hassan Ayadi. It was also used by Ali W'raq. The task of any member of the Welfare Committees (Lijan Al-Riâaya) was to arrest the Youssefi activists and to transfer them to the Sabbat Edhalem center where they were beaten by bats to get them to acknowledge their actions against the state. According to the witness, one of the torture supervisors in this center is Ezzedine from Ariana. The witness said that he cannot confirm nor deny some accounts of the ignorance of the fate of many of the Youssefi detainees in the Sabbat el Dhalem center."*

The violations did not only affect the Youssefis. They also affected the Zaytuna students who were tortured at the headquarters of the *Sabbat el Dhalem* Division for their main role in opposing Bourguiba's policies that excluded them. The regime deliberately eliminated its Zaytuna opponents without any knowledge of their families inside the country who never suspected what was happening to their children as they enjoy scholarships from the endowments.

It is worth mentioning that this conflict between the two parts of the Constitution Party played an active role in the pressure on France, where the historian Charles André Julien notes that Bourguiba politically exploited what he described as a threat to civil peace in order to improve the terms of negotiations towards independence.

In a letter dated 22 June 1956 from the French High Commissioner in Tunis Mr. Seydoux to the French Secretary of State in charge of Morocco and Tunisia stated that Bourguiba intends to demand the evacuation of the French army from Tunisian territory basing his argument on the fact that *"security has been restored after the cessation of operations against the French and Tunisians, especially after the arrests recorded in the case of the Red Hand gang (where they were arrested and ex-filtrated to France without trial) and the arrest of the group of Ridha Ben Ammar besides the elimination of the Youssefiya resistance and the rebels in the south."* The French side commented that: *"This characterization is wrong and optimistic as the Youssefiya uprising has not been eliminated yet and our armies continue to sweep almost daily*

²⁴⁵ During a hearing on Tuesday 09/20/2016 at ten o'clock in the morning at the headquarters of the TDC.

with the seizure of weapons that pass through the border stealthily. Therefore, the presence of the French army in Tunisia is justified for reasons far beyond the issue of public security." Then, in the same document, France insists on the military presence in Tunisia, as it considers Tunisia a strategic location for what it calls the "protection" of North Africa, the Mediterranean and the "free world."

The presence of the French army stayed put at the bases of Bizerte, Aouina, Remada, Gabes, Gafsa and Sfax. The French army continued to bomb the Tunisian-Algerian border areas in retaliatory operations, such as the incident of Meryj Ain Draham, 31 May 1957, and the events of Sakiet Sidi Youssef 08 February 1958. All positions were withdrawn only under the agreement of 17 June 1958 except the base of Bizerte until the Battle of 1961.²⁴⁶

3. Exceptional courts

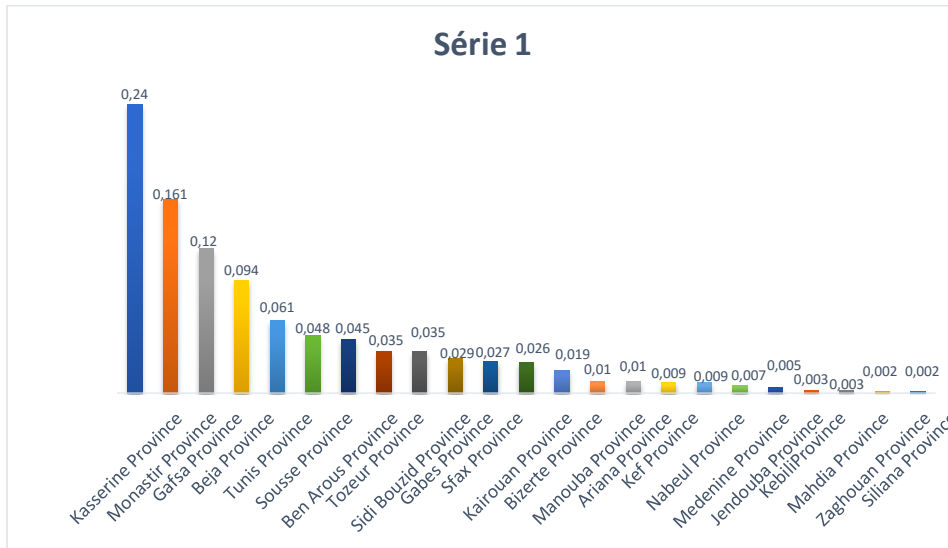
Trials started in May 1956. The Supreme Court of Justice issued 28 death sentences, most of which were carried out, 122 forced labor sentences ranging from 20, 10 and 5 years, 31 life sentences of hard labor and 17 jail sentences with delay. The opposition leader "Salah Ben Youssef" was sentenced twice to death penalty in absentia In January 1957 and in December 1958 to finally get assassinated in 1961. By the end of 1959, the High Court of Justice had eliminated the Youssefiya opposition in a way to eliminate all substantial opposition which allowed the newly established state to set up its institutions.

4. Testimonies

TDC draws up numerous testimonies relating to torture during interrogations. What was strange is that a judge practiced torture. S.D.²⁴⁷ stated that he was sentenced to ten years of hard labor and that in November 1957, following his arrest with a group of resistance fighters heading towards Libyan territory by Tunisian forces, he was beaten on several occasions during the trial by the investigating judge (during his interrogation) .The latter was called by the people of the region Mohamed Khachrif, but his name in the official papers was Mohamed Cherif. He used to hit by kicking with his leg and slapping on the face and threatened to beat with a chair. After the trial, the source was transferred to the prison of Ghar El Meleh.

246 See the http://www.vid.tn/art_2/ sent by the TDC to France in the appendixes

247 The owner of the file number 0101-006414 during the secret hearing at the TDC on 10/27/2016



Graph of violations against Ben Youssef affiliates and their distribution by town

Bechir Turki, director of military information and one of its founders at the Ministry of Interior and Ministry of Defense in Tunisia in 1956-1992, told La Presse newspaper that the operations of the *Welfare committees* (Lijan Al-Riâaya) were very secret and centered in the Sabbath Edhalem division in the Medina of Tunis. He said that the neighbors could hear the yelling and wailing of the victims and that they could watch blood covered bags transferred on Donkey backs. He added that he investigated this issue in 2004 and listened to the testimonies of some of those who lived next to the Sabbath Edhalem and are still alive and witnessed on that. There was someone in this division responsible for bringing Youssefis pretending they would help them find jobs. Another person would receive them and prepare for a third who was in charge of abhorrent practices of torture till of death. There also had in their possession chemical products used to dissolve the corpses. Further investigation proved that other corpses were chopped up and put in bags to be transferred on donkeys to be disposed of elsewhere. A number of executioners and killers have been used throughout the country to liquidate the dissidents without leaving a trace.

Driss Ben Hassan Ben Hammouda Guigua²⁴⁸ said that the clash was severe between the Bourguiba and the Youssefis and that he was appointed the General Directorate of Security from December 1956 and to September 1962. In that same year he was removed and Beji Caid Essebsi was appointed in his place. He added that the situation was crucial and the Welfare units were active under the supervision of Ahmed Tlili (In charge of security in the Constitutional Party) an under the attention of Taieb Mhiri, (Minister of Interior affairs).The detention center Sabbath Edhalem took orders from Taieb Sahbeni and was run

²⁴⁸ The owner of the file number 010061-0000 during the hearing session by the Research and Investigation Committee of the TDC on 14/09/2016.

by Sheikh Hassen Ayadi. It was a center where a lot of abuses and torture took place and that he couldn't affirm if there were cases of killing.

Ahmed ben Mohamed Nacer (aka Ahmed Tellisi)²⁴⁹ from Mornaguia testified that Bourguiba had commissioned Hassan Ayadi with several assassinations targeting Youssefi leaders which the latter carried out with the help of Amor Chachya. Arrests and interrogations took place in Dwirat Unit in Bab B'nat in the capital under the supervision of Ali W'raq and Said Kaaboura. And when the center was discovered and became in danger of demolition, they decided to create another nearby center known as Sabbat Edhalem lane which was in fact a warehouse. He said that among the figures that were present during torture were Mahjoub Ben Ali and Taieb Mhiri.

In addition to the existence of another unofficial arrest center at Niano region in Beni Khalled directed by Amor Chachya where again the welfare units composed of former resistance fighters and Sbayhiyah used to kidnap dissidents, saboteurs, and opponents. They also used to torture and intimidate them so as to preserve order throughout the country under the supervision of Mahjoub ben Ali, Sassi Lassouad, Mesbeh Jarbou, Mohamed Radaoui, and Amor Chachya.

5. Nasr Village camp

TDC recorded 369 files relating to the camp of El-Nasr village in Sidi Bouzid, where the central authority assembled in 1962 the number of resistance fighters suspected of supporting Lazhar Chrayti who were not integrated into the nucleus of the National Army for fear of their unsecured loyalty to the military establishment of the young state of independence.

The village of Nasr is a district of the delegation of Meknassi of the governorate of Sidi Bouzid. It is located south of the railway line between Sfax and Metlaoui. It was founded under the experience of cooperatives since 1963 based on the decree number 15 of September 30, 1961 under the Appellation "Cooperative unit Nasr 4".

The resistance fighters of the Tunisian armed revolution were assembled from various neighboring regions. They were fighters who trained in arms and resisted colonialism in the battles of liberation led by Lazhar Chrayti. The central authority used to apprehend their reaction especially after the execution of Lazhar Chrayti in 1963.

They were settled near the horse breeding center in Meknasi where they were placed in work sheds for a nominal daily wage of 100m, it was almost like forced labor, and anyone who complains about their status gets his wage cut off. Added to that they were prevented from contacting their family, they were stripped of their status as resistance fighters, they were under constant control by the District agent and they were under control by Nocturnal security patrols to stop them from contacting the outside. Within this group there are many Zaytouni students and none of them had been assigned the position of "Sheikh Trab". These violations lasted for more than three years.

²⁴⁹ At the Truth and Dignity Commission's Research and Investigation Committee on January 4, 2016

Facts

TDC undertook a field research and a group hearing in the village of Al-Nasr and received memos from the victims stating that it was decided that they should be grouped in the form of “ghetto” (camps) where they can be easily monitored, controlled and classified according to the degree of “Danger” if there is any. Those rebels weren’t aware of this mechanism which was adopted only when news of the "conspiracy" against the leader Habib Bourguiba spread. They then felt that they had become under scrutiny and suspicion by the regime. They were employed in trivial jobs for a salary of 100 millimes per day, a classification is no different from "the employment of prisoners."

Urgent lists were seized and were known to the security structures and the national army as a result of the process of handing over their individual weapons shortly after the Treaty of Internal Independence, which was coordinated with the French authorities. In return, they were handed cards giving them some kind of immunity for crimes committed before the date of the Convention and put them away from the specter of any prosecution By the occupier. This card is the basic argument adopted by the Tunisian state in their census and classification.

The official authorities brought them from their places of origin and from different parts of Sidi Bouzid, Mekkassi, Souk El Jadid, Amra, Abdel Sadek, Snad, Sanoush, Bouzaiane, Gafsa, and the bushes adjacent to these gatherings. And they were displaced 4 kilometers from Meknasi in tents in Pierre Lovy farm (Nasr village now).The purpose of the displacement was the administrative monitoring away from other inhabited regions.

The Delegate was responsible for the verification of absence and their causes.

The absence of the "barn" is not as important in itself as it is about limiting the movement and depriving them from freedom. Anyone who would venture outside the camp in search of a job shall be subject of interrogation and investigation.

As a result of the forced population displacement, movement limitation and monitoring carried out by the Tunisian state, many of them lost their native lands by losing contact with their native lands as their relatives took possession of them and exploited them without their knowing. And most of them were lost as a result of the prolonged absence. This mass forced displacement caused massive destruction of the family construct the effects of which are apparent on the new generation who have become dropouts failures at schools and unfit.

The state has built Nasr Village which a group primitive housing shelters to transfer this group and to perpetuate their status in exclusion and exploitation. Ben Ali regime went on with this policy by preventing their children from holding positions in security and army. They were also excluded from development plans. The village does not carry any form of development to this day as a matter of fact there is no primary school, high school nor a university which prevents their children from the right of education. This village lacks all infrastructures and is a kind of Garbage Dump which leaves it to a disastrous environmental situation.

Violations of forced displacement

This violation is considered a form of forced displacement which TDC deemed to be a substantial violation according to transitional justice law. It's also an infringement of international treaties²⁵⁰ which prohibits forced displacement within the country. It is also a discriminatory measure that violates the Tunisian law and the international instruments to guarantee freedom of movement and the State's duty to guarantee the basic rights of citizens. It also constitutes the crime of deprivation of liberty outside the framework of justice by Tunisian law.

Testimonies

It is noteworthy that 201 of the resistance fighters died in this region and 104 survived and aged between 75 and 90 years, most suffering from chronic diseases. Sixteen resistance fighters died from February to December 19th 2016.²⁵¹

TDC also received testimonies from some of the victims who are still living in Al-Nasr village: Ahmed ben Mohamed ben Omar Mahfoudhi (84 years), Hadi ben Mohamed ben Othman Saidi (88 years), Hadi ben Ali ben Hadj Jilani Saidi (88 years) and Taher ben Hassan ben Dhaou Zweidi (89 years) and Sabti ben Mohamed -Akhdar ben Baghdad Samari (84 years) and Hadi ben Khalifa ben Aoun Taheri (90 years) and Ali ben Hamad ben Mohamed Chanini (82 years) which state that:” **After the coup attempt in December 1962 and the execution of their leader, Lazhar Chraiti, the regime was alarmed by the resistance and commenced to gather them forcibly and displace them in a limited area easy to monitor. In fact they were crammed in camps in the middle of nowhere without life amenities such as water, electricity, school and healthcare center.** "The witnesses also confirmed that they had set up military camps in Al-Nasr village where they stayed for four years away from all civilization and services. Then, they declared that after the camps had collapsed and the oldest dwellers cut down underground pits, they covered them with shredded tents and weighed them with stone, dust and dry grass. Also, all the witnesses confirmed that a close administrative control was installed around them under the supervision of the Delegate, who deals with cases of absence at the morning calls and follows it by a flood of interrogations. The attendees also confirmed that going out and returning to the camp is conditional on obtaining a written license issued by the Delegate after committing not to return. Witnesses also said they were noticing security cars roaming the camp at night. Mr. Sabti Samari and Ahmed Mahfoudhi confirmed that they wanted to leave the camp to harvest some seeds, but they were only able to do so after several interrogations and with the written permission of the authorized person.

IV. The Battle of Bizerte 19-23 July 1961

The events of Bizerte constituted a crime against the Tunisian people, which took the form of an unequal battle between the third military force in the world, France, and a state that had been independent for five years. In this context, the Truth and Dignity Commission

250 United Nations: Guidelines on Internal Displacement: <https://undocs.org/ar/E/CN.4/1998/53/Add.2> Les personnes déplacées à l'intérieur de leur pays (PDI)

251 According to the data in the hearing

received 41 files concerning the violations that accompanied the evacuation battle, which left about 5,000 martyrs.

The signing of the Protocol of March 20, 1956, did not lead to the fulfillment of the demands for complete independence and complete disengagement from France, which remained in control of the sensitive organs and currency. In addition to France keeping 20000 soldiers scattered over 5 bases like in Bizerte .The Algerian revolution made the base of Bizerte a strategic location on which the colonial powers depend to provide logistical periods for their forces in Algeria.

1. Course of events²⁵²

The superintendent of the military base, Admiral Maurice Amman, began the work on extending and expanding the military airfield on June 26, 1961, exceeding the Tunisian border by 150 meters which gave away to the Tunisian government the intentions of French colonialists to stay longer at the base and this was considered as a violation of Tunisian sovereignty. The superintendent responded by writing to the governor of Bizerte Mohamed ben Lamine on June 26, 1961, who sent him a written approval. But President Habib Bourguiba ordered the governor of Bizerte to demand that the superintendent halts the ongoing work and ordered the National Army and National Guard to besiege the base and prevent the continuation of the work. This prompted the base's superintendent to issue a warning of the use of force if the prevention shall be continued.

Bourguiba considered this position provocative and contacted French President General De Gaulle. on July 17, 1961 president Bourguiba gave the French forces 48 hours to evacuate the military base with a popular mobilization campaign to declare the option of confrontation. He then receded so as not to ruin his relation with France. Stressing that the purpose behind mobilization is not waging war but to put pressure on them. The French government replied to these decisions by sending a letter to the Tunisian government on July 18, 1968, warning it against resorting to force, even though Bourguiba was willing to cancel the battle if the French government accepted the principle of negotiating the evacuation.

On July 19, 1961, the National Radio announced that the Tunisian army had been instructed to prevent French planes from flying in Tunisian airspace. Then the Tunisian artillery proceeded to bomb the landing strips and a plane was destroyed, which started direct confrontation with the French forces. Bourguiba's initial intention was just skirmishes to pressurize the French government. But the events took another direction that exceeded the expectations of President Bourguiba, who entered the adventure without preparing it logistically and organizationally. The biggest proof of such chaotic situation is what happened on July 18, 1961. In fact, a health mission headed by Dr. Said Mestiri, who went to Bizerte to carry out first aid (due to the increasing number of the injured) and supported the regional hospital at the request of the Ministry of Health, was prevented from passing by a mixed Tunisian patrol (military and volunteers) on the basis of receiving instructions that ban passage to Bizerte. However, the medical mission crossed the checkpoint in order to carry out the urgent task assigned to it and was shot by the Tunisian checkpoint without

252 See 'Maurice Amman' report in appendices

significant damage. This was in addition to the problems faced by the volunteers who were left without food or water in the absence of officials. The course of the events was as follows:

- On July 19, at 21:40pm , Tunisian sources announced the injury of six Tunisian soldiers.
- On July 20, 1961, French forces received instructions to start the attack.
- The French Air Force and artillery forces bombed Tunisian positions, especially checkpoints to lift the siege on the base.
- The fighting prompted the Tunisian forces to retreat to the streets and alleys of downtown Bizerte and from there to the old city, the only place where they were sheltered from the fire of the French forces.
- The volunteers civilians who have no experience in fighting continued to come to the battlefield and they were not trained and then recruited, but directly thrown upon arrival in the protest marches accompanying the battle.
- On the same day in Menzel Bourguiba, a popular march was launched at the entrance of Terskhana, which resulted in a heavy toll among the civilian demonstrators.
- There were popular marches organized at Menzel Abderrahmane and Menzel Jemil and around the Ramadi barracks, which French troops faced with firing at civilians without arms. But the mobilization directed them towards checkpoints and military barracks.
- A popular demonstration took place in the city of Bizerte which marched through the streets of the city and when it passed in front of the trap barracks, French forces opened fire on the civilian demonstrators, wounding about a dozen people, including women and children, including "Idriss El-Touj" (16 years) and "Habiba Jabalia" (30 years) together with 15 wounded women.
- The French army decided to destroy the houses with the burning napalm and to kill the civilian demonstrators.
- In the Kasbah Square in the capital, President Bourguiba delivered a speech emphasizing that the government will not back down from confrontation no matter how long it takes.
- President Bourguiba went to the media discourse to condemn the mass violations and to announce the severing of diplomatic relations with France without the consulate.
- Bourguiba Submitted a complaint to the UN Security Council and called it to convene.
- On July 21, the colonial forces continued their incursion into the city.
- Tunisian forces retreat towards the old city inhabited by civilians.
- Mohamed Bjaoui, commander of the Tunisian artillery, was killed.
- President Bourguiba decided to reduce the frequency of popular rallies and direct resistance through what he called "gangs" and individual resistance thanks to their ability to reduce losses and harass the colonial army.
- President Bourguiba made threats to use guerrilla warfare by allowing Algerian fighters to fight and open the door to volunteering for Arab fighters.

- On July 22, the colonial forces took control of the city center and the Jappy and Farre barracks.
- On the same day the colonial forces intensified the shelling on the neighborhoods besieged by their forces.
- The bodies of martyrs spread throughout the city.
- The same day the Security Council decided to approve the issuance of a provisional regulation committing the parties to a ceasefire and return the situation to what it was before the outbreak of confrontation.
- The Tunisian government has ordered the cessation of offensive operations.
- Hedi Mokadem Governor of Bizerte and the commander of the military base in Bizerte agree on the effective ceasefire from Sunday 23 July 1961 at eight in the morning.
- On Sunday, July 23rd, a funeral procession for 22 martyrs was held in Kasbah Square in Tunis.
- On July 24th, the preliminary number was declared 670 martyrs, 1155 injured and about 1000 missing.

2. Violations that accompanied the battle of evacuation

The Truth and Dignity Commission received 650 files relating to the abuses that accompanied the evacuation battle, in which about 5,000 civilians were killed.²⁵³

Violation of the right to life

During the battle, French forces deliberately engaged in:

- Killing unarmed civilians, namely women and children.
- Tying the hands of captured and unarmed fighters with a metal band and killing them at close range.
- Abuse of dead bodies such as genital cutting, cutting hands and legs.
- Burying the wounded alive.
- Burning fleeing civilians by sending missiles in their cars.
- Killing the captured in cold blood.
- Shouting civilians in the back.
- Killing the captives.
- Cremation of dead bodies.

Assault on public property

The violations of the French colonial regime against Tunisian civilians were not just directed to their persons but also their public and private properties. The shelling focused on:

²⁵³ Béchir Turki, éclairages sur les recoins sombres de l'ère bourguibienne. p.81.

- Industrial infrastructure (where Bizerte cement plant was destroyed)
- Health infrastructure (where the multidisciplinary sanatorium was destroyed along with four electrical generators)
- Educational institutions (destruction of school equipment, destruction of scout's headquarters in Rimel)
- Administrative institutions (destruction of the headquarters of the Court in Sidi Abdallah, workshops of public works of the processing and theft of some of its basic equipment, the destruction of police and guard stations in Bizerte Medina and Sidi Ahmed and in Menzel Jemil)
- Burning the official inhabitat of public works engineer in Zarzouna
- Destruction of Transport networks (train station in Sidi Ahmed and Tinga, destroying 60 carriages of which two carrying supplies of wheat, flour and sugar)
- Destruction of agricultural crops and theft of part of them.
- Targeting the communication network, electricity and water distribution.²⁵⁴

The French state at the order of Charles De Gaulle, who had intended to teach a "lesson" to Tunisia, committed a war crime in Bizerte. France waged an unequal war in which thousands of civilians were killed in order to maintain control over a territory beyond its sovereignty. What the military has done against Tunisian civilians is a crime against humanity that requires an apology to Tunisia and reparations. In this context, the Council of the Truth and Dignity Commission decided to issue a [memorandum](#) on this content to the French State and requested the Tunisian authorities to follow up on this matter.

Bourguiba was the biggest beneficiary from the Battle of Bizerte, where he had the advantage of ridding himself of the charge of subordination to the West and reaped its fruit immediately after the battle. Whereof he participated in the Non-Aligned Summit in September 1961, only a month after the assassination of Salah Ben Youssef on August 12, 1961, during which a reconciliation happened between Nasser and Bourguiba and his return to the Arab incubator as Bourguiba freed Tunisian territory from colonialism. It was also a successful diplomatic battle, with Mongi Slim elected at the head of the UN General Assembly.

However, this battle left Tunisians with a bitter taste and a sense of injustice, as they were blaming the government for risking thousands²⁵⁵ of innocent lives in order to achieve political goals from which he gained a lot. This battle will have many repercussions, the most important of which is the coup attempt of 1962.

²⁵⁴ Colonel Noureddine Boujallabia, *La bataille de Bizerte telle que je l'ai vécu*, Sud Edition, Tunis, 2005, pp 77-79.

²⁵⁵ The Ministry of Defense refused to provide TDC with the final number of civilian martyrs, who numbered approximately 4,500 to 5,000

V. Assassination of Salah ben Youssef

The post-independence period was Tunisia's darkest period, especially in relation to the Bourguiba Youssefi conflict, which intensified with Bourguiba's political choices and his quest to exclude Salah Ben Youssef in all ways. The most recent of which was his assassination in 1962, which constitutes a state crime. That's why The Truth and Dignity Commission took in charge the investigation of these facts to collect the violations and to preserve national memory.

1. Offense of premeditated murder and participation in it:

The grave violations of human rights suffered by Salah Ben Youssef and his assassination at the instigation and knowledge of senior officials in the state apparatus, which was supervised by the field chief Bachir Zarg El-Ayoun, head of the President's Office, the Presidential Guard Commander and parliamentary representative who asked for the help of Mohamed Ben Khalifa Mehrez and Hamida Ben Terbout to carry out the assassination, who acted under the protection of the Authority and granted effective immunity against any trace within the framework of a systematic and organized plan of the President and his close men and targeted a prominent political opponent on the meaning of the provisions of articles 3 and 8 of the primary law n°53, 201 which consists a violation at the level of international criminal law and punishable according to the provisions of the penal code.

The facts

The Secretary General of the New Constitutional Free Party in Tunisia, Saleh Ben El Kacem Ben Youssef, entered into a sharp dispute with the party leader Habib Bourguiba over the strategy of managing the conflict with the French colonialist. Salah Ben Youssef was opposed to the principle of the conclusion of internal independence agreements with France on 03 June 1955, which led to a split in the party between their respective followers and Tunisia went through what looked like a civil war that killed and wounded many people in a critical period of its history and its struggle for liberation.

The two sides exchanged accusations of attempting to kill each other, which led to the decision to remove Salah Ben Youssef from the party at the conference held in Sfax in 1955. He was forced to emigrate to the Arab Republic of Egypt after being informed at dawn on 28 January 1956 of the issuance of an arrest warrant.

On January 24th, 1957 and on November 2nd, 1958, he was tried in absentia and sentenced to death by the Tunisian High Court of Justice. Despite his advice from the Egyptian authorities not to leave Egypt for information that there were attempts to assassinate him, Salah Ben Youssef accompanied his wife and two sons since early 1961 to Germany where he settled in the city of Wiesbaden for medical treatment.

On March 2nd, 1961, in the framework of the search for a solution to the dispute between Salah Ben Youssef and Habib Bourguiba, a meeting was organized between them in the hotel hall where Habib Bourguiba was staying in Switzerland. This was an effort from Habib Bourguiba with the coordination of Bachir Zarg Laayoun. The Meeting was attended by this latter, Wassila Ben Ammar, Allala Laaouiti, Taoufik Torjman The Tunisian ambassador in Berne, Amor Chadli, the president's private doctor together with members of the Swiss

security forces at the request of Salah Ben Youssef to ensure his safety. The debate intensified as Bourguiba denounced bringing the Swiss security and refused to shake hands with Salah Ben Youssef and accused him of trying to kill him by a pistol equipped with a silencer or poison referring to a letter Salah Ben Youssef sent to Sadok Ben Hamza inquiring him about never disclosing the matter. The meeting ended after a clear tension, followed by Salah Ben Youssef leaving the room with an order from Bourguiba.

Following the failure of that meeting, a team was formed at the behest of Bourguiba and knowledge of Taieb Mhiri Minister of the Interior with the mission of assassinating Salah Ben Youssef. This team was under the direct field supervision of Bachir Zarg Laayoun, Head of the Presidential Guard, Head of the President's Court, a member of the Tunisian National Assembly and Salah Ben Youssef's cousin. The team consisted of Bachir Zarg Layoun's nephew who is also a relative of Salah Ben Youssef, Hmida Ben Tarbout, Hsan ben Abdelaziz Ouardani, Abdallah Ben Mabrouk El Ouardani and Mohamed ben Khalifa Mehrez.

In preparation for the operation, the team traveled several times between Zurich and Germany to monitor and follow Salah Ben Youssef's movements. Bachir Zarg Laayoun was assigned in preparation for the operation in the previous period. Two alleged officers who called Salah Ben Youssef and deluded him that they were on his side and wanted to liquidate Habib Bourguiba. He accepted dealing with them and the delusion was successful. They meticulously planned to liquidate Salah Ben Youssef and get him to the place of implementation at the Royal Inn in Frankfurt with the help relative Hmida Ben Tarbout living in Germany, who mastered the German language claiming to organize a political meeting with him to support him and coordinate with the opposition at home and overthrow Bourguiba. The assassination team was able to carry out his mission according to the bar of events in the following chronology:

Between 18 and 27 June 1961, Abdallah Ben Mabrouk and Mohamed ben Khalifa Mehrez stayed at the Grunberg Inn in Frankfurt (They used fake names: Taher Aaloui and Ahmed Naar)

- Between 21 and 27 June 1961 Hmida Ben Terbout, nephew of Bachir Zarg Laayoun and relative of Salah Ben Youssef, stayed at the Vera Inn in Frankfurt, 119 MainzerLandstrass Street.

- Between 17 and 29 June 1961 Bachir Zarg Laayoun stayed at the Waldorf Inn in Zurich, Switzerland.

- On June 21, 1961, Saleh Ben Youssef stayed at the Varyhstein in Zurich, Switzerland.

- On August 11, 1961, Bachir Zarg Laayoun stayed again at Waldorf in Zurich, accompanied by two Tunisian people who were not identified by the Swiss authorities.

On the same day, August 11, 1961, Hamida Ben Terbout resided in the same lodge as Waldorf in Zurich, Switzerland, after flying by air from Hamburg. His was already sent by his uncle from Tunis undercover as a representative of his German tobacco company to Zurich to prepare for the assassination.

- Bachir Zarg Laayoun spent the night between 11 and 12 August 1961, before the day of the assassination, Waldorf, Zurich, with the assassination squad composed of his nephew Hamida

Ben Terbout and Abdallah ben Mabrouk and Mohamed ben Khalifa Mehrez to finalize the implementation plan and the division of roles and preparation of the withdrawal method.

- In the early morning of the day of the assassination August 12, 1961 Hamida Ben Terbout left Waldorf Inn in Zurich with his companions Abdallah ben Mabrouk and Mohamed ben Khalifa Mehrez and booked return tickets from Zurich airport towards Frankfurt and then back to Zurich.

- On 12/08/1961 Bachir Zarg Laayoun remained in Zurich and was seen at Waldorf Inn at midday.

- On the morning of 12/08/1961 upon the arrival of Hamida Ben Terbout, Abdallah ben Mabrouk and Mohamed ben Khalifa Mehrez to the Royal Inn, which is located opposite the train station in Frankfurt, Hamida Ben Terbout booked a room on the upper floor for the benefit of his companions who registered themselves with the names Mabrouk and Mehrez.

- At four o'clock in the afternoon, Hamida Ben Terbout phoned Salah Ben Youssef and used the trust and kinship from the same Royal Inn and asked him to come from the city of Wiesbaden, where he lives to Frankfurt for an important matter and insisted on persuading him to meet the alleged officers, even for a short time, in the hotel in Frankfurt.

Although Salah Ben Youssef initially refused to travel on the evening of August 12, 1961, to Conakry, the capital of Guinea, via Frankfurt airport at the invitation of its president, Sekou Touré, to prepare for the Non-Aligned Conference to be held there, he responded to Hamida's request as the Ben Terbout family were known for their allegiance to the Youssefia movement beside of their kinship. That's why he agreed to hold the meeting at Royal Inn, but not to exceed half an hour before his transfer to the airport and inscribed on his diary the itinerary to the hotel. When the phone call was terminated, Hamida left the hotel.

On Saturday evening, August 12, 1961, at 4:30 pm Salah Ben Youssef arrived at the Royal Inn in Frankfurt, accompanied by his wife, Soufia Zouhair, and entered the lobby of the hotel, which did not have a salon. He was received by Abdullah ben Mabrouk and Mohamed ben Khalifa Mehrez who were waiting for him and asked him to go to the room. On the top floor, he went up behind them after telling at his wife, Soufia Zouhair to wait for him in the cafe opposite the hostel.

- On the evening of Saturday, August 12, 1961, between 4:30 and 5:00, after entering the room and sitting on the couch, Salah Ben Youssef was shot by one of his recipients, Abdullah ben Mabrouk and Mohamed ben Khalifa Mehrez, with a 7.65-mm pistol from very close range at the bottom of the skull, from the back, while he was sitting on an armed chair facing the door of the room. The bullet entered from the left side of the back of the head and exited from the right side below the skull and behind the ear in a forward direction.

- On August 12, 1961, at 5 pm, Abdallah ben Mabrouk and Mohamed ben Khalifa Mehrez left the Royal Inn room, leaving the key in the door from outside. And they informed the receptionist that they would return soon because they were waiting for a phone call but headed to the airport and went back to Zurich with Hamida Ben Terbout.

- During the two hours following the departure of the assassins, the receptionist received three phone calls that he did not transfer to the room. He pointed out to his interlocutor that

the people he requested went out and did not return yet. He asked him to inform them when they were present at the need to move to the place, he had set for them.

- On August 12, 1961, at 18:45 pm, Soufia Zouhair, wife of Salah ben Youssef, was surprised by the fact that her husband did not return from the hotel because they had to be at the airport at that time. She went to the hotel and inquired of the receptionist who informed her that he had just started his shift. On her request he checked the register and reported that there are two Tunisians living in a room on the upper floor and she went upstairs, opened the door and found her husband lying on the couch gasping and bleeding from the back of his head with his hands open and his diary torn and thrown on the ground with his pen beside his handbag. She shouted for help, the receptionist called for an ambulance that took him to the university hospital Frankfurt. He was given first aid and they tried to save his life and carried him to surgery but died of his injuries on the 22:45pm on Saturday, August 12, 1961.

- On August 12, 1961 at 20:05 Abdallah ben Mabrouk, Mohamed ben Khalifa Mehrez and Hamida Ben Terbout left Frankfurt by air and joined Bachir Zarg Laayoun, who was waiting for them at the Waldorf Inn in Zurich.²⁵⁶

- Shortly before midnight between Saturday and Sunday 12 and 13 August 1961, Bachir Zarg Laayoun was seen accompanied by Ben Terbout, Abdallah ben Mabrouk and Mohamed ben Khalifa Mehrez at the Waldorf Inn in Zurich where they spent the night in one room.

- In the early morning of August 13, 1961, the four persons, namely Bachir Zarg Laayoun, Hamida Ben Terbout, Abdallah Ben Mabrouk and Mohamed Ben Khalifa Mehrez left the Waldorf Hotel in Zurich, and headed to Geneva airport back to Tunisia.²⁵⁷

- The Tunisian authorities did not condemn the assassination of Salah Ben Youssef and did not seek to open an investigation or request information and cooperate with the German and Swiss authorities to uncover the truth. The Tunisian authorities remained silent even after a large number of residents from Djerba Island, the birthplace of Salah Ben Youssef, filed a petition in June 1962 to President Bourguiba and to the Tunisian parliament demanding an investigation and accountability for the perpetrators, but their efforts failed.

- While the German authorities began research on the killing of Salah Ben Youssef and the German security confirmed that the perpetrators of the crime are Hamida Ben Terbout and Mehrez and Mabrouk and according to the diligence of the German authorities they are directly involved in the assassination and there is a possibility that their fake identity is Ahmed Naar and Taher Alawi (without stating Source of their information).

²⁵⁶ According to the press release, the German security authorities indicated that at eight o'clock and five minutes at night (20:05) three Tunisian people left Frankfurt towards Zurich, the descriptions of which largely correspond to the descriptions of the three persons who came on the morning of August 12, 1961 to Frankfurt via the Rhein-Main airport from Switzerland And specifically from Zurich after they acquired from Zurich tickets back and forth to and from Frankfurt, they had memorized Tunisian passports and travel visas to Switzerland and their names matched with the names on the hostel, which were not disclosed at the time to ensure the integrity of the search

²⁵⁷ According to the information provided in the report of the first district attorney general at the Frankfurt County Court, Dr. Grossmann signed on October 13, 1961 in Frankfurt am Main.

- On December 15, 1973, President Habib Bourguiba gave a lecture before the students of the Institute of Journalism and News Sciences about the history of the national movement, his ninth and last lecture, in which he dealt with his dispute with Salah Ben Youssef and the details of his assassination. And he declared **“that the perpetrators are two people from maybe Ouardanine or from Msaken who went to Salah Ben Youssef and told him that they are officers of the Tunisian army and ready to assassinate President Bourguiba, so he rejoiced, saying this is what he is eagerly waiting for. Salah Ben Youssef was had an appointment with Bachir Zarg Laayoun in Germany. Bachir didn’t travel to Frankfurt, but it was the two other men who proposed to Salah Ben Youssef to go up to their room to make up the plan of Bourguiba’s assassination. Once in the room, one of them pointed the gun at his ear, killed him, went out, closed the door and went immediately to the airport....”** Bourguiba carried on : **“ I recently asked Hassan ben Abdelaziz to introduce me those two volunteers to be honored and awarded for what they have done and thus got rid of this Viper.”**

- Former President Habib Bourguiba has actually rewarded and honored both Mohamed ben Khalifa Mehrez and Abdallah ben Mabrouk with the Independence medal on the occasion of the fortieth anniversary of the Party. And this was issued as a decree on the 2nd of March 1974 in the official gazette of the Tunisian republic, Official Order of the Republic of Tunisia No 38 issued on June 4, 1974, p. 1287.

He also assigned the largest category of the Order of the Republic to Bachir Zarg Laayoun and the second category of the same Medal to Mohamed Rezgui of the Ministry of Interior by virtue of an order dated 25 July 1974 published of the Republic of Tunisia. 53/117 Date of August 20, 1974 p 2014.

2. Responsibility of former President Habib Bourguiba for the assassination of Salah Ben Youssef

Habib Bourguiba acknowledged his intention to liquidate his rival and political opponent Salah Ben Youssef after the stormy meeting between them in Zurich Switzerland on March 02, 1961, which worsened their relations. He indeed instructed Bachir Zarg Laayoun to organize a plan to get rid of him.

Many proofs concerted to the degree of conclusive evidence and unequivocally indicated the principal role played by the President of the Republic of Tunisia, Habib Bourguiba, in the assassination of Salah Ben Youssef. These are the proofs:

- Initial disagreement between him and Salah Ben Youssef on the strategy of managing the conflict with the colonizer and on the results of negotiations and agreements of internal independence with France and the dispute intensified after their reconciliation meeting that failed on 02 March 1961 in Switzerland.

- Developing a complex plan to trap Salah Ben Youssef and break his guard by assigning him to the Presidential Guard Commander Bachir Zarg Laayoun and one of his close men, who is at the same time a cousin of Salah Ben Youssef, to oversee the assassination team composed of two professional killers of his supporters, Abdallah Ben Mabrouk and Mohamed Ben Khalifa Mehrez, brought by Hassan ben Abdellaziz Ouardani, close to Habib Bourguiba and one of his secretaries. In addition to adding Hamida Ben Terbout, the nephew of Bachir

Zarg Laayoun and a relative of Salah Ben Youssef to the assassination team to play the role of luring the victim and reassuring him without losing sight of the close surveillance and penetration provided by Tunisian security agent Mohamed Rezgui since 1958.

- Assassination team monitored the victim Salah Ben Youssef since June 1961, according to the research carried out by the German and Swiss authorities, relying on the Tunisian security element, Mohamed Rezgui, who was undercover to show his affiliation with the Youssefis and on ways to hide and use nicknames in order to obscure the Swiss authorities which impeded them from recognizing the Residents who were with Bechir during the month of June at the Waldorf Inn.

- The decision and choice of the German authorities ended in abandoning the necessary investigation in the assassination based on the recommendations of the German Embassy in Tunisia, which confirmed that the role of Bechir Zarg Laayoun is very important in the vicinity of President Bourguiba and in the ruling party and it is not recommended at all to issue a suspension card against him as it would spoil relations between the two countries despite the findings of the preliminary research by the German security to detect the perpetrators and track their movements between Germany and Switzerland and how they carried out the assassination and return to Tunisia. This led to the conclusion that the German authorities considered that suing Bachir Zarg Laayoun would prove the direct involvement of President Habib Bourguiba in the assassination.

- What was mentioned by Habib Bourguiba himself in a lecture he delivered at the Institute of Journalism and News Science on December 15, 1973, in which he listed the assassination in his own way and stated that Bechir Zarg Laayoun, his head of office and presidential guard commander, stayed in Switzerland and did not enter Germany, but he pointed to the perpetrators to leave by The first plane to any destination. He added that he recently referred to Hassan ben Abdelaziz Ouadani to bring the killers to honor them as a reward for what they have done to rid Tunisia of a "Viper."

- Proof that former President Habib Bourguiba has already fulfilled his promise to reward the perpetrators of the assassination , Abdallah Ben Mabrouk and Mohamed Ben Khalifa Mehrez, what was registered in the official gazette of the Republic of Tunisia No. 38 of Friday, 31 May-Tuesday 04 June 1974, pages 1286 and 1287, in which the order of granting them the second class was published. Order of Independence by virtue of March 02, 1974 on the occasion of the 40th anniversary of the Party's resurgence.

- What was registered in the official gazette of the Republic of Tunisia n ° 53 of Friday 16 August-Tuesday 20 August 1974 page 2014 of the award of Habib Bourguiba to Bachir Zarg Laayoun field supervisor of the assassination team by granting him the largest category of the Order of the Republic and also reward Mohamed Rezgui security, which violated the organization of the General Secretariat and contributed to his part in order to lure the victim Salah Ben Youssef and to thwart the plan of precaution and prudence by giving him Mohamed Rizqi mentioned with six other members of the Ministry of Interior, the second class of the Order of Independence on the occasion of the Republic Day and by presidential decree of 25 July 1974.

- Accurate details provided by Habib Bourguiba in his lecture on the execution of the assassination of Salah Ben Youssef and how one of the killers pointed his gun to the victim's ear and killed him and went out and closed the door and that information coincided with the research done by the German authorities and with the testimony of Salah Ben Youssef's widow, Soufia Zouhair, which confirms Bourguiba's knowledge of the assassination and him being informed by the perpetrators of those details.
- The official specialized authorities removed the paragraph from the lecture delivered by Habib Bourguiba on 15/12/1973 at the Institute of Journalism and News Sciences, whether in its audiovisual version , audio version or even written version, regarding his announcement of his intention to reward the assassination team by honoring them for helping Tunisia get rid of a dangerous "Viper" referring by that to Salah Ben Youssef, as that part represents a direct acknowledgment of Bourguiba's involvement in the assassination, which was included in *L'action* newspaper on December 19, 1961.
- The silence and opacity with which the Tunisian authorities met the assassination and refusing to open an investigation about it and not to demanding the German authorities to do the research and pursue the investigation.
- The failure of the Tunisian authorities in the Bourguiba era to seek bringing the body of the victim Salah Ben Youssef or even his remains, despite his important role in the national movement.
- What Habib Bourguiba used to describe the victim Salah Ben Youssef as a "Viper " and what he literally stated in his speech on December 15, 1961, "Thus we got rid of this serpent snake."
- What The witness former Minister of the Interior, Driss Guiga, confirmed of the intensification of the conflict between Bourguiba and Ben Youssef and their supporters. Also he confirmed that the Youssefis were subjected to systematic torture at the irregular detention center at Sabbat Edhalem formed by Bourguiba followers and that Bourguiba relied on Bachir Zarg Laayoun and Hassan Abdelaziz Ouardani to end the conflict with the Youssefis in his favor.

Conclusion

The conflict between Bourguiba and Ben Youssef ended with the latter being assassinated by the former. Bourguiba never hesitated to express his delight to end an era of conflict that adversely affected the course of independence. This was followed by a subsequent uniqueness of opinion and grabbing power, and the impunity of the perpetrators led to the perpetuation of an approach based on grave violations of human rights as an answer to the opposition of the regime. This has lasted throughout the history of the old regime. No one could deny the two leaders being patriotic. However, and through the available evidence, Bourguiba resorted to eliminate his opponent for extreme cherishing of power.

VI. The coup attempt of 1962

Course of events

The Battle of Bizerte in 1961 had many repercussions and caused outrage at the policy adopted by Habib Bourguiba to address the issue of evacuation and disregard of human life for political purposes.

The coup attempt took place against the backdrop of a complete closure of the public space and a total ban of freedom of expression and association and the liquidation of opponents of the regime.

On the other hand, there is the situation in which a number of resistance fighters found themselves in, which was characterized by marginalization and poverty. They found themselves excluded from the history of their struggle against the French colonizer with official narrative control of the history of the struggle for independence with a lone unique hero. All other names who participated in the fight against the colonizer were canceled which led to their sense of injustice.

In the summer of 1962, the idea crossed the mind of "Abdelaziz Akermi" (an original resistance fighter of Gafsa), "Hedi Gafsi" (an engineer living in Menzel Bourguiba) and "Omar Benbli." Saleh Hanachi (commander of the Gafsa garrison with close ties to Hadi Gafsi), Mohamed Saleh al-Baratli, Habib Hanini and Ali kchok Ben Salem all residents of Bizerte joined the idea and contacted Lazhar Chraiti, who agreed to the idea and expressed his willingness to attract a number of military personnel.

The meetings were held in the house of "Lazhar Chraiti" in Ezzahra or his farm in the Mejaz El Beb or in Bizerte in the home of "Hedi Gafsi", during which it was agreed upon to remove President Habib Bourguiba from power and replace him with Mongi Slim.

Abdelaziz Akermi agreed with Mohamed Saleh El-Baratli to turn against Bourguiba in cooperation with the head of the Presidential Guard, Kbaïr Mehrzi, who pledged to reveal the night password to Mohamed Saleh El-Baratli in order to access the presidential palace.

The first nucleus was reinforced by a number of others: Habib Hanini, Ahmed Rahmouni, Sassi Bouyahia, Colonel Abdel Sadek Ben Said (in charge of armored vehicles at Al-Aouina barracks), and Moncef Materi (working in the armored unit of the Menzel Bourguiba barracks). Mohamed Ben Barkia (Engineering Artillery), Mohammed Ben Guiza (Heavy Artillery weapons), Hassan Marzouk (Director of the National Guard Tire Training School in Bir Bouragba).

However, before they went into effect, the arrests began on December 19, 1962, after their secret was revealed and the coup attempt was officially proclaimed on December 24th to be later tried.

The trials began without delay on 12 January 1962. The group was charged with **"conspiring against the internal security of the State, attempting to assassinate the President of the Republic, attempting to replace the State Authority, to replace the governing body, to contact the enemy to aid him, to hold a warehouse of arms, to carry arms without a license, and to**

seize state funds." The court released harsh sentences ranging from death (14) to hard labor for 10 to 20 years without fair trial conditions.

On 22 January 1963, the Court of Cassation rejected the appeals filed by the accused, which were based mainly on the absence of the basic elements of a fair trial, as the military court, defense lawyers and the prosecutor of the republic were all appointed by the political authority represented by the President of the Republic Habib Bourguiba. The 10 defendants were executed in the dawn of the 24th of January 1963 in Bir Bouragba and were buried in a collective grave.

On January 7, 1963, Driss Guigua was removed from the Ministry of Interior and replaced by Béji Caid Essebsi. The trials ended on 27 January 1963.

Violations

Prisons have constituted a second stage in the continuation of abuses and torture against prisoners of the attempted coup, as evidenced by the testimony of a number of survivors or their families.

Mr. Kaddour Ben Yohret said that when they arrived at the Ghar El Melh prison where they were taken, their hands were tied behind their backs and thrown from the prison car to the ground with full force, in addition to being forced to be in the prison yard and assaulted by a whip made of a cow's tail known as "Karrafash" anywhere on their bodies. The director of the Karakah Prison of Ghar al-Malh was then called "Mahmoud Mrabet". He also confirmed that they spent two years and eight months in a cell called "neck of the camel".

The victim inquired about the Minister of the Interior at that time, Mr. Béji Qaid Essebsi, was he reporting to President Bourguiba about the cruelty they were experiencing or not? He added that on one occasion, he encountered a piece of bread falling in "mold", and the guard, called "Abd al-Jalil Chebil," forced him to eat it, and he also forced the rest of the prisoners to eat bread in the same way.

He explained that he was imprisoned in Ghar El Melh Prison, he was in a cell alone and his leg was chained with a ring in the ground. He also stated that he was beaten by a "kraffash" and a stick, was insulted by the prison keepers without any reason and said that he was starving for 8 hours and the same thing happened to him in Borj Roumi Jail. He additionally mentioned the cold, especially that water was running under them and that they were sleeping on the floor on torn sheets.

He also said that among the officials they were visited by Taieb Mhiri at Ghar al-melh prison and that the rest of the prisoners of the coup attempt were beaten after this visit.

VII. Conclusion

While the planning and preparation for the coup attempt is proven, the conduct of the investigation and the conditions of the trials and the conditions of the imprisonment of the survivors have proved that the trials were political and characterized by revenge and

vindictiveness by the head of the authority and his assistants, ministers and administrative officials. Indeed both local laws gained thanks to the militancy of many of the defendant's themselves and the international conventions Tunisia signed and adopted both of them were violated.

Chapter Two

Abuses against the Left

TDC examined 867 cases of victims of abuse submitted by the leftist family.

1. Course of events

The year 1968 was a turning point in the political life in Tunisia, especially in the Tunisian universities, which were the scene of a student political movement which opposed to the regime of President Bourguiba and his policies. Bourguiba tended to exclusively detain power and work to remove his opponents by all possible means. The leftist opposition, although it seeks to adopt different political ideas from those endorsed by the official regime, what disturbed the opposition was the behavior of this regime and its president, who refused to open up and embrace the principles of democracy and difference of opinion on the grounds that he is the only father of Tunisia and its greatest hero and builder of the nation. Taking advantage of the coup attempt of 1962²⁵⁸ to unleash the executive power and the party power loyal to him in the consolidation of the single system and thus the fusion of the Socialist Constitutional Party in the state.

Leftist thinking was formed mainly in two basic structures: the Tunisian Communist Party, which was founded in the 1930s, and the Socialist Studies and Socialist Group in Tunisia, founded in 1961 and known as the Perspectives (Prospects of Tunisia) referring to the political review that was published in Paris and brought in secret. To Tunisia to be distributed among students and political activists in general. Each spectrum had their own vision in the political work and structure of objectives, but this did not prevent coordination between them or participation in the plight of the consequences of their political activities as they have been considered one enemy of the authoritarian regime.

2. Events

The events started with the development of the activities of the affiliates of the "Perspectives" movement in the Tunisian universities (Faculty of Humanities of 9 April, Faculty of Law and Political Science of Tunis and the Faculty of Medicine). The first confrontation with the regime was in 1965 when the authorities intercepted the perspective's review in the Tunisian Mail and arrested the receiver Sadok Brahem. Some days after Noureddine Ben Khedher and Leila Ben Othman were arrested. In December 1966, following a protest march led by a number of Perspective activists, the authorities stopped Khemaies Chammari, Aziz Krichen, Mohamed Azzouzi Chebbi, Abdelhamid Hermassi, and other Communist Party activists. Salah Zghidi and Sahbi Dengezli and Jalal Abdeljawad.

258 See the section on "the 1962 coup attempt".

In the spring of 1967, following the aggression against Egypt and Syria, there were massive protest marches in the center of the capital, where the leftist movement was one of its components and through which the regime took advantage of the opportunity to get rid of its political opponents, especially the leftists, by assigning the leadership of the Socialist Constitutional Party militias to attack Jews on "Al Horriyya" street and burn a number of Tunisian Jewish property and shops²⁵⁹, most of whom lived in the "Lafayette" in the center of the capital. These attacks were aimed to distort the protest march by the leftist groups who tried to prevent this as the protests were not against the Tunisian Jews, but against the Israeli attacks on both Egypt and Syria. This incident pushed leaders of the General Union of Tunisian students to condemn the distortion process led by the Socialist Constitutional Party, which led to the intervention of the national army and launched a campaign of mass arrests. Mohamed bin Jennet was arrested without the knowledge of the authority that he is one of the leaders of the perspectives for he was a student at Zaytuna University. He was held responsible for arson and vandalism. He was referred to the military court and, on August 31, 1967, he was sentenced to 20 years of hard labor and imprisoned in Borj El Roumi prison.

Due to these events, the school year 1967-1968 witnessed many student movements as it was an exceptional year at all levels, during which there were numerous strikes, public meetings and political statements in an unprecedented manner. And by that time a committee made up of communist and perspective students was formed to demand the release of Mohamed Ben Jennet. Another committee was formed to support Vietnam and to denounce the US war against Vietnam. In addition to demonstrations which were organized to denounce the visit of the Vice President of the United States "Humphrey". The perspective activists intensified the student movement during the march of the same year by massively distributing flyers at universities and high schools. Various free public meetings were held at university between 15 and 19 March and resulted in the forming of the "Committee of Five", consisting of Ahmed Ben Othman, Aziz Krichen, Ibrahim Razguallah, Salah Zghidi and Khemaies Chammari. The committee's mission was to negotiate with the university deans to be authorized to have part in the management of the university. After a tripartite dialogue between students, professors and administration which committed itself not to take any punitive measures, whether judicial or administrative against students.

When Ben Jennet was not released, the Perspective movement continued to incite strikes and demonstrations. That's why the Bourguiba regime launched a campaign of arrests against all political sensitivities. The confrontation began with the arrest of the "Committee of Five Students" in the office of the Dean of the Faculty of Law and Economic Sciences along with other students and professors. The campaign continued and reached hundreds of Perspective activists and those supporting the movement, together with some Communists and Baathists. Although their participation in the events of March 1968 at the university was almost non-existent. The logic of the one-party system requires the elimination of all opponents at once. After referring them to a judge, 134 suspects were held captive; they were perspective activists and Baathists including Noureddine Ben Khedher, who was arrested in 1968 along with Ibrahim Razgallah and Ahmed Smaoui at the Ministry of Interior. Gilbert Naccache

259 See the chapter on violations against students, p. 262, "Using public anger against Israel and turning it against the Tunisian Jewish community."

was arrested on 15 March 1968 at his house in the capital, where he lived with Nouredine Ben Khedher, who was arrested the night before and was transferred to the headquarters of the Ministry of Interior, as well as Hachemi Troudi, who was arrested at night.

Ahmed Ben Othman Raddawi was also transferred by the Party parallel security (PSD) with other student leaders. They were brutally beaten till they passed out. The day before Othman's arrest by the political police (DST). On 12/4/1968, Habib Houass, who was about to present his work as a university graduate, was arrested, although he had no relationship or affiliation with the Perspective who held captive for nearly a month and was subsequently transferred to 9 avril Prison till the Date of trial on 16/9/1968.

From September 9, 1968, everyone was referred to an exceptional court, the State Security Court ²⁶⁰, which was established under the law of July 2, 1968, after the events of March.

The State Security Court issued its verdict on 16/9/1968, which included 104 Perspective activists and Communists for accusations of conspiracies against the internal security of the state, maintenance of an unauthorized association and insulting the state and its president. The sentences ranged from 14 years in prison to the non-hearing of the case. After the trial they were deported to Borj al-Roumi prison to serve their sentences.²⁶¹

3. Post-amnesty violations

After the amnesty, the released persons were placed under house arrest and administrative control, which was not legal without any judicial ruling, among them were Nouredine Khedher in Teboulba, Aziz Krichen and Ahmed Ben Othman in Sfax, Gilbert Naccache in Gafsa then in Bou Salem then in Ouardanine. But during house arrest, some of them were able to leave the territory of the republic secretly, like Aziz Krichan, Ridha Smaoui, Lamine Zgolli and Ibrahim Razgallah.

The presidential pardon was only to limit their movements and push them to seize all political activism mainly opposing Bourguiba. As a matter of fact security forces re-arrested Ahmed Smaoui in late 1970 and was released in December 1971 when he was subject of various types of torture in order to extract information about the secret Movement of Perspective leaders.

4. The events of February 1972 and 1975

The victory of the leftists in the majority of the seats of the General Union of Tunisian Students at the Korba congress prompted the ruling party members to falsify the results of the congress and hand the leadership of the Student Union to students affiliated in the one and unique party The Socialist Constitutional Party of Bourguiba. This led the Students of the Left to organize an Extraordinary congress on the 5th, 6th and 7th of February 1972 on the Campus of Manar. However police forces intervened on the second day to stop it on February 6, 1972, which sparked student protests faced by the authorities with a campaign of large-scale arrests of leftists amounting to about 600 arrest as an expression of the regime's refusal to abandon the student organization and to confront leftist movements. These arrests

²⁶⁰ See section on employment of the judiciary

²⁶¹ Subject of referral on December 31, 2018 to the Specialized Criminal Chamber of Transitional Justice in the Tribunal of First Instance in Tunis.

exceeded a week and continued until December 1972 and included the leaders of the movements who were tried in 1968 and who are in Tunis, along with a number of other students from other regions, and the total number of detainees reached about 1500.

5. Trials

Torture was systematically practiced during the arrests and Raoudha Gharbi²⁶² presented an influential testimony during a public hearing organized by TDC on 10 March 2017.

The State Security Court issued verdicts in case No. 8 on August 24, 1974, in which 202 defendants were referred for “conspiring against the internal security of the state, maintaining an unauthorized association, publishing false news that would disturb the public order”, and penalties ranged between 10 years imprisonment and six months with a postponement of execution, or not hearing the case.

It also issued judgments in case No. 10 on October 4, 1975, in which 90 defendants were convicted of crimes that range from conspiring against the internal security of the state, maintaining an unauthorized association and the publication of false news that would disturb the public where sentences ranged between 10 years imprisonment and six months with the postponement of execution and not hearing the suit.

In March 1973, the Tunis Court of First Instance sentenced 14 defendants to prison terms ranging from one to three years in the case of the Tunisian worker .

On April 18, 1973, the Tunis Court of First Instance issued sentences ranging from 3 to 8 months imprisonment against 14 defendants in the case of the Mass Democratic Movement .

On December 18, 1974, the Tunis Court of First Instance issued sentences ranging from two and six months to six years in prison against 33 defendants in the case of the Progressive Front for the Liberation of Tunisia.

In May 1975, the Tunis Court of Appeal issued sentences ranging from two to seven years against 19 defendants in the case of the Progressive Front for the Liberation of Tunisia.

The state security court pledged the case of the Tunisian worker, which included 42 defendants and handed down on July 7, 1975, sentences ranging from one year to three years in prison.

The state security court pledged the case of the Tunisian worker, involving 101 defendants, and in October 1975 handed down sentences ranging from one year to nine years in prison.

On March 21, 1977, the Police arrested 25 members of the Popular Unity Movement and 33 people were prosecuted, eight of whom were on the run.

On June 13, 1977, the State Security Court pledged the case and sentenced in absentia to five years in prison for Ahmed Ben Salah, Sliman al-Doggi and Hicham Moussa for maintaining an unrecognized association and three years in prison for the promotion of publications containing defamation of the President of the Republic and spreading false news that would disturb the regime. Abdelkader Zouari, Abdellatif Ghorbel and Kamal Smaoui were sentenced to five years' imprisonment for retaining an unrecognized association.

²⁶² Raoudha Gharbi Testimony - Public Hearing March 10th, 2017:

On June 6, 1979, the Tunis Court of First Instance ruled in the case of the Tunisian People's Revolutionary Party, in which 38 defendants received sentences ranging from one year to seven years in prison.

On August 22, 1979, the Tunis Court of First Instance ruled in the case of the "Secret Units", in which 47 defendants received sentences ranging from one to four years.

6. Events from 1981 to 1987

The period of the 1980s was characterized by the intensification of the crisis within the authority and the cracking of the state apparatus between the conflicting blocs that entered the battle of the succession of Bourguiba, the explosion of the social and political situation, the expansion of trade union strikes and the expansion of political opposition movements in all their tendencies, during which the pace of repression intensified to include all political opponents.

The intensification of the repression coincided with the announcement of the establishment of the Tunisian Communist Workers' Party on 3 January 1986, the date of the second anniversary of the Bread riots.²⁶³

On 28/04/1987, Nabil Barakati, a leader of the Tunisian Communist Workers' Party, was arrested on charges of distributing leaflets and taking him to the security center in Gaafour, where he was subjected by the chief of the police to various forms of torture. On the morning of 9 May, Nabil Barakati was found dead in the drainage canal with a bullet in the head.²⁶⁴

In May 1987, 40 members of the Communist Workers' Party were tried for belonging to a clandestine party.

On October, 1987, and based on information given by a whistle-blower, leaders of the Patriotic Democratic Party along with regional and local leaders of the Communist Workers Party were arrested in Teboursook, Tibar and Béja.

On November 16, 1993, a group of youths in Nabeul were arrested on suspicion of belonging to the Communist Workers' Party.

The trials of leftist currents in Tunisia constituted one of the chapters of the authoritarian regimes that succeeded Tunisia and established a culture of impunity.

²⁶³ See section on bread protests.

²⁶⁴ The subject of the indictment number 3 that was referred on 19 April 2018 to the specialized criminal Chamber of the Tribunal of First Instance in Kef.

Chapter Three

Violations against Nationalists

In the early days of its emergence as a political faction on the Tunisian scene, the nationalist movement was associated with those who adopted the Nasserist or Baathist approach. Hence the national movement emerged in its intellectual and cultural dimensions.

The National Movement formed part of those who were subjected to violations.

Actually TDC received 307 files as follows: Tunisian Baath Party (22 files), Arabic Baath Party in Iraq (47 files), Arabic Socialist Baath Party in Syria (11 files), The Nationalist Progressist Front for the Liberation of Tunisia (23 files), Revolutionary Movement for the Liberation of Tunisia (09 files), Movement of Arab Revolutionary Committees (22 files), Independent Nationalists (15 files), Movement of Tunisian Revolutionary Committees (05 files), Arabic Union Forefronts (2 files), The Democratic Unification (5 files), Nasserist Unification Movement (6 files), The Tunisian Revolutionary People Party (09 files), the Arab People's Liberation Movement (2 files), the National Nasserist Current (one file) and 133 files belonging to national trend without organizational or partisan framing.

1. Violations

The year 1969 witnessed trials including a number of nationalists. They were 27 out of the 134 suspects, which included the provisions of case number 02 of the State Security Court, who were sentenced on February 18, 1969, for belonging to an unauthorized association and for high treason.

These violations occurred throughout the period from 1968 to 1978. Most of them concerned political trials and the prevention of political organization in the form of political parties or movements preventing them from legal licensing, claiming that their activism represents a threat to the internal and external national security.

That's why most trials were issued by special courts, State Security Court, or the permanent military court in Tunisia, such as the course of the trials and sentences issued against the National Progressive Front in 1976, which would later relate to revolutionary movements such as the Tunisian People's Party, the Arab People's Liberation Movement and the Revolutionary Movement for the Liberation of Tunisia which resulted in systematic judicial repression and serious physical violations against members and collaborators of these parties.

This period was distinguished by the fact that the violations have become systematic and extended over a long period of time and rely on security information collected by the security services (security research) according to the ongoing security monitoring of individuals and movements or national political organizations, but the scope of violations will focus on economic and social rights as well as cultural rights in the form of exclusionary practices and violations of individual rights, such as home sanctity or other rights relating to private life, through the frequent administrative and security control.

The most frequent violation was arbitrary arrest with a total of 97 times, whether through summoning, raiding or kidnapping.

2. Trials

On May 13, 1975, 27 young men from Tataouine, Douz, Gabes and Kebili affiliating to the National Front for the Liberation of Tunisia were arrested following a complaint by a member of the Ministry of the Interior, claiming they were “forming an association that is not authorized, insulting the president of the republic, illegally crossing the borders, disseminating false news, and distributing leaflets”. During their arrest in the headquarters of the Ministry of Interior Affairs, they were victims of torture and prevention from a fair trial.

On March 11, 1979, Tawfiq al-Madani founded the Arab People's Liberation Movement. Omar al-Majri and Mohsen al-Ayari were subsequently arrested. They were interrogated by Agent 17, of Palestinian origins. They were tortured by him, especially Omar Mejri as a leader of the organization in Tunisia. Among the other detainees was Hammadi Ben Yahia. Tawfiq al-Madani was tried in absentia in July 1983 and sentenced with 12 years of hard labor. The National Security Chief by that time was Ahmed Bennour.

In 1981, the founding of the Arab National Rally was announced. The first confrontations with the system were during the bread riots in 1984, during which the movement denounced the policy of repression and the trials against the detainees. The state and members of the government decided to put the leader Bechir Essid in prison for 4 years for accusations such as the “formation of a sabotage society”, “insulting the President, encouraging theft and murder, spreading false news and distributing leaflets”.

Chapter Four

Black Thursday, January 26th, 1978

TDC dealt with the files of the events of Black Thursday 26 January 1978, in the context of uncovering the reality of the bloody events that took place in Tunisia on this day, a day that left a big impact in the course of Tunisian political, social and economic life. TDC received 909 files, including 479 files for victims among which 33 files were related to injuries during protests, demonstrations and uprisings, 14 files were related to the violation of murder. The remaining 430 files were for victims of direct harm as a result of family ties. In addition to the file submitted by the Tunisian General Labor Union as a representative of a group of trade union victims.

TDC also devoted a public hearing to the event²⁶⁵, which left serious consequences on the bodies and lives of the victims.

Some of the testimonies will be enclosed in this report.

Worthy to mention is the fact that members of the executive bureau of the Tunisian General Labor Union boycotted the hearing sessions and declined an invitation to testify on behalf of the Union.

1. Facts

The decade of the seventies of the last century witnessed instability in the relationship between the authority and the Labor central Union (UGTT). The social crisis started to improve after the social negotiations of 1974, but the economic situation dwindled while The Labor Union insisted on some demands, mainly pay rise. On January 17, 1977, both sides reached an agreement called the “National Consensus Document” or “Social Charter”, in which the Government responded to part of the demands of the working organization. However the document was not unanimously approved of by the Union Conference held in March 1977.

The crisis intensified when the government announced its decision in the summer of 1977 to raise the prices of some food items despite the agreement between the government and the Labor Union which stipulated the necessity to maintain the social ladder and to review salaries each time prices raise of 5%.

Despite the signs of relative reconciliation between the Federation and the government in September 1977, the situation finally deteriorated with the strike of textile workers in k’sar Hellal on 07-10-1977 to protest the poor management in their factory. The government was then led by Hedi Nouria who denied the legitimacy of the strike and used the security and

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military forces to break up the strike. He, therefore, launched mass arrests of striking workers and demonstrators, which made the option of security confrontation inevitable.

The situation was aggravated by the fact that the Tunisian General Labor Union (UGTT) received a threat to liquidate its Secretary-General Habib Achour by Abdallah Ouardani, whose research in a case committed by the Sousse District Court proved that during a special session in October 1977, he stated that the pistol in his hand, which had already killed Salah Ben Youssef is ready to kill Habib Achour.

The People's Newspaper, the tongue of the organization, contributed to the framing of workers and educated its readers from the general public about the reality of the situation. This led to a record rise in the number of sales to more than 120 thousand copies. Thus, the authorities targeted the review's headquarters, printing offices and journalists, such as Mohamed Qalbi, who was famous for his satirical writings "Harbousha."

2. Declaration of general strike and bloody confrontation

In light of this tense political climate, the UGTT held a national plenary session at Amilcar Hotel on 8, 9 and 10 January 1978, which witnessed lengthy deliberations that ended with the agreement on organizing a general strike on Thursday 26-01-1978 for 24 hours, provided that it does not include some public services such as electricity, water and health. .

The general strike took place on January 26, 1978, where the popular participation exceeded all expectations and the streets of the capital witnessed marches in which many trade unions, workers and students took part. The strike spread to all parts of the country and the movement turned into a popular state rejecting government policy.

The government proceeded with the option of a bloody confrontation by firing live bullets at the demonstrators, killing and wounding many²⁶⁶. The government then admitted that 52 people were killed and 365 were wounded. Security forces also launched a campaign of arrests, which began with the arrest of most members of the Executive Office except Tijani Abid, who disowned his participation in the strike and submitted his resignation from the Union before the outbreak of events and was inaugurated a month later a new Secretary-General of the Union in the extraordinary 15th Congress. Around 5,000 people were arrested.

The arrests targeted a large number of trade unionists who were arrested and taken to various security centers and to the headquarters of the State Security Safety Division at the Ministry of Interior where they were brutally interrogated and tortured.

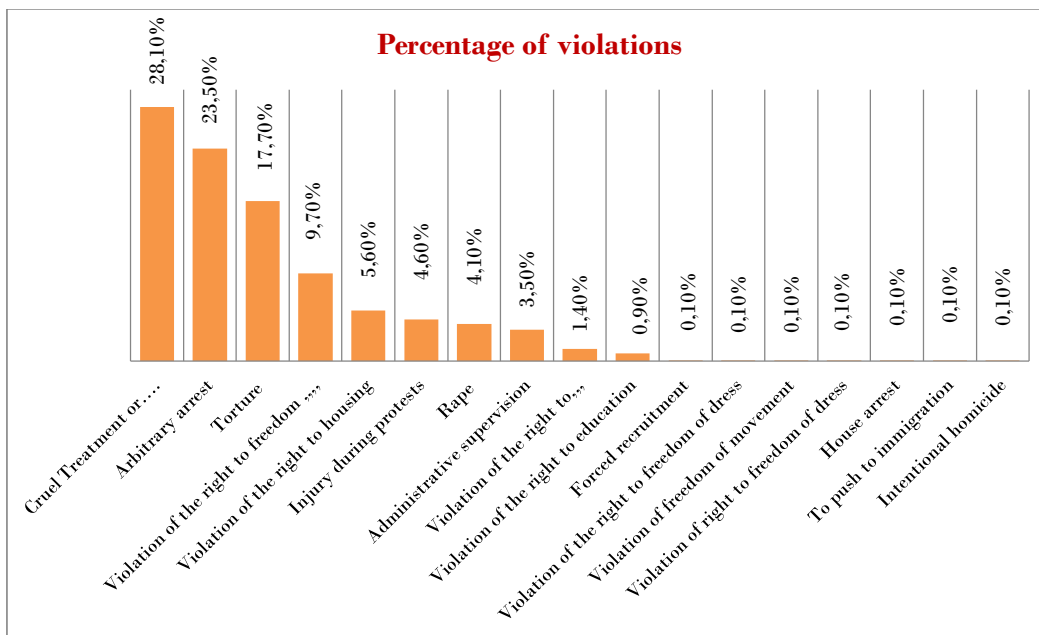
The arrested unionists were subjected to various forms of torture in the cellars of the Ministry of Interior, and some died under torture, such as Hussein al-Kouki²⁶⁷, founder of the

²⁶⁶ Subject matter of the indictment number 49 that was referred on December 31, 2018 to the specialized chamber in transitional justice in the court of first instance in Tunis

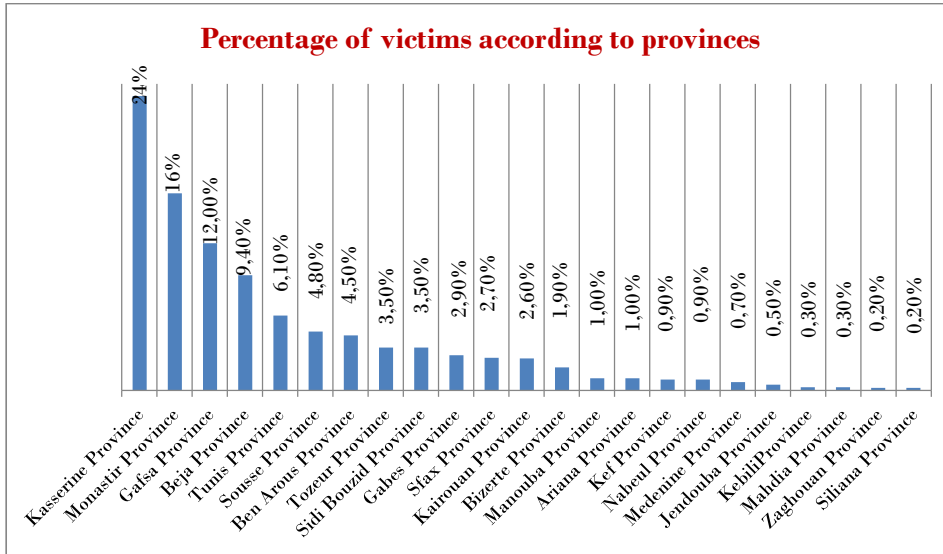
²⁶⁷ Subject matter of the indictment number 48, which was referred on December 31, 2018 to the specialized chamber in transitional justice in the court of first instance in Sousse

regional union of banks and insurance companies in Sousse, and Said Gagui²⁶⁸, general secretary of the General University of Pension and Tourism.

This was followed by a series of trials, where 30 union leaders were referred to the State Security Court in case number 15, and the State Security Court, headed by Judge Mohamed Taher Boulbaba al-Fatimi who sentenced a first group of trade unionists, consisting of 24 people, ranging from 6 months, with a postponement to 10 years of hard labor. Hundreds of other trade unionists were prosecuted before ordinary courts.



²⁶⁸ Subject matter of the indictment number 50 that was referred on December 31, 2018 to the specialized chamber in transitional justice in the court of first instance in Tunis



January 26th, 1978 is considered a political, unionist and social turning point in the history of the workers' organization. It represented a Cesarean birth to an organization independent of political power.

Chapter Five

Events and confrontations against students_____

1. Introduction

TDC received 1503 files concerning violations against students. TDC considered that these violations constitute one axis despite the diversity of the political currents concerned with the violations, because of the unity of the space targeted by the authoritarian regime in all stages.

Since the beginning of the establishment of authoritarian rule in the mid-1960s, the university space constituted a fortress for the youth uprising against the authoritarian choices of the regime, which managed to impose almost total dominance of the public space leading to the establishment of the one-party system in 1964 (the decisions of the "Destiny Conference" of the Socialist Constitutional Party) hence political pluralism and electoral competition were abolished. Also, all popular, working and cultural organisms became run by the state as auxiliary institutions of the one and unique Party.

The university space embraced bold and avangardist forms of alternative expressions. Currents evolved and built critical perspectives and opinions that competed, coexisted and created parallel organizational forms such as oratory skills that were trained in rhetoric, writing, analysis, planning and organization, and elites that subsequently influenced the course of public life. The student movement was a cradle for the emancipation from the nightmare of the Bourguibi tyranny and an early challenge to it all along his reign. It also produced innovations in the methods of mass action, which later spread within other spaces such as the trade union and human rights arena and secret political formations with multiple cultural branches.

On the other hand, the Authority has sought to subject the university space to the testing and development of specialized agencies in political maneuvering, methods of abuse, prosecution, surveillance, sedition, division and formation of expertise in adapting legislation and laws to empty them from its essential principal of independence and of any every free thought.

The battle for control over the professional structures of Tunisian students was the most visible expression of the confrontations between the Bourguiba authority and the student movement, which fought a long struggle to protect the independence of the Union and to preserve its away from all attempts of internalization by the ruling party. A resistance that cost its members and leaders many violations and prosecutions. At the same time, the state always tried to attract opportunistic elements of the union in order to recruit them in distortion and slander and enabled them to take advantage from public resources in order to support the organs of the regime.

2. Founding of the General Union of Tunisian Students :

The General Union of Tunisian Students was established, in the midst of the national struggle, with the support of the most deeply rooted social forces after the declaration of the armed revolution of 18 January 1952 against French colonialism and the beginning of an open confrontation between the people with all their political, social forces on the one hand and the colonial powers and their agents on the other. The Union fused into the national popular struggle, the line of struggle that would constitute its main feature.

The first "Constituent Conference" (one and a half years after it was established in confidentiality in Tunis) was held in Paris on 10-11-12 and 13 July 1953 under the slogan "radical educational reform and the struggle for national political and economic independence and social progress" and stipulated the need for compulsory primary education for girls and boys alike.

In July 1956, the Zitouna Student Movement "Student Voice" fused into the General Union of Tunisian Students and the student movement became united in the same trade union organization.

But Bourguiba was seeking to dominate the federation. "During the federation conferences, the secretary of state presided over the opening of the conference and then the president Bourguiba himself, if not busy with more important matters, concluded the conference. Members of the new executive office used to meet Bourguiba before the vote," stated Mohamed Sayah in his book "Agent and Witness". "Bourguiba used to ask for the draft of the list to be read to him" .." in 1960, we followed the same practice and went to meet with the head of state. Bourguiba then asked me to read the general rules of the conference, and I began to read the text [...] When I reached the paragraph of land reform and the need to distribute land to the peasants, Bourguiba stopped me saying: "What are these slogans these frames invent!?" Then he turned to Hedi Nouira, saying, "Si El Hedi, tell them that in Sidi Bouzid we gave resistance fighters lands planted with olive trees and which were under colonization. So they cut down the trees and sold them charcoal." "We will come to terms with them and change one or two words in the list," said Mr Mohamed Mzali, then youth and sports director. [...] This I am saying for history."²⁶⁹

3. The General Union of the Tunisian Students under Bourguiba rule and the systematic targeting of university space

Despite the student rejection of the dominance of the Constitution Party over the Union, the latter succeeded in the 11th Congress, which was held in Kef in August 1963, to approve the Union's affiliation to the Constitutional Party, by adopting the so-called "Charter of the Tunisian student" and decided to dissolve the Paris branch which was run by leftist students who won most of its executive bureau seats. He also decided to expel 12 activists and withdraw their membership from the organization. During the 12th Congress held in 1964 in Monastir, it was decided to lift the sanctions, due to the basic pressure.

²⁶⁹ Mohammed Sayah, the actor and witness, interviewed Mouldi Lahmar. Pp. 94 - Ceres Publishing House 2012.

The "Destourians Students" from the ruling party maintained their dominance, as the rules of procedure of the Union stipulated that all members of the administrative commission (between 20 and 30 members) were considered automatically as delegate to the congress, and that the large number of members of the ruling party was aimed at containing regional conflicts between Destourians and ensuring a majority in the conferences. To block the door for opposition students to be always a minority, as well as the prevalence of forgery and election fraud, besides the freezing and expulsion of militant elements of the structures of the Union for artificial reasons such as causing violence and provocation, all this in order to ensure a comfortable majority in all conferences and thus ensure complete domination for an organization.

Most of the congresses were undemocratic and merely endorsed decisions by the Destourian Party leadership. It ignored the students' concerns, as in mid-December 1966, when a police officer brutally beat two students. The leadership of the union (Mohamed Sayah, Issaa Baccouche ...) did not react. As a result, a big march was held attended by 1000 to 1500 students heading towards the Ministry of Interior and calling "For Democracy", "Down with the Gestapo, Down with Repression", and this was considered as the first mass movement of students. The students declared a 3-day general strike, which led the authorities to close the university until the winter break. In the midst of this struggle, the role of the Union leadership was to whistle blow and to set up the "blacklists", a term that appeared in those years, a practice that would reappear during the 1990s, (1991/1993) with its Secretary General Naoufal Zyadi.

4. Employing popular anger against Israel and turning it against the Tunisian Jewish community

After the Israeli bombardment of Egypt, the Tunisian University witnessed mass demonstrations condemning the Israeli aggression and the occupation of Sinai and Gaza on June 5, 1967. The university students organized a demonstration on the morning of June 5 in front of the American Cultural Center in the capital raising anti-American slogans, blaming them for the Israeli war against the Arabs.

However, a group of people joined the demonstration carrying pictures of Habib Bourguiba and batons. They broke window shops, used violence against students who tried to stop them but did not succeed, especially that the police forces were just a few agents who were overwhelmed by events. Witnesses²⁷⁰ from the leftist movement that called for the demonstration said that the rioters belonged to the Destourian Party militia and moved at the behest of Mohamed Sayah, who sought to accuse the leftist students and implicate them in the violence by turning the demonstration towards Jewish residential and religious institutions to give the movement a racial and sectarian dimension aimed against Jewish citizens (anti-Semitic). In fact, these elements attacked the neighborhoods of Lafayette and Hafsia in the capital, where they stormed the homes of Jews and assaulted them with violence and defaming their honor and burned and robbed their shops without security intervention for a whole day, which led many of them to emigrate due to the absence of

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protection by the state. These criminal acts didn't cease until late in the day when President Bourguiba intervened in a speech denouncing these acts and then ordered these acts to stop with intense interference from security.

The authorities used these events to liquidate the protest movement in the university with repression and trials, the most important of which is the trial of student Mohamed Ben Jennat (Perspective Organization), who was sentenced to 20 years of hard labor on charges of "Store dislocation and theft" and "setting fires in the Jewish neighborhoods." The trial was malicious and Ben Jennat became a symbol of the national and popular struggle.

In the student community, the constitutional leadership within the Union increased its isolation by standing against the petition of solidarity with Ben Jennat presented at the 15th conference of the Union held in Gabes in the summer of 1967. The Ben Jennat affair turned into a line of separation between political forces (students of the authority and democratic students) which helped the opposition to win many seats in university structures.

During the month of March 1968, on the occasion of the imminent trial of Mohamed Ben Jennat and the announcement of the general strike in universities, the police, and mainly BOP and DST teams, besieged colleges and streets of the capital. On the third day of the strike, militia teams brutally attacked a public meeting at the Faculty of Medicine, leaving many wounded and detained students and professors, including surgical professor Dr. Zouhair Safi, who, along with other professors, was taken to an irregular prison outside urban areas in an unknown location where they were brutally beaten and tortured. This general strike continued for ten days, but the protest movement lasted until the end of 1968, where another trial was organized in September 1968, the case of the fighters of the Prospects before the State Security Court, specially created for those cases and trials.

At the end of the academic year 68/69, the students renewed their actions to release the imprisoned students. In 1970, a general strike was organized on the occasion of the visit of US Secretary of State Rogers, who presented his plan for peace to the Arab capitals which led to canceling his visit to the Faculty of Law and Political Sciences established with American financial support. Students' protest there resulted in closing the faculty and arresting many students.

5. "The Extraordinary Congress 18" in Korba, Nabeul.

The 18th Congress was held in August 1971 in the city of Korba, and despite all the obstacles, the opposition won the majority of the Congress's delegates (105 out of 180), which led to Destourians (Habib Chaghal, Mohamed Sayah ...) to come out "with the least damage by proposing the idea of a" representative leadership of all political currents ". One-third of the seats for Destourians, one-third for independents, and one-third for communists. A proposition rejected by the democratic majority (while the Communist Party students agreed to it) and the Democrats focused their work on issuing efficient legislation to ensure the independence of the Union and its party and shifting the internal order toward limiting the powers of the Executive Office and ensure its control by the affiliates. In the meantime, desperate to find a "compromise" with the majority in order to secure seats in the new leadership, the president resigned under pressure, gave the signal to the police who besieged the congress hall and launched a campaign of arrests involving a number of opposition

congressionists. An administrative board was appointed although congressionists have not yet presented the regulations for approval.

Immediately following this coup, the majority drafted a petition presenting what happened during the 18th Congress. A detailed report on the coup was prepared and distributed to students in the next academic year 1971/1972. In particular, the period from October to December 1971 was marked by the emergence of the "Media Committee" which won the confidence of the students and became their field representative and organizer of their movements (strikes, public meetings ...), and on this basis, students refused to get any membership from Congress toppers and no election of any structure was allowed to take place under their supervision. On the other hand, the students temporarily organized around what was then known as the "runway bodies" and signed a petition calling for the resignation of the governing body and the convening of an extraordinary congress. Only students of the communist party boycotted the meeting and called to accept being led by an appointed council, which was considered an isolated minority position.

6. Students' and Pupils' Resistance: February 5th Movement

On February 2, 1972, the Faculty of Law gathered around 4,000 students (out of 10,000 students registered at the Tunisian University) to denounce repression and prosecutions and to call for the extraordinary Congress 18.

Indeed, the conference started on February 3rd and thousands of students participated in 5 committees: General Political Committee, Internal Affairs Committee, Trade Union Affairs Committee, Cultural Affairs Committee and Press and Information Committee.

The secondary school pupils' movement soon joined the student movement and declared a strike on the 2nd and 3rd of February.

On February 5th, BOP and political security police teams intervened to stop the extraordinary 18th Congress and dispersed about 6,000 students who were gathered in the faculty to attend the congress as part of a repressive attack which resulted in a lot of wounded and injured students.

Around 900 students were suspended and many were injured. The authorities decided to close the university and some institutes until April 1972, and the official media launched campaigns to distort the movement and stir public opinion against it.

For their part, Tunisian students abroad organized several actions in support of their comrades. As a matter of fact, in Paris, the Union Branch Committee, which is controlled by elements colluding with the authorities, was removed, and the "Dar Tunis" in the international student neighborhood in Paris was occupied. The Tunisian Residents' Committee, which was composed of constitutional elements was replaced by a representative committee. Tunisian students in Paris also announced the formation of CAL-UGET as a temporary student union structure to support the movement in Tunisia and to frame the student activity there. Grenoble, Toulouse, Marseille, Lyon (France) and Brussels (Belgium) had similar committees.

The February 1972 movement was a decisive turning point in the history of the student movement and in students' awareness and struggle. It also crystallized the breach of the

student movement with the constitutional party system. The students raised the slogan of “popular university, democratic education, patriotic culture,” which reflected the students' attitude towards education, and demanded the free and compulsory education and the need to open the university and all educational institutions to all Tunisians and put an end to the policy of selection and selectivity.

The rest of the detainees were released in September 1972 and the governing body resigned on December 29, 1972. This was officially announced on the pages of Al-Sabah newspaper on December 30, 1972. Immediately thereafter, in January 1973, the student masses presented a project to resolve the crisis. Trade union representation "or what is known as the 1973 project, a practical proposition to solve the crisis of student union representation by electing temporary student union structures (temporary branch bodies, temporary federal offices, temporary university committee) and the temporary university committee shall be the official and sole spokesman for the union until the completion of the extraordinary democratic congress. The project has defined the democratic principles and bases on which these structures will be elected: freedom of candidacy and election, representation of students in temporary trade union structures according to their number in colleges and higher institutes, democratic elections from the bottom up directly and publicly. It was also agreed that students withdraw confidence from any member of any structure whenever they depart from the principles and bases on which they are elected.

On 14 February 1973, the Minister of Education, Mohamed Mzali, approved of this project and sent a leaflet to the deans of the colleges asking them to allow the organization of provisional student union elections.

7. The state retreated on its concessions and resumed a policy of systematic repression

These provisional student union structures represented new organizational frameworks for students in preparation for the extraordinary 18th congress, but the authority, after initially acknowledging the structures, retreated and launched a repressive campaign on the temporary trade union structures and their activists. As a matter of fact, in April 1973 the Disciplinary council of the faculty of law inflicted many arbitrary penalties on a number of the temporary union structures members. In these sanctions were the final expulsion from the university. That is why students went on a general strike throughout April and a hunger strike in May 1973 to protest repression.

In October 1973, 600 students were forcibly recruited in the army. In November, 200 leftist students were arrested (Amel Tounsi, Choola ...). The year 1974 was definitely a year of trials in terms of their number and the number of summoned students, especially the trials of April 17, 1974 and April 20, 1974. 13 students, who were arrested on the 8th of march 1974 on the general strike day were sentenced to 4 to 6 months in jail. 27 students were arrested in protests against the 17 April trials and were themselves summoned before the tribunal on the 20th of April. Sentences ranged from 3 months to 1 year of imprisonment. On the day of the trial, about 100 other students were arrested, which prompted the movement to declare the general strike until the beginning of May despite the intervention of the police and their daily besiege of colleges by trained dogs. The year ended only with the issuance of the law of

May 7, 1974, which established the presence of a police system (Vigils) inside the university to monitor students and their activities within the university and dormitories.

On the occasion of the commemoration of the temporary trade union structures movement of February 1972, the number of people arrested reached between 350 and 400, but this did not prevent the broad rules of commemoration, as political prisoners launched a symbolic hunger strike (on 5 February 1976). In the weeks that followed, With the support of professors, the students launched an open battle against the university guard corps ("Vigil"), considered a foreign body to the the platforms of science and knowledge, who's mission monitoring and suppressing the university space. A device on which the authority relied to suppress the student voice. They endowed it with all privileges as their salary reached 80 dinars which was deemed very high compared to the average Wage rate, as it did not exceed fifty dinars.

On May 5, 1976, at the invitation of the temporary trade union structures at the Bardo campus, a public meeting turned into violent clashes with the Vigil forces resulting in approximately 30 wounded and dozens of detainees, 10 of whom were tried, sentenced to 4 months in prison (5 students) and the remaining five released. As part of the same battle, the structures called for a general strike that lasted until May 12, in order to expel the Vigil from the university and overthrow the law of 7 May 1974. Eighty students were permanently expelled from the university because of their trade union activity, which contributed to the emptying of the temporary trade union structures from their activists and leaders.

The authority failed to pass its choice of union representation at the university, as its followers remained Destourians students and pariahs who remained clinging to the 18th extraordinary congress of the General Union of Tunisian Students. Authorities decided to work on wearing and time gaining by allowing the organization of elections with the purpose of renewing the temporary student union structures. These election took place in May/June 1975 in secrecy before the structures resorted to renewal through reinforcement (cooptation) and deviation in style to the extent that the narrow factional considerations prevail over trade union standards, which exhausted their representation against the growing rift within them under the influence of the main left currents In Tunisia (The Tunisian workers and the different branches of the patriotic democratic students .

On February 2nd, 1977, thousands of students gathered together with temporary union structures to commemorate the 1972 movement and to renew their rejection of Vigil's presence at the university. The police stormed the Bardo II dormitory at night after it was surrounded under the false pretense that the students were detaining the director of the dorm and threatening him. Then the rooms were broken into by breaking their doors, scattering their contents and violating the resident students who were forced to crawl on glass shards and going up and down several times from the ground floor to the upper floor (fourth). Witnesses told TDC that during these events one of the students died after being thrown from the third floor. The police claimed it was a "suicide." The students were then seated in the dormitory courtyard for three hours to then get beat by police bats and attacked by dogs. The outcome of this aggression was 1 dead and dozens wounded. In response, demonstrations were held in which 7,000 students participated in a protest against the Bardo II crime. As a

result, 150 were detained, 30 of them, mostly females, were sent to prison where they were subjected to the worst forms of torture.

8. Violence breeds violence: the Manouba incident

The aggravation of repressive police operations (under the supervision of Interior Minister Tahar Belkhodja) has helped the rise of radical currents of advocates of extremist and violent doctrines at the expense of the union movement keen on the independence of the Union and the defense of the students' specific concerns. A minority of student activists began to resort to violent tactics during confrontations with the university vigils ... and then soon used violence to resolve conflicts between student currents; The climax of violence was reached in the eighties of the last century during the confrontations between leftist and Islamists especially during the events of the Manouba Campus.

The regime won time by betting on the complexity of the union representation's crisis; with the growing factional rivalry between the influential leftist formations and their inability to start an initiative in order to impose their independence, besides its inability to profit from the weakness of the authority in the early 1980s (confrontation with the UGTT, rigging the results of the first pluralist elections).

Violent confrontations initiated by the Islamic Movement on 26 and 27 March 1982 on the occasion of a union rally in the campus organized by the temporary trade union structures left six students seriously injured and unprecedented tension.

On the other hand, a group of leftist students decided to respond violently to the Islamists. On March 30, 1982, a group of students from outside the Faculty of Arts came and joined classmates inside Manouba residence hall armed with white weapons went up to the university city in search of Islamists to beat them. The confrontation led to the wounding of many students. During the incident the police was watching the situation from outside the residence hall without intervening.

9. The unity of the union representation was split and the Tunisian general union was formed

The crisis of union representation of the General Union of Tunisian Students (UGET) led to a crack in student lines and obliterated a legacy of student resistance against the ruling party's domination.

On its part, the leaders of the Islamic students university adopted since the summer of 1980 the formula "founding conference" and abandoned the "extraordinary Congress 18" claiming that the discord with the Destourians students was secondary. This shift came after a qualitative development in the composition of the student movement characterized by the rise of Islamists and the beginning of the decline of leftists, as highlighted by the results of the student council elections in November 1980.

Since the beginning of the academic year 1982/1983, students of the Islamic trend launched the initiative called "Student Charter" that called for "restructuring the student movement through the formation of the Unified Student Work Committee". This initiative was a way to solve the dilemma of either toppling the general union of Tunisian students or setting up a

new union. Some student political currents interacted with the Islamic Trend Initiative, albeit with caution, as patriotic democratic students accepted the idea in principle but proposed instead of a unified student action committee, a movement management committee representing all currents. The communist students suggested open committees.

The initiative put forward by the Islamists confirmed the shift in the university political map for their benefit, which led them to frame more student protests and led to the decline of the impact of temporary trade union structures on the university scene and the conflict of representation by the activists of the leftist students.

While it was convenient for the authority to witness the leftist currents in the university weaken because of the conflict with the Islamists, it was not satisfied with the control of Islamists in the student arena. In this context, the entire Islamic student leadership was arrested on January 9, 1983.

During the academic year 1983/1984, discussions continued on the crisis of union representation, and later emerged new theses to solve it mainly in the direction of a "general congress" to resolve the dispute since the academic year 1980/1981 between leftists clinging to the General Union of Tunisian students on the one hand and the Islamists and Baathists calling for a constitutional assembly. This new proposition was advocated by the islamist movement during an internal seminar held in the capital in summer 1984 and it was agreed during that symposium that the academic year 1984/1985 is the appropriate year to organize the assembly.

The university was witnessing a deterioration of the financial situation of students and the absence of democracy in the management of its structures with the presence of sectorial crises specific to each college.

The Decisive General Congress was held on 18/19/20 April 1985 at the Faculty of Science of Tunis and adopted the "Decisive regulation" which confirmed the option of establishing a new union, the "General Union of Tunisian Students".

10. Facing the project of the Minister of Higher Education Abdelaziz Ben Dhia

In July 1985, the then Minister of Higher Education and Scientific Research, Abdelaziz Ben Dhia, took an initiative in six measures, which were a declaration of a state of emergency at the university, extending from excluding the student from university to introducing security agents to control the situation. The supervisory authority has resorted to forced Conscription into the army and arbitrary trials. As student movements continued, the ministry activated the 1973 law governing university life. But the scientific board of the Faculty of Arts in Manouba broke the ban imposed by the ministry on public meetings and held a public meeting in the courtyard of the college.

The events of April 21 following the **assassination of student Othman ben Mahmoud on April 18, 1986**²⁷¹ in the Zouhour district of the capital were highlighted by the university live violent confrontations between students and security forces in the university campus and the

²⁷¹ Case subject of an indictment referred by the TDC to the specialized criminal chambers.

Faculty of Arts in Manouba. About a thousand students were arrested and many of them were forcibly conscripted in the military. Additionally, Amor Chadli took Abdelaziz Ben Dhia's position as head of The Ministry of Higher Education and Scientific Research.

The Tunisian General Union of Students held its second congress in December 1986 and the main petition was related to changing the registration fees and exams.

11. Battle of the august 82 decree related to the registration

The governing body of the General Union of Tunisian Students (UGET) on 14 February 1987 decided to call a general strike on 18 February 1987, demanding a reversal of the August 82 decree. Strikes continued at the university and spread among most of the faculties in the capital and inside the country which worsened the disturbances at the university. As a result the Minister Amor Chadli was replaced by Mohamed Sayah as a minister of higher education and scientific research on May 16, 1987. During the summer vacation, President Bourguiba decided to amend the August 1982 decree, and a presidential decree was issued revising the decree number 1173 for 1982.

12. Legal recognition of the Tunisian General Union of Students (UGTE)

Following the change of power on November 7, 1987, the arrested and conscripted students were released following the events of the academic year (1986/1987). From December 1987 to January 1989 elections were held to choose scientific assemblies of the faculties. Islamist, independent and leftist students all participated in these elections when the Islamist students won most of the seats. The Tunisian General Union of Students receives a legal work visa. The extraordinary 18 congress of the General Union of Tunisian Students was held which ushered a period of coexistence of the two organizations within the university space, it began from 1988 to 1991.

13. Going back to violence and the events of February 1990

This period was characterized by more freedom in the university space. However, it was limited especially after the elections of April 1989, which represented a setback in the political scene. Prior to the 1989/1990 university return, the Authority attempted to bring the University under its control.

Before the inauguration of the academic year 1989/1990, Tunis Afrique Press agency announced that the slogan of the Ministry of Education of this academic year would be "Neutrality of the University and its Space". A project called "Media Plan to Neutralize the University" was prepared.

The academic year 1989/1990 was launched in light of the accumulation of material and pedagogical problems such as lodging, food and transport for students. as a framework law for higher education was ratified without consulting the two recognized student unions, which provoked the protest of the Tunisian General Union of Students and the General Union of Tunisian Students.

The political scene was at the forefront of the growing rift between Ennahdha, whose students are part of the Tunisian General Union of Students, and Minister Mohamed Charfi, former president of the Tunisian League for the Defense of Human Rights, who pursued a policy of suppressing movements in university space.

Since the opening of the university year, the Dean of the Faculty of Humanities and Social Sciences in Tunis prevented a press conference that the Tunisian General Union of Students intended to hold on the grounds that it is outside the student union activity.

Student union movements took place in most university spaces, and the Tunisian General Union of Students called for a general strike throughout the university campuses on November 22, 1989. The same union called a general strike on December 14, 1989. About 96 students from the Zitouna University went on a 16-day hunger strike.

The Executive Office of the Tunisian General Union of Students met with the Minister on 11 January and presented to him several files, including the file of education reform, the freedom of association and political work, especially the case of the four expelled students from the University of Sfax. The file of the media plan and the file of the University of Zitouna were not responded to by the minister.

On January 13th, the University police station in the Faculty of Arts of Kairouan was attacked by a group of students, leading to the arrest of some of them. Attempts were then made to attack university police stations in the capital's colleges, and the General Union of Tunisian Students supported these moves.

Following a public rally on 15 February 1990 at the Faculty of Law in Tunis, a three-day general strike was scheduled for 15, 16 and 17 February and a march was organized on the X-Highway where there were confrontations with the security forces. The same thing happened in Sfax.

On February 20th, sit-ins were organized at the Faculty of Humanities and Social Sciences in Tunis, the Technical high teacher's school in Tunis, the Faculty of Science and the Faculty of Law in Sousse, the Faculty of Law in Sfax, the Faculty of Arts in Kairouan and at the National School of Engineers in Gabes. The security forces intervened to break up the sit-ins at first, and then attacked several university districts on the night between 21 and 22 February. The authorities subsequently made the decision to force Conscription into the army²⁷² about 600 students to the army, mainly targeting the structures of the General Union of Tunisian Students (UGTE). In addition, a number of leaders were arrested which evacuated the university from its active elements due to the night raids and the storming of colleges by the security forces.

All parties in the student scene were opposed to the existence of university security forces even after the events of February 1990 and many indicators showed that most students were dissatisfied with their financial situation, as reflected in the list of demands expressed by the two organizations prior to the events of February 1990.

272 See [public hearing](#) on January 2017

14. Dissolution of the General Union of Tunisian Students (UGTE)

The General Union of Tunisian Students sent a memorandum to Said Nasser Ramadan, political affairs adviser at the Ministry of Interior affairs, asking him to withdraw university security forces, noting that "most of the strikes and problems witnessed by the university were caused by the demand to evacuate the university from the police. The same demand was presented by the Dostourians students and sent to the secretary General of the Party.

On the other hand, the Ministry refused to hold the fourth conference at the Faculty of Law in Tunis, under the pretext of disrupting the conduct of lessons. It proposed to the Federation to hold it during the holiday or outside the university. While it had authorized the general union of Tunisian students to hold their 19th Conference in the faculty of law. Although Minister Mohamed Charfi received a delegation from the General Union of Tunisian students on November 24, 1990 to inform them of the decision of the President of the State to establish a "Committee for the organization of university life." marches continued during January 1991 in solidarity with Iraq during Gulf War. The army and internal security forces were put in a state of emergency on 14 January then On January 15, 1991, the Ministry of Education announced the closure of secondary and higher educational institutions until the 28th of January. Student Salaheddine Babai was martyred by the security forces during a student march in Sfax College on January 15, 1991. Mabrouk Zemzami, from the Faculty of Science of Monastir, died on 12 February 1991 from injuries sustained during a student demonstration on January 31st.

On March 8, 1991, the Ministry of Education and Science issued a circular referring the security inside the colleges to the security forces after the July 1989 framework law on higher education mandated it to the deans and scientific councils, which means that the security inside the university has become a responsibility of the Ministry of Interior affairs. Some deans were unhappy with the matter and regarded it as an affront to the sanctity of the university institution, as the dean of the Faculty of Economic Sciences at the university campus, Mr. Abdeljabbar Bsais, said in a press statement.

The period between the issuance of the Ministry's publication and the spring holiday witnessed several interventions by the security forces in university institutions who tore up texts that were attached by the student currents on the walls of colleges. Dean Abdeljabbar Bsais stated: **"Either General meetings or political posters are part of the University life and it is the case in Universities around the world."** On March 11, 1991, Security forces besieged the colleges, the university campus, the Faculty of Arts in Manouba and the Faculty of Humanities and Social Sciences in Tunis. The students responded by fleeing from the University.

On March 15, the Ministry of Interior summoned the union leadership to hold it responsible for what was happening at the university and threatened that their visa could be withdrawn. On March 25th, security forces initiated a search campaign inside some colleges and university dormitories to announce the discovery of a "weapons hiding spot" (Molotov cocktails, chemical weapons, and acid bottles) at a residence occupied by student deputies at the Scientific Council of the Faculty of Science in Tunis.

Interior Minister Abdallah Kallal issued a decree on March 29, suspending the activity of the Tunisian General Union of Students (UGTE) and closing its units.

The leadership of the Union denied any connection with the issue of weapons mentioned in the communication of the Ministry of Interior. Mr. Mohamed Chakroun, who is the lawyer in charge of defending the Union stated on 3 July 1991 before the court (case No. 75816) that the Minutes were edited by security officers. Members of the union questioned by the judicial police did not admit that the places reported by the police in a March 25th communication are at the disposal of the Tunisian General Union of Students. On April 26, 1991, the Tunis Court of First Instance issued its decision in the urgent case number 89916 to suspend the activities of the Tunisian General Union of Students and close its units pending the ruling in the original case. On July 8, the court decided in the original case to dissolve the Tunisian General Union of Students "Because of its terrorist character."

15. General Union of Tunisian Students (UGET) and the serial Concessions

The General Union of Tunisian Students (UGET) experienced a decisive turn that caused its transformation with changing the mechanisms of joining the trade union framework, thus reneging on its history and abandoning the criteria for the elections of the temporary trade union structures of 1973 and adopting the criteria of the elections of the colleges scientific councils. The conflicting branches stopped working with the criteria of membership and started granting membership affiliation only to students of the same or close political formations. Divisions and balances were settled among entities that were sometimes foreign to the university who imposed their guardianship of the student movement using pretexts and slogans that seemed radical ("*no Dostourians, no khwanjia*"), while in reality they were aiming at excluding the vast majority of students.

To understand this transformation, we went back to the beginning of the academic year 87/1988, when the formation of the "Democratic Action Front of the University" was formed, which took advantage of the period of détente that immediately followed the coup attempt of November 7, 1987 to complete the extraordinary congress 18. Together with previous leaders, secret talks and mediation with commissioners from the new authority, it led to the lifting of the nearly two-decades-old government ban.

Between the 19th and 20th congresses, the police returned to old practices such as interventionism, arresting and forced Conscription into the army of students. The Union also led street marches and demonstrations against the Western aggression in Iraq, and the number of participants in some demonstrations reached 10,000 students, which forced the closure of the university for two weeks, nonetheless marches continued in the streets and in various parts of the country.

The 20th congress was held in the summer of 1991 in Bir el Bey, in a delicate situation for the university and the country. The end of the academic year 90/1991 was marked by a campaign of arrests against affiliates of Ennahdha. This campaign affected the supporters of this movement in the university, especially when the demonstrators were shot.

The 20th congress marked the development of a “right wing deviation” by accepting “controls” on students' political, unionist and cultural activities. The political authorities took advantage of the situation and required the organization to accept the return of the “Dostourian Students” to the union as a political party like the rest of the currents at university as a condition for the union to continue to exist and operate.

On the school year of (1991/1992), “Dostourian Students” affiliated to the ruling party began preparing to confront the leftist faction left on the scene (after the removal of the Islamists), and they were supported by the police and administrative authorities ... The new executive board benefited in the first period from some facilities (education fees, grants, housing, Passports ...) before the Authority retreated from these facilities and intensified further restriction on the activities of the Union and the threat not to allow the holding of the next conference if two seats were not given to the Dostourians in the Executive board. The Minister, at the time Mohamed Charfi, was the spokesman for the authority in this matter. However, the authority would not have dared to do so if it hadn't been encouraged by a certain conduct of the union's Secretary General Naoufel Ziadi. The union witnessed a lot of deviations. First, The union's regulations contained a lot of concessions. Also the union leaders turned deaf ears to the oppression inflicted on Nahdha affiliates at the University such as persecution, detention, Torture, prevention from schooling and other rights (school grand, housing). Besides, they partly ignored the existence of Dostourian Students and didn't uncover them. In addition, some leaders of the Union attended the meeting of the International Union of Students in the capital of Cyprus in the spring of 1992 with Samir Labidi - the former General Secretary who represented the re-activation of the mechanism of the clientele. In fact, he quickly climbed responsibility position within the system of Ben Ali and ended up as a minister in Ben Ali's last government. The deviations of the leadership of the Union did not stop there as Secretary-General Naoufel Ziadi and some influential members of the Executive Bureau dared to send a message of thanks to Ben Ali following the release of one of the detained activists during the National Council held in Monastir in August 1992 under the excuse that The Union **"appreciates all that is positive in the conduct of the Authority."** With this behavior, they returned to a tradition that the student organization knew only at the hands of the Dostourians during their control over the organization. It is known that the Secretary General Naoufel Ziadi met Mohamed Ghariani, from the ruling party, to attempt to have contact with the authority in order to assure them and appear as the moderate and reasonable Unionist, not the extreme one.

16. Completion of the domestication of university space

After the authority isolated and weakened the Islamists, It was the turn for the leftist's forces and independent personalities. Thus, the authority launched a series of judicial persecution, arrests and trials against them.

The 21st Congress was held at the end of November 1993 under the increasing pressure to impose Destourians elements in the organization's leadership.

The 21st Congress started in an atmosphere of tension and the political police forces were outside surrounding the faculty and blocking all the roads leading to it. Students were kidnapped and beaten, their clothes inspected while interrogated about the ambiance of the

conference and the contents of its regulations. The participants insisted on rejecting the "Students of the Tajamoo". Tajamoo or "Gathering" was the name of the new Political Party of Ben Ali's Regime.

The student movement continued to mobilize to confront the "Education Reform Program", through movements at the 9 April Faculty, the faculty of Law in Tunis, The Faculty of Arts in Sousse, The Faculty of Arts in Kairouan. However, betrayal came from the right wing of the organization's leadership. The political authority launched its attack on the most active students, mainly Nejib Baccouchi who was a member of the executive bureau of the union in the Faculty of 9 April in Tunis, this cost him 3 years in prison and 3 years administrative surveillance. On November 1, 1994, the Political Authorities attacked the students of the Faculty of Arts in Kairouan while protesting against the education reform program by resorting to repressive measures (batons, tear gas, horses, dogs ...). This attack ended with the trial of 34 students. These events signaled a new campaign against the student movement.

The 22nd Conference was held at the University Cultural Center of Hussein Bouzaiane on 31 January and 1-2-3 February 1997 after the Union became a legal organization in form but not really recognized nor its activities acknowledged, thus, the authority strengthened the presence of its repressive organs in colleges and university district. College deans and directors of higher institutes never hesitated to prevent students from sticking posters or statements, denied them the right to meet, convened disciplinary councils. They also issued decisions contrary to the nature of their duties and against the law, such as preventing activists from entering faculties, denying convicted students their right to register and submitting lists in the names of militants to the police in order to stop them or prevent them from entering during the strike. Meanwhile authorities were collecting funds and resources to support the "RCD/ Tajamoo students" in order to show them as an active student party or branch and an actor in the arena and equip them with the "legitimacy" they have never had.

Following the suspension of a group of young Communist Party students in February/March 1998, the university experienced a state of decline, resignation and terror. At that time, Union Secretary-General Assef Yahyaoui came close to power and signed a joint statement with the Minister of Higher Education with the purpose of domesticating the organization and opening the way for students loyal to authorities to seize it²⁷³. The next Secretary General Ezzedine Zaatour continued on the same path by taking part in the famous press conference organized by Al-Sabah newspaper in January²⁷⁴ with the participation of the Secretary General of the RCD Students' Association.

The regime's sabotage approach continued by the ruling authority, either by threatening the through regime's campaign of arrests from time to time, or by encouraging and working to woo some opportunistic elements, which led to the split of the Union in two parts during the preparations for the 23rd congress, which affected the The rest of the organization's path to 2011.

273 See Al-Sabah, 31 October 1998, p. 2

274 See Al-Sabah Newspaper, Issues 25-26 January 2002

Chapter Six

Violations against Islamists

Truth and Dignity Commission received 24,120 files concerning various violations against persons affiliated with the Islamic Movement in Tunisia, including members of their families. 3603 files related to the 1980s, 10928 files in the 1990s and 9589 files between the two periods.

I. Context of events

The Islamic movement has emerged in Tunisia since the late seventies, resulting in the foundation of The Movement of the Islamic trend, which had clashes with the authority that rejected the existence of an Islamic movement at all, making it vulnerable to prosecutions and serious violations that have affected its leaders and members since its inception.

On December 5, 1980, security forces uncovered the secret organization of the Islamic Movement in Tunisia, by arresting Saleh Karkar and Bin Issa al-Damani, who had all the documents relating to Al-Jamaah Al-Islamiyah.

In April 1981, the Movement secretly held its second congress in the same period as the Socialist Constitutional Party (Bourguiba Regime's party) held its extraordinary congress. This conference recognized the necessity of resorting to public action after the decision of the ruling party to tolerate party pluralism.

The movement was announced publicly on 6 June 1981 during a press conference held by Rashed Ghannouchi, Abdelfattah Mourou, Zaher El Mahjoub, Benaissa El Demny and Habib El Mokni.

On the same day, the movement applied for an official accreditation without receiving any response from the authorities. On July 18, 1981, the authorities arrested 107 leaders of the movement to be summoned before tribunals in September of the same year for trial on charges of belonging to an unauthorized association, undermining the dignity of the President of the Republic and spreading false news and distribution of hostile publications.

Rashed Ghannouchi and Salah Karkar were sentenced to 11 years in prison, and the rest of the detainees faced various sentences and seven were released, including Salaheddine Jouchi. Abdelfattah Moro was sentenced to 10 years in prison and was released in August 1983 on health grounds and subsequently was held under house arrest for one year. Between 1981 and 1984, 25 prosecutions of Islamic leaders were organized nationwide.

In 1984, Prime Minister Mohamed Mzali held negotiations and talks to end the crisis of the Islamists and met with Abdelfattah Mourou and agreed that the movement should send a message to President Habib Bourguiba explaining its principles. Moro, who was under house arrest, held consultations with Hammadi Jebali, who was working in secrecy, Rashed Ghannouchi and his group who are in prison and the rest of the leaders who are abroad until there was consensus in the ranks of the leadership to send the message in the name of the movement, and that was on 3 July 1984. On August 3, 1984, former President Habib Bourguiba issued a decision to release all detainees of the Islamic trend as a move towards giving some freedoms and alleviating the tense political and social atmosphere or context. This pardon was exploited by the movement to organize its third conference in Suleiman on August 25, 1984, which renewed the mandate of the same leadership in addition to enabling the movement's presence in the form of advocacy groups, but also at the cultural and social level.

On July 6, 1986 the new secret organization of the movement and its literature and structures were revealed. On July 8 of the same year, Mohamed Mzali was dismissed as head of government and replaced by Rachid Sfar which signaled a new wave of clashes with the movement.

In December 1986, the movement organized its fourth congress, and in March 1987 Ghannouchi was arrested and clashes with the regime peaked in September 1987.

Ghannouchi was sentenced to hard labor for life and the government accused the movement of involvement in the bombings that targeted four hotels in Sousse and Monastir, which left 13 wounded. The political authority pursued a policy of security grip as a response to the demonstrations, as well as sit-ins and distribution of leaflets that the security forces faced with excessive violence. The clashes resulted in 10 deaths under torture, nearly 8,000 detainees, the crippling of the organization's executive body and its institutions, and the arrest of most of the executive leadership.

Preparations for the State Security Court began in September 1987, when 90 defendants were summoned to be sentenced on September 27, 1987. 8 detainees were sentenced to death, including six defendants on the run, like Hammadi Jebali, Ali Larayadh, and Salah Karkar, while Ghannouchi and others were sentenced to life imprisonment.

During The Ben Ali regime there surfaced the case of insurrection security group consisting of civilians (both as leaders and affiliates), along with a number of low-ranking security and military officers. They were organized under the leadership of Commander Al-Mansouri²⁷⁵,

²⁷⁵ See the indictment of the number of 68 that was referred on December 31, 2018 to the specialized chamber in transitional justice in the court of first instance in Tunis

who was killed under torture. According to the official version, they were supposed to carry out a coup d'état on November 8, 1987, preceded by the action of the then Prime Minister, Zine Abdine Ben Ali, who removed Bourguiba of the presidency for health reasons.

Although initially acquitted of belonging to the security group, the leaders of the Islamic trend acknowledged their relationship with this group and considered that its role was not to overthrow the government, but to save the leaders who were sentenced to death.

The Ben Ali regime initiated political reconciliation with the opposition, especially the Islamists, through a meeting on the National Pact, which witnessed the signing of most political factions, including the Islamic Trend Movement, which changed its name to the Ennahda Movement, as well as participating in the legislative elections announced by the regime in 1989, but soon turned against any political opposition, which is inconsistent with its policies, including the Islamic Movement, opening the door for security forces to launch a fierce campaign of arrests against Islamists or Nahdha members and leaders.

The movement engaged in the so-called "summoning the conditions of disobedience" to confront what it considered a comprehensive eradication plan, which led to a new confrontation between August 1990 - October 1991, where a number of leaders of the movement was tried.

Detainees in the Ministry of Interior and other detention centers were abused and subjected to various forms of physical and psychological torture. Prison inmates were also targeted and abused in various forms and ways. Their family members and relatives were also targeted through harassment, house storming and vengeful punitive practices such as preventing them from applying to or holding jobs at the public services and persecuting them at the private enterprises where they might be working.

The authorities harassed religious freedoms and accordingly practiced suspicion detention, censorship of books, education programs, and civic activity.

On July 9, 1992, the military trials at the Military Court of Bouchoucha of the Movement's leaders and affiliates began on charges of a five-stage executive coup plan. The suspects were interrogated until July 21, while the military trial in Bab Saadoun started on July 28 to end August 4.

On August 29 and September 1, the two courts declared the following sentences:

- Lifetime (45 accused)
- Between 24 and 15 years (55 accused)
- Between 13 and 10 years (53 accused)
- Between 08 and 05 years (61 accused)

- Between 04 and 1 year (44 accused)
- Release of 15 defendants

II. Violations

1. Torture and murder under torture

Islamist activists have been arbitrarily arrested, detained, and unlawfully deprived of their liberty²⁷⁶ without judicial warrant, and most of the time for a prolonged period accompanied by torture²⁷⁷.

The arbitrary arrest also included the arrest of the family members of the victim without being accused. And this arrest is for the purpose of forcing the victim to surrender if he is on the run, or to disclose information or sign a statement if he is arrested.

The most serious of what happened in the framework of arbitrary arrest is the kidnapping of a number of defendants and convicts in the case number 76110 and 76111 from inside the civil prison in Tunisia after their conditional release from the contracting investigating judge as they were transported by security vehicles numbered civilian miners from the prison square to a secret prison in Tunis suburbs (*Naassan*) for interrogation and torture.

Many died under torture²⁷⁸ and others died after the death penalty following an unfair trial. Some died while in prison of torture or neglect²⁷⁹.

Many Islamic victims also died after being discharged from prison, as a result of illnesses they suffered in the prisons, which are deadly diseases that had not been treated. Many victims were also subjected to sexual torture, including rape. Women belonging to the Islamic Trend Movement were not spared from this violation, as many of them were raped in torture rooms and the torturer went as far as inserting a sharp object in the vagina of one of the victims to make her abort.

2. Violation of the right to access justice and fair trial

All the trials lodged against the Islamist activists during the eighties or nineties were characterized by a violation of the legal guarantees that are supposed to be enjoyed by all citizens.

²⁷⁶ See Public hearings held by TDC in November 2016 - december 2016

²⁷⁷ See victim's testimonies in Part II chapter 4 on Prison and torture

²⁷⁸ See public hearing of Faycal Baraket and Rachid Chamakhi cases on November 2016

²⁷⁹ See part I Mandate : more then 20 Bills of Indictment related to cases of murder under torture were referred to Criminal Chambers Specialized in Transitional Justice by TDC belong to the Islamist family.

3. Enforced disappearance

The security forces kidnap Islamists and keep them under arrest for an unknown period without meeting legal framework. Their families remain without news until the announcement of their death sometimes²⁸⁰.

4. Cut out of livelihood and security control

After the prison release, the victim is subjected to administrative and security monitoring procedures, forcing the victim to sign up repeatedly in a registry in the Security centers several times a day²⁸¹.

The violations that came along with the signing procedure in the security centers (harassment and violence) resulted in six suicides documented by the TDC. It was common for security forces to ask the former prisoner to be accompanied by their spouse when coming to sign in order to harass them.

Whenever the person has got a job, he is required to give up and threaten him if he continues to do so, or his employer is required to fire him.

5. Emergency stealth and Forced migration for political reasons

Islamist activist sometimes goes underground for fear of security prosecution and of being imprisoned as a result of the issuance of absentia judgments or for fear of torture upon arrest.

Some Islamists were forced to emigrate outside the country, escaping from administrative control, or fear of arrest and torture, and migration is often illegal and across the Libyan or Algerian borders, individually or with their family.

Summary

Violations against Islamists from 1981 to 2002 reflected the atrocity of the systematic repression against them and Tunisia's emerging live forces of change. The Islamic Movement faced 5,182 political cases involving 11,160 victims TDC has received.

These violations also reflected the failure of the regime in the propaganda addressed to foreign countries, especially in the attempt to persuade them with the enactment of texts to protect the rights and freedoms and ratify international conventions such as those against torture and the abolition of the State Security Court.

²⁸⁰ See Kamal Matmati case in “Bills of Indictment Related to enforced disappearance” p 75; See [public hearing on Kamal Matmati Case on 17 novembre 2016](#)

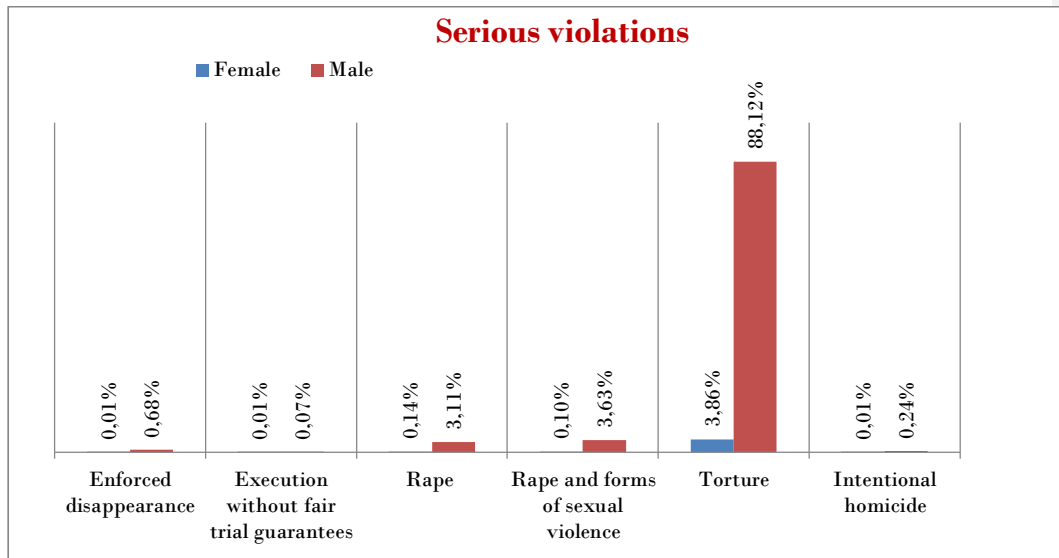
²⁸¹ See part II chapter five “Abusing the victim through the procedure of signing several times per day” p 155

These violations also reflected the subordination of the biased media to the political authority mainly the executive power, by whitewashing the regime and its policies and distorting and diabolizing its opponents. The judiciary branch was also considered a cover-up, a consecration and a big supporter of police rule.

Ultimately, abuses and offenses against Islamists such as arrests, torture, forms of sexual violence and the resulting harsh sentences and prison penalties that lacks the minimum of human dignity are typical of the regime's punishment for its opponents.

The conclusion is that the relationship between the regime and the Islamic trend /Ennahda till the 17 December/24 January revolution was characterized by estrangement and mistrust on both sides despite attempts to mediate and call for reconciliation, and the resort to the security policy remained the authority's choice in dealing with Ennahda and its supporters.

Distribution of violations against Islamists



Barakat Al-Sahel's case

TDC received 184 files, in the so-called "Barakat Sahel case", of victims who suffered numerous violations of arbitrary arrest, torture, violation of the right to a fair trial, administrative surveillance and prevention from the right to work or make a living, and received 86 files of victims of direct harm as a result of family ties.

On May 29, 2018, the Truth and Dignity Commission also transmitted an indictment covering the serious violations committed in the context of the "Barakat al-Sahel case", which included 142 victims and charged 16 of the perpetrators from the former President and the Minister of Justice to Directors and officers of the State Security Department.

TDC also held a hearing session in which General Salem Kardoun²⁸² presented a testimony on the violations he suffered from the state security police.

Facts

May 22, 1991, represented a turning point in the political life in Tunisia, when the Minister of the Interior, Abdellah Kallal, announced the discovery of a coup attempt on the regime and the change of the State Authority, led by a group of military personnel in Baraket Sahel, located at the entrance of the city of Hammamet; a campaign of arrests was launched on April 17, 1991, which affected a large number of civilians and military personnel of various formations and military ranks.

The arrest campaign started by summoning a number of military leaders for urgent tasks or emergency meetings, and some of them were arrested and detained in military security headquarters in Al-Aouina prison, then transferred to State Security police department Without judicial warrants.

They were subjected to torture by Police officers Abderahman Al Guesmi, Mohamed Nasser, Hussein Al Jallali, Zouhair Redissi, Bechir Al Saidi and Mohamed Hajji under the supervision of Mohamed Ali Ganzoui, Ezzeldine Jnaih, and other senior military officers as Mohamed Hedi ben Hassine, former chief of staff of the Army of the land, Mohammed Hafaidh Farza former military security director, Mohammed Guezzuez former deputy director of the military tribunal, Moussa Khalfi, former director of internal security in the General Directorate of Military Security, Mustapha Ben Moussa former military security lieutenant, along with former Interior Minister Abdallah Kallal and former President Zine El Abidine Ben Ali.

²⁸² See public hearing Retired Dean [Salem Kardoun](#)

They were subjected to humiliations and violations of their human dignity through systematic torture in various ways: hanging on tables, doors and columns and dumping in troubled water and human waste and electric shock and sleep deprivation and eating and isolation in the cell, exposure to strong light, death threats, mock executions, sexual assaults such as burning of the genitals, rape, the use of broken glass, castration, and total loss of sexual functions ... Some of these brutal acts were also carried out on the victims in front of their inmates to intimidate them. All this was done in order to obtain information and confessions about a rumor that a group of military personnel would overthrow the regime.

Former Interior Minister Abdallah El Kallal held a press conference on the Barakat Al- Sahel case. It was broadcast on national media, during which he announced details of the discovery of a conspiracy to overthrow the government in which a group of civilians and military officers took part. The Military Security Department took charge of starting an investigation under the instructions of the former Minister of Defense Habib Boulares. Further research concluded that the house where meetings of the insurrection group were supposed to be held could not by any means be the headquarters of the meetings of the plot, and investigations and national surveys proved that the house cannot be the seat of such meetings and accommodate the large number of suspects.

The General Mohamed Al-Hafaidh Farza General Director of Military security submitted the file containing technical inspections and a report to the Minister of Defense, who submitted it to Zine El Abidine Ben Ali. After about a week, a meeting was held at the Ministry of Interior to consider the circumstances of the "Barakat Al-Sahel" case. The attendees were Minister of Interior Affairs Abdallah Kallell, Mohamed Ali Ganzoui and Ezzeddine Jnaih, director of the State Security Department; Mohamed Hfaïdh Farza and General Ben Hassine stated that the research carried out in this regard has deviated from its proper course based on the results of the investigations and inspections conducted by the security department concerning the place where the meetings of the alleged conspiracy occurred. They also requested that the delicate position and status of the summoned high officials within the military establishment should be taken into consideration. The military side asked the Minister of Interior to meet personally with one of the accused officers and they suggested the name of lieutenant colonel Mohamed Ahmed who was head of security division of the land army. The proposal was accepted by the Minister of Interior. A few days later, Abdallah Kallell, Mohamed Ali Ganzoui and Ezzeddine Jnaih met the detainee, Lieutenant Colonel Mohamed Ahmed, who informed them of the violence and torture and that the statements extracted from him were taken under torture. After the meeting the recall campaign was stopped. By 23 June 1991, the second day of Eid al-Fitr a group of detainees were transferred from Mornag Prison to the Ministry of Interior, in particular to the office of Mohamed Ganzoui, then they were moved to the conference hall annexed to the minister's cabinet. There were just 15 among the detainees when Abdallah Kallell entered the room

accompanied by Ali Seryati, Mohamed Ali al-Ganzoui, Ezzedine Jnaih, the head of the military tribunal Guezguez and Mohamed Hafaidh Farza, the director of military security, the detainees were then informed that the President of the Republic "greeted you and tells you, Happy Eid". He added: "He says that he will let you go have some rest for a month and the Ministry of Defense will later on conclude a settlement with you." He also apologized to them and admitted they were not guilty.

The military considered the date of the Abdallah kallal meeting was a day of condolence for the military and their families in the file of Barakat Sahel, where they were called terrorists and *Khawangia* and that this manipulation simulated by the state security services was able to convince the public with the serious allegations of the alleged military coup attempt. After this meeting thousands of citizens took part in demonstrations planned by the Democratic Constitutional Rally Party (RCD), led by Secretary-General Abderrahim Zouari to support Ben Ali. The slogan of these demonstrations was "Down with the enemies of the country, both civilians and military." Ben Ali hired Salaheddine Bali, Abdellah Kallel, Abdelaziz Ben Dhia and Habib Boulares to "legitimize the trial of these military personnel." Thus, soon The arbitrary military tribunals were set up under General Mohamed Guezgez, his assistants, besides the disciplinary councils chaired by Colonel Rachid Ammar which were used to fire officers who were acquitted by preliminary investigations and the military court. They were also denied access to their legal rights (retirement and health care in military hospitals).

Violations continued against the arrested military group, that was referred to the judiciary of the Permanent Military Court in Tunis, which did not take into account at all stages of the trial nor in the process of interrogation, being tortured and forced to confess and sign ready reports.

The arrested military officers in the so-called "Barakat Al-Sahel" case were summoned before the military tribunal in cases Nos. 76110 and 76111, the judgment statements of which were declared respectively on July 09, 1992 and on August 30 of the same year at the Military Court in Bouchoucha and the Military Court in Bab Saadoun in Tunis. They were accused of the crime of planning and participating in an attempt to replace the state authority, in addition to the attempt to assassinate the President of the Republic and the charge of conspiring against the internal security of the State and belonging to an unauthorized association.

After serving prison sentences, the victims continued to be harassed. Former Defense Minister Abdelaziz Ben Dhia signed arbitrary decisions and ordered that all those tortured should be prevented from returning to their military positions, and decided to impose mandatory retirement or retirement due to professional deficiency and automatically cut salaries to inflict harm, humiliation and severe suffering to them and their families.

Chapter Seven

Protests of Bread in 1984

TDC dealt with the case of bread protests of January 1984. In this context, it has received 1212 cases concerning violation of the right to life, torture, rape, arbitrary arrest, violation of physical sanctity, violation of the right to a fair trial, cruel and inhuman treatment during the period of incarceration and violation of the right to peaceful assembly.

TDC devoted a public hearing²⁸³ to these events, during which victims of these events presented their testimonies, some of which are presented at the end of this report.

The events of bread in 1984 were not the result of coincidence, but were the result of accumulations that the impoverished people felt since the government of Habib Bourguiba signed the protocol of the internal independence of Tunisia, in addition to several external factors, which accelerated the flow of popular uprising. This uprising began from the south of Tunisia from the city of Douz on December 29, 1983, then spread to the majority of the Tunisian regions until reaching the capital on January 3, 1984, to be extinguished on January 6, 1984. On that day Bourguiba appeared to announce to thousands of protesters in front of the Carthage Palace: "We go back where we were", which means canceling the decision to increase the price of bread and dough products as a whole.

1. IMF dictations²⁸⁴

Although one of the objectives of the International Monetary Fund (IMF) are "on the face of it" to intervene to rescue the economies of countries that are experiencing difficulties and imbalances through the lending mechanism, and it has performed a significant intervention in many colonized and emerging countries, the IMF has always imposed conditions on the beneficiary countries, that on more than one occasion has led to crises in these countries rather than rescuing them. Among these situations TDC mention:

The bread uprising happened in Egypt on 18 and 19 January 1977 under the rule of Mohamed Anwar Sadat. The Egyptian government decided to raise additional resources and announced austerity measures to reduce the deficit. The measures included the reduction of subsidies for basic foods in a way that raises the price of bread by 50%, sugar by 25% and tea by 35%, as well as some other goods, including rice, cooking oil, gasoline and cigarettes by up to 38%. In reaction, people marched in the streets, pushing the government to retreat from increasing prices. Egyptian President Anwar Essadat called it "the revolution of thieves" and the official media talked about "a communist plot to create trouble and disorder in Egypt and the overthrow of the regime". The Egyptian army went down to prevent demonstrations, along with the declaration of a state of emergency and a curfew from 6 pm to 6 am.

²⁸³ Public hearing on [bread events 1984](#)

²⁸⁴ See [Memorandums sent to the World Bank](#) and International Monetary Fund

Thousands of people were thrown in prisons on charged of participating in riots or belonging to a communist organization.

The bread uprising in Morocco in 1981, also known as the Hunger Uprising: Morocco experienced during this period unprecedented social strain that peaked when the "Magreb Arab Press Agency" published an article revealing that the government will proceed to a significant increase in consumer goods prices, adding to the previous increases, that in a 2 years' period reached more than 200 % for milk, 246 % for butter and 180 % for grain derivatives. In the face of this stifling economic situation, the union of Democratic Confederation of Labor called for a general strike that paralyzes the country, which many citizens, especially in Casablanca, Morocco's beating heart, responded to. Most shops were closed and traffic was stopped, but the Ministry of Interior tried to urge the working class to abstain from striking, which has created violent confrontations between the two sides. The army intervened and faced these protests with repression, violence and arrests.

The situation was no different in Tunisia at the beginning of the 1980s, which was on the verge of an economic collapse that left a great social strain, a political crisis and breaches in the ruling team in particular. Bourguiba started to lose control especially with him being worn out with both age and conspiracy of the inner circle among his entourage. As a way out from such crisis, the Tunisian government requested borrowing from the IMF, which stipulated the government of Mzali to carry out a series of "reforms", most notably enacting austerity policy, lifting subsidies on consumption, returning prices to reality, controlling production costs and freezing wages. This is what the government then tried to pass as the Finance Act of 1984, which was approved by the National Assembly amid acclaim and praise for Mohamed Mzali, the prime minister, his speech who evoked all his literary and rhetorical talents to convince the people. The state canceling its contribution to the Compensation Fund for basic foodstuffs has led to an increase in the price of wheat derivatives, including the price of bread that doubled from 80 millimes to 170 millimes, representing an increase of 112 %, under IMF pressure and dictations, which led the people to protest this unjust decision in the streets. The regime's stubbornness to pass its decision led to a clash with the security forces, which used various means to disperse the marches, starting with beatings with sticks and the intensive use of tear gas to the sniper shot, which resulted in many wounded and dead among the demonstrators. In addition to arbitrary arrests which filled prisons with detainees in the absence of fair trial conditions.

2. Events

The dictates of the IMF and the World Bank, the donor organizations, have prompted the government of Mohamed Mzali to abandon the welfare state pattern towards a policy of price liberalization and abandoning subsidies for basic foodstuffs.

In May 1983, the Minister of Finance and Planning, Mansour Moalla, defended this guideline before the representatives of the Labor Union, Taieb Baccouche, and the Federation of Industry and Commerce, Habib Majoul, justifying his opinion with the exacerbation of the budget deficit because of the subsidies aiming to bridge the difference between the real cost and the selling prices of some food items. He argued that the Compensation Fund expenses

raised from 139 million dinars in 1981 to about 246 million dinars in 1983, against an increase in the trade balance deficit.

In order to implement these guidelines, the government of Mohamed Mzali decided to lift the state's contribution to the Compensation Fund for basic foodstuffs, which led to an increase in the prices of wheat derivatives. Thus bread jumped from 80 millimes to 170 millimes i.e a 112 % rise. The Minister of National Economy, Rachid Sfar, issued the decree concerning this increase in the official journal on 28/12/1983 (p. 1 dated 01/01/1984) to enter into force on the same day, which angered large segments of the population (as bread represents the first food element in Tunisia), especially the marginalized and poor classes. This pushed them to go out in protests and rallies that continued for many days in a sharp reaction, at the surface rejecting the drastic increase in prices, but in substance rejecting the options and policies that deepened social inequalities and enshrined political tyranny.

3. Violations

Officially, 89 people were declared killed and 938 were declared injured, 348 of whom were members of the security forces. More than 1,000 others were arrested, some of whom were held for six months before being put on trial. Most of the demonstrators were unemployed young people, the list of arrests included as well a great number of students from different intellectual and ideological orientations.

The Tunisian League for the Defense of Human Rights (LTDH) issued a report confirming that at least 92 people were killed, as a preliminary and inconclusive figure. In addition, a special commission of inquiry was established, done in accordance with Presidential Decree No. 22 of 15 January 1984, to determine the responsibilities and clarify the various motives and reasons behind what happened. This commission was chaired by Ridha Ben Ali, the Attorney General, and has presented its report on march 13, 1984, estimating the number of casualties during the clashes at 89 victims, while the number of wounded was estimated at 590 among the protesters and 348 among the security forces.

On December 29th, 1983

On the weekly market day, a group of people from Douz met in the "El-Tawil" café, located in the center of the city market, where Belgacem Ben Rhouma, Moustafa Ben Mesbah and Larbi Ben Ammar, together with Mr. El Touil, the café owner, agreed to write a petition protesting these increases and then handing it over to the "Moatamad". When they went to deliver the petition, the latter refused to take it and expelled them, threatening them with calling on the security officers. As a result, disagreement erupted, and the bystanders began to gather. One hour later more people gathered and started to raise angry slogans.

On 01 January, 1984

A peaceful demonstration was held in the city center of Gafsa, on the initiative of the late Mr. Omar Thabet Gouider, head of the Human Rights League branch in Gafsa. When the demonstration reached the center of Gafsa, it was met by a significant number of police agents.

On 02 January, 1984

The first casualty was killed; it was Sassi Chadli, in western Douz. He was a young man at the age of 21, an agricultural worker. And despite escaping from the march, he was followed by security officers to his neighborhood (Cité Al Fouqaha in Douz), where he was targeted and shot with two direct bullets into his heart that killed him on the spot.

On 02 January, 1984

Sfax joined a wave of popular movements as shops and buses were burned, but the crisis was not addressed peacefully by political and security leaders. Rather it was decided to use all available means, including the use of live bullets.

This resulted in the death of 12 people and the injury of more than 20 civilians by gunshot wounds, with different levels of severity.

On 03 January 1984

In the Tunisian capital, there was a big number of death and injured, including students, workers, and other civilians. Fadhel Sassi was targeted in the cross between Paris avenue and Bourguiba avenue and shot by gunfire without warning or use of tear gas. Then dozens of citizens were killed in the streets of the capital and its suburbs.

The beginning of May 1984

Criminal trials were launched in the various courts of appeal of the Republic.

The detainees were falsely accused of theft, looting, assault on private and public property, damage to the property of others, and participation in hostile and unauthorized demonstrations and were thrown by hundreds into prisons, as some detainees from influential families were released from prison and replaced by poor people and popular neighborhoods inhabitants, especially rural migrants who were obliged to admit thefts and looting acts they did not commit. They were tortured during investigation, however judges refused to examine the traces of torture on their bodies.

TDC has transmitted 08 indictments to the specialized criminal chambers of transitional justice relating to grave violations against victims in the context of the Bread events of 1984.

Conclusion

The state of emergency was lifted on 25 January 1984, after the country was turned into an open barracks where all freedoms were denied and all movements were oppressed. Most of those who took part in the protests were placed under security surveillance, and this continued until Ben Ali came to power. After November 7, 1987, a first law was issued on August 18, 1988, which pardoned some convicts for certain offenses.

Most of the convicts were released, but the sanctions did not stop. About 70% of those convicted were denied their right to obtain or renew their passports. They were harassed, put under police surveillance and considered as political opponents of the regime.

Chapter Eight

Violations while countering Terrorism

TDC undertook to investigate violations committed in the context of the implementation of Law No. 75 of 10 December 2003 to support the international effort to combat terrorism and money laundering. In this context, TDC received 1307 cases of torture, arbitrary arrest, violation of the right to a fair trial, cruel and inhuman treatment during the detention period, security harassment after imprisonment and deprivation of work and making a living.

1. Facts

December 10th, the anniversary of the Universal Declaration of Human Rights was chosen to ratify the Anti-Terrorism Law, although it contains chapters that contradict human rights principles and norms. The ratification of the Anti-Terrorism Law is in compliance with Security Council Resolution 1373 of 2001, which was adopted following the terrorist attacks in the United States on Tuesday, 11 September 2001.

The anti-terrorism law violates human rights by violating the principles of criminal law²⁸⁵ per se. This was illustrated by the broad definition of terrorist crime that led to the broader application of the anti-terrorism law and criminalized acts such as "disturbing public order" that was used to prosecute political opponents or human rights activists and anyone suspected of sympathizing with the opposition, despite the absence of any evidence of their connection to terrorism.²⁸⁶

Martin Scheinin, the former UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms in the context of countering terrorism, emphasized in his report²⁸⁷ that the 2003 Anti-Terrorism Law **"did not give Tunisians greater security but was widely used as a tool to suppress all forms of political opposition."**

The former regime exploited the issue of combating terrorism to further restrict public and individual freedoms by putting in place a number of new crimes, penalties and procedures that violates freedom of opinion, expression and information, criminalizes independent association activity, constrains the funding of associations in order to stifle their activities and prevent them from carrying out their duties and subject them to permanent monitoring under the pretext of respecting the procedures of "prudent financial conduct".

²⁸⁵ The principles of criminal law are the legitimacy of crimes and penalties, non-retroactivity, the principle of a narrow interpretation of the text, whereby the text on the basis of which the accused will be referred to these principles adheres to because they constitute objective guarantees of a fair trial, such as if the text is preposition and the elements of the crime are clear and not broad.

²⁸⁶ See Appendix

²⁸⁷ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr. Martin Scheinin <http://hrlibrary.umn.edu/arabic/AR-HRC/AHRC13-127.pdf>

The application of the Anti-Terrorism Law has resulted in a number of violations due to exceptional procedural rules that do not respect the most basic rights of the accused. The measures include prolonged solitary confinement, enforced disappearance, falsification of minutes and arrest dates, and the use of torture to extract confessions and gather evidence. More than 3,000 people were prosecuted under the Terrorism Act, these trials that did not meet the most basic conditions of fair trial.

2. Violations against victims under the pretext of "Counter-terrorism"

Torture

In February 2003, a group of 13 young men from the Ariana area were arrested and charged with forming a gang in order to prepare for terrorist operations, to attack persons and property for intimidation, to prepare a place for meetings and to hold unauthorized meetings. During interrogation, they were beaten with sticks, burned with cigarettes, electrocuted, hung in the chicken position, touched in sensitive places, stripped, threatened with rape, and raped with a stick. Under threat, they were forced to sign the minutes without looking at their contents.

Violation of the right to litigation and fair trial

The Tunis Court of Appeal issued sentences ranging from four to sixteen years of prison and ten years of administrative control surveillance, based its evidence on documents from the Internet.

As well, on 10 February 2003, a group of young people from the city of Zarzis were arrested for using the Internet. The only evidence was a collection of files downloaded from the Internet. These young people were subjected to the most serious violations.

The S17 Border control procedure

Security restrictions continued to this day on all those who have been tried under the Terrorism Act, even if they benefited from a general amnesty, according to the S17 border procedure, as the state has taken border control measures, known as "S17". This procedure is implemented arbitrary and in violation of the Constitution and international human rights treaties, as the Ministry of Interior does not need to obtain a court order or the consent of the Attorney before issuing this procedure. It does not disclose the criteria for issuing it, and does not provide the concerned person with written evidence or a justification for issuing it, which does not allow to challenge it before the courts, and that has opened the way for its arbitrary application.

According to this procedure, the "classifieds" are prevented from leaving the country and are therefore prevented from making a living for those who intend to leave the country to work abroad. They are also detained in security posts at border crossings for hours, without justifying the delay or informing them of the procedure.²⁸⁸

²⁸⁸ See Appendices

This procedure was also used to impose house arrest, without providing a warrant to prevent those concerned from leaving their homes by the political police agents day and night. They are also forced to leave their job without providing them with a document allowing them to justify before their employers, which led to job losses.

On May 14, 2018, MJ stated that he is still subject to continuous raids, on an average of twice a week, late at night, by armed security officers both as civilians and in uniforms, as they break his door and search his home without any legal permission. As a result of the repeated raids, he was forced to leave his door open so that it would not be broken (because it was almost repaired after each raid and resulted in great expenses), as well he and his wife were therefore forced to sleep in full clothes.²⁸⁹

Conclusion

In his [report](#) presented to the HR council in December 2009, Martin Scheinin, the former United Nations Special Rapporteur on human rights and counter terrorism, stressed that *“The Special Rapporteur recommends again that any interference with the right to privacy, family, home or correspondence should be authorized by provisions of law that are publicly accessible, particularly precise and proportionate to the security threat, and offer effective guarantees against abuse. States should ensure that the competent authorities apply less intrusive investigation methods if such methods enable a terrorist offence to be detected, prevented or prosecuted with adequate effectiveness. Decision-making authority should be structured so that the greater the invasion of privacy, the higher the level of authorization needed.”* (§ 60)

TDC considers that this inhumane and illegal treatment can only result in the "production of terrorists", and it may be intended by parties wishing to feed terrorism in Tunisia for suspicious purposes, by pushing young people into a suicide bind, closing all doors of life in their face and preventing them from making a living, which hinders their reintegration into civilian life.

²⁸⁹ See Appendices

Chapter Nine

Mine Basin Events 2008

Since the beginning of the last century, the mining basin region has been known for its political activism and its attraction of movements rejecting colonial powers or currents opposed to the political systems that ruled the country after independence.

The colonial interest for the region began since the discovery of phosphate in 1885. The Phosphate Company and the railway were established in Gafsa in 1897. From 1899 to 1920, a number of deep mines were exploited (Metlaoui, Om Larayes, Medhilla and Redayef). After independence, the state moved towards the nationalization of the company and introduced a number of structural changes that started in 1962 and reached its target in 1967.

Since then, the region has been suffering at all levels until 2008²⁹⁰. This year witnessed a spontaneous popular explosion triggered by the injustice and fueled by the exclusion and marginalization that they endured for decades in the form of political, economic and social violations.

1. The structural reform program and its catastrophic impact on the region

The adoption by the Tunisian government of the structural reform program (PAS) in 1986, which includes a number of austerity measures, had had serious consequences that negatively affected the social and economic development of the country.

One of these measures is the restructuring of the Gafsa Phosphate Company (CPG) as part of a strategic reform plan entitled “CPG Rehabilitation Plan”. This plan resulted in a significant reduction in the number of agents from 14,000 in 1986 to only 5,300 in 2007.

Since CPG is the main job provider in the mining basin, unemployment and worsening social conditions in the region have increased, resulting in social strain that will lead to the 2008 uprising.

TDC received 1317 files from the victims. They relate to several violations: murder during protests in 2008, torture, rape and other forms of sexual violence, violation of the right to a fair trial, imprisonment, violation of the right to freedom of peaceful assembly, and violation to the economic and social rights.

The restructuring of CPG has also caused an increase of the level of pollution in many areas, with catastrophic impact on the health of the population and on vegetation.

The phosphate industry in the Gafsa region is classified as highly polluting by the solid, liquid and gaseous discharges it generates. It also destroys ecosystems both at the level of mineral extraction processes and at the level of mud and rock waste.

²⁹⁰ See note to the World Bank and the International Monetary Fund and note to the French State.

Due to the pollution caused by the CPG, the inhabitants of the Mine Basin region have been deprived of their natural ecosystems, which are at high risk to their health and livestock.

TDC received 1,617 complaints of mass arbitrary demobilization in the CPG, 239 complaints of pollution victims due to contamination of groundwater on their land and livestock and due to cancer-related pollution, 73 complaints of water damage as a result of floods caused by the company, loss of life and houses, 9 cases of forced land confiscation to expand phosphate roads and 36 collective files related to environmental pollution.

Investigations²⁹¹ conducted by TDC shown that victims underwent violations on the basis of the Transitional Justice Law.

TDC held a public hearing during which **Mr. Bashir Laabidi** and **Ms. Laila Khaled**²⁹² presented an moving testimony.

2. Direct causes of protests

The announcement of the recruitment entry exam results in the CPG represented a turning point in the mining basin, where these results reflected loyalties and clientelism as recruitment criteria. It was ruled by corrupt trade unionists and representatives of the ruling party at the time (the dissolved Rassemblement Constitutionnel Démocratique RCD).

The deterioration of social conditions was considered as a general situation in the mining basin while few people were exclusively profiting from the region's riches. In fact, the per capita income was the weakest at the national level. With the decline in the recruitment rate in the CPG that was caused by the introduction of new more sophisticated technologies together with relying on overtime instead of recruiting new labor force, poverty rates have doubled and marginalization have increased. Besides, the deteriorating environmental situation caused by the pollution resulting from the treatment of phosphate has reduced other working options, especially in the agricultural sector, as the underground water riches have been exhausted and the soil has impacted by the polluted irrigation water.

3. The outbreak of protests

The uprising was of a purely social nature, starting on January 5, 2008 in the delegations of Redeyef and Om Larayes, following the announcement of the entry exam results in the CPG. People of the region felt that these results were not transparent but rather frauded, and did not take into account the qualifications or the social situation of the participants, it was rather based on favoritism and bribery, in addition to the reduction in the number of recruits, contrary to what was reported at the exam announcement.

The authorities did not content with security intervention, but dispatched the Secretary General of the dissolved RCD, from 13 February 2008, to contact the party affiliates and leaders in order to draw up a plan to address the issue of the protesters' tents erected in the

²⁹¹ On May 29, 2018, TDC referred to the Specialized Court of Transitional Justice of the Court of First Instance in Gafsa an indictment relating to the grave violations suffered by victims in the context of the events in the mining basin 2008.

²⁹² The testimony of Bachir Labidi and his wife - public hearing November 18, 2016: <https://www.youtube.com/watch?V=pjLc0Rqgc4g>

phosphate production centers in Redeyef and Om Larayes. Indeed, the Mayor of Om Larayes intervened by removing the tents, insulting the protesters and calling on the security forces to break the sit-in by force. Hence, the protesters threatened to commit collective suicide by hanging themselves in case their tents were removed by force.

As negotiations reached a dead-end, security intervention became more intense: the police forces broke into the headquarters of the local labor union in Redayef on the 13th of March 2008 to force the sit-inners to evacuate the place. This was an important turning point in the events of the mining basin, as security forces engaged in night raids, arrests and firing live ammunition. On April 7, 2008, the arrests included many trade unionists who were severely assaulted by security forces. Tear gas was also excessively used to counter demonstrators demanding their release. The arrest campaign has continued to include a number of other trade unionists and unemployed youths. Similarly, for the area of Om Larayes, which in turn witnessed a campaign of arrests of protesters using the same brutal methods, which pushed the local people to take refuge in the mountain to spend the night for fear of the return of security repression at night.

On April 8, 2008, security forces raided Om Larayes and Redayef, resulting in the arrest of approximately 100 protesters. On the same day, in a provocative move by the authorities, the successful candidates in the entry exam have been invited to join their workplaces, as an expression of their indifference to what was happening in the region and proceeding with the security solution.

Events continued at the same pace as the regime attempted to quell the protest movement, which spread to the rest of the delegations where the security forces used the same means. On June 2, 2008, a second citizen was killed in the delegation Metlaoui, run over by the National Guard vehicle that was chasing him. On the same day, the ruling party launched their militias in Feriana who brutally assaulted citizens who protested their social conditions demanding their right to work.

On June 6, 2008, clashes erupted once again in Redeyef as security forces used live ammunition against unarmed civilians, resulting in the injury of 25 demonstrators and the death of the victim Hafnaoui Maghzaoui²⁹³ after being shot in the back. Abdelkhaleq Ben Hamed²⁹⁴ was shot in the genitals and died on the 13th of September 2008 due to the injury he suffered, forcing the authorities to call the National Army forces to intervene at night and control the city, in addition to the declaration of a curfew.

²⁹³ Subject of the TDC referral under the file number 0101-003622

²⁹⁴ The subject of the TDC referral under the file number 0101-003620

Chapter Ten

Events of the Revolution of Freedom and Dignity_____

The Truth and Dignity Commission received **163 files** related to violations of the right to life in the context of the events of the Revolution of Freedom and Dignity (from 17 December 2010 to 28 February 2011) and **4,282 files** concerning the violation of physical integrity and injury during protests as a result of excessive and disproportionate use of force by members of the Interior Security Forces.

TDC also organized a public hearing on 14 January 2017, during which many victims testified²⁹⁵.

1. The general context

On December 17, 2010, After Mohamed Bouazizi set fire to his body in front of the headquarters of the governorate of Sidi Bouzid, in protest against the violation of his right to work and dignity by municipal officers, a number of people gathered in front of the headquarters in solidarity with Mohamed Bouazizi. The security officers began violating their right to peaceful assembly and intervened to disperse them using truncheons, causing injuries among many protesters.

2. The Governorate of Sidi Bouzid, the spark of the first protests

On December 18, 2010, as protests continued in front of the governorate headquarters, police officers also continued using tear gas and truncheons, causing severe injuries to a number of demonstrators.

In an attempt to quell the protests, the Minister of Interior, Rafik Guesmi, after consulting President Zine El Abidine Ben Ali, issued instructions to suppress the protests by sending the Director General of Intervention Brigades, Jalel Boudriga, to the governorate of Sidi Bouzid, on December 19th, 2010, accompanied by reinforcements from the intervention brigades. At the same time that Jalel Boudriga was taking the lead of the security system in Sidi Bouzid, reinforcing the area with security officers from the intervention brigades, and dispatching them in whole governorate, the pace of protests increased at night.

And for fear of their continuation, the Minister of Interior adopted a decision, on 20 December 2010, to **establish a central security cell in the Ministry of Interior, called the Crisis and Follow-up Cell**, without determining its composition and functions in any decree. This cell effectively assumed the powers of the direction of operations and security tasks, its leadership was under the minister's direct supervision, in partnership with its ministry's general directors and the commanders of the security forces of various branches and competences: Adel Tiouiri, the General Director of National Security, Lotfi Zouaoui, the General Director of public security, Brigadier General Jalel Boudriga, the Director General of Intervention Brigades, Mohamed Amine El Abed, the General Commander of the National Guard, General Mohamed Zitouni Charfeddine, the Inspector General of the National Guard, Rachid Ben Abid, the Director of Special Department (intelligence), Chedli Sahli, the General Director of Technical Department (intelligence), Mohamed Arbi Krimi, the Director of Central Operation Unit,

²⁹⁵ Fifth public hearing 14 January 2017 :

https://www.youtube.com/watch?list=PLpglHuGzFsmdQFHIFNhXO_NqqCMiG_Qvd&v=E8CTPRbC54w

and the General inspector of the National Security Ali Ben Mansour, all of them supported by Ali Seryati, General Director of the President's Security, as a communication officer and the linking ring between the presidential leadership in the person of Zine El Abidine Ben Ali and the operational leadership in the Ministry of Interior.

On 9, 10, 11 and 12 January 2011, the Chief of military staff, the First General Rachid Ammar and General Ahmed Shabir, the Director of Military Security Department attended the meetings of the cell mentioned above. As well, on January 9, 2011, the Minister of Defense, Ridha Grira, together with Secretary-General of the RCD Mohamed Ghariani attended the same meetings.

Despite the measures taken by the cell in order to reduce the area of protests by further strengthening area the with more security forces, protests moved to the rest of the cities of Sidi Bouzid governorate.

3. The spread of protests to several cities

On the 20, 21 and 22 of December 2010, the delegation of Mekkassi witnessed night protests during which youths of the region ignited rubber wheels in the streets and raised slogans calling for the security officers to leave. However, these latter continued to suppress the inhabitants by deliberately throwing tear gas canisters on the demonstrators and chasing them, in addition to repetitive arrests, raiding into houses and breaking doors, and assaulting women and children.

On 24 December 2010, a march was held in the delegation of Menzel Bouzayen, it has started after the Friday prayer towards the headquarters of the National Guard station in Menzel Bouzayene, to denounce the attacks on protesters by the head of the National Guard station, his officers and elite agents of Sidi Bouzid. Some protesters threw stones towards the station. On the same day, reinforcements consisting of three brigades were deployed in the area, but the protests escalated and National Guard officers deliberately fired live bullets at the demonstrators.

During the events that took place in Sidi Bouzid, and the first victim of a gunshot, President Zine El Abidine Ben Ali was in Dubai on December 23, 2010, spending a holiday with his family members accompanied by Ali Seryati. The latter received phone calls on 25 and 26 December 2010 from the Minister of Interior, Rafik Gusmi, asking him to inform the former head of state that there were victims of live bullets in the governorate of Sidi Bouzid.

On March 25, 2010 and the following days, marches and solidarity movements were organized in several governorates in support of the protests in the governorate of Sidi Bouzid and to denounce the excessive and disproportionate use of force by the security forces.

As a result of the intensification of trade union and partisan movements, and fearing the role played by trade unionists in framing the movements, the authorities took the decision to arrest a group of trade unionists and human rights activists, including **Attia Athmouni**, who was arrested on the evening of December 28, 2010 and deposited in the National Security station of Sidi Bouzid, where he was physically and verbally assaulted. A search warrant was also issued against Monji Ghenimi and another group of human rights activists.²⁹⁶

On 28 December 2010, lawyer **Abdel Raouf Ayadi** was arrested in front of his house by agents in civilian clothes and transferred to the headquarters of the Ministry of Interior, he noticed there the presence of lawyer **Chokri Belaid** who was also arrested, they were both tortured.

²⁹⁶ Subject of the TDC referral file number 0101-018581

4. Spread of protests and escalation of repression after the first speech of the President of the Republic

As a result of the acceleration and spread of events, Ben Ali was forced on 28 December 2010 to address a speech to the Tunisian people, establishing the conviction of all security leaders and officers that they are required to carry out the mission of repressing the demonstrators (describing them as law-breakers, and masked terrorists) “in a firm way”. He deliberately instigated to target them without restriction, granting security forces a license to kill, which encouraged these latter to carry out his directives as they were convinced that they would, as always, be free from prosecution and disciplinary blame, as was the case in all previous human rights violations.

On 31 December 2010, a group of lawyers held a sit-in inside the courts of first instance, implementing the decision of the National Bar league to support the inhabitants of Sidi Bouzid in their demands and to protest against the use of live ammunition against civilians. However they were assaulted and arrested.²⁹⁷

Dating from the 22 December 2010, protest started throughout the delegations of the governorate of Kasserine in the form of spontaneous marches, they turned to daily demonstrations that were dispersed by security forces using tear gas and truncheons.

On January 6, 2011, rapper **Hamada Ben Aoun**, known as "the General," published the song "Raies el bled" (or Mister President) in which he sent a message to the President expressing his indignation concerning the rise of unemployment, bribery and cronyism. The same day, he was taken to the Police station of Sfax, where he was interrogated and tortured, then transferred to the headquarters of the State Security Department in the Ministry of Interior, where he was detained for 3 days during which he was tortured. On the same date in Tunis capital, Tunisian bloggers **Skander Ben Hamda**, **Sofiane Belhadj**, **Aziz Amami** and **Slim Amamou** were arrested and placed in the custody of the State Security Department at the Ministry of Interior for criticism against the regime through social media and publishing videos of police repressing protesters.

From January 6, 2011, security officers launched a campaign of raids on the homes of demonstrators, during which their families were abused and assaulted by physical and moral violence.

Civilians continued to be targeted by live bullets by the security forces, who exploited the residents gathering during the transfer of the body of the victim **Marwen Jemli** from Thala Hospital to his family's house to open fire and shoot them live bullets, deliberately targeting them in deadly places such as the head, the back and the chest, causing many deaths.

Meanwhile, Khaled Ben Said²⁹⁸, the Central Director of Counter-Terrorism, was assigned to supervise the city of Kasserine and began his duties on January 8, 2011, taking over the division of the city into sectors and a security plan setting up two teams one in Cité Ezzouhour and one in Cité Ennour in Kasserine.

²⁹⁷ According to instructions issued by the head of the National Security station of Gafsa, the two professors, Mr Farid Riahi and Mr Faisal Tlijani were arrested, and the security officers intentionally assaulted Mr. Ridha Raddaoui, Hichem Farfi, Atef Sfar, Faouzi Ben Mrad, Latifa Habachi and Omar Sayadi.

²⁹⁸ He was sentenced to eight years' imprisonment by the criminal court of Bas-Rhin in France, for the crime of torture against Ms. Gharbi

5. The excessive use of force continued after the President's speech on 10 January 2011

Protests have expanded to include popular neighborhoods in the capital like Al Tadhamen, Al-Intilaqa, Bab Jedid, Zahrouni, Ezzouhour, Kabaria and Kram-East which were repressed in the same way causing many casualties due to excessive and unproportionate use of force by police agents and national guard.

On 11 January 2011, after dispersing a march that started from the town of Dguech in the governorate of Tozeur, security officers used live bullets against unarmed civilians, resulting in the death of three citizens.

On January 12, 2011, the governorate of Bizerte witnessed popular movements in several areas, including Cité Hached and Menzel Bourguiba, where a group of demonstrators headed to the headquarters of the security station of Cité Hached. They were confronted by the head of the security station, Jamal Soudani and his security officers, who shot the protesters resulting in the death civilians.

The same repressive policy and the use of live bullets was pursued against demonstrators in the governorate of Tunis and its suburbs, Nabeul, Sousse, Kebili, Tataouine, Tozeur, Zarzis, Beja, Kairouan, Zaghuan and Gabes. The same pattern of events occurred during the 13th of January with the death toll rising across the country.

6. The events of 14 January 2011²⁹⁹

Tunis

On Friday, 14 January 2011, a large demonstration was held in front of the Ministry of Interior, which included about 70 thousand demonstrators, during which they raised several slogans demanding the departure of Ben Ali: "Dégage", "the people want to overthrow the regime", "rather be reduced to bread and water than Ben Ali as presiden" In the afternoon of the same day, at the funeral of the victim, Helmi Mannai, who died on January 13, 2011, security forces intervened to disperse the demonstrators. Therefore, the streets of the capital witnessed confrontations and clashes resulting in the injury of a lot of demonstrators and the death of French-Spanish photographer **Lucas von Zabinski**, after being hit with a tear gas shell on his head. The whole night, security forces chased demonstrators inside buildings, arrested many of them, and detained them inside the headquarters of the Interior Ministry, where they were assaulted. Some women that were detained have been subjected to sexual abuse.

On the same day, many cities witnessed confrontations and burning and looting of a large number of houses belonging to the regime's symbols, as well as shops, security stations and public institutions.

Parallel to what was happening on Habib Bourguiba Avenue, marches and demonstrations took place in several cities of the Republic, during which members of the Interior Security Forces used firearms, resulting in the injury and death of many civilians.

Following investigation, TDC found that the grave human rights violations suffered by victims between 17 December 2010 and 14 January 2011 by the internal security forces belonging to the Ministry of Interior's were not isolated, but were part of a systematic and organized operational plan to quell the protests that has become a serious threat to the governing authority.

²⁹⁹ Appendix Chronology of events of 14 January 2011

As the security leaders were monitoring the operations and their results threw daily reports, the instant notifications, and the informations received by the Central Operations cell and the Crisis Cell members about breaches in their obligations and commitments, which requires rapid intervention to enforce the law and protect the physical integrity of citizens, conducting serious investigation about irregularities and suspicions of abuses they may be informed of, prosecuting its perpetrators and sanctioning them, and compensate the victims. On the contrary, they adopted the option to incite and encourage excessive and disproportionate use of force.

7. The aftermath of 14 January 2011, political and security chaos and lack of coordination between security and military units

Following the departure of President Ben Ali at 5:47 am on board of the presidential plane, in direction of the city of Jeddah, Prime Minister Mohamed Ghannouchi, in a speech delivered on 14 January 2011 at about 7:30 pm at Carthage Palace, in the presence of Fouad Mebazaa as head of parliament, and Abdallah Kallel, as President of the Chamber of Advisors, has announced that he would assume the presidency temporarily after the President of the Republic was unable to carry out his duties under article 56 of the Tunisian Constitution.

On January 15, 2011, the Constitutional Council issued a decree declaring the vacancy of the post of President of the Republic permanently pursuant to the provisions of Article 57 of the 1959 Constitution, thus providing the constitutional conditions for the President of the House of Representatives, Mohamed Fouad Mebazaa, to assume the duties of the President of the Republic temporarily for a period of 45 days and a maximum of 60 days.

Security Chaos that occurred on the night between 14 and 15 January and during the days of 15, 16 and 17 January 2011 resulted in the death of a large number of citizens with gunshot wounds from security, military and other unidentified sources.

TDC also received 86 files related to the events that occurred in Tunisian prisons in the context of security chaos during the days of 14, 15, 16 and 17 January 2011.

8. The role of the media in broadcasting rumors:

While the pace of events at the presidential palace was accelerating, the streets of Tunis witnessed security chaos, followed by Mohamed Ghannouchi's speech on Nessma TV, calling on citizens to organize committees to protect neighborhoods against organized gangs.

Also, Minister of Defence, Ridha Grira, contacted minister of Communication, Samir Laabidi, and urged him to use mass media to sensitize people on the dangerousness situation and informed him about the presence of unknown armed men wandering in cars. This decision was implemented by the media, especially the channel Hannibal TV³⁰⁰, whose director deliberately **broadcasted fake distress alerts that increased the tension and fear between the citizens and the security and army forces.**³⁰¹

³⁰⁰ Hannibal TV broadcasted a news about an ambulance and a civil protection vehicle that were stolen by members of militias and that they were firing on civilians.

³⁰¹ Minutes of interrogation of Larbi Nasra, head of Hannibal TV, in the sub-department of criminal cases on January 23, 2011, under the number 01/114.

9. Insecurity and lack of coordination between security and military units

On the night between 14 and 15 January and on 15, 16 and 17 January 2011, the security chaos resulted in the death of a large number of citizens by gunshots from security and military units and other unidentified units.

9.1. The night between 14 and 15 January 2011

In the area of La Goulette, while the victim **Cherif Mtaallah**³⁰² was driving a Kia car that was located in the warehouse of the president's Son-in-law Sakhr Materi, he has been shot by a bullet in the liver that led to his death.

In Cité Essalama of l'Aouina area, at approximately 11:00 pm, **Lotfi Ben Hussein Ben Sahraoui** was shot by a bullet that led to his death.

9.2 The 15 January 2011

The incident of Kram, which resulted in the death of Engineer **Ahmed Ben Tawfiq Kriaa** and his driver **Atef Ben Sassi Ben Moula**, was a **direct result of these false news**. Ahmed Kriaa, together with his driver, headed in a rented car to his factory, located in Kram West, in order to provide his guards and some workers with food and water as they couldn't go out of the factory due to the tension and chaos that spread in the country. Due to the rumors prevailing about rented cars whose passengers were shooting at citizens, as Mr. Kriaa's car approached Zitouna Bank at Kram's junction, the officers stationing there fired at the car, killing the engineer and his driver. The forensic medical expert's report indicated that 25 bullets penetrated throughout Mr. Kriaa's body, while Atef Ben Moula was hit by three bullets, one in the neck, the second in the chest and the third in his leg.

Also, the body of **Mohammed Saleh Ben Brahim Chebbi**, a security officer, was found near the place of the incident. Due to lack of data, it was likely that he was passing by the time and place of the incident and was accidentally shot.

This was not the only incident in which citizens were killed as a result of the **false news** that were broadcasted. On 15 January 2011, a child was admitted to the emergency department in Menzel Bourguiba, suffering from an injury in the eye that required his transfer to the Hedi Rais Institute of Ophthalmology in Tunis. Nurse **Nassib Bayrem Mohajer** and the ambulance driver, **Lotfi Hichri**, were appointed to transport him to Tunis, the mission was carried out successfully and the boy was brought to the hospital. Due to the curfew, the two paramedics asked a police patrol in Bab Saadoun to help them for their way back. The patrol assured the mission and escorted the ambulance from the rear until the highway X. After the police patrol returned back to its former spot, and as the ambulance was continuing through the highway, it was met with another patrol of National army, near the Saudi Embassy. One of the military patrol members deliberately pointed his weapon in their direction. Lotfi Hichri was hit by a bullet in the forehead, while Nassib Bayrem Mohajer was shot in the mouth, resulting in a distortion of the lower part of the face.

On January 16, 2011, in the same context, Makram Qabji, an ambulance driver, and Chadli Rezig, general hospital supervisor, went out in an ambulance belonging to the Aziza Othmana Hospital, towards the house of their colleague Habib Chichi to bring him to his workplace. On their way, they were met by Kamel Guesmi, a police agent, who asked them to give him a ride. They agreed and he entered from the rear door of the ambulance. As soon as they arrived at Cité Ibn Sina, they were

³⁰² The TDC referral file No. 0101-029618

stopped by a checkpoint placed by the youth of Cité Ibn Sina. When the ambulance driver stopped, the youth surrounded the vehicle to search the vehicle and verify the identities of its occupants, as they have been surprised by a person getting out from the rear door, discovering his possession of a firearm. The police agent tried then to run away while pointing his weapon towards the victim Adel Hanchi, hitting him with a bullet to the head that killed him. The ambulance driver and his colleague have managed to escape. Following the investigation, a number of medical documents belonging to the Aziza Othmana Hospital have been seized, as well as a mobile phone chip belonging to the driver of the ambulance who was hit by a bullet on 15 January 2011.

Due to the same rumor and **fake news** that was transmitted through the media, another incident occurred in the governorate of Sousse, in which the victim was an officer, **Sami Youssef**. He was on a rescue mission in Sousse, driving a civil protection vehicle, when he was met by a military patrol and one of the military deliberately fired at him, injuring him with a bullet that led to his death.

In the **district of Carthage**, the victim **Eyles Nader Ben Ezzedine Karrach** died at approximately 5:00 pm as a result of a gunshot wound while unloading waste in a container in front of his house.

In **Borj Touil**, at about 4:00 pm, while **Bennour Ben Saleh ben Haj Sassi** was returning from his farm and once he reached the road of Raoued Ennkhet he was shot by a military helicopter flying in the air. He died on the evening of the same day at the Mongi Slim Hospital of La Marsa.

In **Sijoumi**, and at approximately 7:00 pm on the same day, while the victim **Fathi Ben Abdelaziz Chelbi** was with one of his neighbours along the main road adjacent to the Sijoumi lake, three cars of the type “Peugeot Partner” passed by and randomly opened fire, causing his death due to gunshot wounds at heart.

In the **area of Mallasine**, at around 9:00 pm, while **Omar Amina** was watching television with his daughter, **Marwa Amina**, in their living room that opens to the main street, as he heard a noise and shouting, and rushed to the door to check on his stores located on the ground floor, to be surprised with a bullet that ricocheted on the wall and hit his daughter Marwa in the head, killing her.

In the **Mornaguia district**, 16-year-old **Mohammed Amin Oueslati** was shot in the back by a member of the National Army, causing internal and external hemorrhage that led to his death.³⁰³

In the **city of Manouba**, while the victim **Awatef Kanzari** was in front of her house, she was shot by a military patrol, killing her.

In the **Kabarya district**, in the context of the false news and rumors leaked about the presence of armed militias firing at the citizens, and while security officer **Adel Ben Ammar** was accompanying his brother and son to their place of residence, he was stopped on his way by the neighborhood committees who noticed that he had a weapon. They deliberately attacked him violently, causing his death. They also deliberately photographed his dead body and publicized him as one of Ben Ali's militias.

In the **city of Rades** from the governorate of Ben Arous, at around 2 am, while the victim **Souhail Riahi**³⁰⁴ was guarding the buildings located in the district, he was surprised by the arrival of individuals in black uniforms that started shooting. When he tried to escape towards one of the buildings, one of them deliberately chased him and shot him with a bullet, then threw him from the fourth floor.

³⁰³ Subject of TDC referral file number 0101-019297

³⁰⁴ Subject of TDC referral file number 0101-015080

In the same district, precisely in Salam Street, the victim **Housseem Malki** was guarding the neighborhood accompanied by a group of young people, when a rented car passed by. When closely examined by the youth of the neighborhood, it turned out that inside the car there was an uncovered-face driver and 2 masked people who deliberately fired live bullets towards the youth, which resulted in the victim being shot at the hand.

In the city of **Kelibia** in the governorate of Nabeul, and on his way to a night pharmacy to buy medicine, Habib Teieb suffered a gunshot wound at the heart, issued by a military patrol, causing his death.

In the city of **Sousse**, while the two victims **Teber** and **Aya Rahali** were standing in front of their house, located in Bir Chebek, army officers intervened in order to confront the protesters, and one of them shot a bullet that crossed the external fence, injuring Teber on the right side and penetrating her body to reach her sister Aya, who was injured on the level of her left hand.

In **Cité Erriadh** of the city of **Sousse**, specifically on the level of the main road of Cité Ezzouhour and near the secondary school of Cité Erriadh, while **Imen Omri** was about to buy some of her basic needs from the shop, a car of the type “Citroen Berlingo” passed near to her with five police officers in it who began to fire with live bullets, hitting her in the right leg.

In **Esswiss** district of the city of **Sousse**, the victim **Kamel Baklouti**³⁰⁵ was targeted by a gunshot, causing his death, and as the victim **Ahmed Aamdouni** tried to save him, he was also shot to death by a bullet coming from military patrol.

In the same district, on January 15, 2011, while the victim **Jamel Ben Saad** was standing in front of his house, he received a bullet at the level of neck that caused his death. Witnesses confirmed that those who fired the bullet were officers from the army who were passing by in a military truck.

In the city of **Monastir**, the victim **Mohammed Lagha** was heading to El-Manar elementary school in order to search for his brother, and once there, he found a crowd of people. The Army arrived few minutes later and started shooting in the crowd to disperse it, forcing the victim to run away towards the house of Radhia Bahri. As the army officers raided the house, the victim escaped from the back door and an army officer chased him, deliberately aiming his weapon at him and shot him with a bullet at the level of the heart, causing his death.³⁰⁶

Ouardanine, from the governorate of **Monastir**, witnessed a state of unrest, riots and security chaos following the flight of President Ben Ali, prompting the inhabitants of the district to form neighborhood committees in order to protect houses and property and monitor every suspicious case with the need to coordinate and inform military patrols. The neighborhood committee was set up on the road between Ouardanine and Msaken, at the level of Café Sayadine and the AGIL gaz station. On the night of January 15, 2011, the committee noticed the passage of the first four security cars. The first car was of the type “Mercedes Combi”, driven by security officer Kais Harabi, and carrying the agents Nizar Haj Fraj, Hechmi Ali, Salah Samari, Sadek Ouitouiti, Salah Farhani, Nouredine Azouzi and Ihsan Saafi. The second car was of the type “Peugeot Partner”, driven by security officer Ahmed Jerfal, and carrying the agents Abdelkader Mahmoud, Ali Chahed, Walid Zairi. The third car was of the type “Mitsubishi Pajero”, driven by agent Nejib Mansour, and carrying agent Sahbi Messaoudi and the Head of the Ouardanine police station, Badi Euchi. As for the fourth car, it was a civilian, of the type “Renault Express”, driven by the Head of the technical police of Monastir, Lotfi Gharbi. Upon arrival at the checkpoint established by the neighborhood committee, two agents descended

³⁰⁵ Subject of TDC referral file number 0601-003429

³⁰⁶ Subject of TDC referral file number 0101-017430

from the Peugeot Partner car and lifted the metal barrier, as the neighborhood committee allowed them to pass after identifying the presence of Badii Euchi, the Head of the Ouardanine police station, and one member of the committee contacted the next checkpoint to inform them of the passage of the cars. Meanwhile, the neighborhood committee heard rumours and decided to stop the convoy on suspicion. Members of the following checkpoints arrived and gathered around, chanting the national anthem, and one of them punctured the tires of the front car to prevent them from leaving the place. **Moez Ben Saleh** was heard discussing with Badii Euchi. (Some testimonies mentioned that inside the “Renault Express”, there was a person wearing a burnous, a woman wearing a safsari, and the cry of a child was heard from the inside. The one wearing the burnous was allegedly Kais Ben Ali, the nephew of President Ben Ali). Then, a sound of gunfire was heard, and Badii Euchi, after an altercation with Moez Ben Saleh, pointed his weapon out of the car window then shot and killed the latter. One member of the committee deliberately fired with his hunting rifle on agent **Sahbi Massoudi**, injuring him on the level of his abdomen. After which, chaos occurred and the sound of gunfires was heard, resulting in the death of **Mohammed Zaabar, Faisal Chtioui and Najeh Zaabar**, while **Muslim Qasdallah, Hosni Sbikhi, Malek Baccouch, Mohammed Mabrouk, Hamadi Farjallah and Nabil Mansour** were injured with gunshot wounds. Lotfi Gharbi, Sadek Ouitouiti and Ihsan Saafi managed to escape by boarding on the “Renault-Express”.

Despite the wheels being deflated, the cars continued towards Msaken, and once they entered the city, they were stoned by the citizens. An army patrol arrived and kept the police agents in a house, until military reinforcements arrived to transfer them to the headquarters of the Military Academy of Sousse.³⁰⁷

In addition to the cases of security chaos, a number of agents, whether members of the security forces belonging to the police, to the national guard, or to the military, were subjected to violations of their right to life and their physical sanctity, after serious mistakes committed by both parties, which was a result of poor coordination and behavior between the security units. **Among them:**

On January 15, 2011, **Mohamed Frikha**³⁰⁸, Head of the National Guard station of Chebba, received a call from the Head of the National Guard district of Mahdia, asking him to evacuate the National Guard station of Chebba, which has been closed since 14 January 2011. Therefore, Mohammed Frikha emptied the station from weapons and wireless devices, and given that he didn't have an administrative car, he managed this operation with his personal car, a “Volkswagen Polo 4”, accompanied by his agents. Flight Sergeant **Saber Ghidhaoui** sat next to him in the front seat, while **Morched Frikha, Jawher Khayat and Nefaa Kamoun** sat in the back seats, all of them were armed with “Steyr” rifles and “Glock 17” pistols. On their way back, they have been stopped by three roadblocks erected by citizens on the main road. At the fourth roadblock, they have been stopped by a group of citizens that were suspicious of them. Even when the Head of the station showed them their work cards, in addition to presenting his colleagues and indicating their place of work, the citizens refused to let them pass and informed them that it was necessary that they wait for the military patrol. The patrol was headed by Ali Dmegh, accompanied by Lieutenant Ali Mouldi, and officers Baha Eddine Alouane, Fathi Derwich and Abdelaziz Said who was guarding the administrative car while his colleagues advanced towards the car with the national guard agents on board, asking the citizens to move away from the vehicule, and deliberately fired towards it. Mohammad Frikha was hit with a

³⁰⁷ Criminal judgment n ° 78655 in case n ° 78655 of 12 June 2012 of the Permanent Military Court of First Instance of Tunis

³⁰⁸ Subject of TDC referral file No. 0101-21760

bullet at the head and Saber Ghidhaoui with a bullet at the face, causing their death, while agents Jawhar Khayat and Nafaa Kamoun were wounded by firearm.³⁰⁹

On the same day, **Mohammed Rezgui** with his colleagues **Sahbi Doula**, **Moqded Ouerghmi**, **Mouldi Dridi** and **Khaled Sandid** were assigned to supervise the maintenance of order in the disitricts of Fouchana and Mohammedia. On their way, they were met by a truck carrying people armed with batons, and after thorough questioning from one of the agents, it turned out that these people were heading to Sidi Fraj Region to guard a farm, and the patrol escorted them to their destination. On their way back, they were met by an "Isuzu Dmax" pickup, carrying around 14 people armed with sticks, batons and bladed weapons, so the patrol asked them to stop. Agent Sahbi Doula identified one of them, its was Badreddine Jebassi, known as "Oueld el Arraf", who assured the agents that they were on their way to inspect his farm in Mohammedia. So the agent Khaled Sandid asked them to accelerate their return to their homes due to the curfew, then the National guard patrol continued its way to inspect the neighbourhoods. After finishing their duty, and on their way back to the National Guard station of Fouchana, the national guard patrol was met with a military patrol that included officers Mohammed Fazzani, Bachir Mzoughi, Aymen Nouri, Mehrez Harrathi, Mohammed Amdouni and Aymen Chihi. The national guards noticed that the military patrol proceeded to arrest the pickup belonging Badreddine Jebassi and forced its passengers to lie down. So the national guards decided stop and get out of their "Mitsubishi" car in order to inform the military patrol that they already checked these people, but four soldiers came to them and pointed their weapons towards them, despite the fact they have identified themselves as national guards. However, the military officers deliberately harassed them, forced them to lie down, and assaulted them. A few moments later, another military officer, Colonel Abdelaziz Tlili came up and continued to harass them, then Sergeant Aymen Nouri and Colonel Abdelaziz Tlili deliberately fired live bullets at them, resulting in the injury of **Mohammed Rezgui** with gunshot wounds that caused his death, and the injury of Captain **Khaled Sandid** and Chief Warrant **Mouldi Dridi** with gunshot wounds at the level of their right thighs. Additionally, both agents **Sahbi Doula** and **Moqded Ouerghmi** were assaulted with extreme violence.³¹⁰

9.3 The 16 January 2011

Security chaos and false news continued to spread on 16 January 2011. In **Bizerte**, following an information coming from one of the inhabitants of the area concerning the presence of snipers on the roof of one of the buildings in Salah Ben Ali Street, Marine Commander **Mondher Bennouri**, together with Marine Adjudant **Sofiene Ben Jmela** proceeded to investigate the matter by checking the roofs. Soon after, gunfire echoed from a nearby building. Following an exchange of fire, the victim Sofiene Ben Jmela was shot in the shoulder and head, causing his death, while Montdher Bennouri was shot in the shoulder.³¹¹

In the same city, in front of the Raouebi clinic, while he was on patrol in a military vehicle, officer **Lazhar Kathiri** was injured by a bullet from an unknown source at the level of his right thigh that, causing his death. And the victim **Abdelsattar Saidani** was killed by a bullet from a military patrol that was chasing a rented car in the neighborhood of El Chorfa in Bizerte.

In the area of **Menzel Jemil**, during an intervention, **Hassan Bernis**, Sergeant in the National Army, was injured by a bullet from an unknown source at the level of his head, causing his death.

The process of diffusing rumors on the presence of militias and "foreign mercenaries" belonging to the ruling party and trying to sow terror among the citizens, has continued. And as a direct result of this,

³⁰⁹ Criminal appeal judgment in case No. 1111 of 05/12/2012 issued by the Military Court of Appeal

³¹⁰ Criminal judgment in case No. 6085 issued by the Military Court of Appeal in case No. 6085.

³¹¹Subject of TDC referral file No. 0101-016562

the number of casualties kept on increasing on January 16 2011, without being able to identify the original perpetrators. As well, security officers pursued investigating and searching for the rented cars that were reported by the media. Taxi driver **Ammar Dridi** was the victim of these rumors, he went out on 16 January 2011 to work with his taxi, where he transported tourists from the Carthage International Airport towards a hotel in **Tunis**. As he arrived at Mokhtar Aataya Street, he was stopped by a young man, and when the taxi pulled over, the young man called for the army and police officers that were stationing there. After approaching the vehicle, the security officers asked both the taxi driver and the tourists to exit the vehicle, and one of the officers started assaulting the taxi driver, while another officer proceeded with checking the personal belongings of the tourists, to finally find two hunting rifles. That is when the tourists have been harassed and assaulted, while the taxi driver continued to be assaulted. After a while, the officers discovered that the tourists were boar hunters from Sweden who had been granted legal authorization by the Ministry of Interior, and apologized to them.

On the same evening in **Tunis**, various teams of the Anti-Terrorism Brigade were stationed to protect the headquarters of the Ministry of Interior, after receiving information from the Central Operations Room of the Ministry of Interior concerning the potential presence of "snipers" in the Habib Bourguiba Avenue perimeter. They were indeed surprised by a gunfire targeting them, and after checking its source, it turned out that it was coming from "Dar Etajamoo" (the "RCD Building"), so they fired back. After investigating the source of the gunfire, they found out that it was coming from members of the National Army, located in the roof of the RCD Building, who thought they were as well targeted by "snipers".³¹²

In the area of **Ben Arous**, in the context of the rumor leaked about the presence of "snipers", and after that residents of El Yasminet neighborhood have informed members of the National Army that hooded individuals were stationed in neighboring buildings, a military patrol arrived at about 4pm and an exchange of gunfire with live bullets started with these unknown individuals. While the victim **Moez Bouhani** went up to the roof of a house to understand what was happening, he was shot in the forehead, causing his death.³¹³

In the area of **La Soukra**, while security officers **Abbas Ben Mohamed Boughanmi** and **Jameleddine Ben Ali Agrebi** were preparing to perform their duties with a group of security officers, in three security vehicles, they were stopped by a group of citizens who informed them that they have seen two cars, one 4x4 vehicle and one "Renault Clio Classic", whose passengers were about to fire live bullets. So the two officers, accompanied with their colleagues, headed to Dar Fadhal district in order to search for them. As arriving at the level of the church, they noticed the presence of a military patrol, at a distance of 15 meters, whose officers were lying flat and ready to fire. And once they stopped, the soldiers opened fire at them, causing the death of **Abbas Ben Mohamed Boughanmi** and **Jameleddine Ben Ali Agrebi**, and the injury of 7 other security officers.

At the level of the **La Cagna** district, the victim **Sahbi Ben Abdelmajid Nammouchi** was shot by a bullet in the heart, causing his death.

In **El Gorjani** area, members of the neighborhood committee stopped a suspected civilian car and informed a National Army. An army patrol assigned to maintaining order arrived, in it Captain **Ayten Sehri** who deliberately fired gunshots that hit the victim **Ahmed Ouerghi**, causing his death.³¹⁴

³¹² The testimony of Lieutenant Aymen Saidani from the counter-terrorism elite brigade on 18/04/2017

³¹³ Subject of TDC referral file number 0101-05178

³¹⁴ Subject of TDC referral file number 0101-004523

In **La Marsa** district, the victim, **Issa Ben Hussein**, was injured on the right leg, by a gunshot from an unknown source, while standing in front of his house. His health has deteriorated, and he died after 10 days.

In the delegation of **Msaken**, a military patrol settled in the headquarters of the delegation in order to protect it. At around 10:00 am, two security officers in civilian clothes called for help from the patrol, they were carrying traces of violence, demanding protection after being subjected to violence by citizens. The patrol was surprised by the arrival of a large number of citizens, requesting them to hand over the two officers. The soldiers refused and ordered them to retreat back and leave. After the crowd's refusal, the patrol was ordered to open fire in the air to disperse them. After which, the citizens started to move back, while others started pushing the soldiers, refusing to leave the place. As a result, one of the soldiers lost balance and pulled the trigger, and shot a bullet from his weapon, hitting the victim **Raouf F'hima**, who was standing by and watching the events, in the shoulder. Despite he was quickly transferred to the hospital, he died.³¹⁵

In the city of **Djerba**, in one of the checkpoints set up by the Qaraa's neighborhood committee, the victim **Salah Khnafou** was hit by gunfire from the weapon of a security officer trying to escape from that checkpoint, causing his death.³¹⁶

In the district of **La Goulette**, the victim **Nabil Laaroussi** was killed by a bullet in the heart, issued by a member of a military patrol. When his brother **Abderrazek Laaroussi** tried to rescue him, he was also shot in the lower back, causing his death.

9.4 The 17 January 2011

Rumors persisted about a number of hired **snipers** that were brought in from abroad. On 17 January 2011, Sergeant **Amin Qarami**, of the General Administration of Prisons and Reintegration, went to work and have been appointed, with two colleagues, to the Regional Hospital of Bizerte, in order to guard some prisoners who were injured following the events that took place in the civil prison in Bourj El Roumi. While he was in front of a window of one of the rooms of the hospital, he coincidentally saw a military helicopter that was preparing to proceed to a reconnaissance mission, as one of the military shooters, Mohammed Sebti Mabrouk, deliberately targeted the victim with a bullet at the level of the head, causing his death.³¹⁷

In the same context, the victim **Hatem Mouaffak**, the chief of the police, was on his way to his home in Gammarth, and as arriving at the Palace of Carthage, he was shot in back and in the back of the head by members of a military patrol, causing his death.³¹⁸

On the same day, in the city of **Bizerte**, while officer **Ali Ben Abdessalam Omrani** was performing his duty to guard the army barrack of Bizerte, he was shot in the neck, by a bullet coming from a building in front of the barrack.

In the governorate of **Ben Arous**, while the victim **Karim Ben Mahmoud Raouafi** was guarding the neighborhood accompanied by the youth of his neighborhood at about 2:00 am, he was shot by a bullet that resulted in his death.

In the same area, the victim **Moez Ben Mohammed Kouki**, was hit by a bullet that settled at his heart. His friends, accompanying him, never knew the source of the gunshot.

³¹⁵ Subject of TDC referral file number 0101-029625

³¹⁶ Subject of TDC referral file number 0801-002183

³¹⁷ Subject of TDC referral file number 0101-018373

³¹⁸ Subject of TDC referral file number 0101-007281

In the area of **Sidi Hassine**, a confrontation took place between members of the National Army and an unknown vehicle, using live bullets, which caused the death of the victim **Ahmed Ben Majid Hammami** with gunshot wounds.

In the city of **Bizerte** while **Mahjouba Nasri**, her husband Ahmed Nasri, her brother **Abdelmajid Saidani** and his wife Dorsaf Saidani, were heading to the regional hospital of Bizerte, and as arriving at the level of the military base of Sidi Ahmed, they were surprised with heavy shooting that resulted in the death of victim Mahjouba Nasri by a bullet in the stomach, and the injury Abdelmajid Saidani with a bullet in the leg.

10. The prison events, occurring in the same time as the state security chaos

TDC received 86 files related to the events that occurred in Tunisian prisons in the context of security chaos during the days of 14, 15, 16 and 17 January 2011.

10.1 Events of the civil prison of Mahdia³¹⁹

On January 15, 2011, at approximately 1:00 am, there was chaotic situation inside the civil prison in Mahdia, initiated by prisoners demanding their release. Some of them attempted to break the doors of the prison rooms, using the beds. They were stopped by the director of the prison and the prison staff using tear gas inside the rooms, which caused several cases of asphyxiation. This has forced the inmates of several rooms to remove the windows and the iron bars and climb to the roof of the prison, where live bullets were fired in the air in order to warn them from escaping and ordering them to return to their rooms. But they refused to do so, which forced the prison staff to fire at them with live bullets, causing the death of **Ali Ahmed, Mahjoub Hamouda, Wasfi Ammar, Karim Ben Ali, Makrem Mansour** and **Omar Farhat**. While **Monji Belhaj Mohammed, Najeh Mansour, Kamel Briki, Kamel Chaloul, Bilel Attia** and **Anouar Ouled Brahim** were injured with wounds of varying degrees of severity.

10.2 Events of the civil prison of Monastir³²⁰

On the night between 14 and 15 January 2011, after the prisoners had watched news (Hannibal TV) about prisoners escaping from other prison units and distress calls from citizens reporting on residential neighborhoods being attacked by criminals, chaos and riots started in several rooms of the prison. Especially in room No. 01 where prisoners deliberately beat the door of the room, attempting to break the lock and exit, while some others set fire to mattresses and blankets, even if a number of other prisoners tried to prevent them from doing it. But the fire spread to the entire room, and prisoners tried opening the door to no avail, which led to the death of 48 prisoners by burning or asphyxiation, while a large number of inmates were injured with third-degree burns. And if inmates of room No. 02 did not break out of their locked cell and urged to help break the locks of room No. 01, there would've been many more casualties.

It should be noted that the transfer of the injured with severe burns to the hospital Fatouma Bourguiba in Monastir was done after a long period of time, which resulted in the death of many prisoners, because of the deterioration of their condition due to severe burns or inhalation of smoke.

³¹⁹ Indictment No. 21 referred on 01 August 2018 before the specialized chamber of the Court of First Instance of Monastir

³²⁰ Indictment No. 55 referred on December 31, 2018 to the Specialized Chamber of the Court of First Instance of Monastir

Also, it has been proven that some prison agents have assaulted prisoners suffering from severe burns with sticks and an iron tools.

In order to cover up the actions of the leadership and the agents supervising the civil prison of Monastir, the deputy director of the prison and some prison agents pressured several prisoners into writing handwritten testimonies in which they recorded facts contradicting with the truth.

10.3 Events of the civil prison of Borj Erroumi³²¹

On January 14, 2011, Bourj Erroumi prisoners refused to have breakfast and started chaos by hitting the doors and trying to break the locks. The prison staff threw tear gas canisters inside the rooms, through the windows and openings in the doors. Given the asphyxiation cases inside the rooms, the inmates of the Karaka Wing, located in the first complex of the penitentiary, have been able to break the locks and run outside in the courtyard. After which, the director of Borj Erroumi prison have informed the Director General of Prisons and Rehabilitation, who in turn contacted the Minister of Justice to inform him of the events and to receive instructions on how to deal with the situation. The Minister of Justice answered him that it was necessary to contact the Director General of the Security of the President and the official Personalities, who gave him the following instructions (as confirmed by the telephone call that was recorded with the recording system of the telephone switchboard installed in the General Directorate of the Security of the President of the State and official Personalities, registered under the number 022027 at 13:43 pm on 14 January 2011): "You must fire, fire ... no playing around, that's it, you must fire, fire, kill one or two ... they will go back to their cells ... target the legs and don't use fire in bursts, shot by shot. That's it ... ", and the Director General of Prisons replied with "Yes Sir", then he proceeded to inform his counterparts with these instructions. After which, the Director General of Prisons and Rehabilitation, the Director of the administration of Prison Units and the interim Director of Security administration of Prison Units, have deliberately closed their mobile phones and avoided their responsibilities. This made it impossible for the Director of Borj Erroumi prison to contact them or to contact the leadership of the General Administration of Prisons and Rehabilitation on the evening of 14 and 15 January 2011, despite all his attempts to reach them in order to coordinate security operations. As prison protests continued, the Director of the prison instructed his agents to fire with live bullets at the prisoners, in accordance with the orders he received from the director general of Prisons and Rehabilitation. Weapons have been distributed to all the officers and agents of the prison ("mizburg" rifles, army rifles of type "Steyr", pistols, ammunition), without respecting procedures that require the codification of all operations of reception and delivery, in a register made to record all received equipment in terms of type, quantity, weapon's reference, and the identity of the agent who received the weapon, along with the number of bullets that he get, after signing in the same register.

Given the severe hunger that the inmates felt after not being provided with food by the prison administration since the morning of 14 January 2011, Wing C prisoners deliberately made holes in the wall that allowed them to enter the food supplies store in order to find something to eat, and prison staff shot them heavily, causing death of several prisoners. As hunger continued, many of the prisoners slaughtered and ate cats that were in the prison.

On 16 January, prison staff continued to shoot at prisoners, causing the death of many of them, forcing military units to take control of the prison on 17 January 2011 and to disarm prison staff.

TDC found that the death toll in the events of Borj Erroumi prison reached 13 prisoners: **Saif Ben Nasr, Mohammed Nefzi, Sofiene Marzouk, Lotfi Riahi, Khaled Haddaji, Abdallah Trabelsi, Mohammed**

³²¹ Indictment No. 27 referred on December 18, 2018 to the specialized chamber of the Court of First Instance of Bizerte

Caysi Ben Malek, Ahmed Fathallah, Kamel Yakoubi, Abdelbaki Aouadhi, Makrem Jellasi, Jihed Abbasi, and Mongi Ghridki. While the number of wounded reached 51, including Nabil Marouani, Walid Moqri, Hatem Zaoui, Hassan Mezlini, Marwen Ayari, Chaker Madiouni, Mokhtar Sliti, Mahmoud Aouini, Bachir Turki, Imed Bennouri, Ridha Ben Ammar and Larbi Ben Saad.

10.4 Events of the civil prison of Massaadine

On January 15, 2011, the civil prison witnessed acts of violence and chaos by the prisoners inside the rooms, and prison officers handed them using tear gas. Due to gas density, the prisoners broke the doors of the rooms leading to the corridors and, then they broke the door leading to the flag courtyard. This is when prison staff used truncheons and live ammunition, which resulted in the deaths of Yassine Boukadida and Hatem Bajjar.

10.5 El Kasbah events

On Monday, 17 January 2011, a new government was formed, headed by Prime Minister Mohamed Ghannouchi, made up of some opposition leaders and ministers affiliated to the RCD, which provoked citizens' protest against what they saw as a deviation in the course of the revolution and the restoration of the old system. In this context, marches and demonstrations have been organized on 18, 19 and 20 January 2011 in many governorates to demanded the departure of the government, but they were confronted by security forces with excessive and disproportionate use of force, resulting in the injury of many civilians. This pushed them to make a sit-in, on January 23, 2011, in the El Kasbah Square (known as the sit-in of Kasbah 1). The slogans raised during the sit-in were calling for: the dismissal of ministers of the old regime, the dissolution of the parliament and the advisory council, the dissolution of the RCD, cancelling the constitution and the election of a constituent assembly.

The sit-in continued until 28 January 2011, when members of the Interior Security Forces intervened to break up it up, using excessive force, resulting in the injury of many protesters with wounds of varying severity.

The Kasbah 1 sit-in resulted in the resignation of a group of ministers belonging to the RCD, an adjustment in the composition of the interim government, as these ministers were replaced by technocrats, as well as the dissolution of the parliament and advisory council.

Peaceful protests continued, demanding the resignation of the Prime Minister and the establishment of a National Constituent Assembly. A second sit-in was organized, and marches filled the streets on the 25th, 26th and 27th of February 2011.

Law enforcement officers didn't respect neither the laws nor the national or international legislations that stipulate conditions of the use of force. They deliberately fired at unarmed civilians during those three days. On 25 February 2011, **Mohamed Hanchi** was killed in Bab Bhar. The following day, **Anis Haouali** and **Abdelkrim Dhifi** were killed at the level of Habib Bourguiba Avenue, Aymen Aguilu was killed near the Republic metro station, **Hamdi Bahri** was killed in Carthage Street, **Farid Mabrouk** was killed in the Kasbah Square, and **Khaled Lakhdhari** was killed in Barcelona Square. On 27 February 2011 **Abdelbaset Khadhraoui** was killed in Jamal Abdennasser Street, and many civilians were shot with live bullets, including **Omar Bousaa** and **Slaheddine Meftah** in Paris Street, **Alaeddine Saidi** in Le Passage, **Imed Dabbabi Ganouni** and **Anouar Jedoua** in Habib Bourguiba Avenue near Ibn Khaldoun statue, as well as the victim **Nabil Hablani** in Barcelona Square.³²²

³²² Indictment No. 30 referred on December 12, 2018 to the specialized chamber of the Court of First Instance in Tunis

11. Chronology of events of 14 January 2011

- **At 7:00**

A taskforce of five members of the counter-terrorism brigade was formed with the mission of guarding all balconies that are overlooking the headquarters of the Ministry of Interior, under the supervision of Lieutenant **Aymen Saidani**.³²³

- **At 07:30**

Palace of Sidi Dherif: Director General of the President's Security and Official Figures, **Ali Sariati**, calls Ben Ali and informs him about the death toll on the 13th of January 2011 and about the protest that is going to be organized in Tunis. He also informed him that many police stations have been destroyed and burned.³²⁴

Ministry of Defense: Minister of Defense calls Ben Ali to express his fears that some security officers and National Guard officers would hand over their weapons to the National Army units, so he responded that it would be better that the National Army receives the weapons, rather than to be seized by citizens.

- **At 8:00**

The beginning of the arrival of a small number of demonstrators in the Habib Bourguiba Avenue in the capital, in front of the headquarters of the Ministry of Interior, led by lawyer **Radhia Nasraoui**, demanding the release of her husband **Hamma Hammami**, arrested in the Ministry of Interior.

- **8:20**

Ben Ali's arrival at his office in the Palace of Carthage.³²⁵

- **Between 8:20 and 8:25**

Marwen Mabrouk and **Salim Zarrouk**, Ben Ali's sons-in-law enter the Palace of Carthage.³²⁶

- **At 09:10**³²⁷

The beginning of the gathering of about 150 demonstrators in Mohammed Ali Square.

- **At 09:20**³²⁸

Lawyers begin to gather in front of the Palace of Justice in Tunis.

- **At 10:00**

A march composed of lawyers, started from the Palace of Justice in Tunis towards Mohammed Ali Square.

A march started from Mohammed Ali Square in the direction of Rome Street.

Houssein Trabelsi and his family were transferred, from his home to the Palace of Sidi Dherif, by a patrol belonging to the security of the President of the Republic and official figures.³²⁹

³²³ Statements by Lieutenant-Colonel **Samir Tarhouni**, Commander of the Counter-Terrorism brigade at the Central Division of Laouina on 19/02/2011 and the testimony of Lieutenant **Aymen Saidani** delivered to TDC on 18/04/2017.

³²⁴ Statements by the Minister of Defense **Ridha Grira** to the Central Division in Laouina on 03/09/2011

³²⁵ Correspondance No. 92 on 27/02/2011 addressed by the General Directorate of Security of the President of the Republic and official figures to the General Directorate of the National Guard.

³²⁶ Correspondance No. 92 on 27/02/2011 addressed by the General Directorate of Security of the President of the Republic and official figures to the General Directorate of the National Guard.

³²⁷ Note issued by the Sub-Directorate for Investigation and Research of the Tunis Region.

³²⁸ Note issued by the Sub-Directorate for Investigation and Research of the Tunis Region.

- **At 10:05**

2000 demonstrators gathered at the level of Independence Square towards Habib Bourguiba Avenue³³⁰

- **At 10:35**

5000 protesters gathered in Habib Bourguiba Avenue³³¹

- **11:00**

A large number of demonstrators gathered in front of the Ministry of Interior's building.

- **At 11:25**³³²

Around 1,500 citizens gathered at the Nutrition Institute in Bab Saadoun (doctors, nurses and administrators).

- **At 11:30**

Lt. Col. **Elyes Zallaq**, head of the escorts sub-directorate, assigns a captain of the Presidential Security to prepare the presidential yacht "Elissa".

- **At 11:45**

Minister of Defense, **Ridha Grira**, calls **Tayeb Laajimi**, the General of Air Force, and asks him to instruct the helicopter crew not to approach the presidential palace in Carthage, as well as the need to appoint an armed officer from the General Directorate of Military Security to accompany the crew in its reconnaissance patrol.³³³

- **At 12:00**

Ben Ali gives instructions to **Mohsen Rhaïem**, Advisor to the Director General of Presidential Protocole, to prepare the presidential plane in order to transport all of his wife **Leila Trabelsi**, his son **Mohamed** and his daughter **Halima** to Saudi Arabia so they can perform the Omra pilgrimage.³³⁴

The entry **Ali Srayati** to the office of President Ben Ali with a wireless device.³³⁵

- **At 12:15**

Ali Seriati contacted the General of the Land Forces, **Rachid Ammar**, and informed him that former President, Ben Ali, had received information from abroad indicating that **Rached Ghannouchi** would return to Tunisia. He also asked him to provide reinforcements from the army to secure the houses of the Trabelsi family, and the General Rachid Ammar refused this. (This call was probably made in the presence of Ben Ali.)³³⁶

³²⁹ Statements by Captain **Tareq Balaazzi**, belonging to the General Directorate of Security of the President of the Republic and the official figures, to the Central Division in Laouina on 23/02/2011.

³³⁰ Note issued by the security district of Bab Bhar in Tunis.

³³¹ Note issued by the security district of Bab Bhar in Tunis.

³³² Note issued by the security district of the Medina in Tunis.

³³³ Statements by the General **Tayeb Laajimi**, General of the Air Forces, to the Central Division of Laouina on 06/04/2011, and the statements of General **Ahmed Chabir**, Director General of Military Security to the Central Division of Laouina on 07/04/2011

³³⁴ Statements by **Mohsen Rhaïem**, Advisor to the General Director of Presidential Protocole to the Central Division of Laouina on 20/02/2014

³³⁵ The statements of **Hassan Ouertani**, President Ben Ali's Butler, to the Central Division of Laouina on 12/02/2011

³³⁶ Statements by General **Rachid Ammar**, General of the Land Forces, to the Central Division of Laouina on 05/04/2011

Take off of the helicopter bearing the symbol **AL3** in order to conduct a reconnaissance patrol covering Ariana, Cité Ettadhamen, Ksar Said, Douar Hicher, Jbal Lahmar, the Campus, the Tunisian Radio and Television Broadcast institution, El Omrane, Cité Ettahrir, Sabbalet Ben Ammar, the Géant mall, Sijoumi, Mornaguia, Cité Ennasr, Cité El Khadra and Charguia. The return of the helicopter to Laouina barracks was recorded at 14:00.³³⁷

- **At 12:27**

Take off of the private jet **TSI BT** towards Le Bourget Airport in Paris, carrying **Mohammed Sakhr Materi**, **Mohammed Aziz Miled**, **Brahim Materi**, **Kais Bel Hassine** and a nanny.³³⁸

- **Between 12:00 and 13:00**

President **Ben Ali** calls the Minister of Defence to inform him that a military helicopter, carrying masked Security forces, is heading towards the Presidential Palace to target it. The minister of Defence, after referring back to General **Tayeb Laajimi**, calls back Ben Ali to affirm the falsity of that information as he did not give any order to any helicopter to take off, adding that the Ministry of Defence is the only corps that owns helicopters.

Entry of **Belhassen Trabelsi** to the Palace of Sidi Dherif.³³⁹

- **At 13:24**

The Operation Room of the Presidential Palace is receiving information indicating the possibility of the gathering of protesters at the Carthage Presidential Palace.³⁴⁰

- **At 13:55**

A phone call between **Ali Sariati** and the Airport Police Chief, **Zouhair Bayati**, informing him about the flights calendar. (possibly to book a flight for **Belhassen Trabelsi** and his family members)³⁴¹

- **At 14:00**

A huge demonstration in Habib Bourguiba Avenue, where many slogans were raised to demand the departure of Ben Ali: "Dégage", "The people want to overthrow the regime", " Yes to Bread and water and No to Ben Ali ..."

Minister of Interior, **Ahmed Friaa**, calls Ben Ali to inform him about the development of events in Habib Bourguiba Avenue.

Samir Tarhouni, head of the counter-terrorism brigade, instructs his team stationed inside the Ministry of Interior to refrain from using firearms and to simply use tear gas in case of an attack by protesters.³⁴²

Belhassen Trabelsi's exit from the Palace of Sidi Dherif.

- **At 14:09**

³³⁷ Timetable document of the movements of the military helicopters for 14 January 2011

³³⁸ Correspondance No. 023 on 23/02/2011 and No. 22/617 on 29/03/2011 from the Director General of the Tunisian company for transport and Air Services (Tunisavia) addressed to the General Directorate of the National Guard.

³³⁹ Correspondance No. 363 on 26/03/2011 addressed by the General Administration of Security of the President of the Republic and official figures to the General Directorate of the National Guard.

³⁴⁰ Transcription of a voice recording from the ATIS recorder of the Presidential Security included under No. 021983

³⁴¹ Transcription of a voice recording from the the ATIS Recorder of the Presidential Security included under No. 022061

³⁴² The testimony of Lieutenant **Aymen Saidani** delivered to TDC on 18/04/2017

A phone call between the Airport Police Chief, **Zouhair Bayati** and **Ali Seriati** informing him about the availability of 07 vacant seats on one of the planes.³⁴³

• **At 14:30**

Exit of a convoy carrying 30 members of the Trabelsi family, under the command and protection of the Intervention brigades officers and Official Figures Protection officers, from the Sidi Dherif Palace towards the Tunis-Carthage international airport.³⁴⁴

• **At 15:00**

Ali Seriati, accompanied by **Mohsen Rhaïem**, asked a police officer of the Central office of the Presidential Security to give him their own passports, as well as the passports of the President's assistant **Kamel Badri** and two Filipino nannys.³⁴⁵

Flight TU 750 to Lyon, carrying members of the Trabelsi family is delayed, after the pilot, **Mohamed Ben Kilani**, refused to secure the flight.

The funeral cortege of the victim, **Helmi Mannai**, passed through Habib Bourguiba Avenue, where clashes broke out between demonstrators and security officers, then tear gas was used in order to disperse the crowd in front of the Ministry of Interior building.

The announcement of the dissolution of the government, as well as the declaration of a state of emergency of the third degree and a curfew from 6 pm to 5 am³⁴⁶

The Minister of Defense contacted General **Rachid Ammar**, asking him to go to the Ministry of Interior to supervise the coordination between the security and military units, as a request from Ben Ali.³⁴⁷

President **Ben Ali** informs his assistant, **Kamel Badri**, to prepare to travel in order to accompany **Leila Trabelsi** to Saudi Arabia for three or four days.³⁴⁸

• **At 15:04**³⁴⁹

A phone call between Adjutant **Hafedh Laouini** of the Planes Protection Unit and Lieutenant Colonel **Samir Tahouni**, informing this latter about the presence of Trabelsi Family members, ready to travel. Samir Tahrouni asked him then to monitor them until he arrives.

• **At 15:10**

Samir Tarhouni, from his office at the Counter-terrorism Brigade, calls his wife, Captain **Shiraz Yakoubi**, a controller in the Watchtower, and asks her to delay the "Royal Family plane".³⁵⁰

³⁴³ Transcription of a voice recording from the ATIS recording device of the Presidential Security included under No. 022105

³⁴⁴ Correspondance No. 363 on 26/03/2011 addressed by the General Administration for the Security of the President of the Republic and official figures to the General Directorate of the National Guard

³⁴⁵ Statements by **Lamjed Dabbari**, police officer in the General Directorate of the security of the President of the State and official figures, to the Central Division of Laouina on 13/04/2011

³⁴⁶ Cable from the Tunis News Agency (TAP) on the decisions announced by the President of the Republic on 14 January 2011.

³⁴⁷ Statements by the Minister of Defense, **Ridha Grira**, to the Central Division in Laouina on 03/09/2011, and statements by General **Rachid Ammar**, to the first Central Division in Laouina on 05/04/2011.

³⁴⁸ Statements by Kamel Badri to the first Central Division of Laouina on 08/04/2011

³⁴⁹ Revealing of the incoming phone calls of **Hafedh Laouini**'s phone number: a phone call between Samir Tarhouni and Hafedh Laouini at 15:04

³⁵⁰ Statements by Captain **Shiraz Yakoubi** to the first Central Division of Laouina on 22/02/2011, and the revealing of the calls of Captain Shiraz YaKoubi (No. 459 on 22/02/2011 within the framework of the judicial

- **At 15:30**

The Director General of Tunisair Airlines calls the pilot **Mahmoud Cheikh Rouhou** and asks him to prepare for the scheduled flight on the presidential plane at 6 pm in the direction of Jeddah, Saudi Arabia.³⁵¹

- **At 15:40**

Take off of two UH1H helicopters (**L901** and **L920**) from the airbase in Louina towards the barracks of Remedia in Bizerte.³⁵²

- **At 15:43**

Lt. Col. **Samir Tarhouni** and members of the counter-terrorism brigade arrive at Tunis-Carthage airport

- **At 15:50**

Members of **Trabelsi and Ben Ali families** are arrested by **members of the counter-terrorism brigade** and transferred to the VIP hall at Tunis-Carthage airport.

- **At 16:00**

Two UH1H helicopters (**L901** and **L920**) landed at Laouina airbase, coming from from Remadia and carrying members of the National Army Special Forces.³⁵³

Following the landing of the two helicopters, Lt. Col. **Samir Tarhouni** thought that members of the Special Forces were to intervene and stop him. So he called all of **Larbi Lakhhal**, Colonel of the National Guard Special Unit, and **Zouhair Wafi**, the supervisor of Fst Intervention Unit, asking for reinforcements.³⁵⁴

Belhassen Trabelsi leaves Tunisia via the port of Sidi Bou Said on a yacht, accompanied by his wife and children, the household helper and the captain in charge of the yacht, **Elyes Ben Rabah**.³⁵⁵

- **At 16:15**

The Director General of Intervention Units, **Jalel Boudriga**, the direct supervisor of Lieutenant Colonel Samir Tarhouni, arrived at Tunis-Carthage airport to negotiate the liberation of the Ben Ali and Trabelsi family members that were detained in the VIP hall.

- **At 16:23**

General **Rachid Ammar** receives a phone call from the Minister of Defense: " President of the State told me that there are infiltrated islamists, working in counter-terrorism units, who are holding his family at the airport, and the President is requesting their liquidation."³⁵⁶

- **At 16:25**

Landing of a HH3 Helicopter (**L109**) at Laouina airbase, coming from Remadia and carrying members of the National Army Special Forces.³⁵⁷

- **At 16:26**

mandate entrusted to the investigating judge by the First Central Division of the National Guard under No. 128/p on 24/01/2011).

³⁵¹ Statements by the pilot of the plane, **Mahmoud Cheikh Rouhou**, to the first Central Division on 17/02/2011

³⁵² Timetable document for military helicopter movements for 14 January 2011

³⁵³ Timetable document for military helicopter movements for 14 January 2011

³⁵⁴ Revealing of phone calls issued from the phone number of **Samir Tarhouni**

³⁵⁵ Statements by **Elyes Ben Rabah** to the first Central Division in Laouina on 03/10/2011.

³⁵⁶ Statements by General **Rachid Ammar** to the first Central Division of Laouina on 05/04/2011.

³⁵⁷ Timetable document for military helicopter movements for 14 January 2011.

The private jet **TSI AM** takes off towards Paris Le Bourget, carrying **Cyrine Ben Ali Mabrouk, Mehdi Mabrouk, Mariam Mabrouk, Maya Mabrouk, Malak Mabrouk, Yasmine Mabrouk, Yassine Mabrouk** and **Sarah Mabrouk**.

• **At 16:30**

Entry of the crew of the Presidential plane to the air base of Laouina.

• **At 16:37**

Landing of a HH3 helicopter (**L202**) at the air base of Laouina, coming from Remadia and carrying members of the National Army Special Forces.³⁵⁸

• **At 16:45**

Arrival of Lieutenant Colonel **Zouhair Wafi**, Commander of the National Regiment of Intervention Units, at Tunis-Carthage airport, accompanied by 04 teams with the task of reinforcing Lieutenant Colonel Samir Tarhouni.³⁵⁹

• **At 16:50**

Landing of a BHT helicopter (**L801**) at Laouina airbase, coming from Remadia and carrying members of National Army Special Forces.

• **At 16:54**

Landing of a BHT helicopter (**L804**) at Laouina, coming from Remadia and carrying members of National Army special forces.

Defense Minister **Ridha Grira** calls the General of the Air Forces, General **Tayeb Lajimi**, asking him to move away the plane belonging to the counter-terrorism units that intends to target President **Ben Ali**. (The call coincided with the landing of the BHT helicopter (**L804**)).

• **At 16:55**

Entry of the **Presidential cortege**, consisting of 10 cars, from the southern door of the barracks of the National Army in Laouina³⁶⁰, in conjunction with the landing of the helicopter (**L804**) BHT in Laouina airbase that was carrying members of the Special Forces of the National Army.

Beginning of the supply of the presidential airplane at the airbase depot at Laouina, it ended at 17:10, although precautions prevent from supplying the airplane inside the depot. (Fear of the plane being targeted by rebellious elements in the Carthage Tunis airport)

• **At 16:56**

Arrival of a team from the National Guard special unit, under the supervision of Lieutenant Colonel **Larbi Lakhal**, to Tunis Carthage Airport, with the task of supporting Lieutenant Colonel **Samir Tarhouni**.

The operations room of the Air Forces receives a first flight plan for Jeddah, with the timing of the flight set at 5:30 pm.

• **At 17:29**

The operations room of the Air Forces receives a second flight plan, a local flight plan, for Tunis-Monastir-Djerba-Tozeur-Sidi Ali Ben Aoun-Tunis, with the timing of the flight set at 6 pm and a return scheduled at 6:26pm.

³⁵⁸ Timetable document for military helicopter movements for 14 January 2011.

³⁵⁹ Revealing of the incoming phone calls on **Samir Tarhouni**'s phone number: a phone call between Samir Tarhouni and **Zouhair Wafi** at 16:45

³⁶⁰ Correspondance by the Commander of Military Police Corps on 22/02/2011 included under No. 434/FG/ZA and addressed to the General Administration of the National Guard

• **At 17:37**

Sami Sik Salem, Colonel of the General Directorate of President's Security, calls **Bachir Chehida**, a captain in the General Directorate of President's Security, asking him to pass the phone to Prime Minister **Mohamed Ghannouchi**, informing this latter about the President **Ben Ali's** departure from Palace of Carthage towards Tunis-Carthage Airport and the need for him to assume his responsibility as Prime Minister.

• **At 17:47**³⁶¹

The Presidential plane takes off.

• **At 18:00**

General **Rachid Ammar** received a phone call from Defense Minister **Ridha Grira**, during which he was asked to give orders to the National Army Special Forces to intervene and free the hostages (members of the Ben Ali and Trabelsi families) at the Tunis-Carthage airport. General **Rachid Ammar** refused to do so.³⁶²

• **At 18:10**

The **CI30** plane took off from the Sidi Ahmed airbase.

Entry of Mr. **Fouad Mbazaa**, President of the People's Assembly, to the Palace of Carthage³⁶³

• **At 18:15**

Arrest of **Ali Seriaty** in the VIP hall of the military base in Laouina by Colonel **Elyes Mnkabi**, seizing his weapon and his mobile phone as instructed by the Minister of Defense.

Entry of **Abdallah Kallel**, the President of the House of Advisors, to the Palace of Carthage.³⁶⁴

• **At 18:16**

The presidential plane is flying over the island of Djerba, waiting for permits to enter Libyan airspace.³⁶⁵

• **At 18:25**

Entry of **Mohamed Ghannouchi**, the Prime Minister, to the Palace of Carthage³⁶⁶

• **At 18:28**

The Presidential plane enters Libyan airspace.³⁶⁷

• **At 18:30**

Minister of Defense asks General **Tayeb Lajimi** to provide the **CI30** plane to transport members of the Trabelsi family to Djerba.

• **At 18:32**

Recording of the speech of Prime Minister **Mohamed Ghannouchi**³⁶⁸

³⁶¹ Radar recording of the presidential plane journey on 14 January 2011

³⁶² Statements by General **Rachid Ammar** to the first Central Division of Laouina on 05/04/2011.

³⁶³ Correspondance No.92 on 27/02/2011 addressed by the General Directorate of Security of the President of the Republic and official figures to the General Directorate of the National Guard.

³⁶⁴ Correspondance No. 92 on 27/02/2011 addressed by the General Directorate of Security of the President of the Republic and official figures to the General Directorate of the National Guard

³⁶⁵ Radar recording of the presidential plane journey on 14 January 2011

³⁶⁶ Correspondance No. 92 on 27/02/2011 addressed by the General Directorate of Security of the President of the Republic and official figures to the General Directorate of the National Guard.

³⁶⁷ Radar recording of the presidential plane Boom 14 January 2011

³⁶⁸ Col. **Sami Sik Salem**, after coordinating with **Driss Ben Youssef**, a cameraman of the Tunisian television accredited to the presidency, calls the Director General of Tunisian television, **Chaouki Aloui**, and asks him to

- **At 18:51**

A phone call between **Ben Ali** and **Kamel Ltayef**.³⁶⁹

- **At 18:52**

Landing of the **CI30** plane at Laouina airbase, coming from the Sidi Ahmed airbase

General **Rachid Ammar** receives a phone call from President **Ben Ali** inquiring about the general situation and the possibility of returning to Tunisia, so he informed him that the situation is unstable and Ben Ali answered him that he will call him again in the next day in this purpose.

- **At 19:12**

A telephone call between **Ben Ali** and Prime Minister **Mohamed Ghannouchi** inquiring about the reason why he gave his speech and why he announced that he was temporarily assuming the presidency based on article 56 of the Tunisian constitution.³⁷⁰

- **At 19:30**

Trabelsi and Ben Ali family members are handed over to the National Army units and transported on a minibus towards Laouina barracks.³⁷¹

- **At 20:15**

President of the House of Representatives, **Fouad Mbazaa**, and the President of the House of Advisors, **Abdallah Kallel**, exit from the Palace of Carthage.³⁷²

- **At 20:20**

Prime Minister **Mohamed Ghannouchi** exits the Palace of Carthage.³⁷³

- **At 20:30**

The counter-terrorism brigade, the National Guard Special Unit and the National Rapid Intervention Regiment left Tunis-Carthage airport after handing over members of the Trabelsi and Ben Ali families to the national army units.

- **At 22:50**

send a television team to the Palace of Carthage to record a “historic and important statement addressed to the Tunisian people”. After consulting the Minister of Communication, Samir Labidi, who expressed no objection, Chaouki Aloui sent a press crew to the palace of Carthage. After recording the speech of Prime Minister **Mohamed Ghannouchi**, the Colonel **Sami Sik Salem** transmitted the tape and a memory card to **Youssef Sassi**, a police officer of the General Directorate of the President's Security, and instructed him to deliver the memory card to the Tunis Afrique Presse (TAP) and the tape to the Tunisian TV headquarters, with the necessity to never quit the Tunisian Television headquarters before starting to broadcast the speech of the Prime Minister.

³⁶⁹ Correspondance by Tunisair Airlines No. 0032 on 06/05/2011, which includes the answer of the American telecommunications company, Satcom Direct, providing for telephone calls to and from the presidential plane.

³⁷⁰ Transcription of a voice recording from the ATIS Recorder of the Presidential Security included under 022655

³⁷¹ Between 5pm and 6pm, Lt. Col. **Samir Tarhouni** called Tunisian TV director **Chaouki Aloui**, asking him to bring a television crew to film the handover of members of the Trabelsi and Ben Ali families to the national army. Chaouki Aloui asked Mr. **Mohamed Dahech**, director of the news section at Tunisian television, to send a press crew to cover the event. At around 6:00 pm, a press crew including journalist **Aarem Rjaibi**, cameraman **Mehrez Ayari**, and cameraman **Abdelbaset Tlili**, arrived at the airport. After filming the handover, and with instructions of the Airport Police Chief, **Zouhair Bayati**, the tape was taken from the press crew and was not retrieved and broadcast on the national television channel until 27 January 2011.

³⁷² Correspondance No.92 on 27/02/2011 addressed by the General Directorate of Security of the President of the Republic and official figures to the General Directorate of the National Guard.

³⁷³ Correspondance No.92 on 27/02/2011 addressed by the General Directorate of Security of the President of the Republic and official figures to the General Directorate of the National Guard.

Arrival of the presidential plane at Jeddah airport in Saudi Arabia.³⁷⁴

• **At 23:00**

Arrival of Prime Minister **Mohamed Ghannouchi** at the headquarters of the Ministry of Interior, and a meeting was held in the presence of Interior Minister **Ahmed Friaa**, Minister of Defense **Ridha Grira**, General **Rachid Ammar**, General **Ahmed Chabir**, Director General of National Security **Adel Tiouiri** and security leaders.

• **At 02:00 am on January 15, 2011**

Take off of the Presidential plane from Jeddah airport towards Tunis.

• **At 3:00**

End of the meeting held at the Ministry of Interior.

• **At 06:15**

Return of the Presidential plane from Jeddah to Tunisia. (Without carrying the President of the Republic and members of his family).

Communications held from Presidential plane telephone³⁷⁵

Duration: 137 minutes

- **Ben Ali** calls **Mohsen Rhaiem** at 6:03 pm

- 03 calls that lasted 13 minutes between **Ben Ali** and **Ridha Grira**

- There were 06 calls to the telephone switchboard of the Presidential Palace in Carthage

- A call, at 6:51 pm, that lasted 5 minutes between **Ben Ali** and **Kamel Ltayef**

- Two calls between **Ben Ali** and **Rachid Ammar**: the first at 20:16 and the second at 20:17

³⁷⁴ Statements by **Yassin Ouled Jaballah**, Assistant pilot of the Presidential plane to the first Central Division of Laouina on 05/04/2011.

³⁷⁵ Correspondance by Tunisian Airlines No. 0032 on 06/05/2011, which includes the answer of the American telecommunications company, Satcom Direct, which provides telephone calls to and from the presidential plane.

Chapter Eleven

Buckshot Events in Siliana

The post-revolution period of January 14, 2011 was characterized by political and social instability as well as a fragile economic situation that had a negative impact on the marginalized regions of Tunisia, especially Siliana, which is among the most marginalized regions.

This context contributed to the worsening of the situation and the rise of the protest movement, which focused mainly on employment, with regard to poverty and marginalization suffered by the local community, which led to a number of protests that were fought violently by the security forces, who used the buckshot, which has had serious effects on civilians.

1. Introduction

TDC received 22 files for victims of this incident, including a collective file submitted by the Regional Labor Union of Siliana. It also received 15 files as "victim region" in Siliana. In this context TDC conducted an investigation in order to disclose the circumstances.

The Truth and Dignity Commission investigated the files of the Buckshot events and listened to the victims who submitted their files. It also heard the witnesses who did not submit the files. Additionally, TDC reviewed the report of the "Independent Commission on Buckshot Events" and the report of the Office of the High Commissioner for Human Rights. However, TDC was not able to access the report of the Ministry of the Interior Affairs related to the events despite the numerous correspondences addressed to the Ministry for the purpose ...

Many witnesses testified before TDC's investigation teams, which contributed to the disclosure of an important part of the truth ... However, TDC noticed the refusal of some actors in the events of Siliana to testify, in particular the security officers and trade unionists (especially the regional secretary general) and some politicians ... It is a violation of article 66 of the Transitional Justice Law, which provides for the duty to testify before the Truth and Dignity Commission.

The Commission devoted a public hearing³⁷⁶ on 24 November 2017 at which TDC presented documentary and testimonies of victims.

It is worth mentioning that the military court tried to oppose this hearing and the State Agency for Military Justice issued a communiqué³⁷⁷ on August 24, 2017, which considered that the holding of a public hearing on the Events of Buckshots is "*a violation of the principle of confidentiality of investigation*" and warned the state prosecutor of military justice that the principle of the independence of the judiciary "*requires Refrain from all authorities and various bodies to interfere in the files before the courts*" in violation of the provisions of the transitional justice law.

³⁷⁶ Twelfth public hearing on spraying events in Siliana. <http://www.ivd.tn/timeline/About-12th-public-hearing-about/>

³⁷⁷ <https://www.babnet.net/cadredetail-146873.asp>

2. Events

April 26, 2011

More than 800 people gathered in front of Siliana's governorate headquarters and demanded the dismissal of some officials. These events ended in riots, which resulted in the arrest of 53 protesters.

November 2012 was characterized by many protest movements in many regions of the country such as Sidi Bouzid, Kasserine and Kef, all linked to the marginalization, unemployment and poverty experienced by these regions or cities.

November 21, 2012

A sharp dispute broke out between the secretary of the governor, Ibrahim al-Zenaidi, and the general secretary of the basic union of the employees of Siliana town hall, Samira Ferjani, about the distribution of aid among a number of governorate workers fellowship, which strained the relationship between the regional labor union of Siliana and the governorate.

November 27, 2012

The Regional Labor Union in Siliana announced a general strike to demand development, employment, dismissal of the governor and the release of detainees who were arrested a year and a half ago without trial (events of 26 April 2011 in Siliana) and organized a protest march that started in front of the headquarters of the regional labor union towards the governorate with more than 5000 protesters. The security forces used tear gas and batons to disperse the protesters, who used heavy stones and Molotov cocktails in the direction of security agents, according to the Interior Affairs Ministry report.

On the same day, Interior Affairs Ministry sources confirmed that the demonstrators burned the National Security Center in Siliana.

On the night of November 27-28, 2012, security agents began to use buckshot to a limited extent for the first time.

November 28, 2012

The general strike, decided by the regional labor union in Siliana, continued with a large number of citizens gathering in front of the governorate headquarters to protest against the security campaign that targeted them last night, which necessitated sending large security reinforcements from several Tunisian cities such as Tunis, Beja, Gafsa, and Kef. Security teams based on intervention units, public security teams and some security agents that belong to the Intelligence department (*mokhtassa* and *Irched*), who used buckshot guns to disperse the demonstrators. About 60 protesters were injured in the face and eyes. On the other hand, security forces (public security, intervention units and national guards) sustained 131 bruises and 03 fractures.

On the same day, journalist David Thompson, a France 24 correspondent, was assaulted while filming the events. He was shot with about 60 grains of buckshot, most of which settled on his back. Additionally, journalist Abdesslam al-Samrani's right arm was broken due to the beating he received from a security agent in official uniform.

Ministry of Interior spokesman Khaled Tarouche announced the burning of 03 police and National Guard stations (Bouarrada National Security Center, the National Security Center in Makthar, the National Guard Center in Borouis), as well as burning part of the delegation of Makthar, storming the financial holding in Makthar and looting its contents (cigarettes ...) and attempting breaking into the fiscal agency of

Bourada. The security forces ran over a citizen named Hicham El Kafi by a large white police car (Tunisian mining plate number 17752).

November 29, 2012

The general strike in Siliana continued for the third day in a row, denouncing official and party statements related to the current events in the region, which was considered as provocative and degrading. Hundreds of citizens gathered in front of the regional union of labor in Siliana and called for the same demands.

On 01 December 2012

Medical sources confirm that some security officers deliberately used batons to assault the ambulance which was working in an accelerated pace to rescue the injured and transport them towards Hedi Rais Hospital and Charles Nicole Hospital in Tunis.

3. Type of weapons used

The weapon used to confront the protesters are: shotguns, gun with smooth barrel type used in spraying events is the semi-automatic type, but in general most of them consist of balls of lead (their size and number vary according to the type of use and mono bullets can be used. From 03 to 04 meters lead balls are combined when launched.

During the [public hearing organized on November 24, 2017, TDC published the findings of its ballistic investigation in documentary, as well as the chain of command of those responsible for violations.](#)

4. Responsibility of high officials

The TDC found out the security forces used unjustified and excessive force in violation of law 69 stipulating the confrontation of riots should go through certain steps.

Politically speaking, the government failed to deal with the protests and solve the problems before they took place.

On 28 December 2018, the Truth and Dignity Commission referred an indictment relating to the serious violations suffered by victims in the context of the Siliana buckshot events to the Transitional Justice Court in Kef.



Part Four

Abuses against women

Introduction

The Truth and Dignity Commission received 14057 files of women victims, representing 23% of the total files of victims of human rights violations that have reached TDC. These files covered all age groups and all periods of time, as well as all regions of the country.³⁷⁸

TDC devoted a public hearing³⁷⁹ to victims on March 10, 2017, during which many victims testified about violations against women.

Hearings concerned 8,369 women, representing 59% of the submitted files. Women were victims of 23,717 violation cases. Also, 3099 files that have been investigated concerned violations of freedom of dress and belief, representing 37% of of the submitted files.

TDC referred to the specialized criminal chambers of the transitional justice 68 cases of woman victims.

In chapter 4 of the Organic Law No. 2013-53 organizing transitional justice, the legislator stressed the need to take into account the specificity of the reality of violations against women. TDC has therefore adopted a gender approach for equal access to civil, political, economic and social rights and for the promotion of equity between genders, particularly for women who have suffered violations with reference to Article 8 of the Organic Law on Transitional Justice. Previous experiences of transitional justice have shown that chances to regain political, economic and social rights were higher for men than for women. Women usually face difficulties in accessing these rights. Therefore, and based on Article 67 of TDC bylaws regulating the Rules of Procedure, the Women's Committee have been established as an essential mechanism to take into account the specificity of women victims in tackling problems that could prevent them from being involved in the transitional justice process.

Access to rights has been easier for men, given that women needs special measures. In this context, TDC has taken special measures that allows to sensitize, guide, dispel the fears, provide legal aid repeat some secret hearings for victims of sexual violations, protect privacy to avoid negative consequences such as divorce or violation of physical integrity, and promote positive discrimination that represents a gateway to achieve equity and overcome obstacles, break the silence, overcome feelings of shame and guilt complex, and achieve reconciliation with oneself.

378 See statistical tables at the end of the report

379 Seventh public hearing - March 10, 2017.

https://www.youtube.com/watch?time_continue=1&v=mSnmFHsmGw

I. Special procedures and measures for women victims

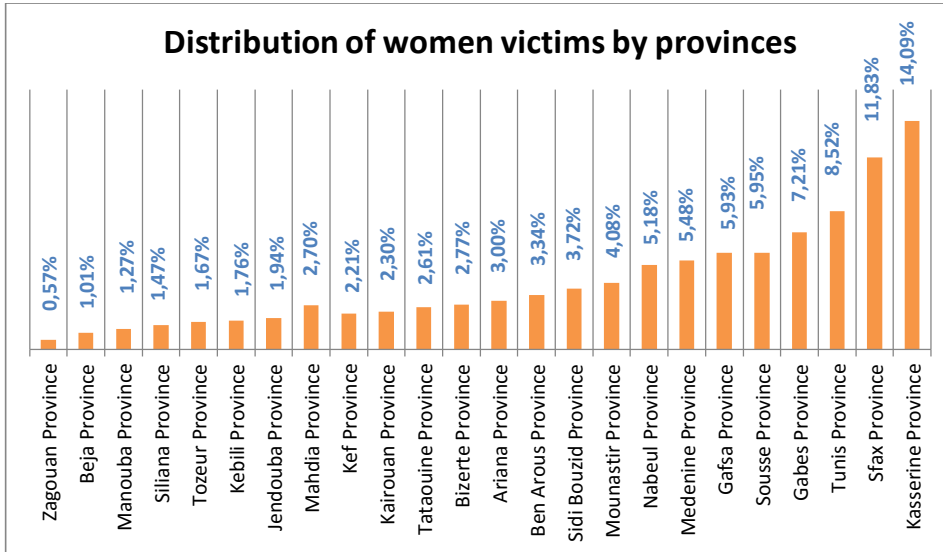
As a result of the specificity of women victims in this process, TDC has identified procedures and mechanisms that help to gain the confidence of women victims and ensure good communication with them. Among the most important measures:

- Creating a toll-free green number dedicated to receiving calls from women victims and to answer their various queries, giving them the freedom to choose the gender of the call receiver. In this context, the Women's Committee receives a periodic report on these calls from the TDC Call Center.
- The establishment of reception desks for women within the control office.
- Provide special care within the immediate care unit (health, social and psychological) in order to provide psychological framing for women victims, children, vulnerable groups, older persons and people with special needs.
- Provide special attention in the regional offices to ensure accurate statements and testimony at TDC.
- For secret hearings, enable women to choose any regional office away from their place of residence, or mobile offices in order to ensure the confidentiality of the hearing its data and encourage the victim to testify.
- Special protection measures within the witnesses protection program for victims eligible to participate in public hearings.
- Protection procedures adopted particularly to the files of sexual violations victims : digitization, encoding and encryption of the file, identification and reduction of the sphere of interaction among TDC's specialists dealing with the file in order to stem any data leakage possibility. These procedures had been applied to files of victims from both sexes. TDC has also intervened to protect women victims in situations where they had been harassed by security services after testifying at TDC.
- Drafting the “statement” during the secret hearings, allowing to provide elements on the violations in a way that addresses the specificity of women related violations such as “pregnancy, abortion, forced sterilization, forced weaning, forced divorce, child raiding, removal of babies from their mother in prison, discrimination in prison, violations of the freedom of dress, consideration of special health needs, etc.” The statement contributed to identify the proportion of violations, their types and their geographical and age distribution.

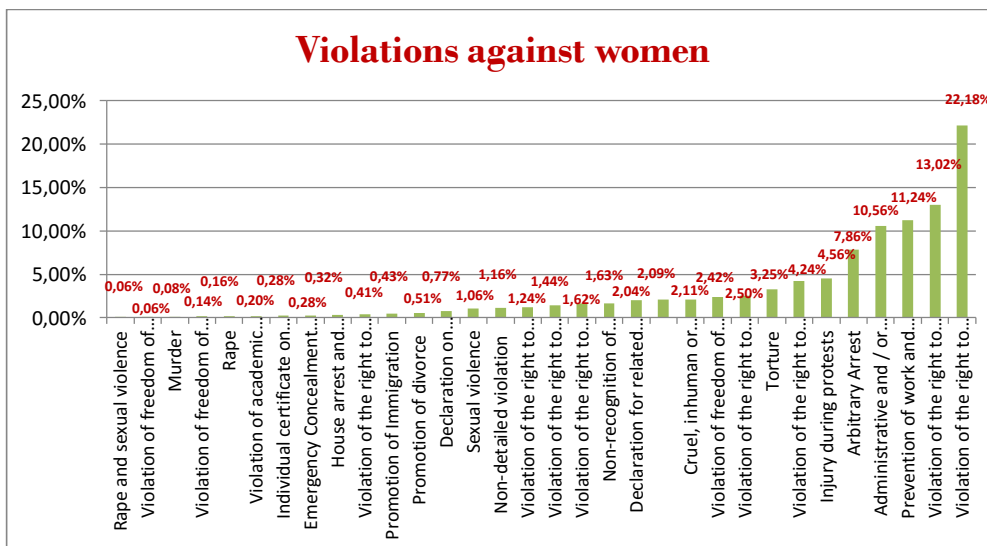
Women's testimonies have contributed to breaking the silence and shifting from ostracism to media appearances and rehabilitation of victims as they have become the focus of attention and acknowledgment of their suffering. Public testimonies were a vivid experience in the follow-up of the women victims reality before and after the testimony, emphasizing that women do not choose silence if they have the proper contexts that preserves their dignity and gives their testimony a moral value within a national process of transitional justice.

II. Statistics of violations of women victims

The number of women victims who submitted files with TDC: 14057 files or 23% of the total files.



8369 women were heard, representing 59% of the submitted files filed where 231717 violations were filed as follows:



III. Systematic repressive policy

The Bourguiba period witnessed significant legislative and legal achievements that had a deep impact on the status of women in the Tunisian society. However, dealing with opposition included resorting to a systematic policy of excluding women activists rejecting Bourguiba's policy and targeting women from different political and intellectual orientations.

The Ben Ali regime was also marked by repressions and extreme violence against dissidents by state organisms and RCD structures. The implementation of security surveillance, incursions, arbitrary arrests, and the adoption of all kinds of illegal methods served to repress political opponents and trade unionists and force many of them to emigrate outside Tunisia. These practices and violations went as far as targeting their close family members, especially the women.

During the Bourguiba and Ben Ali periods, the authoritarian regime systematically violated freedom of belief and dress. The commission undertook 3099 files related to these violations. This case represents 37% of the files submitted by women to TDC, where the violations targeted especially in the pupils and the students. The TDC held a public hearing on violations against women³⁸⁰, dedicated to this kind of violation, and represented by the circular No. 108.

TDC established that the first circular of this kind was the circular No. 22 issued by the Prime Minister Mohamed Mzali on September 17, 1981. He directed it to the Ministers concerning "the appearance of the administration and public institutions agents." The Minister of National Education, Mohamed Fraj Chedly, gave instructions to all the high school principals "to take care with the necessary seriousness and firmness against the phenomenon of veil", a day after the publication of the circular No. 108.

This publication was followed by several circulars :

- The circular No. 102 of 1986 issued by the Minister of National Education Amor Chedly on the appearance of teachers, administrative agents and pupils.
- On October 23, 1986, the Minister of the Interior Zine El Abidine Ben Ali issued the circular No. 81.
- The circular No. 76 of 1987 issued by Minister of National Education Amor Chedly.
- On July 20, 2001, the circular No. 35/1 issued by the Minister of Education Monser Rouissi
- The circular No. 35 of 2001 and the circulars No. 70 and No. 80 of 2002 all issued by the Minister of Higher Education Sadok Chaabane.
- The circular No. 98 of October 22, 2003 issued by the Minister of Health Habib Mbarek

Also, TDC accessed to an archive document concerning an action plan of the dissolved RCD party to confront the "sectarian dress" calling to "warn the veiled women in the commitment procès-verbal" and to apply the circulars referred to "firmly".

380 The testimony of Ahlem Belhadj – the public hearing session held in March 10th 2017

The regime launched campaigns against veiled women that were not necessarily politically active, but were pupils, students, administration agents, workers and housewives. They were subject to harassment and humiliation on the public thoroughfare, where they were assaulted, their veil forcibly removed and taken to police stations to sign a commitment to remove it. Veiled women were prevented from entering public administrations and institutions, and their right to education has been violated ... As a result, these circulars led to security surveillance and public space deprivation and reached even the deprivation from work or making a living.

Even activists from the dissolved RCD Party were not exempt from snitching, as TDC found a report in the presidential archive entitled "Women Lawyers in Sectarian Uniforms Affiliated in RCD Lawyers Forums" ...

IV. Serious violations against women from the events of the revolution and until 2013

During the last years of Ben Ali's rule, Tunisia witnessed waves of social protests and popular uprisings culminating in the revolution of December 17, 2010 - January 14 2011 and the fall of the ruling regime. From the beginning, women were involved in the course of the revolution and played an important and central role in different movements and protests in which they exposed themselves to many serious violations that sometimes resulted in death.

These protests were met with raids on the homes of demonstrators, breaking doors and physical assault on women and children, as well as the violation of the privacy of women as of what happened in the incident of "Hammam Al Afrah" in Hay Ezzouhour, city of Kasserine on January 9th 2011. These events took place when security officers were trying to disperse a funeral where people were mourning a martyr, chasing down young demonstrators who fled towards Hammam al Afrah to hid . Police officers stormed into the hammam (public bath) thinking that the young demonstrators were hiding there and deliberately threw tear gas shells inside.

Protesters were also shot dead, as was the case in Bizerte on January 13 and 17. Some of them were shot dead in front of or inside their houses, like what happened in La Manouba and in the city of Sousse on January 15, 2011.

V. Couples in the test of state violence

In cooperation with UN-Women, TDC conducted a field research³⁸¹ on the impact of human rights violations on the families of political dissidents for the period from 1956 to 2013. The research relied on the UN-Women database and victims who reported to UN-Women during a confidential hearing. This research aims to:

381 See full research in the studies section

- Documenting the testimonies of men dissidents who were victims of human rights violations.
- Identifying the impacts of pressure, changes and separations generated by human rights violations within marital relations and their impact on children.
- Providing a good understanding of the interrelated impacts between the context of human rights violations and gender relations.
- Understanding the ability of women and men to confront repression and to rebuild oneself despite the damage caused

1. Same political repression against different political currents:

The hypothesis of the first remarks is that human rights violations in all their forms have the sole purpose of not only stripping the victim of all his rights but also breaking all the linkages that form his or her identity as an individual, such as marital bonds, bonds with the children, bonds with the parents and the rest of the family. It includes the social and professional environment, and the others in general. This means ultimately the marginalization and destruction of the individual, not only in his identity as a citizen but also as a human being. In order to extract information, and to humiliate and destroy the will to confront the arbitrary state violence, the marital relationship is used as a tool by separating spouses and by putting pressure to force them to divorce through the use of torture and sexual assaults against one or both spouses.

Police harassment, unannounced night visits, arrests, and assault on homes' sanctity to intimidate families have been the share spouses among activists, opposition or those that are considered suspects. Continued and generalized fear had paralyzed communication and tore apart social and family relations. Close and permanent surveillance, violence, threats of arrest and mass arrests have left opponents and their families in constant caution, but without stopping the resistance, as many testimonies assert.

Many of the dissidents were susceptible to snitching, especially if one of the Wanted suspects is taking refuge in their houses. Security agents used to come home at night or at dawn to surprise the family and to ensure the best chance of arresting the person being searched.

The hearings that undertook TDC have produced three types of violations: deprivation of making a living, physical assault and torture. Putting a person in economic vulnerability is a weapon and one of the most frequently used violations, especially under the Ben Ali regime who tried by all means to subdue its enemies and make them starve.

The commission found that a lot of dissidents have been expelled from their work and prevented from working elsewhere. Those who worked on their own by opening small points of sale were harassed and pushed to bankruptcy with abusive penalties.

Wives found themselves having to practice two professional activities, many children were cut off from their education, and husbands were forced to sell their property (even to sell their furniture in some cases) to avoid hunger.

Cooperation has played an important role as a support for victims, but has not reached all those in need because relatives and friends often lived in modest conditions or were themselves being punished and threatened.

But the most brutal and most destructive practices were attacks on physical sanctity and torture, to obtain information about militants or to dismantle a secret network. Dissidents were exposed to it in a permanent and dangerous manner at an early age (pupils and students).

It is not uncommon for police stations, Ministry of Interior headquarters, or prisons to commit sexual assaults, rape or threats of rape on women, men and young people, sometimes in front of family members, as many testimonies confirm. The majority of women who have been sexually assaulted or raped do not speak to their surroundings about their plight, so they used to pretend to be ill to avoid sexual intercourse with their husbands.

Resistance to the repressive regime of Ben Ali has shattered many marital relationships while others have survived. In some cases, the resistance of women and men was measured by the degree of oppression they suffered, as one of the women dissident stated during the hearing saing : “ You cannot assess to what extent I feel I am the strongest while they were with no regard to me. They were beating me, torturing me, degrading me, and in spite of all this I felt like I am the strongest and they were insignificant and worthless in front of me. ”

Self-confidence and pride are the source of strength to counter the enemy's hits. This is the conclusion reached by one of the first-generation dissidents who is still going: "We were hurt, but my mind and my heart, my soul and my dignity were in good shape. I feel that no one can control me and I don't fear anyone."

2. Forced divorce or separation of spouses among political opponents

TDC examined that the forced divorce by security officials has been practiced especially in the 1990s against Islamist dissidents. Forced divorce or separation between spouses can take many forms, as observed in the quantitative field study.

- Divorce between dissident spouses can be the result of direct pressure on the victim: mostly, the wife is the one who is repeatedly summoned by the security agents and experience harassment and threat to force her to divorce. The same method is used against husbands to push them to ask for divorce, mostly by accusing the wife of immoral behavior (offending the male honor by accusing the wife of betrayal). These direct pressures also include children who are targeted and even threatened with rape, but it's usually the wives that are the target of this type of violations in order to coerce the husband to give informations or stop political activity, or worse to isolate him, make him weaker and cut-off any relationship that can help him endure and rebuild himself.

Among the 340 cases that were subject to pressure for separation from their parner, many did not end by divorce or separation: 57% have divorced and 43% did not. The number of men that have divorced is proportionately twice that of women (73% against 37.4%). It should be pointed out that the number divorce or separation increases with the extent of the damage

suffered. However, four out of ten couples stated that despite the severe damage, they continued to live together.

The harassment of spouses, in addition to detention, torture and threats against children, have forced them to ask for divorce for achieving a truce. The qualitative dialogues showed that despite the cases condition, some spouses that were forcibly divorced have married again when the husband was released from prison. This is the case of a wife: "I lost my job... I was afraid and I asked for litigious divorce under the pressure of the police".

When the political police target a person on the basis of belonging to prohibited opposition groups, the mechanism of repression begins in shattering his personal life and those around him. And if a person chooses to live in secrecy, this violence becomes a daily share for families for months and years. Family members are then subjected to pressure, daily harassment and abuse, especially for women.

Arrests usually happen in violent and sudden circumstances. The security forces raid the residence and takes the searched parent with no warning, usually using excessive force, physical violence and verbal humiliation. Such violence does not exclude the spouse or the children, regardless of age.

The trauma caused by this cycle of violence is usually followed by the absence of the parent in prison for several years. In some cases, both parents are arrested and the fate of their children is a dispersal between neighbors and the extended family. The testimonies in this regard have highlighted the repercussion of these events on the child's psyche and the necessity of restructuring the family bonds out of this situation.

It also happened that both fathers and children have been subject to violations. It is a shocking moment for the parent who faces three types of pain: firstly he is tortured, secondly he faces the pressure of threats over his children, finally and the most painful is finding himself witnessing a violation on his son. Here, one of the old unionists testifies about his commitment to the struggle, and to the "sense of manhood and resolute will. It was severe pain for him to be arrested and tortured in front of his son "The purpose of the arrest is to break your will and to shatter your psyche, naked in front of young men, beaten by the torturers while we are on our knees."

In the framework of immediate care, 52 victims were directed to the Nebras Institute after signing a partnership protocol with the Institute on April 30, 2018. TDC added then two lists of 114 victims of grave human rights violations for evaluation and treatment.

"The clinical assessment shows that the average beneficiaries have high scores in the rating scales of post-traumatic stress, anxiety and depression, requiring special attention," according to a report of the Nebras Institute.

VI. Prosecutions of women victims of violations

Violent and systematic practices against women for more than 55 years were not limited to grave violations, but also to unfair and sham trials for their participation in associative and

party activities and protest marches. This was done by pressing malicious charges against them and sentencing to harsh prison terms.

TDC recorded 229 trials involving women, representing a sample from the total of political trials.

1. The prosecution of Tunisian women during the Bourguiba period 1956-1987

During this historic period, Habib Bourguiba was keen to extend his authority within the wheels of the new Tunisian state and to reduce the path of Tunisian people's peaceful and armed struggle against French colonialism to his own person, considering himself as the spiritual father and the sole leader of the Tunisian resistance in all its forms.

He exploited his existing dispute with Salah Ben Youssef and his rejection to the second Tunisian armed revolution to exclude and prosecute his political opponents among former comrades and various Tunisian emblematic figures in the struggle. He established exceptional courts, including the Superior Court of Justice on April 19, 1956, and whose decisions cannot be appealed³⁸².

The arrests and prosecutions included women who participated in supporting the armed resistance efforts in 1956, accusing them of conspiracy against the internal and external security of the state, carrying weapons, not announcing the formation of a saboteurs gang, and homicide. Besides, the women of the Husseini family were prosecuted for dissimulation and embezzlement of funds and confiscated jewelry from the former Bey's family.

Since the mid-1960s, this repressive political orientation of Bourguiba's regime has been met with strong opposition and protests escalation by the leftist currents, prompting the Bourguiba regime to take an implicit decision to eliminate these movements and to liquidate its symbols. On September 9, 1968, 104 people, including 7 women, were referred to an exceptional court, known as the "State Security Court", on charges of conspiracy against the internal security of the state by use of force and violence in order to overthrow the existing regime and attacking the external security of the state³⁸³.

These arbitrary arrests and prosecutions continued during the 1970s, on charges of conspiracy against the security of the state, maintaining an unauthorized association, harming the dignity of the President and the government members, and publishing false news. During this campaign, detained women were subjected to the worst forms of torture inside the state security centers and the Ministry of Interior offices.

The prosecutions included women who used to support Bourguiba, most notably Radhia Haddad, who became an outspoken critic of Bourguiba's policy, publicly supporting a new and democratic orientation within the RCD party. She was sentenced on May 8, 1974 to four months of prison, suspended, followed by a period of harassment and persecutions.³⁸⁴

382 Official Gazette of the Republic of Tunisia, No. 34, Supreme Order of April 27, 1956 on the Establishment of the Supreme Court of Justice.

383 No. 16, Supreme Order of February 25, 1958, Extending the Work of the Supreme Court of Justice.

384 a, f, c, copy held by the Truth and Dignity Commission, Judgments of the State Security Court of 1968.

As for the Islamic trend, which has known a wide participation of women especially among students and pupils, and who's public field presence was met with total rejection by the Bourguiba regime, preventing women affiliates from organizing and public activities, along with a repression and prosecution campaign. Between 1981 and 1983, many of them³⁸⁵ were prosecuted on charges harming the dignity of the President, participating in an unauthorized association and publishing false news.

2. The prosecution of Tunisian women during the rule of Zine El Abidine Ben Ali 1987 - 2010

The Tunisian political scene witnessed a coup against the rule of Habib Bourguiba led by Prime Minister Zine El Abidine Ben Ali on November 7, 1987. Two years later, and following the announcement of the presidential and legislative elections results on April 2, 1989, results that have been deliberately rigged by the regime to exclude winners from various participating lists and parties, the country entered a dangerous turning point characterized by extreme repression and violence against dissidents practiced by state organs and RCD party structures.

Pluralism of parties has been almost completely banned, student activities and protests has been suspended. Many female students were prosecuted, whether belonging to the Tunisian General Union of Students or the General Union of Tunisia's Students. For instance, two female students were prosecuted in November 1994 after a protest march at the College of Regueda in Kairouan, sentenced to two years and four months of prison³⁸⁶.

As part of its organized and systematic campaigns against women activists, wives or daughters of dissidents, the Ben Ali regime imposed heavy and arduous suffering on thousands of women for 23 years, with night-time raids in their homes, arbitrary arrests, physical torture, sexual harassment, psychological harassment, and sham trials. Campaigns that were also in accordance with the administrative circular No. 108 of 1981 and the subsequent circulars that gave instructions to all state institutions to prevent the veiled women or women with headscarves from entry to all public facilities or roaming the streets.

For Ben Ali's regime, the promulgation of Law No. 75 of December 10, 2003 regarding the fight against terrorism³⁸⁷ represented an important source of proactive and extraordinary measures to further crack down on human rights activists, politicians, and social media users on the pretext of security and fighting terrorism³⁸⁸. The prosecutions included the wives of the victims of this law and some female student activists from various Tunisian universities.

Women from the villages of the mining basin of Gafsa that have participated in the 2008 social protests also experienced grave violations.

Al-Sabah Newspaper, dated 16 September 1969. Collective, Political Trials in Tunisia 1956 - 2011, Part II, Higher Institute of Contemporary History of Tunisia, Tunis, p. 51.

385 Hadad, Radhia, Parole, op.cit, p 107.

386 Mourad, Najib, The Islamic Trend in the Student Movement in Tunisia: An Unforgettable History, Magharebia for Printing and Publication of the Book, Tunis 2017, p. 290.

387 Official Gazette of the Republic of Tunisia, Law No. 75 of 10 171 December 2003.

388 Amnesty International, "Tunisia Continues Violations in the Name of Security," document dated 30 October 2009.

VII. Referring the files of women victims of violations to the specialized criminal chambers

TDC referred a number of indictments to the specialized criminal chambers in which 68 women were victims of grave violations. TDC also referred several referral decisions to specialized criminal chambers, including the names of hundreds of women victims of human rights violations and financial corruption.

The Commission has also provided psychological follow-up with a female psychiatrist during the collection of testimonies, the investigations and their accompaniment to the hospital for testing their psychological condition and assessing the rates of damage.

VIII. Gender approach and preservation of memory

TDC has listed the State's initiatives to preserve the memory of women from 1955 to 2013. We have noted that these initiatives are limited to giving names of few victims to some streets, squares or schools, without giving a historical overview presenting the victim or the violation suffered, in addition to the scarcity of these initiatives. For example, there is no square in Tunisia that bears the name of a woman victim, or even one memorial that commemorates her. Instead, there is a clear consecration of stereotypes in the Sedjouis' Martyrs memorial, assigning the woman to a secondary role in supporting the wounded and nurse him.

The inventory of state initiatives to preserve women's memory leads us to conclude:

- Limited memory-saving initiatives for women victims and their exclusion, especially from official initiatives.
- Men's dominance and possession on important initiatives, especially at the level of implementation and content.
- The initiatives that have been carried out so far perpetuate the stereotypical image of women and reflect the perceptions of the patriarchal society in the field of memory preservation, especially as it fuels the inferior view of women victims.
- Absence of laws, strategy and memory-saving policies able to frame the completion process of initiatives and explicitly providing a gender approach to ensure equal opportunities for women and men victims.
- Initiatives based on the principle of selectivity in content selection.
- The dominance of influential members and the official authority over the important initiatives.
- Litigations over initiatives creates conflict of interest, especially for the governing authority.
- Categorizing and limiting civil society initiatives.

IX. The effects of violations on children

1. Children of prisoners are indirect victims

The situation that keeps away a child from his imprisoned parent hides the memories and considerably weakens the ties, especially for young age children. Therefore, upon his release from prison, the father becomes an unknown person that child must relearn to know.

The release from prison wasn't accompanied with psychological follow-up, but with the violence of surveillance and police harassment. This release brings the prison's nightmare back to homes. The torture, the violence and the isolation that the father endured in prison has implications on his mental health: "He became a parasite at home, a mentally challenged person without source of income, because he lived in detention then was released without psychological care. He couldn't communicate with his daughters or his wife that was able to manage her life independently. "

The return of a former prisoner to his daily life disturbs the way that the family is organized, especially when this organization was built without him, around the mother and other family members. The bonds between the mother and the son becomes usually intimate by the difficulties they have experienced, these bonds collide therefore with the return of the prisoner that is demanding to regain his position.

Such is the case of the wife of a former prisoner that was arrested shortly after the birth of his son. It was a shocking event for her as she was totally unaware about her husband's political commitments at that time, and she had no political activity : "It was a thunder clap for me as I woke up that morning". From that day, she found herself alone in facing the police violence and social and economic restrictions. She was fired and had to live with her husband's family. Therefore, her son grew up in a situation of physical and psychological vulnerability that has created intimate conditions in their relationship, until the return of the father. This has caused disturbance, regarding that the father was not only unknown for his son, but considered as the source of all their misfortunes, and his return comes to interfere in the relationship with his mother.

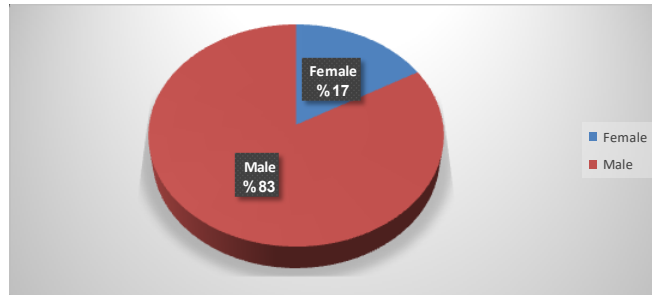
Re-composition of a family after a long estrangement created by the imprisonment is usually considered difficult.

2. Direct targeting of children

Children have been subject to numerous violations including sexual abuse, torture, arbitrary detention, abduction off the street or the school, and violations of the right to education.

The files submitted to TDC included children of different age groups. TDC registered 198 complaints on violations related to minor children between the ages of 6 and 18 (170 males and 28 females). These victims were distributed between direct victims and victims that were subject to violations because of their close relationship with the victim.

These victims were of different ages and from different regions. Children victims stated that they were subject to sexual abuse in different places such as detention centers, prison and other places of detention.

Graph: Percentage of child victims of rape ³⁸⁹

3. Rape and sexual abuse in detention centers

TDC recorded 28 cases, of which 17% were females and 83% males. Here are some testimonies:

- The victim (MB) stated that in 1992, at the age of seventeen, following the raid of security agents at his home, his mother was subject to insults and verbal abuse, during which he was arrested and taken to the detention center of Bouchoucha. The victim was not alone in the detention room where several other children of the same age or older were arrested. They were stripped, subjected to beatings and other methods of torture, with no consideration for their young age. The victim indicated that he was tortured in the Bouchoucha security area, precisely the Guidance Team, in a room that contained two iron tables and a closet full of torture tools such as plastic machines, sticks and iron machines, which has contributed to intimidate him. As for the grave violations, the victim stated that he was raped with a tool, through “inserting a truncheon in the behind”, as well as being sexually harassed by a security agent, “Zarga, who was a homosexual”, after he stripped him naked and messed with his genitals : “He wanted to touch me and if I went along with his plan, he would make things easier for me”. The victim refused to further talk and clarify on the sexual violation.
- The victim (SS) was arrested at the age of 16 for two days in 1981, and was kept in the Mahdia police station in a room he described as overcrowded. He suffered from malnutrition throughout the period of arrest, in a room stained with blood. The victim did not mention the violations suffered in detail, saying only: "He stripped himself naked in front of me and said to me I will do to you mother, and will I do, and will I do... He beat me and strongly inserted an olive tree branch inside of me..." As for the effects of the violation, he said: “Blood continued to poor out of me for 3 days ... not a hemorrhage but mere bleeding ... My father didn’t wanted the situation to get bigger and kept his silence.”
- The victim (KO) reported that on October 12, 1965, during confrontations between people of his area and the State Security, caused by bringing bulldozers supposedly to expand the road, he was arrested and raped in El Gorjani security department: "I have been raped ... this

389 Ibid.

took place in El-Gorjani, in the State Security offices, in prison, deliberately... it was terrible..."

- The victim (SN) reported that he was arrested during the events of 1978, after a protest march. He has been arrested for 7 days in the police station and was subject to torture: "He asked do you preferred Om Kalthoum or Farid? This is the stick of Om Kalthoum and this one is Farid's". He was beaten and burned with cigarettes: "Forgive me, but if I remove my pants you would see the burn marks, my toenails were ripped off with clippers". They also forced him to sit on a glass bottle: He gave to me a wine bottle and said to me sit on it."

- Victim (NM) says that he was arrested by security officers in 2006 at Foussana security center in the governorate of Kasserine: "Jalloul Soltani came to my High-school". He was then detained and exposed to torture and beaten. "They made me enter a hall and stripped me naked, then forced me to put one knee to the ground and hold up a chair until my back was badly injured, I didn't pass my Baccalaureate sports exam". Furthermore, the victim was stripped, beaten on his testicles and raped: "they stripped me naked and kept beating me with a broom on my testicles, then inserted the broom in my behind. "

- The victim (AJ) stated that he was subjected to several grave violations, as he was arrested on several occasions, beginning in 1987, at the Ministry of Interior, during which he was tortured, stripped naked and raped with sticks "They deliberately inserted a plastic stick in my behind and continued to insulting me with the most heinous adjectives". The victim added that from the very beginning of his detention he was subjected to psychological pressure by bringing his parents with him and taking them to the detention center. "How did the torture start?" I was seventeen, and it started when my mother and father were brought in to force me to confess, as they gave the illusion to my mother that they were going to release me if I confess. He was threatened with sexually abusing his mother: "They told me we are going to do sexual things to your mother", he also stated: "They took my mother and father with me in the car where my dad was slapped, imagine the condition of a child when he sees that and its effects on his personality."

4. Rape and sexual harassment in prison

- Violations against the victim (AG) continued after he entered a prison where was practiced child trafficking by putting them in the rooms of the elderly prisoners: "They took me to prison and I was detained with homosexual young people ... They put me in a cell where men had collective orgies." This detention period had a significant impact on the psychological and social level, as the victim suffered from sexual disorders resulting from these practices, scenes and attitudes that he endured in prison. The victim suffered from a social stigmatization that lasted a long time after his detention period, as it has affected his relationship with his relatives and family, which made him vulnerable to rape on several occasions: "Don't be surprised when I tell you I was raped several times when I was a child, because of rumors spread about my case."

- The victim (SA) stated: "They moved me at night, from 9 April prison to Borj El-Roumi prison ... As soon as I entered, the beatings and searches started... I was put in a cell with convicts of serious crimes, murder and life sentence criminals. One of them sexually abused me ."

- As one of the prisoners of the bread events (NT) mentioned, "I was 15 years old when I was imprisoned, I was sentenced with five years. Everyone in the prison knew about me and my case, the youngest of them, a schoolboy on that time. Imagine sending a 15-year-old boy in a prison with common criminals, it's like throwing a piece of meat in a group of dogs. They were selling and buying us in the corridors, we were bait to everyone for 5 years long."

5. Rape and sexual harassment elsewhere

- After the peaceful protests in front of the high-school on January 1984, the victim (S.B) was arrested and transferred with her comrades in the police station of Nasrallah from the governorate of Kairouan, where they were beaten and transferred to the security department of Kairouan. As the security department was overcrowded, they were transferred again to another place while they have been blindfolded: "We didn't know where we were taken, when we opened our eyes we found ourselves in a house". The victim stated that as soon as they arrived at their place of detention, they were placed in a room with their arms tied, knowing that "these agents put us in the house and we never saw them again." When the victim was asked if she was sexually harassed, she mentioned some practices by saying "He grabs you, puts his hand inside you and press on you ... he burned her with cigarettes, sometimes in her neck, sometimes in her back ... he tells me pull down your pants now, pull down your pants ... he even tells me go touch you friend". As for other methods of torture, she have been subjected to beating with a baton and to the bee position: "You hold your left ear with the left hand and your right ear with the left hand, and you turn around while being beaten". The victim was also raped, she broke down in tears given what the trauma has left, saying "They inserted their fingers in me". This has affected her marital relationship: "I wasn't a happy like the brides do ... there are many things I wasn't able to do ... sometimes I wonder how my husband accepted to marry me". She stated that such abuses were practiced the same way on her friends, that the process of rape by introduction of fingers was repeated for six days, lasting from two to four hours. She was examined by a doctor upon entering the juvenile correction center since the rape have caused hemorrhage. The victim also added that these violations had a significant impact on her, at the psychological and social level, especially "My mother stopped taking me to weddings, as she felt ashamed of me when I call for her in the audience."

- As for the 14-year-old victim (M.T), her father's house was raided in October 1987, she was transferred to the police station of Grombalia on charges of participating in an unauthorized march. She was raped and released at dawn the next day given her young age: "They came in the evening, at five pm, they raided our house and one agent turned to me and asked me if I was (M.T). He forcibly pulled to remove my scarf, put me in a car and took me to the police station of Grombalia. After a while, they started beating me and insulting me, then put me on a table and did his thing (crying real hard), he raped me ... When they realized that I was underage, they released me at dawn and threatened me to shut up and to not speak about it." This violation caused her a nervous and psychological breakdown, and a deterioration of her relationship with her husband.

6. Torture

In this context, many child victims have been subjected to various forms of physical and psychological torture. These violations were practiced in both formal and informal places.

- The victim (S.M) stated that he was arrested in 1985 in the security department of Bab El-Jedid, at the age of 16, by security officers in civilian clothes. He was detained in a room containing "tables and a cupboard with all types of sticks." The room was in a horrible state, suggesting that many torture practices happened there. "It was a horrific scene. I swear to God, the walls were stained with blood and stinky, because the person that was taken out before I came in was unable to walk on his feet, so he was dragged by agents." The victim added that he was tortured by the security officers: "beaten with a truncheon, constantly suspended, they were taking turns ... it was an ongoing process". He was subjected to a sexual violation by putting a stick in his behind. "Yes, I was subject to that in the Sidi Bechir police station, and I was threatened with it in the Bouchoucha police station".

- The victim (T.C) was arrested in 1991 for 45 days, in the detention center of Bouchoucha, at the age of 16 years: "I remember that I was detained for 45 days at Bouchoucha center, I was only 16." During that detention period, the victim was subjected to all forms of torture as he stayed the entire period in a room lacking all human condition: "We ate in a plastic bowl, which we also used as a toilet". Regarding the torture, he victim stated that it has started since the the security forces raided his uncle's house, he was threatened with rape, insulted and humiliated: "I was young and they put a fierce dog next to me." The victim mentioned the torture methods he was subjected to: "There was a lot of beating with sticks, burning with cigarettes in my legs and my genitals, stripping me naked ... I remember someone called Mohsen, he watched something in a movie and he wanted to try it on me, it was comparable to the roast position, he started debating on how he would do it to me." This torture caused a break at the level of his left leg that remained untreated and caused much suffering: "My parents used to buy two different shoes for me. One size 42, and the other size 43." In addition to torture and psychological intimidation, "they used to put you in a room next to the torture room in order to let you hear the people being tortured."

- The victim (KO) reported that on October 12, 1965, during confrontations between people of his area and the State Security, caused by bringing bulldozers supposedly to expand the road, he was arrested and raped in El Gorjani security department: "There was rapes, not only torture ... in the room number 6 or 7 where there was chains, a chain of a meter and a half long." As for the torture methods, he mentioned "Torture and hits by El Falqa (Baton on the feet) were usual ... it was like having a bottle of water next to you, he tells you it's a normal thing, he tells you it's our job, we do only the big things". Adding "there was also the Pottasium, a kind of bleach, it damaged our feet."

- As for the victim (QO), he reported what he had endured during his detention, saying: "At that time, in 1984, I was 17 years and 6 months old. The anti-crime squad is well known. We were interrogated during a whole month at the Ministry of Interior. They pull off nails from someone, some other was burned in ... no words can describe what they did to us, I can't describe it. If I wasn't embarrassed I could show you marks that are still in my back, as well as others from cigarette burns down in my body, burning marks never disappear. They pulled

off my toenails with clippers, in the brigade they used to take all night with us. They transfer us from El Gorjeni to the Ministry of Interior. Every night they stayed the whole night beating us again and again until we gave up and signed on everything. We don't even know, we signed on anything they told, they did whatever they want of us. I don't want to speak about the swing, I don't want to speak about how they took us out, completely naked, we were six or seven persons facing each other. I don't want to speak about all of this because I feel ashamed about it, but I still have marks and now I feel ready to show you."

7. Detention

Several cases were reported stating that child victims were detained in security centers as well as in special places used to detain child victims. Arrests happened in different places: home, school and street.

- The victim (MM) confirmed that in 1992, at the age of seventeen, security agents raided his home and his mother was subjected to insults and verbal violence. He was arrested and taken to the detention center of Bouchoucha. The victim was not alone in the detention room, several other children of the same age and adults were arrested. They were subjected to all kind of mistreatment like beating, stripping them of their clothes and other torture methods, with no consideration for his young age.

- The victim (MH) added that in 1981, he was 17 years old and was studying in the fifth year of secondary Technical school in Bizerte. He was arrested after participating in an unauthorized protest gathering around 2000 pupils. He stayed a whole week in the detention cell of the Ministry of Interior: "When I entered the cell, I found my classmates. At the beginning they were 07, then the number grew to 12."

- Following peaceful protests in front of his high school in January 1984, the victim (S.A) was arrested and transferred with his classmates to the police station of Nasrallah in the governorate of Kairouan, where they were beaten and transferred to the security department on Kairouan. Given that it was overcrowded, they have been transferred one more time to another place while being blindfolded.

- The victim (A.A) stated that as part of a peaceful march in January 1978 in the city of Sousse, he was arrested with his comrades in the security department of Sousse and was subjected to torture: "They beat me everywhere, on my mouth, on my head ... it has caused damages in my head". This use of violence against him was aiming to force him to confess or admit the charges pressed against him: "But we were beaten way harder than the things we did."

- The victim (A.M) stated that he was arrested with a group of protesters, for five days at the RCD party Coordination Committee of Kasserine, in January 1984, by agents of the city police station of Kasserine. The victim was tortured, beaten and hit with tear gas in the detention room. He also stated that he was burned with a cigarette on his back after he was asked to strip off his clothes.

8. Violation of the right to education

Despite the ratification of international conventions by the Tunisian state and the existence of legal provisions that promotes the right of the child to education, the implementation of these laws and legislation remains relative. Most of the child cases faced a violation of their right to education and a deprivation of continuing their education.

- The victim (N.M) stated that he was arrested in 2006 by security agents at the Fousana police station in the Governorate of Kasserine: "Jalloul Soltani came to fetch me in my high school". After his release, the victim was deprived his right to education and forcibly prevented from taking exams: "They come for me and take me so I can't take my test. I come back to ask for an absence note to return to class like other children, they obtain their note and return to class but not me, I stay grounded."

- As for attending school, (S.C) stated: "Upon my conditional release in March 21, 1986, I thought I could return to school at least. Dad accompanied me to my high school, and the principal told him I am sorry but your son is no longer suited neither for education, nor for religion. He gave me a school certificate for a definitive expulsion from all high schools. "

It is noteworthy that most children that have been victims of grave violations have been prevented from returning to school as they became holding a criminal record, while others have been subjected to ongoing security harassment, forcing many to drop out.

Conclusion

Minors were not only subject to violations, they also faced prosecutions due to their participation in the protest marches or to their family ties with political opponents. Pressing malicious charges resulted in harsh sentences against them, in clear violation of all national laws, international instruments and conventions that have been ratified by Tunisia to protect the rights of the child, and United Nations Committee on Children's Rights recommendations to the Tunisian Authority³⁹⁰. These prosecutions lacked all legal procedures for the prosecution of minors stipulated in the UN Convention on the Rights of the Child in its Article 40, especially:

- To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense;
- To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
- Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

³⁹⁰ United Nations, Convention on the Rights of the Child, of 30 November 1989.

- If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

As well as child protection code in its chapter 94:

- A child who has not attained the age of fifteen years cannot be detained in preventive custody if he/she is commits an offense or misdemeanor.

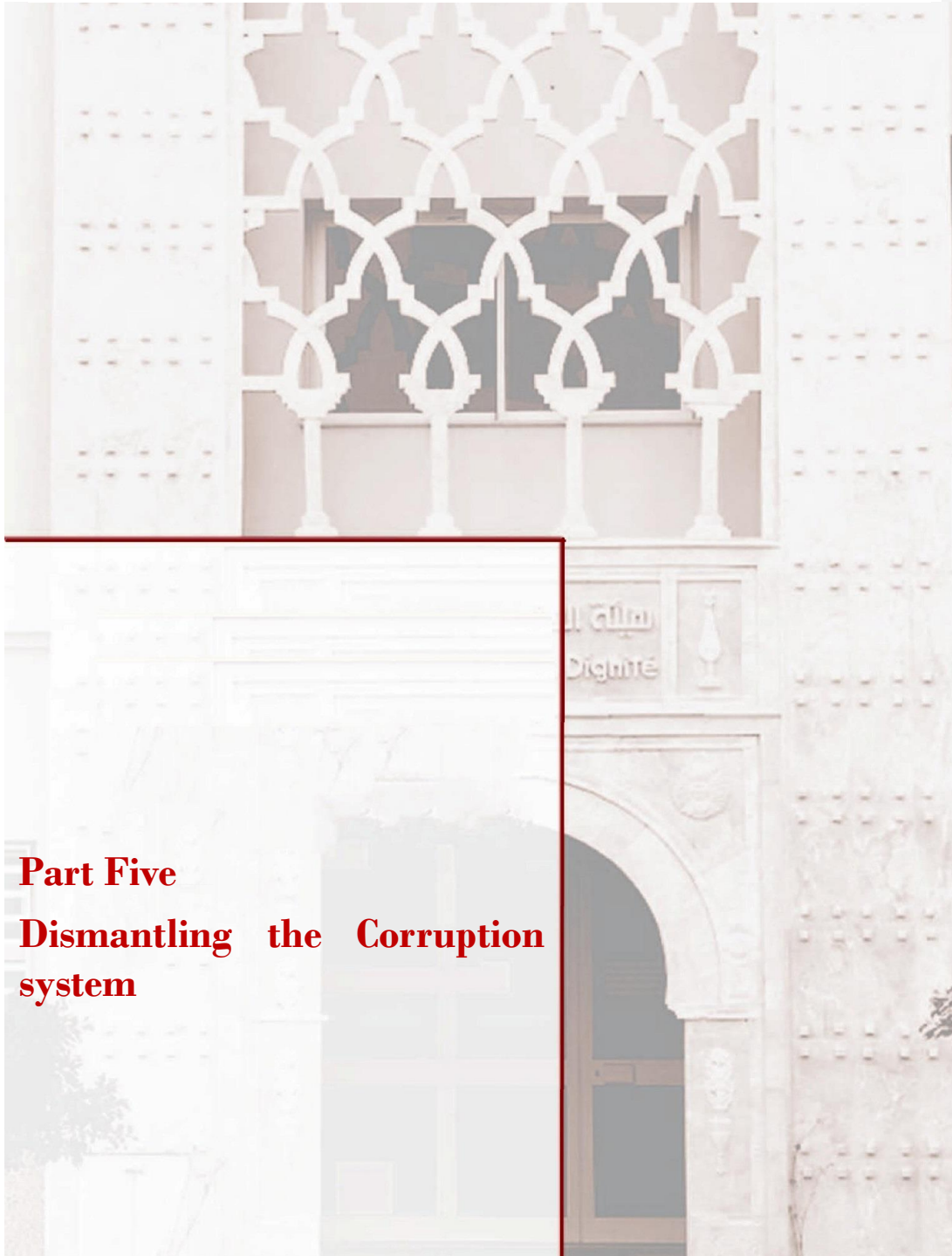
- The child cannot be placed in detention unless it is found necessary to take this action or it appears that no other measures can be taken. In this situation, the child is placed in a specialized institution, and when this is not possible, they may be placed temporarily in a special children's wing of a prison, provided that they are separated at night from the other inmates. Otherwise, it leads to a blame for the failure to respect this procedure³⁹¹.

Based on the testimonies of minor victims, it appears that the Tunisian security and judicial authorities deliberately failed to comply with these provisions and legal articles. These abuses continued with sentences that reached 10-year prison against 14-year old minors³⁹², with prosecutions without legal safeguards and with deliberately not informing them of their rights. Most of the judicial hearings took place with a lack of defense counsel, and even when a lawyer attended, he was not allowed to plead in favor of the victim.

Remarkably, the attendance of an advisor assigned to Child Welfare in some of these judicial hearings, as he is empowered with legal powers that enables him to preserve the child dignity, to prevent all torture and sexual abuse methods and to intervene to provide a fair trial to the accused minor.

391 Official Gazette of the Republic of Tunisia, No. 90 of November 10, 1995, Law No. 92 of November 9, 1995, on the issue of the Child Protection Code.

392 A, F, C, copy to TRC, Judgments of the Court of First Instance of Tunis and Appeal of Sousse.



Part Five
Dismantling the Corruption
system

Chapter One

Financial Corruption and Abuse of Public Funds

1. Introduction

The Organic Law on Transitional Justice entrusted the Truth and Dignity Commission (TDC) with the investigation on financial corruption and diversion of public funds cases. **17292** complaints concerning cases of financial corruption and diversion of public funds were submitted to TDC, in addition to **685** files that were submitted by the State Litigation's Department. TDC held secret hearings for 11,331 cases involving victims, witnesses and alleged violation perpetrators. TDC also received from the National Anti-Corruption Commission **1486** cases, most of them were inherited by the National Commission of Investigation on the facts of Corruption and Bribery.

TDC have devoted a public hearing session on financial corruption on May 19, 2017, aired on the national channel and several private channels, during which one of Ben Ali's in-laws presented a live testimony on operating methods of influence peddling and corruption under the former regime.

It is worth mentioning that during this **public hearing**³⁹³, TDC presented a witness to corruption in the Customs authorities but he has been pressured before the session, and when he was given the floor he denied all statements he had made to the TDC investigation unit, claiming its contrary in public.

This session had a strong impact on public opinion, prompting the government to launch, three days later, a campaign of arrests targeting corruption kingpins (55 detentions). This campaign started on the 23rd of May.

During its closing conference in the 14th and 15th of December 2018, in which TDC has presented its work outputs, the Commission exposed the **Banque Franco-Tunisienne** case, considered as textbook case of corruption and a concentrated expression that summarizes all forms of corruption. This case will be exposed in detail later on.

Tunisian law has defined corruption in the framework decree No. 120 of 2011, related to anti-corruption efforts, as "**the misuse of power, influence or function for personal benefit.**" Transparency International, for its part, considers corruption as "**the abuse of entrusted power for private gain.**" As for the World Bank, it defines it as "**the abuse of public or corporate office for private gain.**"

Through its research and investigation on financial abuse cases, TDC aims to reveal the truth, to dismantle the system that contributed to make them happen, to identify a list of those

393 <http://www.ivd.tn/timeline/اجلسة-الاستماع-العنينة-العاشرة-الخاص>

responsible, to evaluate their financial impact and to formulate proposals that can reduce them.

This scourge has eroded the Tunisian society for decades, as corruption has proliferated to the top of the state's hierarchy during the reign of Sadok Bey and Mustafa Khaznadar. This was the major cause of the loss of national sovereignty and French occupation in the late nineteenth century. Indeed, the state was relying on increased tax pressure and human rights violations in order to deal with its inability to respond to his society's entitlements, such was the case during the revolution led by Ali Ben Ghdahem.

The World Bank estimated that the wealth accumulated by the former president and his family was more than **50 billion dollars**, in the form of real estate, companies, shares and bank accounts held in Switzerland, France, Canada, Qatar, United Arab Emirates, Lebanon, Latin American countries and some tax havens. It is worth mentioning that this amount **exceeds four times the Tunisian state's budget**, which was established at **14.5 billion dollars** in 2018.

Despite the succession of commissions and committees in charge of recovering looted funds, the results have been way below expectation. Despite the TDC attempts to interfere within its legally provided prerogative, and proceed to the evaluation of abuses, the delineation of responsibilities and the state reparation follow up, TDC faced a lack of cooperation of other state institutions that are involved in the matter. Moreover, TDC has recorded obstacles that hindered the completion of its work in some cases.

Corruption represents a diversion or reduction of public finance revenues, forcing governments to rely on debt to achieve financial equilibrium. Consequently, the impact of corruption reaches the future generations that find themselves crippled by the reimbursement of sizable loans that were contracted to cover up financial abuses and violations. In addition to its impact on the financial revenues and the future generations, financial corruption causes bankruptcy of the State, making it unable to meet its obligations, which would lead to the confiscation of its economic authority.

TDC received files of corruption and financial abuse that were directly deposited by the victims. Also, through the examination of the presidential archive, the files submitted by the National Anti-Corruption Commission, the French diplomatic archive and other files that were discovered by TDC through every available means, the Commission reached to a number of files involving financial and economic abuses.

Drawing upon the results of its work, TDC noted a strong correlation between human rights violations and financial abuses, through the will of authoritarian regimes to seek for privileges and material benefit, or caused by a prevalence of corruption arising from unequal distribution of wealth, increased taxation, and attempts to silence dissident voices. Financial crimes are therefore considered as the center of gravity of the violations covered by Transitional Justice, as they represent its most important cause, and a tool for sanctioning its perpetrators.

On this basis, the phenomenon of financial corruption has been examined through the identification of its causes, the way it is generated and its legal and financial complexity.

Legislative and procedural recommendations have been formulated in order to foster efforts in countering it, inducing a direct impact on the administration of justice and the rule of law.

2. TDC's methodology in dealing with corruption-related violations

TDC functions in the area of financial corruption are numerous and complex, adding to the great diversity of submitted cases and the limited time dedicated to complete its mandated tasks. In view of this situation, the Commission considered that its methodology should follow an approach drawn from risk-based auditing standards. This methodology goes through the following stages:

Identifying the nature of the task with respect to the section, the axis or the file: the file examination teams sought to benefit from every study and research done in the concerned field.

Initial risk assessment: during this phase, TDC proceeded to an initial identification of the ways that can be exploited to illegally benefit from a function, an information or a status, and examine the relative importance (quantity and quality) of each potential violation.

Evidence and means of obtaining them: evidence in financial corruption cases are related to the violation existence, they vary depending on the file, on the abuse and on the subject of study. Searching for evidence is usually based on a list of interrelated questions, on intersections, and on analytical studies.

Abuse assessment: at this stage, we maintain hypothetical violations that have been found to exist through the gathered evidence and the general considerations of authenticity. In order to assess these abuses, the Commission uses all available means that measures the gained benefits or the damage incurred to victims, whether natural or legal persons.

Dismantling the system and defining responsibilities: This stage is based on the reassembling of the components of the legal, financial, fiscal and administrative structures, then proceeding to the precise delineation of responsibilities.

3. Research and diagnosis techniques:

To assemble the pieces of evidence, the Commission is empowered by the following prerogatives:

- Cross-check with data held by other parties.
- Analytical cross-check.
- Cross-check with public administrations (tax administration, banks, etc.)
- Reliance on tests conducted within the framework of an investigation or within random tests entrusted to the Commission or other institutions.
- Temporal comparison for the data.
- Comparison with sector rates.

Given the complexity of financial crimes, their direct and indirect effects on individuals and society on the long and short run, the Commission has given due attention to these factors and formed specialized teams to study these abuses. To overcome these constraints, TDC has

relied on quantitative and qualitative scientific criteria for the identification of the areas that are most vulnerable to the proliferation of corruption and the magnitude of its economic and financial implications for individuals and society.

As mentioned earlier, financial corruption aims to achieve undue material benefits, directly or indirectly. Gaining these benefits require two conditions: the rapid transferability of cash and the presence of an active market for these operations.

Consequently, high-liquidity activities along with the presence of an active market represents a hotbed for corruption and a fertile ground for the development of an interrelated system involving beneficiaries and players. Based on these characteristics, on the Tunisian economic choices during TDC's mandate, and on the submitted files, the Commission has opted for a file examination through six economic fields:

- Real estate.
- Banking and finance.
- Underground resources exploitation.
- Good governance.
- Privatization of public institutions, companies bailout system, and tax and financial privileges.
- Smuggling through customs abuses.

4. Corruption fields that TDC has investigated

Corruption is a phenomenon in which intervene all components within society and their relations, starting from the state official institutions, whether legislative, executive or judicial, to cultural and media institutions, ending with individuals in their daily operations. Corruption have mechanisms that affect the fabric of societies and the individuals' behavior, resulting in direct negative impacts on economic development and on building a climate of trust for transactions.

Corruption is based on a range of mechanisms:

- **Bribery** in all its aspects in the public and private sectors, embezzlement in all its aspects, abuse of office, illicit enrichment, non-compliance with laws and regulations, and failure to provide fair and equal service.
- **Officials' illegal exploitation** of administrative prerogatives or a legally vested government position, for personal purposes, by opportunism or by inclination, and all that falls under the pattern of clientelism and compromises the administration's neutrality, as well as getting kickbacks for speeding up a procedure or for legal or administrative transgressions.
- **Exploitation of governmental or administrative corruption** by the private sector, through the obtention of illegal tenders, confidential data, tax or financial privileges, or the acquisition of state property and capabilities.
- **Breaking laws, regulations, values and ethics.**
- **Developing financial, legal and procedural schemes** to confer fake legitimacy to the operation.

- **Bureaucracy and hindrance** in the fulfillment of citizens' interests, complicating procedures and dispersion of responsibilities.

4.1. Real Estate

TDC's mandate has covered the period between 1955 and 2013. During this period, the real estate experienced important events:

- Nationalization of lands.
- Liquidation of Religious endowments (Awqaf and habous).
- Implementation of the cooperatives' system.
- Proliferation of real estate speculation.

The real estate market is among the active markets in Tunisia, especially at the beginning of the third millennium. It is characterized by a high level of liquidity and its ability to provide bank funding when necessary.

In addition to the availability of the required quantitative and qualitative criteria, a significant number of files related to real estate have been submitted to TDC, including:

- Expropriation for the benefit of the influential members.
- Obtention of low-priced land parcels within the framework of fictional projects.
- Changing the land-use and collecting benefits.
- Trade-offs for fictional reasons with an unfair exchange basis.
- Violation of public and private domain
- Contract forgery and the introduction of modifications in the cadastre.

The repercussions of real estate corruption have reached all of the economic activities, as the speculative operations led to an increase in property prices. Speculative operations in real estate have caused a deterioration in the agricultural lands inventory, with a misappropriation of the national agricultural lands that have been granted to non-specialists, through favoritism and abuse of authority, which resulted in poor performance and failure to secure the agricultural products that meets the market needs.

Real estate speculation has been a backward pulling force to economy, as it has weakened the real economy's ability to attract investment and provide funding. This has an ongoing impact, as the current real estate stock of unmarketed apartments due to abusive sale prices is estimated to more than **100,000 apartments**, representing a total cost of more than **10 billion dinars** (10% of Tunisia's GDP in 2017, which is about 100 billion dinars). Consequently, the economy did not get back its financing.

Given the importance of the real estate field regarding the number of submitted files, the value of the initial violations, the availability of a fertile ground for the proliferation of corruption, and its disastrous impact on the national economy, TDC has devoted an entire section to the corruption in this field, for the delineation of responsibilities, the identification of violations mechanisms and formulated a set of measures to limit these violations.

4.2. Banking and Finance

Corruption in the banking or financial sector is unique regarding its high liquidity characteristics. The violations usually take the form of:

- **Obtaining undue loans, without collateral and with favorable terms.**
- **Loans and surplus write-offs.**
- **Exemption from prosecution.**
- **Cancellation of mortgages and collateral.**
- **Insider trading.**

These situations provide the proper conditions for the proliferation of corruption, especially with high liquidity and the presence of an active market. Through the files that have been submitted to TDC, we have noted that the banking system constituted one of the most important weapons used by the corrupt regime in the economy, as banks have been used to punish those who disobeyed the regime and to pressure them to waive their rights. On the other hand, banks have been used as a rewarding instrument for devoted regime officials.

The banking system that has contributed to endemic corruption in this section includes the central bank, a majority of public banks and private banks in varying degrees. Violations in this field have costed to the national community considerable funds dedicated to the recapitalization of these institutions (in 2015, the state has provided the recapitalization of STB bank (Société Tunisienne de Banque) and BH bank (Banque de l'Habitat) to an amount of **867 million dinars**).

In this regard, it should be noted that the doubtful debts held by public banks represents **47% of the banking system debt stock**, worth **5,9 billion dinars**.

The stock markets is not immune to exploitation by corrupt officials, as they:

- **Companies that do not comply with the conditions governing the stock market have been listed at a value higher than their real value, making huge profits.**
- **Confidential data and information have been exploited for personal benefits.**

In 2010, the capitalization of stock market reached an amount of 15,282 billion dinars, versus an annual trading volume of 3,837 billion dinars. Considering the importance of the funds circulating on the stock market and its high level of liquidity it, the Commission found useful to study this branch, particularly as small investors are more likely to lose their savings, becoming therefore reluctant to invest. This eventually makes the economy lose an important source of funding.

4.3. Underground resources exploitation

Referring to the figures revealed by France regarding the colonial period in Tunisia, it appears that the Tunisian economy depends significantly on the variety of natural resources with which the country is endowed.

Prior to independence, France tried to grant the largest share of Exploitation Concessions to French companies, through issuing a set of supreme decrees that have been signed by the

Resident-General, thanks to which French companies have benefited from the best incentives and concessions with preferential terms.

Following independence, successive governments did not proceed with the revision of these contracts and concessions to recover the rights of the Tunisian people, even worse, they adopted the same approach by intervening for people closely linked to the power to grant them exploitation rights for these resources.

Natural resources, particularly oil, are considered to be highly liquid in an active market, especially that sale transactions are made without ceilings, in foreign currency, and in most cases without any administrative evidence.

In this regard, risk of corruption in this sector have risen both quantitatively and qualitatively, especially when the current system is allowing to:

- **Conceal the production volume** by foreign companies, along with discrepancies in the declared quantities between the Tunisian Company of Petroleum Activities (ETAP) and the Ministry of Energy, which resulted in an inability to perform a serious monitoring of the sector's incomes.
- **Inflating expenses** during the exploration and research phase, resulting in a reduction in the state's share upon the discovery confirmation, or pushing the state to become reluctant to participate because of a deteriorated cost-effectiveness.
- **ETAP renouncing its rights on discovered fields**, either for the benefit of influential persons, or for the benefit of one of its officials on the pretext of lack of profitability.
- **The extension of exploration period**, resulting in field depletion without any benefit for the state.

4.4. Public governance and good governance of public institutions:

Governance is the system through which organizations, enterprises and departments are administrated and controlled. Based on this definition, governance can be considered as a set of systems and interrelationships that are responsible for:

- Conservation and effective management of resources.
- Effective use of the available income.

The Tunisian administration and public institutions suffer from poor governance, including ministries, social funds, hospital institutions, economic installations and real estate inventory.

Cash accounting has demonstrated its inability compared to accounting related to financial pledges. By maintaining public finance accounts that adopts accounting rules based on non-reliable and ineffective information, decisions will remain improvised and non-scientific.

Consequently, the information system in public administrations suffers from severes weaknes in terms of delayed and inappropriate information.

The state has established ineffective and inefficient control bodies, as they are not based on a self-regulatory system and they do not cover all management processes in a comprehensive manner.

In this connection, we note the importance of:

- **The cost of public administration.**
- **The magnitude of risks it is exposed to and that have not been removed.**
- **Poor procurement governance.**
- **Penalties and operating income could be rapidly converted into cash.**

TDC has therefore decided to scrutinize public governance in order to discover breaches, conflict of interest areas, violations and those responsible for them. It has also sought to suggest an effective management system and an efficient internal control framework, along with procedures and legislation that ensures accountability and prevent from avoiding responsibilities.

In this context, TDC received an important number of files, mainly related to violation of the public interest and misuse of official position. These files were either received within the arbitration and reconciliation mechanism, or transmitted by the National Anti-Corruption Commission.

4.5. Privatization of public institutions, companies' bailout system, and tax and financial privileges:

TDC has received a number of files related to abuse of public funds during privatization processes of public institutions, including:

- Banks.
- Car dealerships.
- Industrial companies.
- Hypermarkets.
- Hotels.

Through the analysis of the list of institutions and shares that have been sold by the State, TDC noted that the majority of existing corporate groups are initially formed around a public institution, which have been divested by the State in exchange for public bank loans.

The Commission also noted **serious impacts related to the repayment of the debts held by these institutions** (debts are transferred to "Al Bounian Company", which is a "non-productive public institution") and a **failure to maintain jobs** (layoffs for economic reasons), despite the **importance of their profitability and their assigned property portfolio**. TDC also noted an **unjustified decline in the sale price**, caused by corruption in the administration and political interference in some cases.

In 1995, the Tunisian legislative system has established a bailout system for companies facing economic difficulties. This system aimed to help them:

- Continue their operations;
- Maintain existing jobs.
- Settle their debt

Since its entry into force, the system has provided at least 2,500 companies with bailout and follow-up mechanisms. Based on the files that the Commission has received within the research and investigation framework, or transmitted by the National Anti-Corruption

Commission, TDC noted a dissatisfaction among the owners of companies that benefited from the bailout mechanism.

After investigation, it turned out that the bailout mechanism has not met its goals, neither for continuing operation, nor for maintaining their jobs or settling their debts. Besides, the bailout system has been a hotbed for abuse of power by the regime organs, for appropriation of institutions at the cheapest prices without complying to the statement of work, and for benefiting from loan write-offs.

4.6. Smuggling through Customs' gates:

Customs is considered as one of the main gateways for corruption in many countries. A World Bank [report](#) on “*Political Connections and Tariff Evasion*”, published in 2015, stated that companies having close ties with Ben Ali's regime have been able to evade paying customs duties for **\$1.2 billion dollars** from 2002 to 2009, thanks to **manipulations in the fee schedule of imported goods**. Also, companies with political ties have been allowed to evade taxes for **\$217 million**, only for the year 2009.

The same report³⁹⁴ stated that one third of the **662 companies** owned by **Ben Ali's family** operates in **import and export**. In addition to the losses incurred by public finance, the evasion from import duties has led to undermining competition, absence of equal opportunities and promoting parallel economy.

394 https://openknowledge.worldbank.org/bitstream/handle/10986/30960/wber_31_2_459.pdf?sequence=1

Chapter Two

Correlation between financial corruption and human rights violations

The phenomenon of administrative and financial corruption is a deadly scourge on societies. It is an old and rooted phenomenon that was present at all times and in all societies. Its emergence and continuity is linked to human desire for material or moral gain through illegal means, which is most evident in dictatorships, especially in their public institutions.

Based on the results of the various TDC works, we have noted that **all economic, political, or human rights violations have resulted in financial crimes through the quest of people close to authoritarian regimes for material privileges and benefits**, or have been caused by the proliferation of financial corruption due to unfair wealth distribution and increased tax pressure. Financial crimes are therefore at the heart of the violations that are covered by transitional justice, as it represents its predominant cause, and a means of rewarding its perpetrators.

On this basis, studying the phenomenon of financial corruption, identifying its causes, how it develops and its legal and financial complexities, and providing legislative and procedural proposals would have a positive impact on reducing other abuses and human rights violations.

I. **Violations attributed to former President Zine El Abidine Ben Ali, his family members, his wife's family members and his entourage:**

Following the outbreak of the revolution of freedom and dignity, from December 17, 2010 to January 14, 2011, its subsequent political repercussions and its resulting fragmentation at the top of the governing system, TDC has initiated, since 2014, conducting inspections and field visits, seizing presidential archive, and hearing several top executive power officials like advisers, ministers, senior state officials, businessmen and people close to the governing system.

As part of the prerogatives granted to TDC by law, the Commission has taken the initiative of collecting evidence including records, reports, testimonies, complaints, and presidential archive, which have proven that violations related to **financial corruption, embezzlement of public funds, money laundering and participating in it, have been committed by the following alleged perpetrators.**

TDC has interpreted the alleged perpetrators of violations including **financial corruption, embezzlement of public funds, money laundering and participating in it**, in accordance with international conventions and treaties that have been ratified by the Republic of Tunisia,

particularly with the **United Nations Convention against Corruption** that was adopted by the General Assembly on 31/10/2003 and approved by Law No. 16 of 2008 dated 25/02/2008, the **Criminal Code** in Chapters 82, 95 96, 97, 98, 99 and 100, and **Law No. 75 of 2003** dated 10/12/2003 concerning the support of international effort to combat terrorism and prevent money-laundering as well as participating in it according to **Chapter 32 of Criminal Code**.

The committed violations are limited to the following areas:

- Financial corruption and embezzlement of public funds in real estate
- Exploitation of the Real Estate Housing Agency (AFH) for personal benefit
- Exploitation of the Société de Promotion du Lac de Tunis (SPLT)
- Divestment of state domains
- Establishment of real estate companies specialized in purchasing properties for the former president relatives and in-laws
- Placing the Ministry of State Property and Land Affairs at the service of Ben Ali and his entourage
- Financial corruption and embezzlement of public funds in the field of privatization of public institutions
- Financial corruption and embezzlement of public funds in the field of customs
- Financial corruption and embezzlement of public funds in the field of tax evasion
- Financial corruption and embezzlement of public funds in the field of tax incentives
- Financial corruption and embezzlement of public funds in the field of public procurement

II. Procedures taken by the Commission against alleged perpetrators:

Although the alleged perpetrators were summoned to appear at TDC's Investigation Unit as required by the Procedure Manual (the summons is attached to the Procedure File), they opted to not to attend without providing any plausible reason.

Judicial proceedings:

Consequently, the Commission had issued to the specialized chambers an **indictment** accusing the alleged perpetrators of financial corruption and abuse of public funds offenses, on **December 30, 2018**.

III. Contribution of corruption in expanding regional disparities

Corruption is the main cause of economic underdevelopment in societies, because it stands as an obstacle to a sane and proper development in these societies. Regardless of the state's economic policy and its development model, the regional disparities in Tunisia have been

exacerbated by social exclusion and the consolidation of rent-seeking situations. It is undeniable that these practices have a negative impact on social justice, access to economic opportunities, and redistribution of wealth.

We note regional disparities through various indicators: poverty, welfare, unemployment, access to basic services and infrastructure, and transport connectivity. For instance:

Poverty Index: the poverty rate in the Midwest is four times higher than in Greater Tunis (32% vs. 9%)

Prosperity gap: the differential in average household consumption between Greater Tunis and the Midwest region has reached 56%.

Disparities in the Human Development Index and access to basic public services index (health, education, water and sanitation):

Health services are centered around major cities:

People in interior regions are discriminated regarding the **number of doctors per capita** and the **number of hospital beds available**.

Maternal mortality rates are three times higher in the interior regions (**70** deaths per 100 000 live births vs. **20** deaths per 100 000 live births) because rural women receive fewer prenatal services or treatments for high-risk pregnancies.

Education:

The Midwest region is characterized by a high illiteracy rate, as it is three times higher than in Greater Tunis (32% vs. 12%).

Repetition and dropout rates are higher in the interior regions because of the high number of pupils living more than 3 kilometers from the nearest primary school.

Students in the interior regions are discriminated regarding the access to university education, due to shortages in university institutions, pedagogical equipment availability, and the quality of education staff.

Employment:

The concentration of the country's economic activity in the coastal areas has resulted in a lack of employment opportunities in the interior regions. According to the World Bank report, "92% of all industrial facilities in Tunisia are concentrated in an hour's drive from the three major Tunisian cities: Tunis, Sfax and Sousse. These three coastal cities are the center of economic activity, accounts for 85% of the country's GDP."

The majority of private companies in the interior regions are micro-enterprises (94% of companies in the Midwest are one-person companies), therefore very limited in terms of job creation.

These factors are among the underlying causes of the revolution outbreak and a root cause of the social strain. It has been expressed through the anger of marginalized populations against the lethargy shown by the government regarding the deterioration of their social status, which has directly affected their purchasing power and their living conditions.

The increase in the number of social movements that Tunisia has recently experienced is yet a vivid reminder to Tunisian society that the marginalization affecting most of the regions in the country has never been remedied after the revolution.

Especially when a report of the **World Bank** noted that "**regional disparities have, paradoxically, been exacerbated by the economic policies. Industrial policy and particularly the Investment Incentive Code, the labor market regulations and the agricultural policy have contributed to accentuate regional imbalances rather than reducing them.**"

IV. A total absence of control over state revenues

TDC has recorded a total absence of control over the efficient use of public, important as they are. Indeed, most of the public finance control bodies and all its ramifications are only focused on expenses and payments.

According to the Organic Budget Law, public finance resources are divided into three sections:

- **Tax revenues:** direct taxes (on individual or corporate income for example) and indirect taxes (on consumption and value added for example)
- **Non-tax revenues:** from mining revenues (oil and gas), gas pipeline transit tax, and revenues from shares or public institutions
- **Revenues from internal and external debt:** through the examination of the relative development of these revenues (Appendix 1) we observed:
 - o **A significant increase in the value of the tax revenues**, as they reached **50%** in 1996 and a record rate of **76%** in 2010 (despite the proliferation of corruption and the weak state capacity to develop its own resources)
 - o **A significant decrease in non-tax revenues**, falling from **25%** to **10%** during the first decade of the 21st century.
 - o **Low revenues coming from natural resources exploitation** during the period 2000-2010, which remains below **100 million dinars** annually, despite the exceptional increase in fuel prices in international markets.

By examining the files and reports submitted to TDC or available to the public, the Commission has been able to classify some aspects of financial corruption in the following axes:

- Misuse of national resources
- Weak profitability of shares and of public institutions
- Expenses and interventions that have been made extra budget and out of control

I. Gold mines

Through the examination of the documents provided by the presidential archive, TDC found a **correspondence**³⁹⁵ addressed to the President of the Republic, in March 1989, mentioning

³⁹⁵ See appendices

the existence of gold mines in certain areas in the North-West of Tunisia. Despite the material importance of the discovery, the Commission did not find any trace showing that public finances have benefited from any income related to this field.

It is worth mentioning that the Tunisian State granted the company “**Albidon Tunisia Limited**” a research license for mineral substances of the third group, covering an area of **4164 km²**, pursuant to a decision of the **Minister of Industry and Energy**, dated October, 25, 2004.

The parent company of “Albidon Tunisia Limited” has submitted its application in 2003, and confirmed that it has obtained the license through its official website, as it has reported the importance of the quantities of gold discovered in the area of **Kef Regueb in Nefza** in the northwest of Tunisia.

It is noteworthy that the company **Albidon Tunisia Ltd.** has not been officially founded, as it is advertised in the Official Gazette, until March 2006 with a capital of **10,000 dinars**. In view of the uncertainty and discrepancy related to this operation, regarding its low initial capital compared to similar projects and **obtaining a license** prior to legal formation, TDC has done further investigations on the parent company. The Commission discovered that it is an Australian company registered in the **British Virgin Islands**, a tax haven, its shares are traded on the **Canada Stock Exchange**, and the company is owned by an investment fund registered in the **Comoros**, which most important shareholders were **European governments**.

Although this company has signed contracts with the most important metals manufacturers in the world, and despite the extension of the research license, **the Commission did not find any trace of revenues related to this field in the public budget.**

2. Deterioration of oil revenues:

Through the examination of public budget revenues from 1986 to 2013, the Commission observed a **deterioration in revenues coming from oil resources exploitation**. In 2000, oil revenues did not exceed **32.2 million dinars**, while they were up to **169.1 million dinars** in 1999, a **decrease of 425%**. This decline has continued over the whole subsequent decade.

Between 1986 and 1999, the oil revenues recorded in the state budget amounted to an average of **275 million dinars**, exceeding 400 million dinars in some years, while this average for the period between 2000 and 2010 has reached only **97 million dinars**.

The decline in revenues recorded between the first and the second period is **a result of a decrease in the quantities produced by the Tunisian state**, as the world prices witnessed an increase of **170%** between these two periods.

This shortage in quantities is mainly caused by the requirements of the Hydrocarbon Code, that was issued in August 1999, allowing companies that were previously governed by the Supreme Order of 1948 and the decree of 1985 to fit under it. Thus, **9 of the companies holding hydrocarbon concessions** (out of 12), which were founded before the publication of the Hydrocarbon Code, have chosen to be governed by the latter.

It should be noted, that all decisions regarding their activity became under the control of the Tunisian Company of Petroleum Activities (ETAP) and the Ministry of Energy (with all its specialized structures), with no control from the Parliament.

V. Direct link between corruption and resorting to debt

Corruption is a cancer gnawing modern economies and a cause of the collapse of ancient civilizations. International and national bodies and agencies have been revealing its deep connection with human civilization and the onerousness of its consequences on individuals and societies. Tunisia is no exception in this regard, with a long history of a violations that were a prime cause of loss of national sovereignty and the establishment of the French occupation, in the late 19th century, following the proliferation of corruption at the highest level of hierarchy during the reign of Sadok Bey and Mustapha Khaznadar.

Corruption in its different forms (tax fraud, tax evasion, bribery, smuggling...) represents staggering amounts that remain outside the Public Treasury, a tremendous loss that contributes to widening the state budget deficit, which is the major cause for resorting to debt.

Over the years, successive governments have developed a form of addiction to indebtedness to address the structural deterioration of the budget deficit, placing therefore Tunisia under the thumb of international institutions and donors.

This phenomenon has started with the economic crisis of 1986 and the Structural Adjustment Plan (SAP), and has been subsequently accentuated under the Ben Ali regime. Following the fall of the dictatorship, this trend was not reversed, quite the contrary.

Immediately after the revolution, although the **major portion of the Tunisian public debt was considered illegitimate due to predation by the Ben Ali clan**, no debt moratorium and no debt auditing were undertaken by the authorities. This, despite the fact that **two bills on debt auditing have been introduced in parliament**, the first in July 2012 in the Constituent Assembly (ANC), and the second in July 2016 in the Assembly of Representatives (ARP). **The first bill was simply withdrawn** in February 2013, while **the second has been overlooked by the ARP Finance Committee**. This clearly shows the barriers that stand in the way of this initiative, even though it is beneficial for public finances.

Far from learning from the mistakes of the past, and instead of initiating necessary reforms to increase the state's own resources by targeting the money that doesn't reach the Public Treasury, policymakers have increasingly shifted towards the easy way: resorting systematically to debt. These policy choices resulted in a sharp rise of Tunisia's public debt. **External debt alone has tripled within six years, rising from 5,6 billion euros to 15,7 billion euros between 2011 and 2017.**

While growth remained slow, never exceeding an average of 1.5%, the **level of indebtedness has meanwhile increased from 44% to 70% of GDP** between 2011 and 2017, resulting in a brutal disruption of the country's main macro-economic balances.

If resorting to debt was intended to improve public service, develop infrastructure, tackle unemployment or proceed to an upgrade of the industry, Tunisia might have expected to benefit from it in the medium run. However, the current loans are essentially intended to cover the budget deficit and finance the operating costs of the state.

This excessive use of resorting to debt has resulted in a gradual deterioration of public finances, which have been affected by an inevitable increase in debt servicing.

Tunisia has reached a situation where the **resources monopolized by debt servicing have exceeded those allocated to investment** in the 2018 finance law. Furthermore, a publication from the Tunisian Central Bank (BCT) has revealed that **88% of the budget deficit have been funded through external resources** over the first 10 months of 2017. This indicates a flaw in economic governance, the Tunisian economy is almost maintained under perfusion.

Thus, Tunisia is caught in the trap of debt spiral while **engaged in forced reforms that are not adapted neither to its economic context nor to its strategic needs.**

VI. A deterioration in the corruption index and its effects on the country's image:

The proliferation of corruption and informal economy over the recent period had a devastating impact on economic growth, as well as on the perception of our business climate by of international bodies.

Thus, Tunisia's ranking **dropped from 40 to 76** between 2014 and 2016 in the Transparency International's **Corruption Perceptions Index**.

In addition, Tunisia has recorded **one of the highest score deterioration concerning money laundering risk** in the **Basel AML index report 2017** of the Basel Institute on Governance. Tunisia's score **rised from 4,62 to 6,37** between 2016 and 2017, causing a drop by 70 ranks in the overall ranking.

This index incorporates in its methodology an assessment of the effectiveness of the Anti-Money Laundering/ Terrorism Financing (ML/TF) system by the Financial Action Task Force (FATF). The results of this assessment have been published a year earlier, in May 2016, and for Tunisia they were unequivocal: **"There is still numerous deficiencies in terms of technical compliance, and the effectiveness of the AML/TF system remains low or moderate."**

These deficiencies were also mentioned in details in the report of the **Tunisian Commission for Financial Analysis (CTAF)**, published in April 2017. CTAF considers that the country is presents a **"relatively high" risk** of corruption, tax and customs evasion and cybercrime which have been identified as major threats linked to the Tunisian financial sector.

CRAF, this financial intelligence unit reporting to the Central Bank, has alerted the Tunisian authorities by producing an in-depth diagnosing on key deficiencies in the AML/TF mechanism.

Among the great number of deficiencies that have been identified, CTAF mentioned:

- **Smuggling of precious metals to supply Asian markets**

- **Anomalies related to real estate investments**
- **Exploitation of the Tunis Stock Exchange to incorporate funds from corruption**
- **Termination of life insurance contracts in order to reinvest their assets**
- **Involvement of lawyers and accountants in legal and financial arrangements for transactions related to tax havens**

To date, **none of the CTAF's recommendations has been adopted to improve the AML/TF system.** And on December 13, 2017, Tunisia was blacklisted by the European Union for among countries vulnerable to **money laundering and terrorist financing**, bringing its share of repercussions on the Tunisian economy.

VII. Weak state interaction with corruption:

Despite its adverse effects on the national economy, policymakers did not fight corruption in accordance with its magnitude. And the various campaigns conducted by successive governments never seemed to be able to contain its spread.

Dealing with financial crimes is a prime example: tax fraud, tax evasion, embezzlement of public funds, or conflicts of interest have become common practices that undermine economic activity and generate huge losses for public finances.

Recent years have been characterized by media coverage given to a large number of corruption cases, whether at an international level with **financial scandals involving Tunisian citizens** (*Swiss Leaks, Panama Papers*, etc.), or at a national level with corruption cases involving politicians, businessmen, senior officials, ministers, deputies and security officials, etc. Although many incriminating evidence have been made public, no large-scale operation have been carried out to dismantle corruption networks and protect public finances.

The outcome of the arrests remained very weak, particularly concerning those that led conviction. The continued absence of deterrent penalties against perpetrators has created a climate of impunity that has affected the State in many aspects.

Worse still, in September 2017, parliament has adopted the Administrative Reconciliation Act, allowing the legislator to whitewash the perpetrators of corruption in the eyes of justice, without any accountability.

VIII. Loss of the citizens' trust in state institutions:

In the eyes of Tunisian citizens, the state has only fostered a sense of impunity and made them question the effectiveness of the campaigns that have been conducted by various post-revolutionary governments. This has been confirmed by a study published by Carnegie Endowment for International Peace. The survey on "Corruption Perceptions", conducted between July and August 2017, has revealed several striking facts:

- **More than a quarter of the interviewed admitted that they face corruption on a daily basis.**
- **The majority of the interviewed believe that tackling impunity should be a priority for the government in its fight against corruption, followed by anti-smuggling efforts.**
- **The overwhelming majority of the interviewed believe that the government has not been effective in any way in its fight against corruption.**

IX. Deterioration of business climate:

The deteriorating business climate has a definite impact on the perception of potential investors.

If foreign companies have long been discouraged by lengthy administrative procedures, political instability, social tensions and unfair competition, they are actually adding the proliferation of corruption and the money laundering to the list of disabilities. Tunisia is therefore losing more ground in terms of attractiveness.

This situation reached its peak with the recent downgrades of the sovereign, the country found itself slipping dangerously towards the rank of high risk countries in terms of investment.

Aside from the fact that it has led to a further increase in the **risk premium linked to its debt and more unfavorable repayment terms**, the Tunisian state will face more difficulties in **convincing donors and attracting investors**.

X. The Banque Franco-Tunisienne (BFT) case: an ongoing corruption case from 1982 to date

On December 31, 2018, the Truth and Dignity Commission has transmitted to the court specialized in Transitional Justice of the Tunis an indictment, involving the reference 69, related to the violations committed by senior executives in the BFT case.

The Banque Franco-Tunisienne (BFT) case is a textbook case of a pervasive corruption³⁹⁶ in public institutions coupled with prosecution, encompassing the following infringements:

- **Abuse of power** by government officials in the exercise of their official functions
- **Collusion** between the political power, the local authorities and the private sector in committing a crime of embezzlement
- **Instrumentalization of the judiciary** against Mr. Abdelmajid Bouden and ABCI
- **Breach of trust** in the management of public funds
- **The risks** that threatens the Central Bank of Tunisia in terms of State solvency and stability of the national financial system

³⁹⁶ For further details consult evidence in the following link: <http://www.ivd.tn/rep02/?lang=fr>

The BFT case concerns a 36-year litigation between the Tunisian State and the Arab Business Consortium International ABCI, under the guise of "defense of supreme interests of the State." Its repercussions on the Tunisian taxpayer are estimated at more than **1 billion dinars** in direct damage, while indirect damage to the Tunisian state is likely to reach a multiple of that amount.

While the bank was in a good financial health before the litigation arises, BFT is nowadays facing a heavy deficit, partly due to a major failure in governance. It's a situation that has its origins in to significant deficiencies in governance, but it was mainly the result of a dilapidation of the bank's wealth by **granting loans without collateral to Ben Ali regime's relatives.**

During his hearing in the parliament in May 2017 (minute 3:38 to minute 7:22)³⁹⁷, the Governor of the Central Bank, Mr. Chadli Ayari, stated that "The BFT case is presenting a major problem. It is a **bank that loses 100,000 dinars each day.**"

For its part, the Tunis Court of Cassation has issued a decision (No. 113) confirming that the proceduction had "resulted from the instrumentalization of public prosecution for the implementation of the purposes of political corruption that threatens the economic security of the country ..."

On July 17, 2017, the ICSID international arbitral tribunal has rendered its judgment against the Tunisian state and acknowledged its full responsibility in the BFT case. The financial consequences of this 36-year litigation will have serious repercussions on Tunisia's public finances and will increase the public debt burden. It must be recalled that ABCI had requested a 1 billion dinars compensation in 2010.

However, the Tunisian government has opted for a headlong policy and pursued its litigation strategy, despite ABCI's will for an amicable settlement and despite the heavy costs of the British law firm's fees that incurred by Tunisia. This policy is actually aiming to cover-up the involvement of senior officials and those close to power.

It should be noted that the Banque Franco-Tunisienne has so far been able to escape from audit work, although it is a public bank.

It should be noted as well that the Tunisian State has signed a framework agreement³⁹⁸ with ABCI, on August 31, 2012, expressing the commitment of ABCI Group to reinvest in Tunisia the amounts received in the framework of the reparation decided by the international arbitral tribunal, and to not uphold its full right in reparation from the Tunisian state. In return, the Tunisian state commits to reinforce the official recognition of BFT as an ABCI ownership. However, the Tunisian state has quickly backtracked on from this agreement, losing a golden opportunity to get rid of a burden on these debts.

1. Bad Debts

In this case, a plan is designed for the approval of loans without collateral with the complicity of the bank administration. It only requires that the customer submits an

³⁹⁷ The reply of the CB governor:

³⁹⁸ See record agreement text in the appendix

ordinary loan application and fills the form with all the required data. After a while, a meeting is organized with the bank administration, under the guise of a loan rescheduling procedure, in order to proceed to the collateral dropping. In the end, the loan is simply classified.

Bad Debts in the BFT³⁹⁹:

On October 27, 2008, **Youssef Ltaief Enterprises** received a loan with collateral from the Banque Franco-Tunisienne amounting to **2 million dinars**. On December 10, 2008, **the security deposit has been dropped** by a handwritten note from Mr. **Mounir Klibi**. This amount has therefore disappeared from the state accounts.

It should be noted that both of **Youssef Ltaief** and **Chafik Jarraya** have received loans from the BFT worth about **200 million dinars**, as evidenced by the account statement issued until 2013 by the bank's Central Administration of Loans.

The Banque Franco-Tunisienne has granted several loans to several institutions that have been **listed as outstanding debt**, for a total value of approximately **700 million dinars**. Among the persons that benefited from these loans, **Imed Trabelsi, Lotfi Abdennadher, Chafik Jarraya, Tahar Ben Hassine...**

Violations:

- Breach of the provisions of the Central Bank Circular No. 24 of 1991 dated December 17, 1991 relating to risk allocation, risk coverage and follow-up on commitments.
- Breach of the provisions of the articles 24 and 34 of Law N° 90 of 2001 dated July 10, 2001 relating to loan institutions.
- Breach of the provisions of article 33 of Law No. 90 of 1958 dated September 19, 1958 relating to the Central Bank's creation and organization, as amended by Law No. 26 of 2006 dated May 15, 2006.
- Breach of the provisions of Circular No. 47 of 1987 dated December 23, 1987 relating to the methods of granting, controlling and refinancing loans.
- Breach of the provisions of the Central Bank Circular No. 04 of 1980 dated January 31, 1980 relating to banking risks centralization.

2. Lost credits:

This mechanism is based on lending the client and then waiting for the repayment deadline. At this stage, the bank will go to court to bring an action against the debtor, without providing the necessary evidence and documentation that proves a loan default. The court will therefore rule in favor of the debtor. After losing the case, the bank is forced to book the loan amount as a loss. It is an easy and effective mechanism that is out of surveillance and leaves no trace, as it represents a quasi continuous means of enrichment for beneficiaries, particularly when the control bodies are under the authority and control of the bank.

The Commission did not receive files related to such abuses, its considerations were therefore limited to describing the abuse and its modus operandi.

³⁹⁹See <http://www.ivd.tn/rep02/?lang=fr>

3. Loans with Privileged Terms

Banking privileges can be defined as all the privileges granted to a client upon obtaining a loan. These privileges are of various categories: loans without collateral, with insufficient collateral or with unevaluated collateral, and loans with low interest rates and lower than the market rate.

The “Enjoy Hotels Collection” case⁴⁰⁰:

According to the documents accompanying a file submitted by the **BH Bank** to the **National Commission of Investigation on the facts of Corruption and Bribery**, then transmitted to the Truth and Dignity Commission, there is evidence that **Enjoy Hotels Collections**, a company owned by **Imed Trabelsi**, has received two bank guarantees from the BH Bank: the first was dated 04/12/2010 and worth **2.124.000 dinars** and the second was dated 06/12/2010 and worth **1.062.000 dinars**.

It should be noted that the company was founded on 28/10/2010 with a **capital of 150.000 dinars**, which only a quarter have been released. That's two months before the company receives the bank guarantees, meaning that the it was not fully operational. Therefore, the company did not meet the bank's eligibility criteria that entitles to such guarantees. The bank also granted **loans without collateral** to Imed Trabelsi, **in the absence of a bank's Loans Committee decision**.

Alleged Perpetrators:

Mr. Brahim Hajji: CEO of BH Bank.

Dalila Bader Koubaa: BH Bank Central Director of Operations and Loans.

Habib El Amri: BH Bank Central Manager of Loans.

The “Sousse Real-estate Company” case⁴⁰¹:

After the revolution, the **BH Bank** has granted to the Sousse Real-estate Company, owned by **Naima Ben Ali**, the former president's sister, a 900.000 dinars' loan in February 2011, despite of the legal proceedings against her.

With reference to the company's account statement, it was found that the company was indebted, and that the transaction date was on February 24, 2011, while the value date was on May 31, 2010. The loan has been transferred to the company's current account, despite the appointment of an Administrative Receiver commissioned to control and manage this account, under judicial authorization of the **Tunis Court of First Instance** on February 3, 2011. Moreover, the loan has been granted without the approval of the bank's Loan Committee.

It should be noted that after reviewing **Naima Ben Ali's** account statements, which have been included in the file transferred to TDC, it was found that she **benefited from a number of bank facilities that had never been repayed within legal deadline**, from 2009 to 2010, worth **367.800 dinars**. These bank facilities have not been recorded in her account until February 19, 2011,

400See appendix

401 See appendix

right after the appointment of the Administrative Receiver that was commissioned to control and manage the debtor's account.

The Commission did not receive files related to this abuse, it has already mentioned this kind of abuse in previously covered files.

4. Fictive Loans

The operation consists of a borrower going to a bank and applying for either a consumer loan or an investment loan. In agreement with the bank's administration, a contract is concluded for a fictional loan, as the bank abstains from releasing the loan value into the borrower's account. The purpose is to allow the borrower to use the contract when confronting the tax administration and escape fiscal obligations, or use the contract as a cover to conceal money laundering regarding illegal and undeclared funds.

This kind of loans is usually not recorded in the bank's accounting system and circumvent the loan committee. As well, the Central Bank is not informed of this operations, making these loans fictive and with no trace.

The Commission did not receive files related to such abuses, its considerations were therefore limited to conceptualizing the abuse and its modus operandi.

XI. Corruption within Customs

Customs have always been among the main gateways for corruption in many countries.

In the 2015 [World Bank report](#) "Political Connections and Tariff Evasion" it has been mentioned that all the companies having close ties with **Ben Ali's** regime have been able to evade paying Customs duties worth **1.2 billion dollars** at least, over the period between 2002 to 2009, thanks to **manipulations in the fee schedule of imported good**. Politically affiliated companies have as well been allowed to evade paying **217 million dollars in taxes in 2009**.

The report mentions that about one third of the companies owned by Ben Ali's family, totaling 662 companies, were operating in the import/export field.

Along with the losses incurred by public finance, the customs duty evasion on imported goods led to undermining competition, absence of equal chances and promoting parallel economy.

The Truth and Dignity Commission has organized a **public hearing session**⁴⁰² on financial corruption and abuse of public funds on **the 17th of May, 2017**. During this hearing session, **Imed Trabelsi** (Leila Ben Ali's nephew) has presented a testimony on financial corruption techniques under Ben Ali's regime, including "changing land-use", "customs fraud", "parallel trade of alcohol products", "private deals (marchés de gré-à-gré)", "public procurement" and "public servants' marketplace".

402 https://www.youtube.com/watch?v=8zvUK3HWHNc&ab_channel=WataniaReplay

1. Control of import operations

Import of goods in Tunisia is subject to a declaration system, whereby the importer has the obligation to complete a detailed Customs declaration on the concerned goods, directly through the Customs web platform **SINDA**.

After completing the declaration with the necessary data on the SINDA platform, the importer is provided with a number and a date, through a link on Tunisia Trade Net (TTN), that could be printed on a ready to use template.

The importer submits the Customs office the customs declaration accompanied with all the documents related to the imported goods.

In the pre-acceptance stage (recevabilité), the Customs authorities checks the supporting documents and the compliance with the submission legal time limits, then proceed to the registration on the SINDA platform.

The SINDA platform performs then an initial distribution through a selectivity system, sending the declaration to one of the following corridors:

- **The green corridor:** immediate release of goods without effective inspection
- **The orange corridor:** release of goods after proceeding to a documents control, without effective inspection
- **The red corridor:** the release of goods requires a mandatory inspection

Regardless of the corridor's color, the SINDA platform assigns an inspector in charge of the declaration, that can be immediately contacted. The importer can follow all of the stages that the declaration goes through and contact the inspector via the platform.

2. Customs control during the release of goods and the privileges granted to export-only companies

Release of goods from Customs is subject to control through scanners available in in all border crossings, ports and airports.

Goods are examined based on the Customs declaration, which makes it easier for the Customs officer to discern any fraud in case of a mismatch between the declared data and the scanning results.

Unlike ordinary companies, export-only companies benefits from preferential treatments such as:

- Ability to complete all Customs procedures concerning imports/exports declarations at the Admission Office, being the closest Customs office to the production unit where the released goods will be transferred to.
- All declarations are directed to the green corridor, meaning an immediate release of imported goods without effective inspection.

Companies having the "Authorized Economic Operator" status (a status granted by the administration, based on compliance with conditions and as part of its discretionary prerogative) are also benefiting from the above mentioned privileges.

3. Flaws in imported goods clearing procedures leading to breach in Customs

These procedures are complicated and non-harmonized, as similar cases are treated differently from one office to another, even from one inspector to another in the same office.

The absence of a clear and transparent procedures manual can not prevent a customs officer from any abuse of power to extort economic players, through creating formalities that don't exist in law, making them believe that he will overcome difficulties, or intervening with key officials, in the purpose of getting bribes.

The completion of Customs procedures by unauthorized people: like many other sectors, the freight forwarders sector suffers from intruders and brokers that make their clients believe that they have a legal authorization to operate. In most cases, they don't comply with a proper application of procedures as they only care about getting commission in return of the client's satisfaction, by whatever means possible.

4. Fraud and smuggling routes

Despite the multiplicity of Customs control mechanisms, smuggling system rely on data falsification and the diversity of smuggling routes, including:

The first method: the container ("quadra") is able to leave the port without undergoing any control process, a technique called "Tantir". The container is smuggled by night, right after paying bribes between **50.000 and 70.000 dinars** to the customs team that gave permission to the theft.

The second method: a container submitted to the red corridor leaves the port through the green corridor who concerns companies benefiting from Customs exemptions (like companies affiliated to the law 72), by undergoing a simple documents control, right after paying bribes varying from **5.000 to 30.000 dinars**, depending on the goods' type and whether they are authorized for sale (like cigarettes and Hookah flavors). In case of importing prohibited goods, the real scanner image of the container is replaced by an old image coming from a file meeting the control criteria, declaring therefore a chicha flavors container as a textile container for example.

It is also possible to replace the licence plate from a truck that have already completed the control procedures to a truck with goods that havn't been controlled.

5. Corruption networks continue after the revolution

Given that actors of corruption networks are dealing with parallel market traders, they started to handle the import of all goods on behalf of these traders in return for commission.

Since 15/01/2011, the Customs administration started to freeze the Customs codes belonging to companies and members of Ben Ali and Trabelsi families, making it therefore impossible to release containers on their behalf that are parked in the Tunisian ports, as well as those arrived later. It was also impossible to release the goods stored in warehouses ("magasins cales") since the trade documents (invoice, list of packages and waybill) mentions the importer's name.

Pursuant to **Order No. 158/2011 of 27 January 2011**, a new Director General of Customs has been appointed. After taking office, he has issued an administrative memo allowing the release of containers imported on behalf of **Ben Ali and Trabelsi families'** companies for the benefit of their "owners", conditionally upon providing the Customs administration with a document proving they are the rightful owners of the loaded goods. They were allowed to release these goods right after paying the Customs fees (based on the items of charge for the declared goods, which does not match with their quality, value and origin) with a fine worth 10% of the goods value.

It would have been easy for parallel markets traders to get new papers with new names from the foreign suppliers, even to falsify documents testifying their ownership over the goods.

The behavior of the Director General of Customs was illegal: pursuant to article 397, paragraph 4 of the Customs Code, "false declarations about the nature or value or origin of goods or about the designation of the real receiver" are considered as undeclared import operations on prohibited goods (a first-degree felony that is punishable by imprisonment for a period of 16 days to 1 month, followed by confiscation of the smuggled goods and all the elements used to conceal the fraud, and a fine worth between once and twice the value of the smuggled goods according to Article 386 of the Customs Code.

Hence, the Customs authorities should have reported a seizure on the concerned goods and prosecuted the persons that claimed their ownership. The Customs administration should have prosecuted these persons for violation of currency regulations, since they have paid the goods in **Tunisia** with the Tunisian currency (dinar), in violation of the Foreign Exchange and International Trade Code and Ordinance No. 608/1977 dated **27 July 1977**.

After recording the case report, the containers regularization requires the submission of a reconciliation request by the offender. If the value of the confiscated goods is less than 50.000 dinars, the file is examined by the regional administrations, and if the goods have a higher value the file is examined by the Litigation and Prosecution Branch.

The amicable settlement terms, especially the required fine, are based on specific criteria listed in a previous administrative memo that takes into consideration the Customs and the foreign exchange aspect of the litigation.

The release order for the containers has been issued without the completion of the technical inspection procedure upon receipt of the goods, without checking their safety and their impact on health and environment.

The investigations undergone by the Truth and Dignity Commission allowed to identify approximately 800 containers that have been released from the Customs, for a total value of more than 100 million dinars, according to the memo issued by **Taher Ben Htira**. On this basis, TDC has transferred this file to the Special Criminal Division of the Tunis Court of First Instance.

6. The parallel market supply in foreign currency

As a consequence of smuggling, organized networks were formed in Tunis Capital (El kherba/Bou Mendil) and in the coastline (Sousse and Monastir), involving Tunisians, Algerians and Libyans with counterparts in Dubai and Turkey.

These networks are specialized in smuggling foreign currency out of Tunisia, after it have been collected from the Tunisian market. Tunisian, Libyan and Algerian citizens living abroad are its financing source when they legally exchange their imported foreign currency. This operation usually complies with legal procedures, as travelers arriving at points of entry are required to declare the amounts of foreign currency in their possession before being provided with a certificate.

Foreign and Tunisian currencies are collected in the parallel market, especially in “El Kherba” in the Capital, in plain sight and with the knowledge of the security authorities and the Central Bank. The money is then transferred to foreign suppliers (in violation of legal procedures). Their clients are Tunisian importers that operates in all types of goods, and destination countries are **China, Turkey, India and Egypt**.

Modus operandi:

The Tunisian importer travels to the destination country and prepares an order for the goods they intend to import, after agreeing with the supplier on the details (quantity, price, etc.).

The supplier proceeds with the shipment of the goods only after having been paid in foreign currency.

The supplier prepares an invoice with an undervaluated amount (compared to the actual value of purchased goods), which will be delivered to the Customs authorities once the goods arrived, along with the Customs declaration, in order to pay the due fees and duties and complete the goods clearance procedure.

Payment method:

After receiving the amount in Tunisian currency from the client, a Tunisian broker handles the full payment of delivered goods to the foreign supplier, in return for a commission based on the exchange rate.

The foreign supplier receives the amount in foreign currency, through banks in **Dubai and Turkey**.

Customs procedures:

The goods clearance is based on an undervalued invoice and a payment of Customs fees and duties that does not correspond to the actual value of imported goods, which deprives the State Treasury from considerable amounts.

Bank procedures:

After goods clearance, the banking transactions takes one of two forms:

- **The first:** in case of full payment through the broker, the Tunisian importer does not transfer any amount to the foreign supplier
- **The second:** in case of a down-payment to the foreign supplier through the broker, the difference between the goods’ actual value and their declared value have to be paid, and the Bank transfers therefore the amount mentioned in the invoice that has been presented to the Customs authorities, in accordance with regulations.

7. Most important cases revealed by the Customs authorities

A network specialized in the payment of illegal import operations, operating in the Sahel region: the value of smuggled currency is 5.880.000 USD, the equivalent of 11.262.000 TND.

A network specialized in the payment of illegal import operations, operating in the Capital: the value of smuggled currency is 10.000.000 TND, during an import transaction of various kinds of goods with a value of 25.000.000TND. The false declaration that was based on a falsified invoice allowed them to evade paying Customs fees and duties totaling 7.000.000 TND.

The case has been lodged with the 9th Bureau of investigation in the Judicial, economic and financial Pole under the number 41041.

The judge has proceeded by hearing all the involved offenders and completing the investigative work to dismantle the currency smuggling network, however, she has been moved from the Pole, and was never been replaced by another judge so far, knowing that the Judicial, economic and financial Pole judges are appointed by a Government Order at the proposal of the Supreme Council of Magistracy.

The Customs administration, along with the control reports that have been issued by the different administrative or judiciary control bodies, have recorded these transgressions and suggested a set of solutions and recommendations of a preventive and remedial nature. However, after the revolution, several successive governments have come to power without undertaking effective measures to eradicate the corruption that impedes the country's growth.

Time has come to go beyond fighting corruption slogans and to truly addressing this scourge.

Conclusion

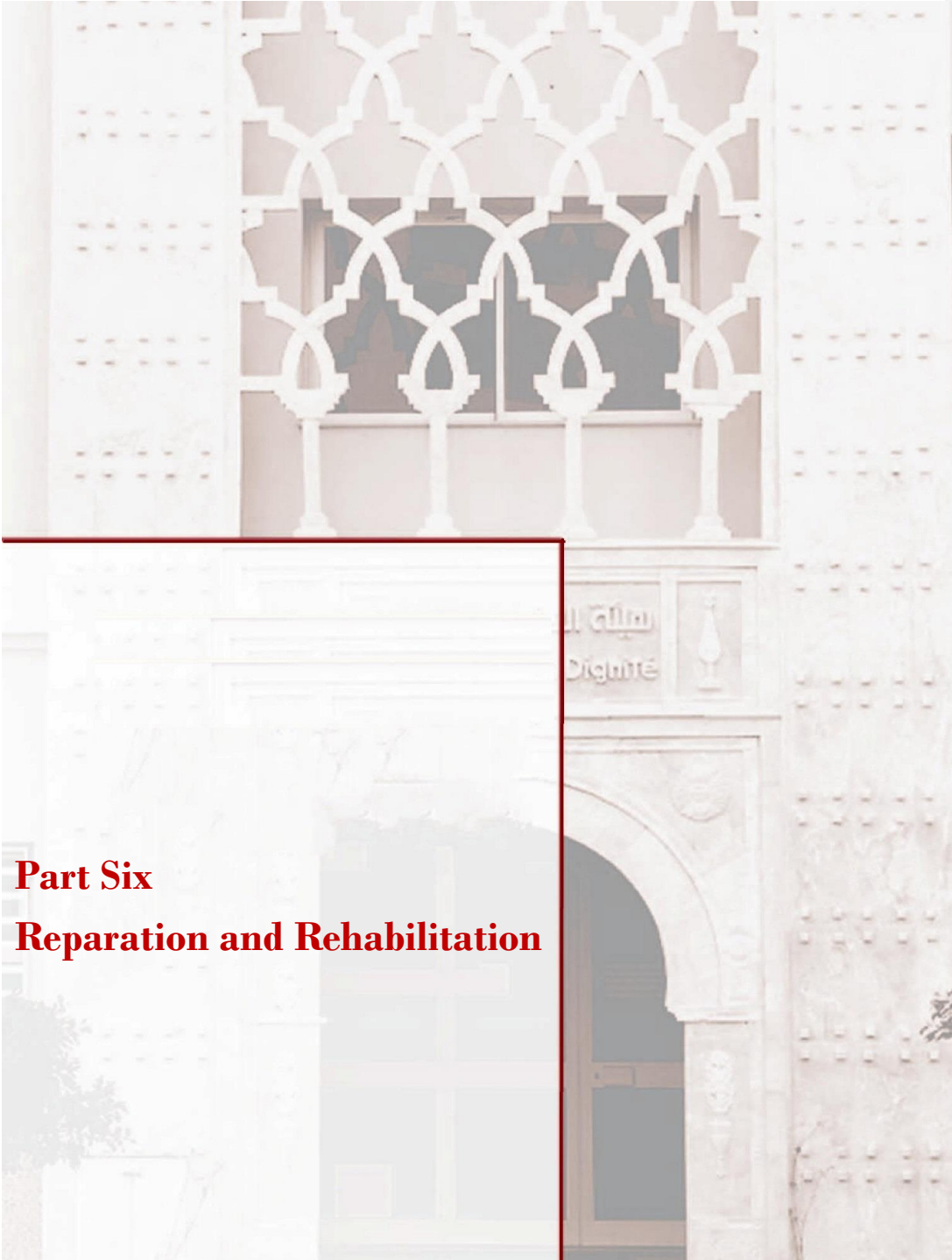
Since the revolution, corruption took a lot of forms; the “**big corruption**” under the dictatorship, with the capture of large sectors of the economy by persons close to the regime, has since the fall of Ben Ali's regime paved the way for “**petty corruption**”, involving less important amounts but with an unprecedented dimension.

Despite the fact that Tunisia has a homogeneous administrative and legislative arsenal, its **mechanisms to fight corruption and money-laundering** (control, organization and execution bodies, specialized human resources assigned to these bodies, inspection practices and procedures, administrative penalties, analysis and treatment of crimes' statistics) **are still ineffective**.

Corruption is not only the main reason behind resorting to debt, it also has a deep impact on **the country's image**.

Besides **renewing the citizens' trust in their institutions** and **cleaning the business climate**, a real and effective fight against corruption could have been an **alternative source to increase tax revenues**, or even a tool for **economic revival**.

Therefore, amid this economic crisis, the state finds itself deprived of resources much needed to secure its supplies and fulfill its commitment towards its donors.



Part Six
Reparation and Rehabilitation

The Commission's Reparation Philosophy_____

I. Introduction:

In terms of reparation and rehabilitation, the Commission's work has focused primarily on preserving the dignity of grave and systematic violation victims, whether they are individuals, organizations or regions that have been systematically marginalized and excluded. Second, the Commission has focused its efforts on the role of reparation in achieving reconciliation and guaranteeing non-recurrence of violations.

The right to dignity is a basic right intrinsically linked to the essence of humankind. It is an absolute principle that cannot be violated or compromised, for a healthy social life without any discrimination. Generally, human dignity is achieved through a sense of citizenship based on our belonging to the national community, the enjoyment of rights and feeling protected by the State as individuals. This generates a willingness to perform our duties towards the community and get involved within it.

The Truth and Dignity Commission has managed to implement a Comprehensive Reparation Program designed to achieve human dignity through compensating the right-holders, giving them the opportunity to defend themselves and helping them to regain their place in society.

This program is conceptualized in way that contributes to reconciliation: on its individual level, with its therapeutic effects on the victim, as well as its social level, by turning the page of the past and contributing to achieve social peace, while not neglecting guarantees of non-recurrence. For a sustainable and effective social peace, TDC has attempted working on the elimination of grave violations root-causes and the implementation of safeguards in that concern.

In order to achieve this purpose, TDC has adopted a work methodology able to handle numerous individual and social requests. It constitutes a source of inspiration in the determination of reparation's criteria and recommendations.

The Commission has started mapping the national and international legislative texts and judicial decisions related to this field. Then it has proceeded with monitoring and assessing the measures that have been taken in favor of the victims prior to TDC's work, and reviewing the comparative experiences and their outcomes. It has finally started processing and studying the files that have been submitted to it, collecting the data required for reparation, and monitoring the impact of violations, the causes and the deficiencies of human rights preservation.

Simultaneously, the Commission has started conducting studies and collecting data that were considered able to foster the effectiveness and the acceptability of the Comprehensive Reparation Program. TDC has then started mapping the distribution and the quality of healthcare, social and legal services on national territory, either provided by State bodies or civil society.

TDC has also conducted a survey on the beneficiaries of Decree No.1 (related to the general legislative amnesty) to determine the effectiveness of the measures taken in their favor, to address the difficulties they encounter and to monitor their expectations.

The Commission has studied 5,744 files of victims that have requested an emergency response from the Immediate Care Unit, in order to monitor their needs and to assess their social and health (physical and mental) condition, as well as those of their families.

Additionally, The Commission has conducted a study on “certain cases” based on criteria such as violation type, gender, etc. The study was entitled “The Impact of violations on the victim’s self-perception and on his relations with others.”

TDC’s work was not limited to identifying the victims’ needs and vertically preparing the reparation program, it has instead opted for a collaborative process, because of its belief in the important role of victims in making transitional justice a successful experience and in the importance of dialogue between all stakeholders.

To that end, TDC has launched a national consultation on the Comprehensive Reparation Program that has involved 6,275 participants. On an individual level, the consultation has shown that 72% of the participants suffered physical damage while 88% suffered psychological damage.

On a social level, the consultation has shown that 76% of the participants have endured harm to reputation, 86% have endured social isolation, 25% have been expropriated, while 85% endured deprivation from resources and work.

Regarding requests, it has been centered on compensation for 95.62%, revealing the truth for 90.38%, preservation of national memory for 88.63% and apology and rehabilitation for 81.86%. Accountability was requested by 77.69% of the participants, professional reintegration by 62%, medical rehabilitation by 55% and psychological rehabilitation by 28.28% of the participants. As for political parties, their requests were revealing the truth, accountability, restitution, preservation of national memory, revising the legislation and the public funding, and apologies and rehabilitation.

On a collective level, the main requests of the communities were the restitution of civil rights, the recognition of minorities, the revision of the legislation to protect their rights, the restitution of their properties, and apologies and rehabilitation. As for regions that suffered systematic marginalization or exclusion, the requests centered on infrastructure, health services, education, culture and the environment. They have also requested the enforcement of positive discrimination and social solidarity economy.

On the basis of the organic law relative to the establishment and organization of transitional justice, TDC has developed a reparation program following a comprehensive approach, starting from individuals to communities, englobing regions that suffered from marginalization and political and economic exclusion, and as well as vulnerable groups.

The program has been designed to take into consideration the State’s financial capabilities in order to be realistic and effective in achieving a genuine reconciliation, by providing justice to the largest possible number of victims from different segments of Tunisian society.

II. Individual reparation

On the individual level, the reparation program is based on financial and moral compensation that depends on the violations gravity. When developing the reparation program, TDC has taken into account all possible types of compensation that have been mentioned in the Organic Law for Transitional Justice as well as in international treaties, as it emphasized on alternative compensation methods such as rehabilitation, reintegration, apology and restitution.

TDC has determined compensation criteria with a calculation proportional to the gravity of the violation, in a spirit of fairness, justice and equality between victims, while providing for restitution of rights, psychological care, healthcare, social welfare and legal support for victims who need it.

For TDC, rehabilitation had been considered as a comprehensive process aiming to assist individuals in regaining their adaptation capability in all areas of life, their physical capacity (physical rehabilitation), their mental capacity (psychological rehabilitation), their social adaptation (social rehabilitation) and their professional capacity (professional rehabilitation).

A rehabilitation in a way that helps victims to overcome the sense of exclusion and marginalization through regaining self-confidence and trust in State structures, therefore leaving behind the status of victim and growing a sense of belonging to the community, as professional and educational integration can't be effective without rehabilitation.

The Commission considers that existing State institutions that are specialized in this field could be relied on, existing programs could be supported, and available mechanisms could be developed to adapt to the needs and suffering particularities of the victims and their families.

TDC has also established common reparation procedures for resisters against French colonization that have been discriminated and marginalized after independence. As well as procedures for political parties, organizations and associations that have suffered violations.

In parallel, the Commission has established special provisions for the calculation of material compensation and for the determination of how women and children (at the time of the violation) may benefit from positive discrimination. Other provisions concerned the procedures to be taken regarding damages resulting from violation of the right to property and financial corruption.

1. The Comprehensive Individual Reparation Program:

Pursuant to the provisions of Article 10 of the Organic law, the program concerns natural and legal persons that were victims of a grave or systematic violation within TDC's mandate, upon the availability of a causal link between the violation and the damage suffered by the victim in order to establish the State liability and to open the right to compensation.

1.1. The Financial Forms of Reparation for Victims of Human Rights Violations

Compensating for Material and Moral damages

On the basis of international treaties that have been ratified by the Republic of Tunisia, the Commission has developed an approach that aggregates the compensations for material and moral damages in a single amount for both damages, depending on the gravity of the violation.

Therefore, violations have been divided into 4 categories according to their gravity.

Category 1:

Concerns **violations affecting the right to life**, including homicide, death under torture or resulting from torture, executions without availability of fair trial guarantees and enforced disappearance with no reappearance. This category benefits from the highest compensation rates (**100%** of the measurement unit) owing to the fact that victims were forcibly deprived of right to life.

Category 2:

Concerns **violations affecting the physical or psychological integrity** of the victims, including rape, torture, injuries during protests that led to a permanent partial disability, sexual violence, and forms of inhuman, degrading or harsh treatment and punishments. Compensations will be different for each type violation according to the differential in the impacts suffered by the victims.

Victims of rape will benefit from the highest compensation rate in this category, with **70% of the measurement unit**, because of the severity of the impact it has on victims either physically, socially or psychologically in particular. They continue to suffer to date, as it has been revealed by the examination of victims' files, the secret hearings and the dialogue sessions during the national consultation.

Victims of torture and victims of injuries during protests leading to permanent partial disability will benefit from **60% of the measurement unit**.

Victims of sexual violence will benefit from **35% of the measurement unit**.

And finally, victims of inhuman, degrading or harsh treatment and punishments will benefit from **25% of the measurement unit**.

Category 3:

Concerns **violations affecting the right to liberty and the right to security of person and protection by the State**, including prosecutions, deprivation from resources and arbitrary administrative surveillance.

It is worth noting here that deprivation from resources have not been considered by TDC as a violation of social and economic rights, it was rather considered as related to prosecutions,

which affects the right to liberty and the right to security of person and protection by the State then depriving victims from having a source of income. Therefore, deprivation from resources is the result of constant prosecutions against some victims.

Compensation for these violations will be **40% of the measurement unit**.

This category also includes arbitrary or illegal arrests, representing various forms of State custody such as imprisonment, arbitrary detention, house arrest or forced conscription, occurring outside the legal framework.

TDC has considered to relate the compensation amount to the period spent by the victim in prison, detention or in forced conscription. In order to achieve equality between victims, percentages have been determined according to the period, as shown in the following table:

Period	Percentage
Less than 3 months	7% of the measurement unit
3 months to 1 year	15% of the measurement unit
1 year to 5 years	25% of the measurement unit
5 years to 10 years	35% of the measurement unit
More than 10 years	45% of the measurement unit

TDC has determined the value of the measurement unit to be 2.000 Tunisian Dinars.

Category 4:

Concerns **violations affecting** civil, political, economic and social rights, including forced divorce, violation of freedom of worship, violation of freedom of appearance and dress and violation of the right to education.

These are not considered as grave violations, but rather systematic and victims will benefit from **15% of the measurement unit**.

Note:

TDC has decided to aggregate compensation rates for all violations suffered by the victims so that each victim could benefit from a compensation for all the violations he/she suffered, in case of their multiplicity. This aggregation does not concern victims of violations of right to life, since they benefit from the highest compensation rate, i.e.: 100%.

Also, the same value of measurement unit that was determined by TDC must be complied with as a criterion in the assessment process, in order to preserve the principle of equality between victims and to guarantee objectivity in the assessment. The compensation calculation method will be following.

1.2. Calculation Method for the Total Amount of Compensation for Material and Moral Damages

The total amount of compensation is calculated as follows:

First: The maximum compensation for a victim shall not exceed 100%, which is the highest compensation rate.

Second: If the victim had suffered several violations, the amount of compensation for each violation is calculated, and the amount of compensation for the subsequent violation shall be adjusted following a medical standard (the Balthazar method)⁴⁰³.

Concerning the following violations:

- Rape and sexual violence
- Torture and forms of inhuman, degrading or harsh treatment and punishments,

The amount of compensation is calculated on basis of the violation with the highest compensation rate.

1.3. Beneficiaries from Compensations for Material and Moral Damages

Financial compensation for material and moral prejudices shall benefit to physical persons, meaning individuals, victims of human rights violation.

TDC has decided that it is not possible to combine the grant of a financial compensations with a status of President of the republic, Representative in a legislative assembly, Member of government, or Adviser to the government or to the Presidency of the republic, as well as for a status of Ambassador, Consul, Governor, full-time Mayor, full-time Member of a regulatory authority or Chief Executive Officer. They will, however, retain their other reparation rights.

Beneficiaries from compensations for material and moral damages in the case of a deceased victim

Within the framework of transitional justice, compensation shall not take the form of an inheritance, as was the practice in Public Law. Therefore, spouses, children, fathers and mothers of victims will benefit from compensations in varying proportions, taking into consideration the specific situation of women, children and those with special needs, pursuant to the provisions of the article 11 of the Organic Law N° 2013-53, dated December 13, 2013 on the establishment and organization of transitional justice.

In all cases in which the victim was a women or a child (at the time of the violation), the amount of compensation will be increased by 5%.

Therefore, TDC has decided that spouses, children, mothers and fathers shall be compensated as follows:

⁴⁰³ Balthazar Method:

Compensation rate for a category 1 violation = A

Compensation rate for a category 2 violation = B and A > B

Adjusted compensation rate for a category 2 violation = $[B*(A-100)]/100$

If the victim's spouse is a woman, she will benefit from 20% of the total amount of compensation, the mother will benefit from 15 %, the father 10%, and the remaining part of the amount of compensation shall be equally divided between the children.

If the victim's spouse is a man, he will benefit from 15% of the total amount of compensation, the mother will benefit from 15%, the father 10%, and the remaining part of the amount of compensation shall be equally divided between the children.

If the victim's children are suffering from a disability, 10% of the total amount of compensation that is allocated to children shall be added to each of them.

If the victim was single, the amount of compensation shall be divided between both parents, with 60% going to the mother.

If both of the victim's parents are deceased, the amount of the compensation shall be equally divided between siblings.

As previously mentioned, compensations are calculated according to the gravity of the violation, on the basis of categories of violations with varying percentages, while multiplying percentages by a measurement unit that have been unified for all categories.

2. Methods for Disbursement of Compensations:

TDC has decided that all victims shall benefit from a tranche of the total amount of compensation, as an advance. The remaining part of the amount of compensation shall be disbursed later, in full where necessary (depending on the availability of resources in the Fund for the Dignity and Rehabilitation of Victims of Tyranny), or on annual tranches over a maximum period of 6 years.

Concerning the elderly, the persons with disabilities and the persons with special needs, the Commission considered that the remaining part of the amount of compensation should be disbursed in the form of a monthly allowance with a value not less than two times the minimum wage.

Regarding the damages related to violation of the right to property over persons, or related to financial corruption and abuse public funds, and considering the examinations requiring expertise that are needed for the damage assessment on the one hand, and the magnitude of possible compensation on the other hand, TDC has decided that the compensation decision for these violations shall be handled by the court specialized in Transitional Justice. The amount of compensations, the legal expenses and the expertise expenses are covered by the parties that perpetrated the violation as well as natural and legal persons that have benefited from the violation. Therefore, the Fund for the Dignity and Rehabilitation of Victims of Tyranny will not bear the compensations that are sentenced in these cases.

3. Non-Financial Forms of Reparation for Victims of Human Rights Violations

Integration and Reintegration:

The integration and reintegration mechanism falls within the comprehensive reparation approach for other individual damages, considering the importance of the right to work in providing financial autonomy and preserving the dignity of individuals.

It's a mechanism whereby victims who have been subject to deprivation from resources and all forms of violation of the right to work will benefit from the integration and reintegration program.

Victims will be integrated and reintegrated as follows:

Victims of human rights violations who have been subject to infringement of right to access to employment resulting in a deprivation from a source of income will be enabled to choose one of the following options:

- Benefiting from a capital, depending on the amount of compensation.
- Benefiting from a monthly allowance with a value not less than two times the minimum wage. The allowance will be disbursed initially by the Fund for the Dignity and Rehabilitation of Victims of Tyranny and afterwards disbursed by the National Social Security Fund (in the same way as the Law No.9 of 1974).
- Benefiting from the required funds to start a project. These funds will be provided by the Fund for the Dignity and Rehabilitation of Victims of Tyranny, according to the program of the National Employment Agency and Self Employment (ANETI) under the Ministry of Vocational Training and Employment.

Paragraphs 1 and 2 of Article 13 of Law No.4 of 2012 dated June 22 2012, relative to exceptional provisions for recruitment in the public sector, are applicable to victims who benefited from exceptional direct recruitment after having exceeded the legal age limit. Their contribution period shall be joint to their accounts in to the National Fund for Social Security (CNSS) the National Fund for Pensions and Social Security (CNRPS) (this point has been reflected in the explicative decision that was attached to the Framework Decision of December 12th 2018).

Regardless of their administrative status, public officials shall be reassigned to the position they were holding prior to interruptions. They shall also benefit from the same career ladder as their peers had during the period of interruption, with a recreation of their career path from interruption date to reassignment date. And considering the difficulties encountered by victims that have been reassigned after years of interruption, TDC considered that they shall benefit from a compulsory training and retraining session for a three-month period minimum.

As for public officials that could not be reassigned to their initial field of work, to a different field of work, or within an administration other than their initial administration, the

Commission has considered their retirement. The Fund for the Dignity and Rehabilitation of Victims of Tyranny will take over the regularization of their career paths, in terms of promotions, ranks, bearing their social security contributions from interruption date of to the date they reached retirement age, according to the amount of compensation they have benefited from.

Concerning educational integration: considering that a great number of victims who were forced to abandon their studies have expressed wish to continue their education, that many of them tried to do it but their requests have been rejected by relevant ministries, TDC has considered that victims and their children who were forced to abandon their studies should be enabled to enroll in public educational institutions.

4. Rehabilitation:

Physical and psychological rehabilitation, as previously defined, is of great importance to the physical and psychological health of the victims and their families. According to the reviewed files, it was found that many victims suffered physical damage resulting from abuses they were subject to, and continue to suffer psychological damage that affected the course of their lives and lives of their families. They expressed the need for the State to take care of them, especially since many of them have no health insurance.

Therefore, victims who suffered physical and psychological damage resulting from abuses and who don't have social and health coverage will benefit from free medical care in public health institutions.

The State must commit to bear the cost of medical prostheses for the victims, systematically and periodically throughout their lives, especially for those wounded during the Revolution.

Spouses, children and parents under guardianship who have suffered physical and psychological damage resulting from violations will benefit from free physical and psychological rehabilitation at public health institutions.

5. Common Reparation Procedures:

Reparation shall be granted to victims of the discrimination against veterans of resistance against French colonization who have been denied from their right to be assigned the status of "resistance fighter" in accordance with the law, on equal basis with other resistance fighters. As well, the provisions of Law No. 9 of 1974 relating to the regulation of allowances for resistance fighters and all amending texts thereof must be applicable on them.

Reparation shall be granted to legal persons, whether associations, political parties or organizations, by enabling them to recover their seized archives and/or property.

Apologies

The President of the Republic shall make a public apology on behalf of the State to all victims, as defined in the provisions of article 10 of the Organic Law N° 2013-53, based on the following:

- Acknowledge and recognize the responsibility of the State in confirmed human rights violations by State organs, groups or individuals acting on behalf or under the protection of the State, and apologize for that.
- Commit to guaranteeing the non-recurrence of violations and the preservation of the dignity of victims, and publicly appealing for a comprehensive national reconciliation in order to turn the page of the past, preserve the national memory, strengthen the national unity, achieve justice and social peace, build a State of law, restore citizen's trust in State structures, and consolidate the values of democracy.
- A copy of the apology text shall be personally addressed to each victim.

II. Collective Damage Reparation:

On the collective aspect of reparation, TDC proceeded from the view that providing justice to the victims could not be done solely through material and moral reparation, while neglecting the root-causes that led to such damages and their ongoing and structural character. Then, TDC started processing files submitted by communities as well as regions that have been marginalized and systematically excluded.

TDC has studied samples of individual files with common grave violations to find out the reasons for their occurrence and how to reduce their recurrence.

TDC worked on developing recommendations, of a legislative or procedural character, that aimed, on a practical level, at strengthening the effectiveness of some fundamental rights, which contributes to eliminating the causes of occurrence of grave violations. It concerns especially violations related to the right to life, the right to personal safety and physical integrity, the right to liberty and security, the right to fair trial, as well as civil, political and socio-economic rights.

1. Enhancing the Effectiveness of some Fundamental Rights:

1.1. The Right to Life, The Right to Liberty and Safety:

a- Excessive use of force / Disproportionate use of force:

These recommendations are summarized as follows:

- Revision of Law No. 4 of 1969 dated 24 January 1969 on public gatherings, marches, parades, demonstrations and crowds, or else establish a new legal framework governing and controlling the use of force by State agents.
- Ban the use of firearms against demonstrators and replacing them by other means (such as water, rubber bullets, etc.) that are effective and at the same time guarantee the right to life. In all cases, the use of force must comply with the following principles. Conditions for using force:
 - The use of non-violent methods should be undertaken as an initial action.

- The use of force shall be limited to cases of extreme necessity as specified by law.
- The use of force is limited to legitimate purposes for law enforcement.
- No exceptions or excuses for the unlawful use of force shall be permitted outside the cases provided for by law.

b- Arbitrary Detention and Enforced Disappearance

TDC recommends that the State should adopt the necessary legislative measures, as soon as possible, to:

- Include enforced disappearance in the Penal Code as an autonomous offense, as defined in article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, and impose appropriate sanctions that take into account its extreme seriousness for the perpetrators, while avoiding death penalty. Also, the Commission invites the State to stipulate the specific mitigating and aggravating circumstances provided for in article 27 (2) of the Convention.
- Criminalize the enforced disappearance as a crime against Humanity, in accordance with the standards prescribed in article 5 of the Convention.
- The Commission recommends that the State should adopt the necessary legislative measures, as the law specifically provides for criminal liability of direct superiors and highest-ranking officials, including the political official if it has been established that he was aware of or has given orders to commit the crime of enforced disappearance, in accordance with article 6 (1). (B) of the Convention.

c- Detention and Deprivation from Liberty:

TDC recommends that the State should do the following:

- Ensure that solitary confinement remains an exceptional measure in cases of an offense previously established by law, for a limited period not exceeding two weeks.
- Continue to intensify its efforts to bring conditions in places of detention into compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).
- Continue to reduce overcrowding in all places of detention, through the renovation of existing facilities and the construction of new ones, in accordance with international standards, and to implement the amended laws that provide alternatives to detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).
- Ensure that detainees are provided with adequate physical and health conditions, including bathing facilities and toilets, sufficient good quality food, enough space for each prisoner, natural and artificial lighting, proper ventilation, healthcare, outdoor activities, and family visits without unfair restrictions.
- Separate healthy prisoners from those suffering from infectious diseases in all detention facilities, provide specialized medical care in hospitals and other specialized medical

facilities for prisoners suffering from diseases, and provide them with appropriate ventilation devices.

- Amend laws to allow effective judicial supervision on all places of detention, enable independent monitoring bodies to conduct regular and unannounced visits to all places of detention, and to hold private audiences with detainees.
- Strengthen the role of pre-trial judicial supervision as an alternative to preventive detention, and giving the judge the role of criminal mediation in some offences and crimes that do not pose a threat to public security.
- Adopt measures to suspend the execution of prison sentences with a probation by a judge, after consulting a psychologist and social worker.
- Activate and expand the scope of the community service penalty.
- Adopt financial penalties and house arrest or electronic surveillance if the act does not represent a threat to society or public security.
- Adopt the principle of gradual enforcement of medium and long-term sentences, based on supervised probation or gradual restricted release, in order to facilitate the reintegration of prisoners into normal life and help them with adaptation to external environment.
- Adopt a general philosophy in the areas of rehabilitation and social reintegration, which should be materialized through a set of criminal measures to avoid and minimize detention, either before trial, during sentencing or during its enforcement.
- Formulate a comprehensive and coherent strategy for the inclusion of alternative sanctions, and take measures aiming at expanding the scope of care and rehabilitation centers in order to include the most vulnerable groups that are subject to alternative sanctions.
- Use all appropriate means, in particular healthcare, education, vocational guidance and training, social assistance, physical education and sports, and personal development, depending on the individual needs of each male or female prisoner, taking into account their social and criminal characteristics, their physical and mental abilities and talents, and the duration of the sentence.
- Rehabilitation and integration programs should take into account the peculiarities of women prisoners, with a focus on their future after being released.
- The women's prison must have a clinic equipped with the necessary medical equipment to provide pre- and post-natal care and treatment to the prisoner and her infant.

1.2. The Right to Personal Safety and Physical Integrity:

a- Torture and harsh, inhuman or degrading treatment:

In its recommendations to the State, TDC affirms that the State should take immediate and effective measures to prevent acts of torture and mistreatment throughout the country, as well as taking resolute steps to put an end to the impunity of the alleged perpetrators. The State should do the following:

- Ensure that the President of the Republic issues a public statement that unequivocally affirms a « zero-tolerance » approach to torture.
- Extend the scope of criminalization in order to include all material and moral acts that can be legally interpreted as acts and practices that constitute torture, and to expand the list of those subjected to legal prosecution according to international laws and treaties ratified by the Republic of Tunisia.
- Expressly specify the cases of harsh, inhuman or degrading treatment in the Penal Code, and to establish an appropriate penalty to each situation.
- Initiate a training for law enforcement officials, medical doctors, public officials, lawyers and all the stakeholders involved in the prohibition of torture and harsh, inhuman or degrading treatment or punishment.
- Declare its immediate initiation of investigation and prosecution against the direct perpetrators of acts of torture as well as those responsible for issuing orders, in all cases. Also, to formally warn its agents that anyone having committed acts of torture, being complicit in such acts or having accepted the practice of torture, will be exposed to personal accountability before the law, to criminal prosecution and to appropriate penalties.
- Ensure that all complaints of torture and mistreatment involving public officials, including police and prison staff, are subject to immediate, effective and impartial investigation by an independent administrative mechanism where there is no institutional or hierarchical connection between investigators and alleged perpetrators. Also, to ensure that the presumption of innocence is respected, that those convicted are punished, and that redress is provided for victims (while respecting the competence of the National Committee for the Prevention of Torture).
- Ensure that all persons under investigation for acts of torture are suspended from the exercise of their function without affecting their financial rights, pending a judicial ruling.
- Bring to justice the perpetrators of acts of torture and mistreatment, so they can be sentenced, if convicted, with appropriate penalties.
- Expressly specify that no confessions being extracted by torture shall be invoked as evidence in any proceedings, unless this confession is used as evidence to convict the person accused of committing torture.
- Ensure that investigation of all crimes are documented by video and audio recording, while taking measures to ensure personal data protection as well as witnesses and victims protection.
- Ensure that defendants and their lawyers have access, at no cost, to video and audio recordings of interrogation, and that such recordings can be used as evidence in court.
- Ensure that victims of torture have an enforceable right to fair and adequate compensation.

b- Forms of sexual violence and abuse, including rape:

Sexual violence constitutes a crime against Humanity, a dangerous situation among the dramatic and devastating patterns of the criminal acts that are committed against individuals. Besides the physical injuries and psychological trauma suffered by survivors or witnesses of such acts, it may also lead to divisions within society. The failure in addressing its effects and establishing safeguards preventing its recurrence hampers efforts to achieve justice, reconciliation and social peace.

Although the Individual Reparation Program is aiming to provide the necessary medical, psychological and socio-economic support to help victims of sexual violence recover their lives, the absence of accountability for perpetrators of sexual violence crimes and the absence of effective non-recurrence safeguards are however nurturing a sense of mistrust in State institutions and their agents. Hence, this situation is defeating the purpose of transitional justice, which is national reconciliation.

Therefore, TDC recommends that the State should do the following:

- Develop a comprehensive plan to cope with the phenomenon of violence, including sexual violence and rape, by inmates and prison staff in all incarceration centers, including women's prisons.
- Provide training for law enforcement agents in human rights and Republican security values.
- Adopt a specific definition of sexual violence crimes in its legislation, including, but not limited to:
 - **Sexual assault:** The perpetrator commits an act of a sexual nature against one person or more, or forces that person or these persons to engage in an act of a sexual nature by force, by threat of use of force or by coercion. Such acts can be resulting from the fear of that person, these persons or others from being subjected to violence, coercion, detention, psychological persecution, abuse of power, exploitation of a coercive environment, or inability of this person or these persons to express their consent. (Article 7 (1) (g) - 6: Sexual violence constituting a crime against humanity).
 - **Rape:** The perpetrator penetrates a sexual member, even slightly, in any part of the victim's body or the perpetrator's body, or penetrates any object or other part of the body into the anus of the victim or into the opening of their reproductive system. The assault is committed by use of force, threat of use of force or coercion, resulting from the fear of being subjected to violence, coercion, detention, psychological persecution, abuse of power or exploitation of a coercive environment, or an assault on a person who is unable to express his or her consent. The threat or use of force and the presence of the victim under the moral and administrative authority of the aggressor are clear evidence of lack of consent. Rape may constitute torture if the specific circumstances of torture exist. (Article 8 (2) (b) (xxii) .1: War crime of rape. Criminal Court. Elements of Crimes).

- **Sexual harassment:** a behavior that has sexual connotation that are not welcomed by the other party, including requests for sexual services or acts of sexual nature that can be done through speech, eye contact or display of sexual material somewhere so that the victim can see it.
- Decide the appropriate penalty for each act. In case of an act that occurs in places of arrest or detention, the responsibility extends to superiors if it has been proved that they were aware of or fail to do what is necessary to prevent it.
- Expressly specify that it is mandatory to present all allegations of sexual violence, especially torture, to the doctor, as soon as possible and before the investigation is initiated. Psychological tests may also be conducted to determine the repercussions on the victim's mental state. The doctor must, in any case, prepare the report on victim after the incident as soon as possible.
- Ensure effective, independent and impartial investigations on all forms of sexual violence and gender-based violence, particularly against women, girls and other vulnerable groups.
- Coordinate judicial supervision on detention conditions between competent authorities, ensure thorough investigations into all allegations of sexual assault in detention centers, punish perpetrators and provide medical and psychological rehabilitation for victims.

2. Achieving Justice, Fair Trials and Effective Equity Measures

In numerous submitted files, TDC noted that some judges were implementing the orders of the political authority, which intervened to influence the course of some trials. However, article 65 of the Constitution of the Republic of Tunisia of June 1, 1959 stipulates that “the judges are independent and subject to no authority other than the law.”

Interference in the judiciary is considered as a breach of fair trial guarantees, it has affected the judiciary's ability to tackle grave human rights violations.

TDC indicates improvements in the field of justice after the Revolution, especially with the ratification of the new Constitution of the Republic of Tunisia of January 26th 2014 that has emphasized the independence of the judiciary by the creation of the Supreme Council of the Judiciary.

The judiciary plays an important role in protecting the fundamental rights of individuals and communities and in guaranteeing public freedoms. Then restoring trust in judiciary and in its effectiveness will contribute to guarantee non-recurrence of grave violations, to restore trust in state institutions and rule of law, and to build genuine reconciliation.

Article 20 of the constitution of January 26, 2014 explicitly specifies that “treaties that have been approved and ratified by the Parliament are standing above law and are below the Constitution”. Yet, treaties are invoked by Tunisian courts only in rare cases.

Therefore, TDC requests the State to take all measures that facilitates treaties implementation by national authorities, including courts and judicial bodies, and specifically recommends to:

- Work on reducing the time limits of litigation while respecting fair trial guarantees.

- Consolidate the principle of immunity against suspension as a fundamental guarantee for the independence of judges, while respecting the competence of the Supreme Council of the Judiciary regarding discipline, promotion and movement of judges, as guaranteed by law.
- Activate the declaration of original or additional property, as well as the role of Supreme Council of the Judiciary in implementing the necessary measures when violations are to occur, as a guarantee of integrity, rectitude and impartiality.
- Increase awareness among judges, lawyers, general public and members of Parliament about the justiciability of economic, social and cultural rights for litigation, and that provisions of international treaties may be invoked before the courts.
- Provide a specialized training for judges and magistrates in the implementation of human rights conventions that have been ratified by the Republic of Tunisia.
- Ban the use of measures that restrict civil liberties and freedom of movement and travel without judicial authorization.

2.1. Civil and Political Rights:

2.1.1. Restoring civil and political rights:

The reintegration of victims of human rights violations into society requires the presence of coherent and successive mechanisms that supports their psycho-social and social rehabilitation. The main mechanism is probably the one that restores civil and political rights, and without which it could be difficult to access to employment or, in some cases, to exercise civil rights such as signing contracts, or to exercise political rights such as right to vote or standing for election.

The Tunisian legislators has addressed the rights restoration mechanism, as a whole section in the Code of Criminal Procedure has been devoted to it: it's the sixth chapter in articles 367 to 370.

Restoration of rights, based on the Tunisian Code of Criminal Procedure, is defined as a measure aiming at nullifying the effects of court decisions in the future, if the legal conditions are met.

Decree No. 1 of 2011 on general amnesty has given amnesty to a number of victims of human rights violations. TDC has observed that many have not fully recovered their civil and political rights.

Therefore, TDC recommends that the State should do the following:

- Activate the general amnesty, especially concerning the nullification of the effects of court decisions (a clean Record No. 3 (Police Record)), since the difficulty to recover rights represents a real obstacle to reintegration and a major cause in the marginalization of those who have suffered violations, especially prisoners. This deprives the transitional justice system from its ability of rehabilitating victims and changing their status from “victim” to “citizen”.

- Settle the legal status of persons that have been arrested and/or tried or convicted on the basis of insufficient evidence or judicial error, and who have been pardoned, granted the right of pardon, or who have been released following completion of sentence.
- Suspend all administrative measures that restricts access to identity documents and passports without judicial authorization.

2.1.2. Freedom of movement and residence and right to travel:

Pursuant to Article 13 (1) of the Universal Declaration of Human Rights, "Everyone has the right to freedom of movement and residence within the borders of each state." Article 13 (2) further declares that "Everyone has the right to leave any country, including his own, and to return to his country."

While the Commission indicates that after the revolution, Law No. 40 of 1975 has been amended by Organic Law No. 45 of 2017, which specifies that "if the passport holder would breach public security, even in the absence of prosecution or a sentence against him, the President of the Court of First Instance having jurisdiction over the residence of the passport holder, and by request of the administration through the Public Prosecution, can ban the passport holder from traveling after summoning him by any means which leaves a written record, pursuant to a reasoned decision about a period that does not exceed three months in any case... The decision of the President of the Court can be appealed in accordance with the procedures mentioned in Orders upon Requests section". Which is in line with international treaties standards in terms of limitations and derogation of freedom of travel, while enshrining the right of recourse as a guarantee.

TDC recommends to:

- Revise the Penal Code in a way that is conducive to its conformity with the requirements of the new Tunisian Constitution and the international treaties, by identifying derogation in a way that leaves no room for wide interpretation for relevant authorities.
- Revise, in particular, articles 22, 23 and 24 of the Penal Code in a way that does not allow officials to implement these complementary sanctions at their discretion. These operational measures must be in line with the principle of proportionality, so that they are compatible with the achievement of its protective function. As well, such penalties shall not prejudice other fundamental rights and shall primarily take into account the socio-economic rights of the convicted person.
- Criminalize all administrative surveillance and any prohibition of movement that has been used without judicial authorization, and determine the individual responsibility of decision maker.
- Call on the administration to respond within legal deadlines to any recourse made by a citizen.

- Propose the establishment of a judicial chamber in the Administrative Court that shall be specialized in hearing abuse cases in which the Ministry of Interior was a party.
- Allocate regional Citizens' Relations Bureau in Police and National Guard districts to receive petitions and complaints and to provide guidance to citizens.

2.1.3. Freedom to create and to join civil society associations:

In the framework of examination of files submitted by representatives of associations, parties, and federations, TDC concluded that political power was putting pressure on those willing to create associations and parties, as well as establishing legal restrictions that stifle freedom of creation.

Therefore, TDC recommends that the State should do the following:

- Include in the educational curricula the struggles of parties and associations, regarded as moral entities that are independent of their affiliates, for their symbolic dimension, as they represent an approach and an ideology that reflects the historical developments and the cultural and political interactions that took place in Tunisian society and their evolution over time.
- Enact an Organic Law for Parties that respects the following criteria:
 - Their legal nature and their statute should be specific to political associations whose aim is to participate in the conduct of public affairs by presenting candidates for free and democratic elections, which differentiate them from other associations.
 - Enrich the freedom to create parties without restriction, provided that the principles of the party do not contradict the principles of the Republic and the requirements of the Constitution.
- Enact an Organic Law for Associations that respects the following criteria:
 - Adopt the authorization upon creation system. The creation of the association represents a legal fact has been decided by the persons willing to form it. The State intervenes only to register the new association and keep its file through the General Secretariat of the Government. In case of irregularities in some creation formalities, the executive power shall only demand to redress the irregularity within reasonable deadlines.
 - Ensure that the Public Administration for Civil Society Organizations or the entity entrusted with receiving the declaration of creation does not interfere in determining the associations objectives and changing their statutes.
 - Ensure that associations have access to public funding with objective conditions that guarantees equality between them. The law shall specify that the Court of Audit must oversee this public funding.

2.2. Socio-Economic Rights

States obligations concerning socio-economic rights are positive obligations, in the sense that they must make certain efforts to ensure adequate employment opportunities, as well as to provide adequate housing, food, clothing, education, health care, and other requirements for a decent life for their citizens. This means that individuals have the right to request the ruling authorities to give them a helping hand and to provide them with everything they need to lead a decent and dignified life.

Therefore, TDC recommends that the State do the following:

2.2.1. Concerning the Right to Health:

- Increase legal protection for patients, health personnel and paramedics that are working in prison institutions, and make them administratively unaffiliated to these prison institutions so that they can play their role without restrictions.
- Provide legal protection of medical ethics and professional secrecy, especially in prison institutions.
- Take effective measures against breaches of norms protecting healthcare provision.
- Strengthen the healthcare system capacity within prisons, providing access to healthcare and providing a safer, more effective and impartial care.
- Take all possible measures that commits all stake holders, essentially law enforcement agents, to provide the injured and the sick with medical care and attention, as much as possible and with minimum delay, with no discrimination concerning their status and situation, and regardless of their ethnicity, religion, political opinions, or any other reason whatsoever.
- Conduct awareness-raising and training activities for law enforcement agents, especially those working in prison institutions, on the importance of the right to physical and mental health.
- Take measures that ensure good coordination between health stakeholders, including prison institutions, social funds and the Ministry of Social Affairs.
- Provide prisoners with a document containing the necessary information about their rights, especially regarding the right to health.
- Urgently improve access to healthcare services in rural areas that are deprived from these services, by providing mobile health convoys on a regular basis.
- Provide specialist doctors in interior regions by encouraging them to work in these regions, which will contribute to improve the provision of health services to patients.
- In the framework of the fight against corruption within the healthcare system, TDC is requesting the State to provide patients with the requisite information on their rights, by giving them the "Charter of Patients' Rights" which defines the channels that can be used for filing a complaint in case of bribery attempts.

- Ensure, to the extent possible, a universal access to medicines, without discrimination, at an affordable cost.

2.2.2. Concerning the Right to Education:

- Protecting the right to education and learning without discrimination, since age requirement for access to education and educational institutions is considered as a discriminatory criterion.
- Provide the persons deprived of their liberty with all necessary means to pursue their education without hindrance, or to go back to school upon release.
- Develop an education curriculum that trains children and pupils on the fundamentals of coexistence, and instills a sense of citizenship and the human rights values.
- Address socio-economic disparities that are affecting academic achievement.
- Invest more education resources in rural areas to address existing disparities, with all possible efforts allowing to increase access to preschool education.
- Take all necessary measures to increase the number of qualified teachers and to upgrade educational infrastructure, especially in rural and remote areas.
- Address the issue of high school dropout rates and high illiteracy rates, as a matter of urgency.
- Establish a National Council for Educational Curricula, with equitable representation for all governorates, that takes into consideration the specificity of regions, works on instruments for developing curricula according to the needs of each region to achieve parity in education, and applies the positive discrimination provided for by the constitution.

2.2.3. Concerning the Right to Employment

- Take all necessary measures, both at the legislative and procedural level, prohibiting any discrimination in gaining and maintaining employment on the basis of ethnicity, color, gender, language, religion, political or non-political opinion, national or social origin, wealth, descent, physical or mental disability, health condition including HIV infection, or for any other reason intended to undermine or invalidate the exercise of the right to work on an equal basis.
- Work to increase transparency in job interviews.
- Take all necessary measures to ensure the right of recourse and the transparency in transfer procedures, especially punishment transfers, in a way that prevents them from being arbitrarily and methodically used.
- Undertake the necessary legislative revisions to criminalize any form of systematic abuse of the right to employment.
- Undertake the essential legislative revisions to enable prisoners to come back to their function to avoid a double penalty: imprisonment and deprivation of their job.

- Improve the means of access to employment and publish information related to access to employment, by establishing data networks on the labor market at a national, regional and local level.
- Ensure that State does not interfere directly or indirectly with the enjoyment of the right to employment.
- Establish national mechanisms to monitor the implementation of national strategies and action plans.
- Ensure that the process of development and implementation of the national employment strategy is in full compliance with the principles of accountability and transparency, and involves the participation of concerned groups.

2.3. Protection of Minority Rights and the Fight Against All Forms of Racial Discrimination

TDC has received four community related files that have been submitted by representatives from Jews, Christians, Amazighs⁴⁰⁴ and people of color. The commission worked therefore on recommendations to protect minority rights and to address all forms of racial discrimination. These recommendations are summarized in five themes: protecting a minority's existence and the right to a distinct identity, the right to participate in decision-making and equal access to decision-making positions, the right to practice one's culture and the right to learn one's mother tongue, and the fight against all forms of racial discrimination.

2.3.1. The right to a Distinct Identity:

TDC recommends that the State should do the following:

- Recognize the Amazigh language and culture and ensure the protection and promotion this people's language and culture.
- Combat all forms of racial discrimination against individuals belonging to minorities, including prejudice and social stigmatization, and intensify awareness-raising campaigns to combat intolerance and promote cultural diversity.
- Promote freedom of conscience and belief among religious minorities, which are enshrined in the Constitution, by taking the necessary legislative and administrative measures so that they can freely practice their religion. Also, to involve minorities religious leaders in all awareness-raising activities.
- On the basis of self-identification, collect dis-aggregated statistics by ethnic and cultural affiliation.
- Encourage the study of the history and culture of Amazighs, as well as the history of Tunisian Jews and Christians, to promote a culture of tolerance and coexistence.

404 The Amazigh, also often referred to as Berber, are descendants of the pre-Arab people in North Africa. The Amazigh population amounts to around 30 to 40 million people, who are spread out across Morocco (around 14 million), Algeria (around 9 million), Tunisia, Libya, Egypt, Mali, Niger and Mauritania.

- Revoke Decree No. 85 of December 12, 1962, and allow the registration of names according to the cultural and religious affiliation of Amazigh, Jews and Christians in the civil status records, without forcing them to adopt Arabic names.
- Restore the Tunisian nationality of every Tunisian Jew whose nationality has been withdrawn in order to confiscate his property, even those who are deceased, and therefore restoring nationality to their descendants.

2.3.2. The right to participate in decision-making and to equal access to decision-making positions

TDC recommends that the State should enable Tunisian Amazigh, Jews and Christians to have the right to full participation in cultural, religious, social, economic and public life. They should have an active role at national and regional levels in decisions affecting them.

2.3.3. The right to practice and develop culture, language, religion, customs and traditions:

TDC recommends that the State should do the following:

- Facilitate the cultural activities organized by Amazigh cultural associations.
- Protect the Amazigh archaeological sites in the north and south as a national cultural patrimony.
- Within the Ministry of Religious Affairs, create three public administrations, each of them dealing with a specific religion and headed by an affiliate of this religion.
- Contribute to the preservation of Amazigh Tunisian villages' architectural style, and ensure their inclusion in UNESCO's World Heritage List.
- Restitute the Jewish clergy shrines, which are considered as mausoleums and a symbol of great importance for Tunisian Jews.
- Provide a decent cemetery for Tunisian Jews and another for Christians, and ensure their maintenance in the same way as for Islamic cemeteries.

2.3.4. The right to learn one's mother tongue or to be educated in the mother tongue:

TDC recommends that the State should do the following:

- Take the necessary measures to include the Amazigh language as an optional course in primary schools and high schools.
- Provide support to Jewish schools, especially with primary classes, and encourage their complementarity within the educational curricula in public institutions so that they can continue their education to the higher classes.

2.3.5. The fight against all forms of racial discrimination

TDC emphasizes the need to focus on citizenship and to enrich the choices and ways that prevail the values of tolerance, regardless of color, sex, ethnicity and religious affiliation. The State must provide protection for all citizens without discrimination.

The Commission has not found complaints and lawsuits filed by racial discrimination victims, this is largely indicative of the lack of appropriate legislation, the ignorance of existence of legal remedies or the distrust of the authorities in taking effective judicial action.

TDC requests therefore the State to include the provisions necessary to criminalize racial discrimination in its national legislation and to provide effective legal remedies. As well, the State must raise public awareness on the existence of such remedies with regard to racial discrimination.

The Commission emphasizes that the relationship between the prohibition of racist hate speech and the flourishing of freedom of expression is a complementary relation, not an exclusive relation in which priority is given to one party over the other. The right to equality, the right to non-discrimination and the right to freedom of expression should be fully reflected in laws, policies and practices as mutually reinforcing human rights.

The phenomenon of racial discrimination and violence against the different other, especially those of black or brown skin, is still rooted in the Tunisian popular imagination and in the daily discourse. There must be an intellectual revolution that breaks down what has been deeply rooted in the collective consciousness, and endeavors to get rid of racism sequels that has long been entrenched in society.

Black women are subjected to multiple forms of double-discrimination based on gender and skin color, through the social division of labor. They are as well subject to economic-racial discrimination as they suffer from social injustice, since society begins to provide its values, culture and social hierarchy including a kind of discrimination based on color or gender, which affects the principle of equal opportunities in employment. They are usually employed in precarious agricultural jobs or as domestic helpers, in addition to the very marginal proportion of black women with senior positions in institutions. This is also reflected in politics, where we observed how black citizens in general and women in particular were excluded from the successive parliaments over the past decades.

Therefore, TDC recommends that the State should do the following:

- Tackle and fight against hate speech and ideas or theories of superiority, racial superiority or hatred.
- Develop a legal framework that protects all victims of discrimination, in accordance with the Tunisian Constitution and the international conventions.
- Put an end to the impunity of all discriminatory acts or speeches.
- Include the following acts in the Penal Code as offenses punishable by law:
 - All dissemination of ideas based on ethnic or racial superiority or hatred, by whatever means.

- Incitement to hatred, contempt or discrimination against members of any group on the basis of race, color, descent, national origin or ethnicity.
 - Threats or incitement to violence against persons or groups on the above grounds.
 - Insult, mock, defame, justify hatred, contempt or discriminate persons or groups on the above grounds, when it clearly amounts to incitement to hatred or discrimination.
 - Participation in organizations and activities that promotes and incites to racial discrimination.
- Take immediate and effective measures, particularly in the fields of education, culture and media, to combat prejudices leading to racial discrimination, and to promote understanding, tolerance and coexistence.
 - Curricula, textbooks and educational materials should inform and address human rights issues and seek to promote mutual respect and tolerance between citizens.
 - Take educational and awareness-raising measures to eliminate stigmatization and discrimination against black people, taking into account the particular stigmatization of women.

TDC also recommends that the State should do the following:

- Work on reducing the social stigma suffered by black or brown skinned individuals and help them to reach decision-making positions locally and nationally.
- Conduct quantitative and qualitative studies that determines school attendance rates among black or brown skinned individuals, research for the reasons behind their school dropout and build a strategy in that light. As well as enabling them to obtain fair and equal opportunities with other society components in knowledge and social climbing, and tackling the marginalization they suffer.

III. Reparation for Victim Region

TDC has received 220 files on regions considered as victims of systematic marginalization and exclusion submitted by associations or inhabitants in these regions.

It is noteworthy that there is no legal definition of the term “region” and “systematic marginalization and exclusion”, which is the first difficulty encountered by TDC in its work. Moreover, it is difficult to prove this marginalization in the absence of necessary data in most submitted files, with lack of interaction from some state institutions and in the absence of accurate data on political events that took place in these areas. This is in addition to the absence of references, studies and researches due to the fact that the Tunisian experience is the first among other experiences of transitional justice that recognized the status of victim

to a region. The Commission also found it difficult to find quantitative and qualitative data related to villages, neighborhoods, “*dowars*” and “*mashayekh*”⁴⁰⁵.

TDC has worked on developing appropriate definitions, a methodology based on objective and accurate indicators, and criteria that proves signs of marginalization or exclusion.

These indicators are based on the access to services or fundamental rights, not just their availability, such as education, health, economy, and fundamentals of decent living, which are the responsibility of the State. While criteria are used to indicate the systematic nature of marginalization and exclusion, most importantly the time span or the continuity in time, the way these indicators have evolved over the years, and their comparison with national and regional indicators. This has been supported by the natural specificities of the region as well as its political or trade-union specificities.

More comprehensively, TDC has examined the causes of economic inequality and discrimination. The problem of unequal development and the systematic marginalization that have been practiced by the political power in interior regions has generated a common sense among the people living in these regions. They have submitted files to TDC as citizens forgotten by the State, and all what they wait for is these regions to be fairly and equitably treated so that they can feel a sense of belonging to the same national community.

TDC has worked on developing a reparation program for these regions, in line with marginalization and exclusion indicators, and taking into account the regions specificities and the requests made by the regions representatives. In a way that will contribute to reduce sense of unfairness and social injustice, to achieve a social contract based on solidarity, and to promote cohesion within society.

The recommendations are concerning the recognition of a systematic marginalization and exclusion of the region by the State, as well as the enforcement of socio-economic rights, the right to a healthy environment and the right to cultural development, without neglecting the activation of positive discrimination and ensuring the enjoyment of rights guaranteed by the Constitution.

To ensure non-recurrence, TDC has also worked on recommendations and symbolic forms of reparation in the regions, through the consolidation of decentralization and participatory democracy, the consolidation of good governance principles, as well as strengthening the role of civil society. National reconciliation requires a new policy of dealing with these regions and their history, an "empowerment" approach to all civil, political, economic, social and cultural rights, and a "protectionist" approach to all forms of discrimination.

405 Rural and small settlements and villages

1. General Recommendations by Order of Priority:

1.1. Linking the Reparation Program to an Alternative Development Program:

The democratic transition is aspiring to create a change that goes beyond revealing of truth and recognizing past violations, and to establish a more comprehensive and in-depth structural programs aiming at achieving national reconciliation and ensuring non-recurrence of violations and operating a transition from tyranny to a new democracy that guarantees freedom, realizes dignity and contributes to the consecration Human Rights System.

In order to be in line with these features, the State must accelerate the establishment of a new developmental model requiring the alternative to enshrine the independence of national decision and operating in harmony with the popular aspirations in order to ensure national dignity, within the framework of a comprehensive vision of sustainable development that guarantees the socio-economic rights for all Tunisians in employment, food, adequate housing, healthcare, social security and quality education ... while contributing to develop national wealth through optimal exploitation of all material and human potential, equitable distribution of wealth, rational exploitation of natural resources, and preservation of environment. These efforts should be made in order to achieve social justice, eliminate regional disparities, and enshrine the principles of equity between individuals and regions.

As well, this developmental model requires to be reflective of the revolution and its causes and to achieve its objectives, therefore it must address the problem of unemployment as an absolute priority.

In this context, TDC makes a number of recommendations meeting the wishes and requests that arise from daily reality of the people living in victim regions. These recommendations should contribute to the restructuring of the economic fabric and the rehabilitation of productive sectors, specifically agriculture and industry, in accordance with a comprehensive program on the short and medium run, through:

a- Measures Relative to the Agricultural Sector:

Reforming the agricultural sector and make it contribute to the revival of local economy and the development of national economy requires solutions to the problems and constraints that hamper it, which can be classified into urgent measures and strategic measures (long term).

Urgent measures include:

- Increase attention to small farmers and their concerns and cancel their debts, as well as support young investors by accompanying them to ensure the success of their projects.
- Subsidize seeds and fertilizers.
- Provide the necessary financing in the agricultural field and reduce the borrowing cost.
- Increase irrigated areas and review the system of water resources intended for agriculture.

- Develop an efficient plan for irrigation water savings and shallow wells electrification in agricultural areas where there is no dams able to provide irrigation water.

Strategic actions, included in a comprehensive program interrelated with development policies and economic options:

- Design a production policy that supports the processing industries in the production areas and works on upgrading production tools and irrigation techniques.
- Overcome land issues related to collective lands, « *habous* » and state-owned lands, that represent a major obstacle for regions, especially in the center, south-west and south-east, which prevents the cultivation in the agricultural production system. This is provided that it would be conducted within the framework of a participatory local democracy, through which local actors can express their concerns and suggest a conception of agriculture rising from their regional specificities with respect to the quality of soil, climate and water.
- Endeavor to improve rural areas and provide them with necessary infrastructure and facilities to encourage rural population to settle and work in agricultural sector, especially the youth.
- Support agricultural scientific research, value the agricultural stock of Tunisia, and support biological agriculture.

b- Measures Relative to the Industrial Sector:

Seeking the foundation of an industry able to play a key role in wealth creation and job creation requires a set of medium-term actions, mainly related to:

- Creating a diversified industrial fabric with high added value, which extends beyond small and medium enterprises to develop large industries, capable of providing employment, especially for the qualified labor force.
- Upgrading and expanding industrial activities related to textile and mechanical industries in order to become effective, efficient and competitive.
- Equal distribution the industrial zones between regions, while reviewing the Investment Code regarding the industrial sector.
- Developing scientific and technological research, while making them more orientated towards productive sectors.
- Launching a set of major development projects, while ensuring equitable concentration of infrastructure and equitable distribution of sector investments, economic activity and public utilities.
- Extending the powers assigned to regional and local authorities concerning industrial location, which would support development and contribute to providing appropriate living conditions in all regions.
- Fostering socio-economic development in interior regions by granting them an autonomy in decision-making in exploiting their own resources and setting their own

local development paths, with the support of the State, so they can be part in the national development dynamic.

- Establishing contractual relations between public and private sectors, whereby the latter benefits from time-limited privileges in return for clear commitments, in order to build a diversified, integrated and competitive economy, with careful control and accountability to foster a climate of democratic participation, transparency and fight against corruption.

c- Promoting Social Solidarity Economy:

It is necessary to support the social solidarity economy in victim regions, by promoting the creation of cooperatives, service companies and non-profit associations, with the need to give cooperatives tax exemptions and mentoring.

As well as expanding the scope of solidarity economy, opening marketing channels for solidarity products and creating its own distribution channels, while preparing regional plans to promote social solidarity economy, giving local initiatives financial and logistical support, and organizing trade fairs and mobile markets for solidarity economy projects in victim region having the appropriate natural and human resources for this activity.

This would contribute to the inclusion of many informal economy activities into organized economy.

d- Exploiting the Touristic Potential of Victim Regions:

It is necessary to develop a national plan concerning the domestic tourism sites, to launch a plan aiming to enhance their value and to market them, as it is necessary to give more importance to cultural and ecological tourism whose features are present in these regions.

The State has to start building routes and touristic stations seeking to highlight and promote this natural heritage. This would help to revitalize these areas and create an economic dynamic, providing therefore direct and indirect jobs that will contribute to absorb a sizeable proportion of job seekers, especially among holders of higher education degrees in humanities, history, civilization, archeology and culture.

1.2. Integrating Victim Regions in the Socio-economic Cycle

In this regard, the State shall undertake a set of measures to grant reparation to victim regions by providing the following social services:

Education:

In order to overcome disparities between regions, to establish an education sector based on the interest of the people and the nation and breaking with imported models, it is necessary to undertake on a series of reforms that ensures the right to free public education in all levels of education and compulsory schooling for all people of school age, as well as waging total war on illiteracy and opening up continuous training to everyone

This should be necessarily linked to the democratization of academic environment, providing pupils, students and parents with the necessary frameworks to express their opinion in all matters related to educational system, promoting dialogue and debate, and breaking

definitively with lecture methods that are in contradiction with research, experimentation and scientific reasoning methods.

Actions shall be taken on two interdependent levels:

- The first level is urgent and includes recommendations for improving education structures and providing human and material resources, with priority given to the victim regions that were unable to access these services and requested them as a form of reparation. This stems mainly from a deep sense of deprivation of receiving equal knowledge with the rest of the regions.
- The second level is in the long run, and related to reforms of a fundamental and deep dimension concerning the educational system.
- **Short-term measures:**

Based on requests that inhabitants have expressed on more than one occasion and that represented a common request to all regions, this stage requires to work on improving infrastructure in primary and middle schools and higher education institutions and ensuring access to knowledge, through:

- Providing scholarships to pupils of low-income and vulnerable families, and school transportation to pupils living in rural areas far from the city center.
- Improving educational spaces, providing them with all necessary equipment and necessary financial and logistical support by developing libraries offering scientific, literary and cultural books related to educational programs, so that all pupils and students have access to knowledge.
- Providing all schools and high schools with drinking water, connection to internet and computers, in the aim of developing educational programs and connecting them progressively to modern means of communication, and gradually abandoning paper education to relieve student of the pain of carrying tools and contribute to protect the parents purchasing power.
- Reducing the number of pupils per class in all levels of education, and provide all high schools with equipped reading rooms to improve learning conditions.
- Providing all schools and high schools with the necessary educational staff.
- Building walls and installing doors in all educational institutions to ensure protection for students and educational staff.
- Extending university housing duration to 4 years for students, especially as most of the residents are coming from rural areas and interior regions that are distant from campuses. As well as, expanding the number of grantees and increasing the value of scholarship to keep pace with price index, income index and inflation rate.
- **Medium-term measures :**

Further attention should be given to pupils by providing appropriate school spaces for knowledge access and guaranteeing the children rights. TDC recommends the following:

- Developing education programs on violence prevention and skills-building, especially the generalization of school psychologist and sociologist positions in all educational institutions and the establishment of listening and guidance units, so that the student can find accompaniment, support, and mentoring. They can therefore learn to acquire self-esteem and effective problem-solving skills, including the ability to seek assistance when necessary. It is necessary to involve teachers, educational staff and parents in these programs in order to promote social responsibility.
- Generalizing sporting, cultural and educational activities in all educational institutions, and organizing recreational trips for students, while coordinating with civil society components which are capable of playing an important role in this regard.
- Enforcing penal judgments that impose penalties to anyone who contravenes what have been outlined in Chapter II of the Children Code, which guarantees the child's right to benefit from various protective measures of a social, educational and health nature, as well as other provisions and procedures aimed at protecting children from all forms of violence, harm, physical or moral or sexual abuse, or negligence that results in mistreatment or exploitation.

- **Long-term measures:**

These measures include a set of actions that deal with structural and fundamental issues to develop a comprehensive vision of education system, in order to establish an education based on the interests of people, serves their issues and breaks with the “one education for the rich and another one for the poor” mentality.

Accordingly, the State should develop a national strategic plan promoting education sector, reforming all institutions associated with the educational system, as well as linking education and scientific research in order to ensure an effective contribution of educational institutions to the national economy development, and restructuring the vocational training system in accordance with the requirements of the labor market.

Health-Care:

Given the vital importance of the health-care topic, its deep social significance, and in order to enshrine the right-to-health for all, in complete harmony with the requests of victim regions inhabitants that have suffered tremendously from being deprived of access to health services, TDC submits a number of recommendations in this regard, revolving around:

- **Short-term measures:**

- Maintain and improve health-care facilities, including local and regional hospitals, basic health centers and reproductive health centers, which would allow them to provide appropriate health services to the inhabitants of these regions.

- Supply basic health centers with the necessary equipment, and increase operating rooms and delivery rooms in local hospitals that are unequipped, so that citizens could access emergency services.
- Supply hospitals with the necessary equipment such as MRI, ophthalmological, and dental care machines.
- Provide well-equipped ambulances to improve emergency health services.
- Strengthen victim regions with medical and paramedical permanent staff, through annual recruitment operations and providing stability conditions in these regions. As well as equally dispatching them among local and regional hospitals and basic health centers, so that all inhabitants can receive proper care.
- Provide regional hospitals with specialized doctors in surgery, obstetric, anaesthesia and resuscitation, and cardiology, and create pediatric departments in each local hospital.

- **Medium-term measures:**

Measures are mainly concerning the reform of the administrative management system, as it represents an obstacle to well-developed health services. The recommendations are:

- Establishing a more flexible and autonomous administrative management system in order to replace the prevalent bureaucratic system.
- Reforming the public health system and making it more effective and efficient.
- Implementing an action plan that ensures the monitoring all health activities in public and private sector.

- **Long-term measures:**

Measures are basically related to establishing public health institutions that are equally dispatched among all regions and among urban and rural areas of each region, through:

- Building local hospitals in each area with a dense demographic ratio (more than 7000 inhabitants) and lacking such facility
- Building regional hospitals in regions lacking such facility, in order to adjust the national health service map and ensure access to health services to all citizens in their region, without having to endure the pain of traveling to distant regions and all its potential risks and exposures, which could even result in death.
- Building basic health centers and reproductive health centers in rural areas that are lacking such facilities.

- **Recommendations regarding infrastructure:**

The development of marginalized regions could not be apart from considering the necessity of providing and developing infrastructure in order to break out their isolation and create an economic and social dynamic.

This should come within the framework of a comprehensive national program for infrastructure development.

Accordingly, the government have a duty today to prioritize infrastructure upgrading in deprived areas, including asphaltting and renovating local and regional roads, building highways and rural roads, as well as providing public transport and creating railroads that contribute to achieving economic shift.

- **Recommendations regarding water:**

Given the critical importance of the water issue and its socio-economic significance, as it represents the basis of life at every level, from drinkable water to its vitality for productive sectors such as industry and agriculture, the State must today raise it as an Emergency Case and a hot topic affecting a vital matter.

Therefore, it is necessary to immediately start supply rural areas inhabitants with drinking water, connecting all urban areas to water network, and supply all schools, high-schools and hospitals with water.

The State must consider this issue as a true achievement of the inhabitants' requests, as it represents their major concern. It would foster their feeling of social justice, help rebuild trust in the State, and foster their feeling of belonging to the nation.

Also, it has become essential for the State to set a management and development program for the water system to be implemented on the medium-term. This would ensure a qualitative and quantitative sustainability of existing water resources, given the scarcity of water levels in Tunisia. The State must work towards finding balanced water distribution and generalizing the use of treated waste water in various areas, including fodder and green spaces irrigation.

- **Recommendations regarding environment:**

Given the importance of the environmental right, which represents a common request to all regions, from the perspective of addressing the environmental violations faced these regions, and considering its close link to the health issue, TDC has made a set of recommendations about improving sanitation services in regions that have been deprived of it for years, as well as reviewing the waste management system in a way that allows to improve governance on waste management and waste sorting.

Also, noting the need to link these recommendations to a comprehensive vision of sustainable development that promotes the preservation of environment and natural resources, since environment is considered as a public interest and a common responsibility.

- **Sanitation service:**

- **On the short term:**

- Delivering rural sanitation projects and extending sanitary sewer lines throughout internal regions to connect them to the sanitation network, in order to improve the rural population living conditions and preserve natural resources.

- Creating water treatment plants in needy urban areas, in accordance with objective criteria that takes into consideration surface and population, as well as providing the necessary equipment and supplies to intervene, clean, vacuum, and transport.
 - Treating waste water, make it match the standards of discharge into the natural environment, and use it in agricultural irrigation.
 - Uniting all scattered legal texts related to environment in a single Code that includes severe criminal penalties for polluting institutions.
 - **On the medium and long term:**
 - Broadening the area of intervention of the National Sanitation Utility (ONAS) to reach non-municipal areas with dense population, by changing their status into municipal areas within the area of intervention of ONAS.
 - Reviewing the sanitation system to ensure equity between regions.
 - Developing a program to assess the technical, environmental and economic efficiency of all sanitation facilities.
- **Domestic and solid waste management:**
 - **On the short-term:**
 - Reinforcing sanitation staff in municipalities and village councils, and increasing municipal agents to enable them collecting waste more than twice a day.
 - Closing and rehabilitating unauthorized dumps.
 - Regulating waste transportation and directing it towards controlled dumps that include recycling and transformation centers.
 - Increasing the domestic waste management capacity.
 - Organizing regular cleaning campaigns for water streams, and increasing environmental structures' control operations.
 - Closing illegal quarries.
- **Regarding hazardous solid-waste:**
 - **On the short-term:**
 - Accelerating the process of finding proper solutions to overcome obstacles in creating Phosphogypsum waste dumps in Gabes, through developing studies on its environmental impact. As well as involving citizens and different civil society components in assessing the feasibility study of economic projects, by adopting national consultations.
 - Accelerating the preparation of a tree planting program around the Groupe Chimique Tunisien (GCT) plants in Gafsa and Gabes.

- Creating a safety and prevention system that provides citizens with a free annual health check-up, due to disastrous impacts of pollution and damaged ecosystem.
- Reinforcing the ecological monitoring mechanism for all polluting factories with a strict enforcement of the « polluter-pays » principle, as well as activating deterrent measures including strict criminal penalties on polluting institutions, such as shutting them down and « name and shame » them.
- **On a medium-term:**
 - Creating new and modern controlled dumps, and backing them up with waste transformation centers and units specialized in sorting, recovering and recycling waste such as plastic, paper, metal and glass.
 - Promoting solid waste recycling projects, and providing all information and facilities necessary for motivating investors and focusing their attention on recycling industries.
 - Setting a information system with an updated database that facilitates the monitoring.
 - Conducting studies on fluoridated water management and stopping their release into the Gulf of Gabes without being treated.
 - Creating an action plan to fight against air pollution caused by the Groupe Chimique Tunisien (GCT) plants.
- **On the long term:**
 - Regulating construction and demolition waste management by establishing a special system that determines standards of collection, transportation, and final burial in special dumps.
 - Creating a national hazardous waste management strategy that sets up measurable objectives and follow-up indicators in fighting against industrial pollution.

- **Recommendations regarding Culture:**

Given the importance of the cultural dimension, which represents a major battle in the fight against terrorism and obscurantism, and in order to enshrine the cultural rights and the principle of equal opportunity, as well as considering the role of culture in cultivating openness to knowledge and fostering creativeness, TDC recommends the State to preserve cultural infrastructure in internal regions.

This consists in maintaining, constructing and rehabilitating Houses of Culture, building cinemas and theaters, creating public libraries in deprived areas, and modernizing and digitizing existing libraries, as well as supporting festivals and promoting them.

The State must also support creative culture, which combines consciousness-raising and wealth creation, contributing therefore to protect cultural assets and achieving cultural productivity.

That would be possible through granting tax incentives to investors in the field of cultural production, such as theatres, printing, books, etc. As well as supporting local orchestras and theatre troupes that performs in interior regions.

2. Symbolic forms of reparation for victim regions:

Symbolic forms of reparation are very important to victim regions, as they represent an explicit recognition of inflicted damages. It is considered as a vector for memory preservation and non-recurrence of past violations. Therefore, reparation for victim regions cannot be limited to material compensation, it also involves a symbolic dimension. Indeed, through the national consultation, inhabitants and local representatives of victim regions have considered symbolic reparation as a major part of rehabilitation and reparation measures.

Material compensation remains incomplete if no symbolic and moral measures were taken to turn the reparation process into a guarantee of non-recurrence, through recognizing the dignity of inhabitants of regions that have been systematically marginalized, apologizing to them, and make changes in the relationship between victim regions and the State and rebuild it anew.

In this regard, the president must declare, through audio-visual media, the State's responsibility for the systematic exclusion and marginalization of these regions. (see Joint recommendations - symbolic forms of reparation)

As well, it is important to include in educational curricula all historical events and struggles that occurred in victim regions, whether with regard to the colonial period or to the social movements and popular uprisings, with a view to commemorating their contributions to the Nationalist Movement and the fight against tyranny, and remember their leaders and emblematic figures.

In order to reflect a participatory approach and take into consideration the inhabitants' visions and requests, TDC recommends the State to:

- Turn the Gaafour police station in which Nabil Barakati was tortured to death into a premises for active human rights associations in the region, as his brother has promised to offer books belonging to his family to turn a section of this place into library for the region's youth.
- Unveil the extent of the massacre committed against youth from different southern regions, as demonstrated by the list of martyrs, that have been forgotten by history, in order to commemorate these historical events and the struggle of these regions' inhabitants.
- Search for the scattered remains of resistance martyrs in Tataouine's mountains.
- Honor the resistance fighters by burying them in a collective cemetery and rehabilitating their families and relatives.

- Create a museum to commemorate the struggles waged in these regions, and documentate the most important battles that took place in Tataouine.
- Turn the presidential palace in Kef into a touristic and cultural center.

TDC also insists on the necessity of prioritizing symbolic forms for reparation, as they aim at preserving collective memory and ensuring reconciliation and moral satisfaction. As well, it insists on creating museums, sculptures and exhibitions, and not at the expense of realizing planned development projects in these regions.

The State should make a set of consultations in the framework of an extended participatory process within concerned regions to set their priorities and involve them in the decision making process.

Considering the scale of suffering that victims had endured under previous regimes despite their different affiliations, ideological orientation, and geographical identity, in the framework of enshrining the national unity and the culture of openness, tolerance and coexistence, and fostering national reconciliation, TDC recommends that symbolic measures shall not be limited to the geographic location where the violation happened. This way, all violations would be unveiled to all regions and the collective memory would be preserved.

IV. Non-recurrence guarantees:

1. Decentralization as a non-recurrence guarantee to violations:

During the time of Habib Bourguiba and Zine Al Abidine Ben Ali, the prevalent political regime was based on an excessive centralization, a political choice that was considered as a means to construct a united nation able to fight the former tribal system⁴⁰⁶. Most of the local authorities used to be appointed by the central authorities who impose their officials and prevent any local party from displaying any political independence.

Administrative-territorial division was also used to enforce the central State authority countrywide: some governorates were created in exceptional circumstances regardless of developmental requirements. Municipalities and regions were formed based on security concerns aimed at dividing problematic areas. The role of municipalities was limited to mainstream services like collecting waste and city planning. As for the vital services such as health-care, education, infrastructure, and employment, they were outside the realm of their intervention. This resulted in the creation of influential regions in contrast with excluded and marginalized regions that were deprived of their social, economic, cultural, and environmental rights for many decades, creating thus severe disparities between regions.

A while after the Tunisian revolution, the Constitution of January 26, 2014 recognized a decentralized system and it was allocated an entire chapter, (chapter 7) leading to a new regional distribution based on municipalities, regions, and counties. Then, there was a ratification of the Code of local communities on April 28t, 2018 leading to the first local and

406, . Decentralization in Tunisia: Empowering Towns, Engaging People, Carnegie Middle East Center, Carnegie Endowment for International Peace, Tunis Observatory, June 2018, page 2.

municipal elections in Tunisia on May 6, 2018 which was "just a small step towards a wider program revolving around decentralization"⁴⁰⁷.

In this context, and in order to consolidate the current reforms and to acquire non-recurrence guarantees to political, economic, social, cultural and environmental human rights violations which have affected the victimized areas, and in order to rehabilitate those who have suffered systematic exclusion and marginalization,

Raising awareness among all inhabitants about their active role of participating in local governance and decision-making.

Reinforcing civil society's role in encouraging and cultivating the culture of participatory democracy as a bridge connecting public and local officials so as to elaborate mechanisms to solicit the citizens' views and their basic needs as well as to inform the local officials through counseling, municipal meetings or filling forms.

Making training obligatory for members of the elected councils of local communities in resources management based on the principles of good and open governance.

Allocating local councils, especially those in marginalized regions, the necessary technical and financial resources to enable them performing their tasks more effectively and efficiently in order to facilitate the development of marginalized regions and to catch up with the luckiest regions and become part of an inclusive and sustainable developmental vision free of discrimination in the context of implementing positive discrimination.

Equitably distributing revenues among all regions and acknowledging the principle of positive discrimination, which aims at ascending the victimized regions to the level of the luckiest regions even relatively, by the State. Especially that this is what victimized areas have demanded, like Ain Drahem in Jendouba, SidiBouزيد, Sidi Makhlouf in Medenine, Beni Mhirra in the district of Sommar in Tataouine and many others... Therefore, the State would allocate part of its annual budgets to victimized areas whereby it will implement the recommendations for reparation of damage gradually by paying urgent recommendations an absolute priority, and following a phased process to the other.

Implementing equality by guaranteeing an equal participation of both men and women in politics and in decision making and also by responding to the requests of victimized regions inhabitants, as well as achieving equity and public welfare. That can occur by guaranteeing equal opportunity for all to access services and improve their conditions.

Implementing the principle of good governance, wise exploitation of wealth and equitable distribution of resources by adding more transparency to municipal and regional work through publishing periodic bulletins about expenses and the progress of the projects.

Emphasizing the principles of open governance by allowing the citizens and civil society to access information in short periods through Liaison Offices created within the institutions of local governance. As well as by the digitization of procedures and operations made by the local authority via a website that comprehends all the necessary services and data. This website also allows the citizens to submit their inquiries and problems. Therefore, all citizens

407. , previous source, page 2.

countrywide will be able to have knowledge of the authorities' actions with due transparency and openness.

It is important to make sure that each region's specificities would be taken into consideration while making an administrative-territorial division in terms of natural resources and the descent of the inhabitants. This aims at preserving their identity and their rootedness in the region, especially that this demand was frequently included in the files received by TDC, as was the case in Ouled Ibrahim; the inhabitants' administrative affiliation was transferred from the governorate of Gafsa to the Governorate of Sidi Bouzid thus depriving them of their families.

Forming part of the endeavor to ensure the rehabilitation of those living in regions that have suffered systematic marginalization and exclusion and to limit the hegemonic presence of centralized authority in the capital, the Truth and Dignity Commission is considering the possibility of distributing the governmental activity to the victimized regions. This suggests transferring ministries and public institutions to the regions that have suffered from a systematic exclusion and marginalization with the necessity to create a plan and an inclusive perspective that can help achieve equilibrium among all territorial, economic, social and political variables equally.

2. Constitutional bodies' role in establishing non-recurrence guarantees

In the context of setting guarantees to execute a program of reparation for damage for victimized areas, it is necessary to establish connections with the rest of the constitutional bodies countrywide.

2.1. Human Rights Commission's role in establishing non-recurrence guarantees.

Article 128 of the constitution provides: Human Rights Commission "watches respect for liberties and human rights and works to promote them and suggests what it deems developing the human rights system and is consulted imperatively in its area of competence..." as also stipulated by article 6 of the organic law N° 51 dated 29/10/2018 regarding the Human Rights Commission, which affirms the indivisibility of rights and liberties undertaken entrusted to the Commission whether these rights are political and civic or economic, social, cultural, environmental and developmental.

This means that the social, economic, cultural, environmental and developmental rights that were violated in these regions due to systematic marginalization and exclusion are part of the Human Rights Commission's vision, in addition to political and civic rights which are under its watch.

On this basis, the Human Rights Commission can commit itself to the surveillance of the follow-up to the recommendations given by the Truth and Dignity Commission on the reparation for damage in the regions that suffered a lasting systematic marginalization and exclusion due to the violation of their economic, social, cultural and environmental rights. Especially that this Commission has been given a legal power to make an extensive surveillance over the extent to which rights and liberties were respected and protected. This

happens through a set of surveillance mechanisms which can guarantee the non-recurrence of human rights violation.

2.2. Role of the Sustainable Development Commission and Rights of Future Generations

Considering that the field of intervention of this Commission is related to all economic social and environmental issues as well as the economic and developmental schemes, whereby it possesses wide consultative prerogatives under the provisions of chapter 129 of the Constitution⁴⁰⁸, its tasks are therefore, compatible with the scheme for reparation in the regions victim of systematic marginalization and exclusion as a result of the violation of their economic, social, cultural, environmental and developmental rights.

When making the required counseling about draft legislations relating to economic, social and environmental issues and also when preparing national and regional development schemes or when making the guiding document for economic balance and outline and the follow-up reports about the developmental scheme or when executing its due counseling prerogatives in economic, social and environmental issues and about strategic and guiding documents specific to general policies or big national projects and programs, then it must put into practice the reparation program in victim areas and also take into consideration the recommendations given in the economic, social, cultural and environmental field.

Hence, its role consists of consolidating participatory democracy by providing a space for consultations and debates alongside associations, political parties, professional commissions and representatives of the local community which enables it to establish a culture revolving around national reconciliation when preparing public policies, development schemes, strategies, and sustainable development programs that can be a non-recurrence guarantees to violations.

V. Inclusion of the specificity of women, children, people with disabilities and special needs, the sick, and vulnerable groups:

1. Women

Despite adopting a number of progressive laws contributing to disrupting traditional patterns and destabilizing some pillars of patriarchy, it is important to say that the first aspects of discrimination against women were manifesting since the independence. For the gender dimension in the State founded by Bourguiba was not devoid of personal goals to gains support for himself, whereas, women's position was used Under Ben Ali's regime to polish his dictatorship.

After the independence, women's role was overlooked and they were not rehabilitated or commemorated for their struggle. In fact, Tunisian women contributed to the National

⁴⁰⁸Chapter 129 of the constitution states that: "The Commission for Sustainable Development and the rights of future generations shall be duly consulted in draft laws relating to economic, social and environmental issues and in development plans. The Commission may express its opinion on matters related to its field of competence ..."

Movement to fend off colonization and were in the front row, side to side with men. They also played a role in providing food and weapon supplies and in offering shelter and hideaway. Some of them were arrested, persecuted and even raped, but after the formation of the nation, their role diminished because of restrictions forced on human rights activists, unionists and political opponents. More than 400 female prisoners were incarcerated under Ben Ali's regime. Just like their fellow male activists, women suffered endless abuses and violations because of their background as political and human rights advocates. They have also been subject to various forms of abuse like night raids, arbitrary detentions, torture in police offices, prevention from employment, as well as administrative stalking and harassment... as we have found out later through our secret in-camera hearings that the number of women who have undergone grave and systematic violations throughout the period from July 1955 to December 2013 and who have deposited their files to the Truth and Dignity Commission are estimated to 16634 files.

Most of the times, women were subject to all sorts of sexual violence; disrobing, molesting, by putting women and men in the same detention centers or by being sexually harassed by police officers touching their private parts or by rape threats and attempts. Some women also get raped privately or before one of their relatives. Most women affirmed that police officers focus more on using sexual violence and verbal violence based on a social kind like insulting, mocking their appearance and bodies, humiliating, threatening, denigration and other deeds and words that debase and degrade women's humanity as an attempt to control and terrorize them.

It is also important to mention that there are testimonies that confirm the sexual harassment undergone by women as well as rape and rape attempts, however, some of these women did not have enough courage to deposit their files to TDC or to speak up about these abuses during the secret in-camera hearings due to social and psychological reasons.

Women have also suffered economic violence through constant stalking and pressure coming from police officers, employers or people working under the government's protection. They were denied jobs, had their work tools confiscated or had their businesses shut down through financial, administrative, and legislative corruption. Their financial possessions were also seized because of their political affiliation.

Political violence was also practiced on women to prevent them from participating in political, associative and partisan activity. In addition, some women who took part in political parties, civil rights or student or associative organizations and unions have suffered campaigns of distortion, and reputation assassination through rumors about their honor and morals.

Therefore, like men, women were also victims of grave systematic human rights abuses in Tunisia. However, in most cases the regime targeted women on the ground that one of their relatives was a political opponent. Actually, most of these mothers, daughters and sisters did not have any political affiliation and were not aware of the political activities in which their male relative was involved in. They were targeted to inflict a collective punishment which was a policy adopted by the authorities. This reflects the regime's internalized patriarchal doctrine that considers women not only vulnerable but also subordinate.

Socially speaking, most of the women who have suffered these abuses are considered guilty or accused. “This societal torment is exacerbated by a psychological one which results in a feeling of guilt, lack of self-esteem and self-confidence as well as social seclusion. This compels her to keep her silence and avoid revealing her suffering even to her closest people fearing a social and familial punishment on the one hand, and perceiving herself as guilty on the other⁴⁰⁹. This explains why the number of victims is bigger than that given to TDC. This should be taken into consideration for the purpose behind transitional justice is to overcome past pains and reconciliation. And by having women who were violated and refusing to speak up, it is hard to achieve social peace and creating a sane and balanced society.

The parallel and constant marginalization of women, especially in rural areas, represents a big challenge facing the reparation for damage. The latter becomes unable to counter violations and the extensive social discrimination which can hinder the effectiveness of these rehabilitations and rid reparations of their compensating and reconciliatory purposes.

Reparatory collective solutions are considered as one of the possible means to fight the structural, institutional and societal discrimination inflicted upon women. For the goal is to reduce the disregard and the exclusion and also to reduce the inadequacy in fulfilling social, economic, health, educational needs and in achieving a reasonable living standard.

And since TDC is knowledgeable of the measures taken by the government, like adopting the Organic Law No 58 against violence against women dated 11 August 2017 and the efforts made to improve representation of women in the judicial sector, in the legislative bodies and in the public service. Despite all these measures, women are still seen as less competent, so they don't get appointed head of the ministry of Defense, the Ministry of the Interior or the important cabinet posts or crucial senior levels. They are still less lucky in accessing the labor market because of the strengthening of gender stereotypes and professional discrimination resulting from numerous provisions that aimed initially at reconciling between work life and family. TDC also points out the disparity in wages between men and women in the private sector as well as the problem of women's unremunerated work in the agricultural sector.

Despite the fact that Tunisia signed most of the international conventions and covenants about human rights and socio-economic rights as well as “CEDAW” which compels it to defend working women and protect her from all forms of exploitation, marginalization, exclusion and discrimination, reality refutes that and proves the State's disregard to meeting its commitment towards working women; it overlooks the violations registered against them during work or by colluding in violating their professional rights in cases of unfair dismissal due to a sudden shutting down of some enterprises or in case of “legal” termination of contracts under the pretext of operational flexibility⁴¹⁰. While studying the files, we figured out that the political power during both previous regimes placed emphasis on the symbolic aspect of the female body when torturing women, for it is loaded with social and cultural significances.

409The National Commission of Inquiry on Abuse, “Report of the National Commission of Inquiry on Abuse and Violations recorded during the period from December 17, 2010 until its removal ceases,” April 2012, p. 477.

410Hussein Mounir: Women working in the textile sector, from job vulnerability to social exclusion, Kossayba El-Mediouni, “Tunisian Forum for Economic and Social Rights”, Monastir branch, February 2015.

1.1. Fighting discrimination against women:

As International Human Rights Law imposes standards of equal protection and non-discrimination, the Universal Declaration of Human Rights provides in article 7 that “All people are equal before the law and are entitled without any discrimination to equal protection of the law.” Also, the principle of non-discrimination is clearly provided in most of “specialized” Human Rights conventions. As a matter of fact, article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) defines the term “discrimination against women” as any distinction, exclusion or restriction on the basis of gender. Since the Tunisian Republic has withdrawn all reservations made in the law of 1985 regarding the ratification of CEDAW in 2011, and as this convention compels the State to implement the concept of gender equality in its legislation and to repeal all discriminatory provisions in its laws. Thus, the State has to review its legislation in order to guarantee effective equality between men and women which stands as recognition of an essential component of society and the role it plays.

Recommendations:

Therefore, TDC recommends:

That all necessary measures be taken throughout public media and throughout the ministry of culture to make efforts to replace the classical and stereotypical image of women and build it anew.

Review with no delay all laws establishing discrimination against women.

Review socio-cultural stereotypes about gender roles and behavior in order to get rid of traditional customs and all gender role based behaviors.

Take targeted measures for the benefit of the most neglected women in labor market especially those working in rural areas.

Fight against professional discrimination and provide means to evaluate jobs allowing the revision of salaries distribution especially in jobs where women are most represented.

Improve the representation of women in decision-making positions in public bodies and push forward towards a balanced representation of both genders in economic institutions.

Sensitize and train employees of the Judicial Service and law enforcement officials about the forms of violence inflicted upon women and reinforce awareness campaigns for all people.

Establish centers and health-care centers providing reproductive and sexual health services and psychologists, and name these centers after women who have suffered human rights violations, and create such centers in less fortunate areas in terms of healthcare.

Give priority in social security programs to poor families and single mothers.

Involve women’s associations in decision-making related to women so that victims receive justice.

Create formative sessions to train women about the techniques of negotiation, communication and argumentation.

Launch training and reintegrating centers for women to:

Create formative sessions for women in various fields like industry and agriculture and to value the specificities, traditions and resources of the regions to encourage them to create their personal business.

Help female entrepreneurs developing their projects.

Encourage women starting businesses by facilitating loan procedures and extend repayment deadlines.

1.2. Fight discrimination against women in the regions:

While socio-cultural factors are contributing to the creation of a social system based on excluding and marginalizing women in general, the poor conditions that women endure in the internal regions exacerbate this marginalization; and make them suffer from poverty, illiteracy and deteriorating health as well as ignorance of their economic, social, political and cultural rights. In these regions, the number of female student drop-out is increasing besides their lack of training which affects the type of job that they can get; with a lot of unremunerated work like doing domestic labor and some agricultural work within unstructured sectors.

Moreover, female participation in political activities in internal areas is still not popular and frowned upon, as it requires mingling with men and meetings outside work time as well as remote travels sometimes. In addition to a pejorative attitude towards women which restricts their role to reproduction alone. These factors deprive women of freely managing their time and energy or devote part of it to political activity.

The Committee on Economic, Social and Cultural Rights has urged the countries that ratified the International Covenant on Economic, Social and Cultural Rights, among which is Tunisia who ratified it in 1969, to:

Take targeted measures in favor of the most deprived women in labor market especially those working in rural areas, fight professional discrimination and provide tools to evaluate jobs allowing for a revision of salaries in jobs where there is a high representation of women.

Improve the representation of women in decision-making positions in public bodies and push forward towards a balanced representation of both genders in economic institutions.⁴¹¹

Nevertheless, women are faced with an absence of practice and effective implementation in reality, which is demonstrated through statistical indicators confirming the increased marginalization of women especially in deprived internal regions.

A study carried out by the Ministry of Women, Family, Children and the Elderly in the framework of Spanish cooperation has demonstrated that 50 thousand woman in the agricultural sector, that is 80% of women in rural areas, are working without a salary and don't have any income; they either work for their brother or father or one of their relatives. Whereas, only 4.7% of women in rural areas own their farming projects. Rural women

⁴¹¹ Economic and Social Council, Committee on Economic, Social and Cultural Rights, United Nations, November 2016

represent 35% of all Tunisian women and more than 50% of people living in rural areas. Moreover, 19% of rural women having their own projects have no social security coverage. 509208 rural women work in the agricultural sector, among which 427534 are supporting their families, yet with no income or social security⁴¹².

In addition to these poor conditions, we can find that women spend more than 9 hours a day harvesting seasonal vegetables, olive trees and fruits for no more than 10DT a day despite their high effectiveness in comparison with men who gain more than them. Women also suffer crowded and dangerous⁴¹³ means of transportation that lack most basic safety conditions. They are usually transported by truck in very humiliating conditions; to carry more female workers, truck owners pour water in the back of the truck to keep them standing up during the travel which exposes them to dangerous accidents. The report done by the Tunisian Forum for Economic and Social rights has also demonstrated that in the period from March 2015 through February 2016, 10 transport accidents have been recorded resulting in the death of 7 female workers in the agricultural sector as well as 133 injured ones.

Additionally, agricultural labor remains unprotected which makes women work without legal contracts. Consequently, they are exposed to professional instability and blackmail from mediators or direct employers despite doing a heavy work like harvesting, sowing, weeding, carrying the harvest, and sometimes ploughing.

These women are also exposed to climatic conditions: cold, precipitations, heat especially while harvesting the greenhouses in summer season, in addition to the bad conditions of moving through the thorny and muddy fields in winter. This can cause different health complications (arthritis, osteoporosis, dermatitis, and sometimes abortion due to carrying heavy produce)⁴¹⁴.

Work conditions of women in the industrial sector especially in textile, food industry and manufacturing are no less dangerous than those of the agricultural sector. They are subject to a systematic and codified violence from the decision makers from all the levels of this sector. The adoption of all principles of the free market resulted in a stockpile of laws and legislations with view to ease the exploitation of the female workforce by codifying forms of vulnerable employment resulted in violations of female workers' rights due to arbitrary dismissal and their inability to regain their rights.

Despite the fact that Tunisia has ratified most of the international conventions and covenants about human rights and social and economic rights as well as CEDAW which compels to engage in defending working women and protecting it from all forms of exploitation, marginalization, exclusion and discrimination, reality refutes this and proves the State's disregard to fulfill its commitments towards working women. The State overlooks the violations recorded through work or even by colluding in violating their professional rights in

412 CREDIF Magazine, issue No. 49, "Unemployment of Women with Supreme Martyrs", December 2015.

413 Hamzah Khalafawi, Rural Women between Marginalization and Discrimination, 7 August 2017, <http://www.sasapost.com>.

414 Yassin Al-Nabli, "Female agricultural workers, forearm, for meager wages," 03/15/2016, nawaat.org.

cases of unfair dismissal due to the shutting down of some enterprises or in case of “legal” termination of contracts under the pretext of operational flexibility⁴¹⁵.

And even though article 134 of the Labor Code provides for a substantive minimum wage in various occupations, many categories of female workers find themselves exempt from the provisions of this chapter. In addition to that, unremunerated labor is still a common practice in the agricultural sector which is regulated by separate provisions for the minimum wage. Furthermore, the work conditions in textile are unsatisfactory and the resources allocated to Labor Inspection Offices to make regular visits to check on the conditions of hygiene, health and safety are scarce. The Labor Inspection Offices’ tasks should also include caring for female workers in shadow economy to avoid their exploitation and exposure to hazardous work conditions.

Adding to all these conditions, rural women also suffer economically from a double figure high unemployment rate, in comparison to that of men, and can even attain three times that of men in some regions.

A national survey about employment carried out in 2011 has shown that illiteracy rate among females has reached 25.9% while that of males is about 11.2%. According to the General Population and Housing Census of 2014, female illiteracy rate attained 25% against 12.4% for men⁴¹⁶.

We find this rate more elevated among girls living in internal marginalized regions for they suffer from a multiplying marginalization due to the fact that they live in regions that do not enjoy the most basic requisites of development. They are, for the mere reason that they are girls, deprived from education and employment, which adds to their economic impoverishment and marginalization.

Girls are also forced to drop out of school to go out and work in order to meet their needs and provide income for their families. In this context, the district of Ain Drahem is known for employment of underage girls; from 6 to 15 years old. They work as household helpers where they are dispossessed of their childhood and innocence and become deprived of their natural right to play, study and grow within the bosom of their parents, who are forced to put their daughters to work to subsist because the government did not provide them with employment.

Adding to the previous, the schools are remote from students who lack means of transportation and are forced to use dangerous rural and mountain pathways. There is also a number of cultural factors, namely a conservative and pejorative attitude towards women as some parents still discriminate between their sons and daughters and consider the natural place for women is the house, therefore, they see no need to educate them.

Women living in internal regions also suffer from many deficiencies on the health level, such as:

⁴¹⁵The Tunisian Forum for Economic and Social Rights, Monastir branch, Hussein Mounir, women working in the textile sector, from job vulnerability to social exclusion, Ksibet El-Mediouni, in February 2015.

⁴¹⁶National Institute of Statistics, General Population and Housing Census, 2014, Tunis.

Disparities between regions and social categories in terms of social security; most women do not have social security because of their unprotected labor. Therefore, they can't benefit from health services and can't have free treatment cards.

Shortcoming in providing health services that can meet the required quality and efficiency, in addition to the difficulty in having access to healthcare due to the lack of an infrastructure that can assure them a safe transportation. There is also a lack in reproductive health centers (only 5 centers in the governorate of Kasserine) and in maternal and child health centers (only one center in Ain Drahem/ only 7 centers in Kasserine/ 8 centers in Gafsa...), and an absence of breast cancer departments in hospitals.

Uneven distribution of health professionals especially the absence of gynecologists, which results in high mortality among pregnant women. One can notice significant disparities on the level of maternal mortality; the national average is about 44.8% on every 100 thousand births, while this number has increased in the mid-west, the south and the north-west⁴¹⁷. One can also find that life expectancy average differs from a region to the other. In 1995, the average of life expectancy reached 76.6 years in Gabes, while in Siliana it stops at 70.5 years old. Same applies to girls' average child mortality in Siliana which reaches 40.4 per thousand while the national average is 19 per thousand⁴¹⁸.

Recommendations:

Therefore, the Commission recommends the State to:

Literacy programs, legal awareness programs as well as skill-development programs to reduce violations and discrimination inflicted upon women.

Provide special buses to secure the transportation of female workers in the agricultural field, empower women economically and improve work conditions.

Review legislation related to employment in the agricultural field to implement equality between workers of this sector and their peers in other sectors by making the minimum wage in agricultural sector similar to that of the other sectors, not only that but also in work dues like working during holidays and weekends by making them paid for seasonal workers.

The obligation for employers to declare the number of female workers in the agricultural sector to the Social Security Fund and pay the necessary subscription fees.

Motivate women to launch their own businesses by facilitating loan procedures and extending repayment deadlines.

Popularize the Digital House model made for women, created in Tozeur, which includes female artisans specialized in traditional fabric which contributes in valorizing their products as well as creating ways to e-market and e-promote it which can empower them economically.

Raise awareness about their rights and consolidate rural women's participation in the management of local affairs.

417National Office for the Family and Human Urbanization, new family planning program, TV Mars 2016,

418Gastineau B, Offres de soins et santé des femmes en Tunisie. CERPOS D321, Université de Paris X, Nanterre, France. (1996).

Fight the two phenomena of early drop-out and illiteracy among girls and young females in the countryside.

Provide special scholarships for girls from cash-strapped families to limit poverty related drop-out.

Increase awareness campaigns among families and broadcast public service announcements on TVs and radio stations about the necessity to educate girls and to treat them as equals to boys.

Create free treatment cards for women working in the agricultural sector until durable solutions are found to guarantee their rights as workers through a legal and executive framework.

Facilitate procedures of subscribing in social security to facilitate their integration in agricultural sector and benefiting from social welfare funds.

Supply regional and local hospitals with the necessary medical equipment and appoint doctors specialized in gynecology.

Create reproductive health centers and maternal and child health centers and supply them with the necessary equipment especially in Kasserine, Tataouine, Kairouan, and in agricultural areas especially.

Establish departments specialized in breast cancer screening to facilitate treatment during the first stages.

Launch reception, guidance and mentoring units for women about health services.

Provide mobile health services to give vaccines for pregnant women in remote rural areas as well as IRM machines and ambulances.

Create women committees within bodies, cultural clubs and women's clubs within schools.

Create women cultural and sports associations.

The reparation of damage for women inside marginalized regions can heal the impacts caused by the violations of their economic, social, cultural and political rights. Therefore, they can regain a sense of dignity and be rehabilitated and their essential role in building the society would be acknowledged just as equally as men's. This can eliminate all radical factors of unequal opportunity, rights and duties in order to implement social justice and equality in gender roles as well as to empower women socially, economically and politically so that they can become an active contributor to society and a primary participator in development.

2. People with special needs:

TDC insists that while studying the files of victims of systematic and grave violations, it noticed that the oppressive power, from the year 1955 and until the revolution, did not take into consideration when oppressing its opponents, the fact that some of them had disabilities. It also confirms that the severity of the violations and the harsh treatment those political opponents and their relatives have undergone has left a huge physical, psychological and mental damage resulting also in disability.

In fact, the reintegration of human rights violation victims suffering from disability back into society requires the multiplication and gathering of various mechanisms that support their psychological and social rehabilitation for life. The State is responsible for guaranteeing equality for people with disabilities to all the rest of social components as well as for helping them build their own capacities to achieve an amount of independence, and self-appreciation which can facilitate their harmonious reintegration in their environment and achieve social reconciliation and peace.

TDC takes also note of the Order No. 3086 of 29 November 2005, defining disability and setting forth the proof required to obtain a disability card, and that the State endeavors to shift from a medical approach to a social approach. However, it is concerned at the risk of exclusion of persons who should be protected by the Convention on the Rights of Disabled Persons, in particular persons with psycho-social disabilities (mental illness) or intellectual disabilities, or others who are unable to obtain a disability card, either due to disability or to other factors related to a disability.

TDC also refers to the Law No 83 dated 2005 providing for free and discounted travel for persons with disabilities and their assistants and mobility aids. However, it noticed a lack in sufficient information about the application of the concept of reasonable accommodation arrangements.

While listening to victims of violations, TDC noticed a popular pejorative attitude towards women with disability from their families and society in general. In fact, there is a lot of socio-cultural pressure leading families to hide women with disability which stands in the way of them obtaining a disability card. Therefore, this limits their opportunity to partake in social life and fully exploit their potential. Some go even further to mistreat kids with disabilities in order to get them to behave properly due to a lack of awareness and understanding of their children's disability.

Recommendations:

Therefore, TDC recommends the State to:

Revise its definition of disability and reformulate it according to the Convention as a reference.

Include in its national law a concept of reasonable accommodation arrangements and to provide for the application of these arrangements according to the article 2 of the convention, and to specifically make sure that the law explicitly recognizes that the deprivation of reasonable accommodation arrangements is a form of discrimination on the basis of disability.

Multiply its efforts to raise awareness among law professionals, especially in the legislative body, and among people with disabilities themselves about the importance of non-discrimination through training programs about the concept of reasonable accommodation arrangements.

Incorporate in its legal texts providing for non-discrimination, an express prohibition of discrimination on the basis of disability and to make sure to include it in all laws, especially those governing elections, employment, education and health.

Prepare and set awareness campaigns and educational programs addressed to different social groups, including families, on women with disability to enhance respect for their human rights and preserve their dignity and ensure fighting stereotypes and all forms of prejudice and hurtful behavior as well as help gain awareness of their potential and contributions.

Ensure the representation of women with disability when collecting data and making statistics. Based on the result of these statistics, conduct research and inquiries in order to diagnose the situation of women with disability and determine their personal needs in order to set and adopt strategies and policies reinforcing their independence and total participation in society as long as these strategies focus on education, health, social security and the fight against violence against women with disability.

Evaluate the phenomenon of violence against children with disability and regularly collect categorized data in order to fight this phenomenon in a better way.

Ensure that institutions providing care for children with disabilities are staffed with specially trained personnel, subject to appropriate standards, regularly monitored and evaluated, and establish complaint procedures accessible to children with disabilities.

Constantly consult with people with disability or the organizations that represent them in order to determine and observe and fix gaps and obstacles to allowing people with disability access various facilities.

Review the laws allowing for guardianship and trusteeship and take measures to pass laws and adopt policies replacing the system of guardianship and trusteeship in decision-making, for it demines their humanity as autonomous independent individuals by a system called assisted decision-making.

Conduct awareness campaigns and develop educational programs on the greater vulnerability of women and girls with disabilities with respect to violence and abuse.

3. Children:

Article 4 of the Tunisian Constitution stipulates that child's rights are the responsibility of his parents and that the State must ensure that their rights to dignity, health, care and education are respected. The State has to provide all forms of protection to all children without any discrimination.

Despite these reforms and mechanisms, (Child Protection Code issued on November 9, 1995, child protection representatives...) when dealing with the files deposited in TDC, the latter noticed that there are a lot of breaches and violations of child's rights and the incapacity of these guarantees to realistically protect many children.

Children are considered as one of the most vulnerable groups that have suffered violence from the abusive previous oppressive regimes. These violations were made only on the basis of children's positions and opinions concerning issues of public interest or their school activity, but also because of their relationship with one of the victims.

Children have also been exposed to various violations like interrogations, verbal and physical violence, and intimidation and bullying resulting in severe damages no less serious than those suffered by adults; it is in some cases even more impactful and has devastating implications that are mostly hard to erase.

We were able, through our in-camera hearing sessions, to unveil facts about victims of the previous violations and various types of grievances they have endured which consist of insults, illegal arrests, physical and verbal persecution, and sexual abuse by police officers or by adult prisoners. Some children were taken to civil prisons regardless of their age. Children's presence in those prisons resulted in their sexual exploitation with total disregard from the concerned authorities.

TDC also discovered that these violations were grave and systematic and consisted of raiding houses, terrorizing children and humiliating them, insulting their parents in front of them, and slandering and harassing them. These practices were inflicted upon all families pursued by the previous authorities for political reasons.

The devastating implications caused by these violations were negatively reflected in children's relationship with their families, in their education and on the psychological and social level since they were highly exposed to physical abuse and traumas.

The implications caused by children's exposure to emotional violence are no less impactful and devastating than physical violence. This can lead to a deficit in mental and psychiatric capacity as they grow up and this can also lead to permanently wreck their self-confidence.

Recommendations:

Make efforts to develop and enhance public institutions in order to protect and reinforce child's rights and his basic liberties as well as support their intellectual creativity.

Ensure that deprivation of liberty is always used as last resort and expand possibilities for alternative sentences such as probation and community service.

Establish the child probation officer envisaged in the Child Protection Code, review and strengthen the process and methodology currently applied in legal mediation in order to reach its educational goal.

Put extra efforts into training the law enforcement personnel on child human rights, and take additional steps to guarantee the preservation of their rights.

Continue creating important institutions that protect and reinforce child's rights and his basic liberties.

Provide in police and National Guard offices and special detention facilities for juveniles' personnel, psychiatrist trained to deal with children.

Establish a surveillance system promoting law enforcement, and ensure an effective preservation of child's rights in detention centers.

Ensure that there are effective independent mechanisms available to receive and address concerns raised by children within juvenile justice system.

Provide institutions for mental health care and social services specialized in taking care of children on all levels. These institutions can also play a role of surveillance to detention centers and correctional institutions, and have among their prerogatives the ability to intervene with the concerned authorities in case of a grave breach of the provided law, which breach can be dangerous for the child.

Organize training sessions for police investigators, prosecutors and judges to acquire the right mechanisms and skills to deal with minor defendants.

Prohibit police officers from raiding houses after 9pm when there are children in there albeit an authorization from the Public Prosecutor, and ensure, in case this happens, that the suspects and the wanted are not arrested in front of their kids.

Social awareness through seminars and conferences on child's rights to health, psychological and social care as well as his right to have an opinion and to feel a psychosocial security.

Protect children from harm during investigations and prosecution and to respect the confidentiality of this group.

During investigation: hear the child only one time in the presence of a psychiatrist and audio-visual recording to check it when needed so that the child is not heard several times.

Enhance juvenile detention centers to focus their mission on rehabilitation and reintegration.

Prohibit detaining juveniles with adults whether in detention centers or prisons.

Work on limiting disparities with regard to access and availability of services for children between different regions, and between urban and rural communities. These disparities are reflected in a range of demographic and social indicators: (rates of school enrolment and dropouts and the rate of success in the baccalaureate exam...)

Take all necessary measures to ensure the sufficient incorporation of the principle of "the best interest of the child" in all legal provisions and to practically implement it in judicial and administrative decisions and in all projects and services and programs affecting children.

Include the principle of "respect for the views of the child" and facilitate its application within his family, school and society as well as in institutions and in the context of judicial and administrative procedures.

Reactivate the Children's Parliament project and children's Municipal Councils locally in order to allow them to participate in common life as well as to provide them with the means to participate actively in setting priorities and implement programs and evaluate them.

Establish an executive mechanism and procedures consistent with Articles 19 and 39 of the Convention on the Rights of the Child, especially for prevention, identification, reporting, referral, investigation, treatment, social reintegration and follow-up.

Children's peculiarity in internal regions:

In this regard, some internal regions have a prevalence of suicide among children under the age of 18. Kairouan is probably one of most relevant examples for the prevalence of this phenomenon casting its shadows on children. This makes us raise the alarm about the dangers

that are now threatening children's lives. According to a study carried out by the Tunisian Forum for Economic and Social Rights, a high rate was recorded concerning suicide among students and school dropouts. The "Ela" region, alone, has witnessed 15 cases of suicide from April 2014 to December of the same year.

This places us in the face of painful and hurtful questions about the reasons that could push a kid less than 9 years old, to commit suicide while he is still in elementary school. We cannot fail to mention the high incidence of child labor in some areas. In this context, the region of Ain Drahem is considered as a destination for under-age girls' employment as household helpers. The situation went as far as making a weekly marketplace for brokering girls in a striking contrast with all the international laws and Conventions that provide for the rights of the child that consider child labor a form of human trafficking.

Having these dangerous phenomena in regions that suffer a systematic marginalization and exclusion, is nothing but a reflection of an aggravating economic downturn and a critical economic situation that families are enduring besides increasing poverty and unemployment. The latter pushes these families to deprive their children from enjoying their childhood and forces them sometimes to deprive them from education and throw them in the labor market at an early age.

This could result in issues and psychological pressure for the child who finds himself loaded with burdens too heavy for his age, in addition to denying the child his cultural rights because of the complete cultural and sports activity desertification and total absence of cultural clubs or activities in many of the schools in less fortunate places or in rural areas or the outskirts of some cities.

Therefore, it is important to focus on treating these serious problems that are now threatening our children's life and safety and to consider them part of the urgent issues that ought to be contained, by:

Enforcing laws providing for all forms of child protection and ensuring the enjoyment of his rights to the fullest.

Reinforcing penal judgment by applying sentences on those who infringe the Article 2 of the Child Rights Code, which ensures the child's right to acquire all precautionary measures that have a social, educational, health aspect, in addition to other provisions and measures that protect him from all forms of violence, harm, verbal and physical or sexual abuse, negligence and carelessness leading to mistreatment and exploitation.

Including protection from suicide among health-care services for it is an essential component of protection. The early diagnosis of psychological troubles and suicidal symptoms and its effective management are very essential elements to guarantee the right amount of care for those who need it.

Establishing school programs that aim at fighting violence and building skills. The most crucial element is to popularize the mobilization of a psychologist and a sociologist and Listening and Social Guidance units so that the students can enjoy a positive care and support and learn self-appreciation and efficient problem-solving skills.

Popularizing sports and cultural and educational programs in schools as well as organizing excursions.

4. The elderly:

Older people, whether men or women, enjoy equal rights as everyone else. TDC is knowledgeable of the Law No 114 dated 1994 providing for the protection of the elderly, which stipulates in its first chapter that “an elderly is a person who is over 60.” And as stated in its provisions, protecting the elderly means protecting their health, preserving their dignity, and helping them overcome their daily hardships caused by their old age, as well as helping them get to know their rights and provide the necessary aid for them besides fighting all forms of family and social discrimination and exclusion.

Despite this law, the provisions of which ensure a protectionist approach for the elderly by establishing a set of rights whether for those in nursing houses or living with their families, in reality, it is still formal and or its application has been limited. In addition, the rights of the elderly did not get enough definition and even the elderly themselves are somehow unaware of their rights and of the parts they can go to in time of need. We can say that they have been used to marketing a certain image. Practically, there was no real will to protect the elderly who need care. In addition there is a lack in studies made on the elderly and an absence of older-people regional delegates who can be informed about what this group of people goes through and endures.

While dealing with the files and hearing sessions of victims of systematic and grave violations, TDC noticed that the ruling regimes from 1955 did not take into consideration the age of the people they were oppressing. Therefore, older people suffered, just like the others, political oppression and physical and material harm. In fact, they would be violated when one or all their sons are arrested which deprives them of their care-giver and provider, in addition to the difficulty of transporting to prisons and also house raids and summoning to police offices. In addition to the financial pressures exercised on these families which can lead sometimes to breaking down the family and creating a feeling of a burden for the elderly which can seriously damage their psyche.

The National consultation on the comprehensive program of reparation for damage for human rights violations victims, which was also undertaken by TDC have shown that 23.38% of people above 60 years old who were victims did not have a social security, and 50.27% of them had no health insurance. This program has also shown that 16.19% of the elderly were renting and 10% were living out of favor. It also demonstrated that 41.41% of the elderly were still providing for their children who were still studying.

On another level, the program has shown that 78.97% of the actual elderly have suffered harm caused by inflicted violations and that 82.06% have suffered physical damages, 77.91% have chronic illnesses and 38.06% suffered physical loss. 79.49% have psychological damage. Meanwhile, 43.04% of the elderly expressed their dissatisfaction with the measures taken for them since 2011.

We can understand that most of them live under socio-economic instability which can result in a heavy burden destabilizing the social equilibrium. To avoid this disequilibrium, a

protectionist approach that can meet the needs of the elderly should be created, especially with the demographic changes and the increase in the number of the elderly, and it should be based on 5 essential axes/levels. First of all, the right to housing because their age does not permit to take them out of their living environment using legal procedures and deadlines regulating house rentals.

The second right is that of having a stable source of income that can guarantee a decent and reasonable living standard and allows them to meet their necessary needs in a permanent way, as having no retirement pension or a stable income or a provider can make them unable to provide for themselves. Therefore, they must enjoy social aids.

The third right is about the elderly's position to the other which can result in some damage. In these cases, the penal code and the Consumer Protection Law should intervene to stand against the exploitation of the elderly's physical and mental weak capacity. The penal code should also allow for the arrest or restraint of those accused of material and sexual assault on the elderly considering the victim's age enough reason to do it. In addition to that, the victim's age should be considered as a risk assessment criterion and a standard to the extent of the punishment and to aggravate the punishment in case the accused is a law enforcement employee.

On the fourth level of protection, the obligation to report the mistreatment that weak persons go through, among which are the elderly, especially from the part of medical and social care personnel and prison officers and State agents since non-disclosure policy as well as their professional secrecy may not allow them to do that. These considerations should be annulled in the face of their responsibility to protect these vulnerable groups.

While the fifth level is concerned with health-care, for the elderly require a special type of medical care regarding their special health needs because of their age, which pushed towards the advent of gerontology. This specialty should be provided in most of health institutions and efforts should be made to train the medical and paramedical to acquire enough skills to deal with the elderly.

Based on the comprehensiveness of the reparation program, TDC worked on the ways to ensure reparation whether at the individual level or the collective one in order to extend the number of beneficiaries and establish a culture of human rights and immortalize collective memory.

TDC also recites the importance of reparation of damage on all levels for it is a complete and comprehensive aiming at restoring the feeling of social belonging, rebuilding trust in the State's institutions, reconstituting national identity with respect to cultural diversity and reformulating collective memory especially to achieve reconciliation and rebuild the societal network.

VI. Joint recommendations:

In this context, TDC considered thinking of other ways and forms of reparation for damage combining the collective and the individual in a way that guarantees reaching more

beneficiaries, achieves sustainable development, contributes to the establishment of Human Rights, and immortalizes collective memory. This has incited us to propose a range of joint recommendations for reparation of damage mostly revolving around:

Use symbolic forms of reparation for damage of the victims given their importance in rehabilitating them and preserving a collective memory.

Establish a public institution to work on monitoring the Fund for the Dignity and the rehabilitation of victims of tyranny.

Create 3 centers to rehabilitate victims of Human Rights violations in three regions lacking health-care services.

The Centers' services can be boiled down to:

Provide medical, psychological and social as well as legal services in order to rehabilitate victims of human rights violations in the context of the Law of Transitional Justice.

Make free field visits via mobile units for people who cannot go to these centers.

Take into consideration women's peculiarity by providing the adequate training for personnel and professionals. Besides providing female professionals (most women who are victims of torture and sexual abuse prefer to be accompanied and listened to by women).

Training different child's rights speakers.

Provide legal guidance and counseling.

Provide other services in training field and building scientific research skills.

Social and economic solidarity programs

Cultural development programs

Conclusion

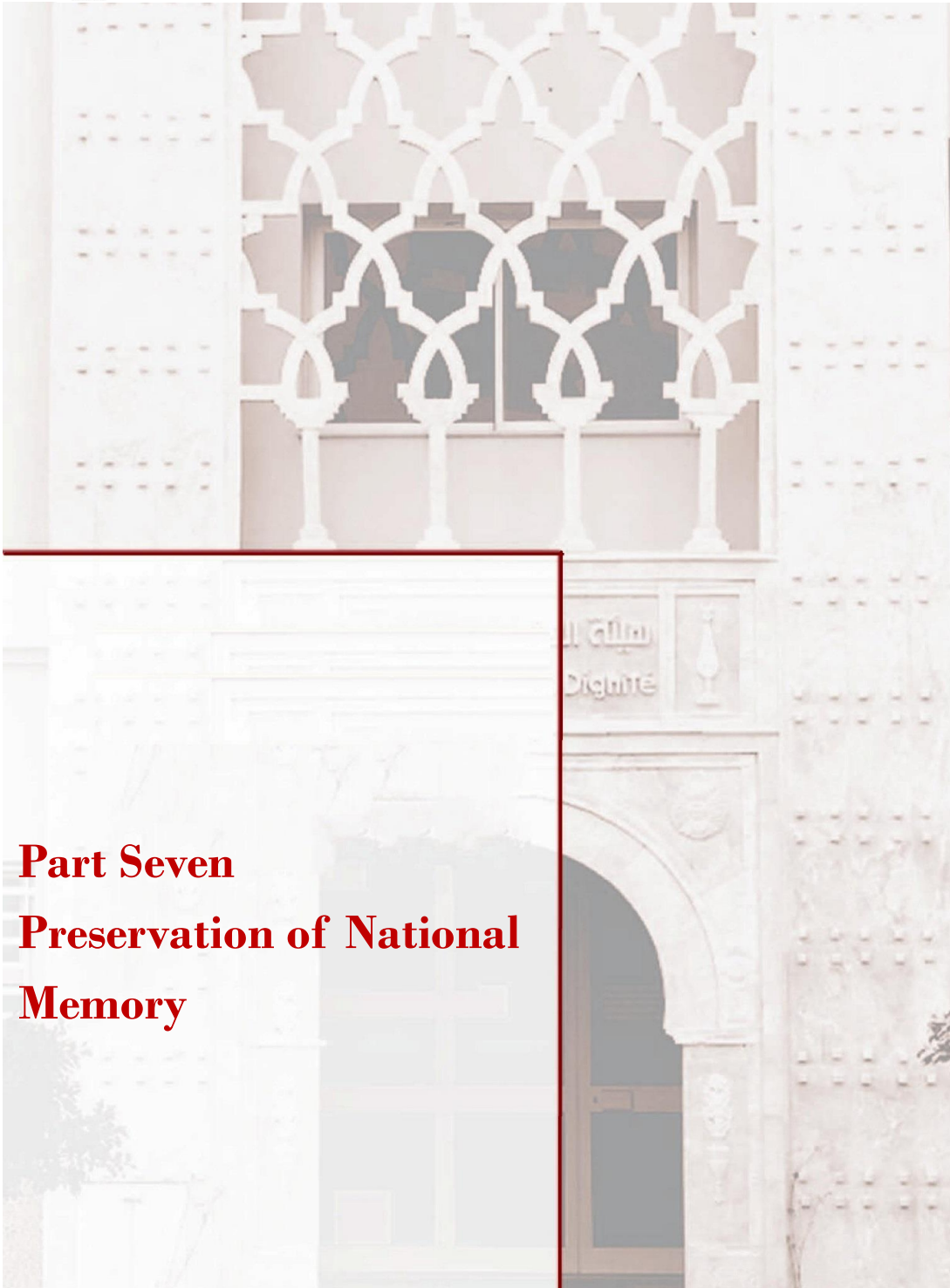
Reparation of damage usually consists of compensations relating to what happened in the past. It is true that compensation has an important role in reparation which is considered the most relevant aspect of the mechanisms of transitional justice for the victim, yet reparation transcends compensation. More specifically, the importance of reparation consists of the efforts made to repair the damage inflicted upon the victims throughout several mechanisms namely, reintegration to assure stability and pulling them out of the crucible of victimization to the effective implementation of human rights and equal citizenship.

However, reparation is not only about repairing past damages. It plays a role in constructing a society of post dictatorship, corruption, struggles, violations and marginalization generated by that regime. Reparation aims at reinforcing reconciliatory initiatives and eventually at paving the way for peaceful coexistence requisites. Reparation, on the individual and collective level, plays an important role in rebuilding trust between the State and the victims by implementing rights and a culture of citizenship and guarantees of non-recurrence of the past tragedies. This proves that reparation is not just an outcome and it is not about the past, it is rather an effort that puts the bedrock for a real reconciliation and for a sustainable social

peace via the implementation of Human Rights as a universal principle that is indivisible and vital to ensure a culture of citizenship, the right to be different and preserve human dignity. This helps enriching societies for it is crucial to attain an intellectual and creative advancement and it is the bedrock of societal progress.

However, building a new social type is not dependent only on the role of reparation; it is rather a collective and social endeavor to which everyone should partake. It is necessary for politicians to recognize their role in the building of the State of law, institutions and justice by the definition of a new and integrated concept of governance based on the deepening of democracy and plurality and modernization of the judicial system from the perspective of non-recurrence guarantees, and building healthy horizontal and vertical relationships in order to regain trust in the State's institutions. Civil society as well has to play its role in observing and raising awareness and to act as a platform for dialogue and creativity, and supplying the State and society in general with the suggestions that can preserve human dignity and achieve discrimination free social advancement.

Despite all of this, in order to really guarantee the non-recurrence of past tragedies and build a new type of society, we have to think of the primary reasons of violence and discrimination since aiming at building a new sociological approach has to necessarily go through the reformation of education. This can help raise a new generation based on values of respect, democracy, and Human Rights. Investing in our children can be the best non-recurrence guarantee of the painful past, the consolidator of trust, and a guarantee of a better future for our nation.



Part Seven
Preservation of National
Memory

Chapter one

The Preservation of National Memory _____

Introduction

The path to national reconciliation not only goes through pecuniary compensation, but also through symbolic reparation, such as memory preservation processes.

The tendency to focus on the memory of violations reinforced the emergence of the concept of "the duty to remember". The concept of memorialization was mentioned as a means to fight injustice and foster reconciliation in the Durban Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, in which States emphasized that "remembering the crimes and wrongs of the past, wherever and whenever they occurred, unequivocally condemning its racist tragedies and telling the truth about history are essential elements for international reconciliation and the creation of societies based on justice, equality and solidarity."

In the late 1990s, the transitional justice paradigm, whereby the rule of law and the promotion of democratic culture, became one of the societal guarantees to deter further transgressions. Since civilians are the ones to bear the main brunt of these gross violations, memory preservation has become a compelling political, social and cultural imperative in reconciliation processes.

Memorialization processes can promote a culture of participatory democracy by stimulating public debate on the representation of past and contemporary challenges of exclusion and violence.

I. Meaning of memory in transitional justice process

The organic law N° 2013-53 dated 24 December 2013 establishing and organizing the transitional justice stipulates, in article 1, that "the preservation and documentation of collective memory are among the mechanisms adopted in the course of transitional justice."

Article 5 of the said law states that "the preservation of national memory is a guaranteed right to all successive generations of Tunisians, and that it is an obligation entrusted to the State and its institutions or those falling under its supervision, and this, in order to learn from the mistakes and commemorate the victims."

Article 44 stipulates that "the Truth and Dignity Commission (referred to hereunder as the "Commission") shall recommend taking all the necessary measures in order to preserve national memory concerning the victims of violations and that it may, also, implement activities required for this purpose".

Article 68 states that TDC shall entrust all its documents and references to the National Archives or to an institution for national memory preservation established for this purpose.

As set forth in Order no. 01 dated 22 November 2014 relating to the internal rules of the authority of the Truth and Dignity Commission, as amended by Order no. 2016-09 dated 06 September 2016, Part Two, subsection III concerning the specialized committees, article 63, the Committee for National Memory Preservation shall undertake to:

- Gather, count, verify and document data on violations.
- Identify mechanisms to be adopted by the State and its institutions to fulfill their duty to preserve the national memory, draw lessons from the past and commemorate the victims.
- Propose the necessary measures to preserve the national memory and mechanisms to ensure the non-repetition of violations.
- Suggest the remedies that prevent the recurrence of such violations in the future.
- Propose mechanisms that encourage intellectual, artistic and literary innovations to preserve the national memory.
- Propose all measures and mechanisms to preserve the memory of violations throughout the whole country.
- Draft proposals and actions that promote the democracy-building process and contribute to the establishment of the rule of law.
- Carry out activities and events aimed at preserving the national memory of the victims of violations and disseminating the values of tolerance, citizenship, the respect of human rights and non-violence.

II. The Commission's legacy and its struggle to access the archives of violations

In order to accomplish its tasks, TDC collected public and private archives relating to violations as stipulated in articles 40, 51, 52, 54 and 55 of the organic law by requesting the judicial and administrative authorities, the public commissions as well as any other natural or legal person to provide it with the documents or information in their possession, and by requesting information and data from official foreign authorities and non-governmental organizations and gathering any information from the victims, witnesses, public officers and other parties from Tunisia or other countries.

1. The role of archives in revealing the truth

Among the most significant activities carried out by TDC was the collection of a massive and valuable record of archives comprising 528,065 individual documents that constitute approximately 15,370 files that TDC has digitized, which is equivalent to more than 50 linear meters of paper archive, from various sources, equivalent to 724 GO distributed as follows:

Presidency of the Republic, ministries, national archives, public institutions, regional councils and local communities, independent bodies, courts, hospitals and health centers, foreign archives, victims, civil society and private archives.

Since the launch of its activities, TDC has adopted a comprehensive digital management system⁴¹⁹ to digitize all paper documents, which are all contained in its servers.

Regardless of the format, the file management system represents an important task as these documents serve as evidence of both the conclusions reached by TDC and the manner in which it reached them.

The fight to access the Presidential Archives might have been the most important and symbolic one in revealing the truth and displaying the resistance of the old regime toward the Transitional Justice process. Indeed, negotiations between the Truth and Dignity Commission and the Presidency of the Republic lasted from July to December 2014; at the end of which it was agreed upon to transfer the presidential archives, necessary for the transitional justice process, to the National Archives, so that TDC could access and exploit them in its work.

Meanwhile, some of the pro-ex regime media outlets mobilized their efforts to disrupt TDC's actions since its inception and spread rumors very broadly over weeks and months, in a way that audiovisual, written, and electronic media played a major role in disinformation.⁴²⁰

The rumor was that the Truth and Dignity Commission woke up on the morning of Friday, 26 December 2014, rented cargo trucks and headed to the Presidential Palace in Carthage to "rob and transfer the archives" to its headquarters.

Various ensuing details scaled up to the point where the rumor became a fairy tale, which, at the time, turned the Presidential Palace in people's minds from a peaceful garden waiting for the departure of a president and the arrival of another new one who won the presidential election, to a victim whose inviolability was transgressed by TDC. This portrayed the President and members of TDC as a group of ignorant, illiterate, arrogant and indecent people that threaten national stability, public security and the people's legacy and memory.

Right from the very beginning, the aim of such allegations was to obstruct TDC's work and undermine its credibility and prerogatives to facilitate the enactment of anti-transitional justice laws, such as the administrative reconciliation law, and the various initiatives aimed at denying transitional justice and rejecting its mechanisms.

2. Context of the presidential archives incident

It has become evident today that TDC was the victim of a plot that was carefully hatched by the remnants of the oppressive and corrupt regime, who kept resisting the revolutionary

419 See TDC's Digital Engineering Map

420 When TDC's delegation arrived at the entrance to Carthage Palace, the media team of Nessma TV, along with members of the Presidential Security Syndicate, was filming the roadblock they were carrying out. Nessma TV was the first to tell the lie of "the break-in at the Presidential Palace" and "the heroics of the Presidential Security Syndicate" to protect the presidential archives. See all Tunisian media for December 26th, 2014 ff.

movement and the democratic transition for many years. Several parties were involved in this conspiracy, including the General Manager of the National Archives, the Presidential Security Syndicate, Nessma TV and other different **partisan and civil entities that were formed following the dissolution of the “Democratic Constitutional Rally”**.

Thus, it is no surprise that there was an overreaction against TDC, since it was heading to the Information Center relating to this regime with a view to elucidate its manifestations and to uncover and dismantle the truth of violations by holding perpetrators accountable. Accordingly, it was necessary to repress TDC through bullying, rejection of law enforcement, disobedience, intimidation, threats, and disinformation through a systematic media campaign.

3. The legal ground for the Commission proceedings

The legislator granted TDC the following prerogatives⁴²¹: to collect documents, data, permits and information from various State services, public bodies, committees, local communities, public institutions and establishments, to gather documents and information held by the "judicial and administrative authorities, public commissions, as well as any other natural person or legal entity" (Article 40, Hyphen 6), to collect information and data from “official foreign authorities and non-governmental organizations” (Article 40, Hyphen 8), to gather any information from the victims, witnesses, public officers and other parties from other countries, to access public and private archives "regardless of all restrictions contained in the applicable legislation" (Article 40, Hyphen 1) and to “examine the lawsuits brought before judiciary committees as well as the judgments or decisions issued by them” (Article 40, Hyphen 7) as stipulated in articles 40, 51, 52 and 54 of the organic law. TDC also has the prerogative to “confiscate documents in relation to the violations subject of its investigations (Article 40, Hyphen 9) and to take precautionary measures to preserve these documents (Article 55). TDC’s requests to obtain information or documents shall not be faced by professional secrecy obligations.

To implement its mandate, TDC's Council met on July 4, 2014 in an extended session and outlined the preliminary features of TDC’s work strategy in the field of document and archives management. This strategy rests mainly on two key elements: establishing a comprehensive document and file management system that is dedicated to the proceedings of TDC and its committees, in such a way as to ensure their preservation and documentation, on the one hand, and trace the past gross violations to reveal their truth and preserve the national memory, on the other.

4. Significance and fate of the presidential archives

Subsequently, the Presidential Palace archives were considered very important for TDC’s work, given that the totalitarian aspect of the regime allows the President to interfere with

421 "The presidential archives cannot be transferred from the Presidential Palace of Carthage", said Mohsen Marzouk, political advisor to the President, in a statement to "Mosaïque FM" radio station on 8 February 2015. He also emphasized, in an interview with "Le Maghreb Newspaper" in its issue of Sunday, 7 June 2015, that "the powers granted to the Truth and Dignity Commission are greater than those the Pharaohs had."

all public and private areas, to play the role of the absolute actor in all different matters, to enjoy wide powers that allow him to have someone to represent him before the law and to act under his command. These powers could turn the Legislative Power into a tool at his disposal to enact laws that enshrine the oppressive and corrupt regime, as added to the Executive Power whose decisions totally depend on the President. The latter dealt with autocracy as a trophy to be shared with his wife, family members, close friends and those close to the spheres of power.

Under such circumstances, the Presidential Palace of Carthage was the place where most of the decisions relating to the conduct of State affairs emanated from. This made it imperative to have a parallel government represented by a large number of advisors in all disciplines⁴²² working under the command of the President and his family, thus rendering the Palace a source of huge and valuable amounts of documents and archives.

Accordingly, and as a first step, TDC decided to proceed to these archives to transfer them to the National Archives under TDC's authority, pending the establishment of an independent institution dedicated to the archives of dictatorship where all the archives of the former regime documenting violations are gathered.

On the other hand, after 14 January 2011, several interventions in the presidential archives were often mentioned in press reports in the media⁴²³. Indeed, facts indicate that former President Ben Ali's advisors continued to serve in an ordinary manner for the period from 14 January 2011 until 22 January 2011⁴²⁴. Other testimonies state that elements of The Ministry of the Interior walked into the Palace of Carthage between January 15, 2011 and January 17, 2011, and took some archives⁴²⁵. Other testimonies indicate that the National Commission on investigation into Corruption and Embezzlement gathered originals and copies of documents from the Presidency in order to carry out investigations on subjects entrusted to it.⁴²⁶

It is no accident, therefore, that **the official document of the Protocol proclaiming Tunisian Independence** on March 20, 1956, has been withheld from citizens for 60 years. Indeed, had it not been for TDC's efforts, the National Archives would not have obtained this document.

422 See the session of 17 July 2014 at Carthage Palace between members of TDC and members of the Presidential Office.

423 In his statement in the "Special Session" Show ("Jalssa Khassa") broadcast by TNN Tunisia News Network TV on Friday, December 21st, 2012 at 09:35 p.m., Adnen Manser, member of the Presidential Office, said that a number of archive folders were missing from Carthage Palace. He indicated that the officials who received these archive folders and who belonged to the Ministry of the Interior of President Beji Caid Essebsi's government did confirm the reception of those files. He added that the Ministry of the Interior should open an investigation into the documents that went missing.

424 See the session of 27 November 2014 at Carthage Palace between members of TDC and members of the Presidential Office.

425 See the session of 26 November 2014 at Carthage Palace between members of TDC, members of the Presidential Office and the Presidential Security.

426 See the session of 25 November 2014.

TDC endeavored to have an official copy of the document of full independence, dated 20 March 1956, to be presented for the first time in six decades at TDC's stand at Tunisia's International Book Fair in April 2016, on the 60th Independence Day. Hence, TDC conducted research to trace this rare document desired by those interested in public affairs, as it provides an important legal ground for TDC's work in revealing the truth of violations related to political disputes and conflicts against the backdrop of independence documents and protocols. It was concluded that the document existed in the office of the President of the Republic. According to the organic law establishing and organizing the transitional justice, TDC corresponded with the Presidency of the Republic on several occasions, requesting a copy of the Protocol of March 20, 1956, since 03 February 2016, and recalled other correspondence, but its requests were ignored.

Subsequently, TDC had recourse to outside expertise to conduct plenty of research, during which it found an unofficial version of the March 20, 1956 Protocol. A large-sized copy thereof was produced and displayed to the public for the first time in 60 years.

After being reminded on April 29, 2016, the Presidency of the Republic responded to TDC stating that it had submitted the document in question to the National Archives and that it can simply request it from the latter.

By verifying the inventory records, it turned out that this document was not inventoried in the presidential archives elaborated by the National Archives upon TDC's request to access these archives.

5. The course of events, negotiations and solutions

The decision to transfer archives to a safe and appropriate place (the National Archives) instead of examining them in situ was taken by agreement between the Presidency of the Republic and TDC, for several considerations, including the nature of the Presidential Palace as a symbol of sovereignty, which implies that it cannot be frequently accessed by TDC's researchers. Besides, the archives headquarters do not correspond to the preservation standards.

The following is an outline of the chronology of events and the order of incidents according to the time of their occurrence and their course.

11 July 2014: A work session with the President of the Republic at Carthage Palace to address the issue of the archives of violations in the Palace. It was then agreed upon that it was necessary to meet with the Presidential Office to further arrange methods and mechanisms to use these archives in TDC's works.

17 July 2014: A meeting at Carthage Palace between members of the Archives Committee of TDC and some members of the Presidential Office centered around the total inventory of paper, electronic and audiovisual archives in the Presidential Palaces and the possibility of their exploitation in TDC's work, and modus operandi of the old regime. The Chief of the Presidential Office undertook to organize these archives before TDC could start using them.

13 November 2014: A work session at the National Archives with the General director of the National Archives, during which he expressed the institution's readiness to receive the presidential archives relating to TDC's work, to provide suitable headquarters to preserve the relevant archives and documents, and to provide the necessary technical assistance and human resources for their processing, providing that these archives remain at the disposal of TDC and the President of the Republic in accordance with a relevant convention.

24 November 2014: A meeting at Carthage Palace between members of the Archives Committee of TDC and some members of the Presidential Office to deliberate on TDC's right to ask for archives according to article 40, which provides for accessing public and private archives and requesting the judicial and administrative authorities, the public commissions as well as any other natural person or legal entity to provide TDC with the documents or information they have in their possession. Or, article 55, concerning precautionary measures that can be taken by the President of TDC to preserve evidence and documents. Or, article 52, concerning the duty incumbent upon any natural person or legal entity to provide TDC with whatever documents or permits about anything that was communicated to them or that they were subjected to, and all the information that could be obtained and that fall under the missions of TDC.

24 November 2014: A correspondence was addressed to the President of the Republic, requesting him to take the necessary measures to enable TDC to transfer the presidential archives covered by the Transitional Justice to the National Archives.

25 November 2014: Preview of the archives of violations at the ad hoc premises at Carthage Palace in the presence of the official in charge of the archive and the Chief of the Presidential Office, and inspection of the former advisors' offices.

25 November 2014: The President of the Republic agreed to transfer the archives of violations to the National Archives under the authority of TDC and the Presidency.⁴²⁷

26 November 2014: Meeting at Carthage Palace between members of the Archives Committee of TDC, some members of the Presidential Office and the Presidential Security. They deliberated on the specificity of military archives and strictly confidential documents and agreed to only uncover archives concerned with the investigation of violations and to keep other documents confidential.

27 November 2014: Meeting at Carthage Palace between members of the Archives Committee of TDC, some members of the Presidential Office and Presidential Security to discuss events that took place in the Palace on 15 January. In fact, a security official (Taoufik Dabbabi) walked in and took the president's computer and hard drives of some advisors' computers. Members of the Presidential Security similarly mentioned that on 19 January 2011, the

⁴²⁷ See the approval of the President of the Republic Moncef Marzouki by hand, and his signature on the second page of the correspondence addressed to him by the President of TDC, received by the Central Registry Office at the Presidency of the Republic under No. 1402694 on 25 November 2014.

National Commission on investigation into Corruption and Embezzlement headed by the late Abdelfattah Amor, filled a truck with documents and left the Palace.⁴²⁸

22 December 2014: Coordination with the General manager of the National Archives by requesting the allocation of four specialists in document and archives management to reinforce TDC team to carry out a total inventory of the relevant archives and to perform the physical work necessary for the transfer process⁴²⁹, based on the manual⁴³⁰ elaborated by TDC for the transfer of documents to the headquarters of the National Archives.

24 December 2014: A work session was held with the General manager of the National Archives for concrete coordination to transfer archives as previously agreed, and to provide him with a copy of the draft agreement between the Truth and Dignity Commission and the National Archives for review and signature.⁴³¹

Topics discussed during the work session include cooperation between the two institutions to protect documents and archives that constitute the subject of TDC's work to avoid potential distortion, alteration, destruction or misappropriation. The National Archives shall provide the technical assistance, particularly with regard to the identification of the archival map relating to TDC's work, advice and recommendations to TDC to take the necessary action granted to it under the organic law establishing and organizing the transitional justice. Other issues included devoting standard-compliant headquarters to preserve documents gathered by TDC within its prerogatives, and to assist it in carrying out accurate and comprehensive inventory, cataloging, classification and all technical work required by documentary and archival records.

However, during the session of 24 December 2014, the General manager of the National Archives retracted his promises made at the session of 13 November 2014 on the pretext that he should consult the Secretary-General of the Government.

The first point relates to the institution's readiness to preserve the presidential archives at its headquarters.

The second point relates to the signature of the convention between the two institutions.

428 See the work session at Carthage Palace between members of the Archives Committee of TDC, some members of the Presidential Office and Presidential Security on 27 November 2014.

429 It should be noted that the transfer of archives is a procedure that is different from diversion and relay, as it means the transfer of the archival record without processing from one headquarters to another, either within the same institution or to an outside premises. A current archive record can be transferred from one headquarters to another, and intermediate or permanent archives can be transferred from intermediate or permanent archive headquarters to another. The transfer process takes place either because of the change of premises, the renovation or rehabilitation of the preservation premises, or for the processing of archive records in premises that correspond to the processing conditions required by the work or headquarters or the particularity of the archive.

430 Refer to the manual of procedures for the transfer of archives.

431 See the draft agreement between the Truth and Dignity Commission and the National Archives on 24 December 2014.

The **third point** relates to requesting the allocation of four specialists in document and archives management to reinforce TDC's team to carry out the transfer process.

The **fourth point** relates to the provision of trucks to carry archives to the National Archives.

The General Director of the National Archives **retracted his promises concerning the four aforementioned points on the pretext that he should consult the Secretary-General of the Government and wait for his approval that can take at least two weeks, without providing any signs indicating that TDC cannot access or transfer these archives.**

24 December 2014: After the General manager of the National Archives refused to cooperate in transferring the archives of violations to the National Archives, TDC took the decision to temporarily transfer them to its headquarters, took the necessary measures to ensure their protection, and distributed them on three locations secured by all means of protection (vaults); pending their transfer to the National Archives.

25 December 2014:

- A correspondence was addressed from the President of TDC to the Chief of the Presidential Office requesting to secure the transfer of archives, covered by transitional justice, from the Presidency to the headquarters of TDC.⁴³²
- A correspondence was received from the Presidency concerning the approval of the President of the Republic to secure the transfer of archives covered by transitional justice to the headquarters of TDC accompanied by the Presidential Security.⁴³³
- Issuance of a memorandum by the Legal Department of the Presidential Office on transmitting archives to the Truth and Dignity Commission. The memorandum indicates that the legal bases for this decision are articles 52 and 54 of the organic law establishing and organizing the transitional justice. And it concludes that the Truth and Dignity Commission has the right to receive the presidential archives in their paper, electronic and other forms, with the need to take arrangements by the Presidency of the Republic and TDC to ensure that extremely sensitive data are not leaked or destroyed. TDC is solely responsible for the archives' preservation conditions after their reception, and can seek the help of the National Archives or other public or private institutions for this purpose.

26 December 2014: Two days before the scheduled date for the transfer of the archives, a specialized team headed to Carthage Palace to prepare for the transfer process, which was supposed to last several days according to a calendar for this purpose. A team authorized by TDC obtained all the written guarantees ensuring that the Presidential Security will secure vehicles transferring archives to the headquarters of TDC.

432 See the correspondence addressed from the President of TDC to the Chief of the Presidential Office and received by the Central Registry Office at the Presidency of the Republic under No. 1402837 on December 25th, 2014.

433 See the correspondence addressed from the Minister Chief of the Presidential Office under No. 013970 on December 25th, 2014, on the President's approval to secure the transfer of presidential archives covered by transitional justice to the headquarters of TDC.

However, upon arrival at the Presidential Palace, TDC team was surprised by the presence of Nessma TV and a barrier to entry consisting of the Presidential Security Syndicate. These security officials introduced themselves in their syndical capacity and prevented the archives transfer process.

The Presidency released a statement saying that: "*TDC was prevented from transferring the archives by representatives of the Presidential Security Syndicate and public figures according to their statements circulated by many media outlets, that this action does not reflect the position of the Presidency towards TDC and that it is committed to cooperate with all commissions as regulated by law*"⁴³⁴.

29 December 2014: A complaint was lodged to the Public Prosecutor at the Court of First Instance in Tunis against members of the Presidential Security Syndicate and its Secretary-General.⁴³⁵

6. External reaction to the presidential archives incident

The issue of transferring the archives of dictatorship was addressed under conditions of defamation, falsification of facts and undue exaggeration, which confirmed the existence of a media system that acted in a quick and systematic manner, reminiscent of the propaganda methods envisaged by the media during the Ben Ali era, which were based on deception and perversion of facts. The media did not seek the correct information and truth in an impartial and objective manner, but rather acted as promotional media seeking to spread lies and turn them into reality, and this after boycotting the press conference held by TDC in the same evening at its headquarters, during which it presented the facts along with evidence.

This was evident from the mobilization of a media institution that had led the election campaign of President-elect Beji Caid Essebsi⁴³⁶, who promised his voters to put to rest the issue of transitional justice, dissolve TDC and achieve reconciliation that builds upon granting amnesty for perpetrators of violations and enabling their impunity. The mobilization process was embodied in the heavy presence of cameras that transmitted the events in real time, which made the rest of the media transmit what seemed to be the truth and made its "experts" use this incident to target TDC and its members. This led many politicians, media and intellectuals to engage in either believing or promoting the rumor.

Consequently, in a first stage, structures of the archival profession rushed to take hasty positions such as the Tunisian Association of Archives Managers, which issued a statement without consulting one of its founders and a member of its managing body, who is also a member of the Truth and Dignity Commission, to get correct information and data on the subject. As well as the National Archives and its General manager who made a statement

434 See the "Clarification" made by the Information and Communication Department at the Presidency of the Republic on December 26, 2014.

435 See the correspondence addressed from the President of TDC to the Public Prosecutor, at the Court of First Instance in Tunis, on 29 December 2014, recorded at the Registry of the Court on 30 December 2014.

436 « Karoui & Karoui » Institution and Nessma TV

without confessing the fact that TDC asked him to accommodate the archives of dictatorship at the National Archives, and that he initially accepted and retracted his promise later.

In a second stage, professional experts together with the General manager of the National Archives engaged in a campaign that emerged gradually against TDC and the adopted archival policy, thus hindering efforts to reveal the truth. Dealing with the issue was no longer as technical as it has become an exposed political matter. This could be seen in the remarkable development of the positions taken by the General manager of the National Archives and some specialists in archives and history; from a purely technical to a political approach, by claiming to alter the law on transitional justice and to change the composition of the Truth and Dignity Commission, which raises suspicions about the impartiality and integrity of these experts.⁴³⁷

TDC and the entire transitional justice process were targeted through a fabricated media hype and an in-depth analysis of the circumstances of events by some media outlets, in a predominantly misleading, obscuring, and intimidating way against TDC, which was portrayed as a non-State institution jeopardizing Tunisians and their history.

7. The course of negotiations after the 2014 elections

TDC initiated communication with the 2014-elected President Beji Caid Essebsi's Office the day after the incident of disruption of TDC's work, to continue negotiations on the transfer of the archives of dictatorship to the National Archives under the authority of TDC and the Presidency. New meetings with the Presidential Office were supposed to begin on January 4th, but were delayed at the request of the Presidential Office. The negotiation sessions only resumed on January 16, 2015.

The new President's administration refused to pursue the initially agreed upon procedures, did not recognize the commitments taken by the former President's administration and decided to deny the transfer of archives and to initiate new negotiations with TDC, thereby ending all previous commitments of the Presidency, violating the principle of State communication through its institutions and initiating new negotiations with TDC.

The first work session **started on January 16, 2015**, and was held between members of the Archives Committee of TDC and some members of the Presidential Office in the presence of the General manager of the National Archives. The session focused on reviewing stages of the previous consultations and interpreting legal articles that allow TDC to use the archives. Requests by TDC consisted in its empowerment to access archives whatever the mechanism to be agreed upon. As for the archives that were digitized under the former President's regime, estimated at 17,000 documents, TDC requested to be provided with a copy thereof, given that it is not problematic.

A series of meetings has then followed until **May 25, 2015**, when the minutes of an agreement were signed between the President of TDC and the Minister Chief of the Presidential Office, whereby TDC will be able to access the archives located in the headquarters of the Presidency

437 A statement to public opinion signed by two experts in archives and history on 6 January 2015.

of the Republic and will assign the National Archives to inventory them and deliver the inventory records successively to TDC to identify the documents that it deems useful to get a copy thereof. This can be ensured through a request thereto submitted to the Chief of the Presidential Office who, accordingly, authorizes the General manager of the National Archives to accomplish the required tasks by providing a reading room and fetching documents relating to the sought file to determine what to copy.

8. Inconsistency in content and inaccuracy in description by the National Archives

There are certain inconsistencies in the titles of folders or files. In fact, it turns out that the title does not reflect the content of the file when requested for reviewing. Additionally, some dates in the inventory table did not match the actual dates of documents, and some titles of documents were listed in the inventory, but turned out to be missing from the file required for review.

As for the content, subjects of records were not introduced even by brief abstracts. Screening processes carried out for inventory purposes were not mentioned, although they could provide an explanation for the inventoried documents and be useful for TDC's work. No information was provided as to how the relevant documents were categorized and shelved. Instead, only the "storage" number was mentioned.

Moreover, the inventory process did not cover all the archives of interest to TDC's work, such as electronic and audiovisual archives, and did not make the slightest reference to the remains of archives that were destroyed and remained in the palace after January 14, 2011 and that can be restored to retrieve the information they contain. The National Archives and the Presidency of the Republic refused to submit the electronic version of the inventory, despite the repeated request made by TDC in order to be able to carry out automated and rapid search, and provided it only with the paper version⁴³⁸.

With regard to the quantitative assessment of stocks, the inventory process was carried out based on an archival stock of, according to a statement by the Office of the former President, Moncef Marzouki, 30,000 folders and 14,000 archives, according to the Truth and Dignity Commission's inspection of one underground headquarters. However, based on the testimony of the General manager of the National Archives in a negotiation session chaired by the Presidency of the Republic on 08 May 2015, the archival stock is composed of two parts:

- Archive folders
- Files not stored in archive folders (in bulk)

The first floor contains 1322 folders, while the underground floor (consisting of 3 stores and a hallway) contains 13,350 folders, totaling approximately **15,000** (fifteen thousand folders), according to the statement of the General manager of the National Archives.

⁴³⁸ See the correspondence addressed to the Minister Chief of the Presidential Office under No. 661/2016 issued on 11 February 2016. The two statements broke scientific impartiality through political positions and through the language of the statement

According to the five inventory records delivered to TDC, inventory results indicate that **11,673** folders were inventoried without any explanation for the disparity between what was stated in the inventory and the total number of the declared folders. Also, there is no such thing as electronic archive inventory, electronic vessel inventory, or inventory of audiovisual documents or images.

Although article 2 of the convention on cooperation between the Presidency of the Republic and the National Archives stipulated that the latter shall conduct a thorough and comprehensive inventory of archival stocks, the inventory process of the last three records did not comply with a necessary condition for archival inventory, which is the file content. In fact, only the folder theme was mentioned, and it is unknown whether it is the original title initially written on the folder, or a mere discretion by the person in charge of the inventory to summarize the content of the folder.

Often, the file content is missing, but we happen to find the folder content, which consists in mentioning only a range of folders through the upper and lower numbers, and stating a general theme that combines all those folders. For instance, we may find in the box of the folder number the expression "from 6,902 to 7,143". Similarly, we may find in the box of the file content, general information that reflect neither the content of the folder, nor the content of the file⁴³⁹, in complete violation of the rules of scientific management of documents and archives. That being so, this inventory ensures neither data accuracy nor compliance with the international standards for archival description relating to human rights violations. Hence, it was difficult for TDC to access archives and obtain information.

The National Archives maintain and gather important stocks of documents that, if provided, could have facilitated TDC's work. However, this was not the case throughout the term of TDC, as the General manager of this institution deviated from neutrality on several occasions, and took part in TDC's fight against its opponents. He signed two petitions in favor of history specialists who reproached TDC's call for reviewing the history of the State of Independence through the prism of human rights violations.⁴⁴⁰ He even took a pro-presidential stance during the negotiations against the transfer of Presidential Archives on violations to the National Archives. Throughout the negotiations, he did not even ask to implement the convention concluded between the National Archives and the Presidency of the Republic, which states that the archives of Bourguiba's era should be transferred to the National Archives.

As of December 2015, he had not made any efforts to implement a scientific management system for presidential documents and archives, especially with regard to the archives of violations. The latter contain evidence of gross human rights violations that can be useful for truth seeking, the right to know, holding perpetrators accountable and providing reparations for victims.

439 See page 283 of the Inventory of the Presidential Archives, store number 1, first registry, July 2016.

440 See the statement made by 60 specialists in history on 9 April 2017, in response to the President of TDC's call for reviewing the State history through the prism of human rights violations, and a second statement on 20 March 2018 after TDC published archival documents unknown to the public opinion.

He was supposed to support the National Archives' request for information that would help identify persons who had held important positions and might have contributed to human rights violations. This information could have, also, clarified the events that gave rise to human rights violations, or helped find out the fate of missing persons.

9. Recommendations

Despite the statements made by officials in the Ministry of the Interior claiming that a committee within it will be entrusted with the task of protecting and managing archives, and stressing that access to these archives should be void of any intention to take revenge or settle scores⁴⁴¹, TDC recommends:

- The establishment of a **memory preservation institution** that undertakes the preservation of TDC's legacy and the archives of oppression and corruption, which involve the archives of violations, including those located at the Presidential Palace, archives of the Democratic Constitutional Rally, archives of the Tunisian External Communication Agency, and the so-called "political police archives". These archives shall be processed while taking the necessary precautions to secure personal data and data relating to national security protection, and building on comparative experiences in this regard, with the need to take measures ensuring the protection of archives that were inaccessible for TDC during its term. The institution that will undertake this mission can continue to work on this archival stock, in order to uncover the truth of violations, to determine the fate of victims in cases of enforced disappearance, to preserve national memory and to commemorate the victims.
- The reform of the National Archives
- The expansion of its legal powers and the achievement of its independence from the Executive Power
- The provision of the necessary and competent human resources
- The provision of the necessary equipment and supplies to respond to the increasing preservation and access requests
- The provision of the necessary trainings to develop technical expertise and skills

III. From collective memory to national memory

Collective memory is linked to the way a group of people perceives the past through their shared natural, geographic and cultural data. Thus, it presents the conceptions of a group of individuals about the past, present and future.

In the area of transitional justice, there is an important factor that turns individual memory into a collective memory, which is known and unknown incidents consisting in the set of violations to which individuals were subjected, regardless of their intellectual, political, racial, religious, sexual, linguistic and geographical affiliations, by the oppressive State

⁴⁴¹ Statement by Lazhar Akremi, Delegate Minister Attached to the Minister of the Interior in charge of reforms under the government of Beji Caid Essebsi in 2011.

organs, and which affected them due to the affront to human dignity they were destined to undergo, thus leaving them unable to express themselves openly.

Through these individual memories gathered by TDC and through the memories of groups, transitional justice seeks to create a national memory, through which these perceptions made by all the victims and collective attitudes of what happened in the past become the basis for rooting the national community and contributing to the formation of its identity. This shall be achieved through **the official recognition of the victims' suffering and accountability of the State organs, an official apology for what happened in the past and the completion of memory preservation actions, such as the commemoration of national days and public holidays, the creation of museums and memorials, the inclusion of educational materials in official programs, etc.**, to memorialize victims and draw lessons from the past.

1. Victims' claims through private hearing sessions⁴⁴²

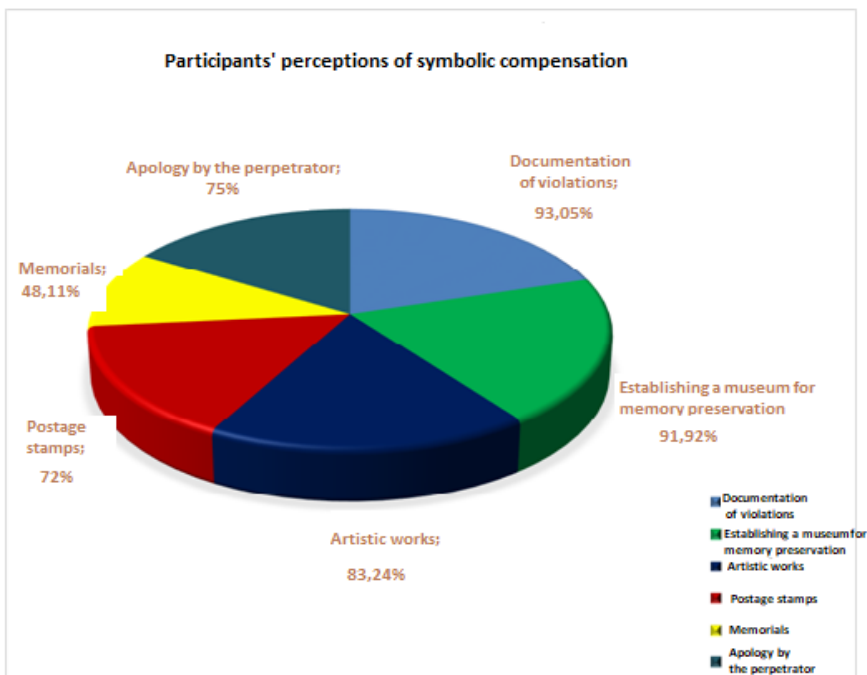
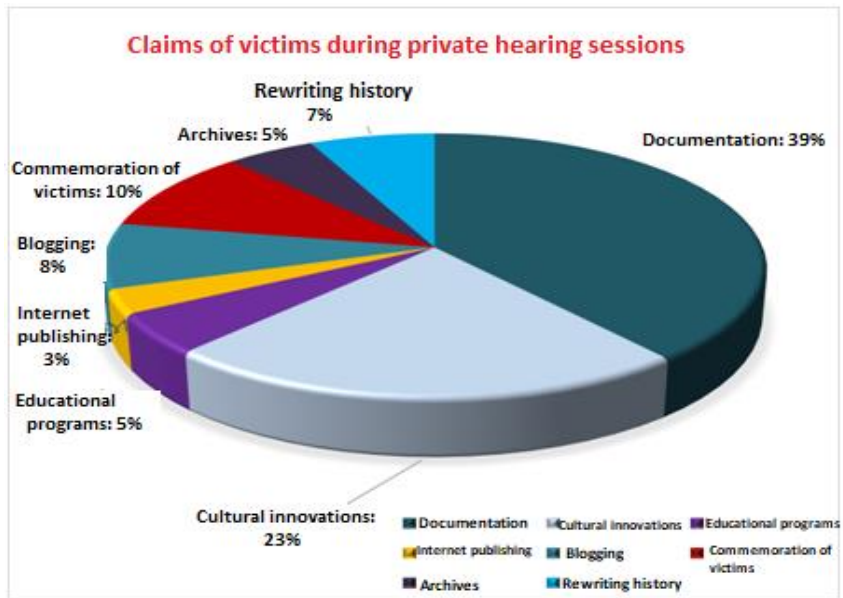
TDC held deliberations and panel discussions on the memorialization and memory preservation processes in the presence of government actors, civil society, victims and experts. This made room for all participants to present their perspectives on how to promote greater understanding of the content of recommendations on memory preservation, and to help develop a sense of joint action to give effect to those recommendations at the end of TDC's term.

Furthermore, TDC conducted a national consultation on the Comprehensive Reparations Program in 2017, in which representative samples of victims, witnesses, institutions, civil society and female and male citizens participated.

During the private hearing sessions, 47,075 victims were heard at TDC's headquarters. They were asked open questions about memory preservation, and they filed claims distributed as follows:

- Documentation: 15,201 claims including paper and electronic documentation
- Archives: 2,118 claims
- Rewriting history: 2,627 claims
- Commemorating the victims: 3764 claims, including: the naming of streets, avenues and squares, the creation of museums, a national day against tyranny, a national day for memory and the creation of memorials.
- Blogging: 3,247 claims
- Publishing through the Internet and social media: 1001 claims
- Including violations in educational programs and educating generations about violations: 1,833 claims
- Cultural innovations: 8,944 claims including documentaries, novels, books, series, exhibitions, cinema, theater, pamphlets, newspapers, culture and television programs.

442 See detailed annex



IV. The scope of memory preservation

1. Conversion of original sites⁴⁴³

After the fall of the old regime, there remained material evidence worthy of preservation, such as regular and irregular detention centers, prisons and camps, as well as evidence of the authoritarian regime's self-worship, such as statues, geographical designations indicating power and murals.

Nevertheless, detention centers of the old regime were rarely preserved intact. In most cases, restoration works were conducted to obliterate evidence, as was the case with the detention and torture cells at the central headquarters of the Ministry of the Interior or in other centers outside the Ministry.

In other cases, such sites continued to be used while implementing certain changes in structures or laws. In third cases, they were demolished, as was the case with the former Civil Prison of 09 avril 1938, or switched of function in such a way as to lose any indication of violations that took place, such as the dredge of Ghar El-Melh, which became an environmental museum, the Civil Prison of Sousse which was annexed to the Museum of Sousse, and the prison of Rjim Maatoug.

2. Sites exploited for non-primary function

The Prison of 09 Avril

The previous Civil Prison, first known as the "New Prison" (El Habs Jdid), later known as the "Prison of 09 Avril" named after its location in the Street of 9 Avril 1938, is situated in the capital and is adjacent to Charles-Nicoll Hospital. It covers a total area of about 7 hectares according to the estate plans submitted to the Truth and Dignity Commission by the Topography and Cartography Office of Tunis on 22 July 2016.

It contains a residence for prisoners, an administrative attachment of about 4 hectares and a vast green zone as wide as the prison area. It also contains a water-well and a gibbet, where executions were carried out during and after colonialism.

This prison was created in 1903 by the French protectorate and was initially intended to only accommodate 700 prisoners. However, in 1953, the number of prisoners reached 3,700 at the peak of colonial oppression; and in 1991, the absorption capacity exceeded 7,000 prisoners.

It underwent some modifications in order to crack down on prisoners, especially political prisoners.

Its key features were overcrowding, lack of ventilation, lack of necessary sanitary facilities, and food that lacks the most basic health conditions. In fact, prisoners were served "Ragout" (a type of chowder) or "Sobba" (prison food), which they used to describe as "a plate that is best served hot and that contains much water". Inflicting serious humiliation on prisoners, torture and deprivation from education were also systematic policies. One snitch from

⁴⁴³ See detailed annex

someone was sufficient enough to inflict on prisoners various types of torments, ranging from "Siloun"(solitary confinement) or "Kounfa" (convoy) to "Falka" (foot whipping) and denial of visit and "Koffa" (a basket used to bring food to prisoners). Besides, unlike the large and overcrowded cells, the windows were too small, which made infection and chronic diseases inevitable in a short period of time.

Circumstances in prison respected neither the norms for the treatment of prisoners set out in the United Nations Standard Minimum Rules for the Treatment of Prisoners, nor those stipulated in the Rules of Procedure of Tunisian prisons. When reports of protest and denunciation of conditions at the Prison of 9 Avril abounded by politicians and human rights defenders, the Prison of Mornaguia was built and the Prison of 9 Avril was abandoned in 2006 and completely demolished in 2009 to obliterate all traces of violations that affected different generations of prisoners who resisted French colonialism, as well as those who resisted the oppressive regime, such as executions and death induced by torture and medical negligence.

Investigations conducted by TDC, in this regard, indicate that the prison witnessed serious human rights violations such as medical negligence that led to death, torture, rape, sexual violence and cruel, inhuman and degrading treatments. In fact, out of a sample of 12,913 victims who served a prison sentence, 5671 passed through the Prison of 9 Avril, i.e., 44%.

The Truth and Dignity Commission addressed numerous correspondences to the relevant State institutions urging them to take the necessary measures to establish a museum for national memory preservation at the site of the former headquarters of the Civil Prison of 9 avril 1938. TDC received a positive response to its request concerning the allocation of a part of the prison land area for its work, but later, State organs proceeded to allocate the remaining space to the Ministry of Justice and a parking lot.

The second allocation was made for the Ministry of Justice in 2017 on 11 April 2017 for plots of land with a total area of 12,400 m, registered under no. 195 Tunis, 835 Tunis, 837 Tunis and 838 Tunis.

Despite the numerous correspondences addressed to governmental entities and the parliamentary committee to review the allocation, responses were negative.

Therefore, TDC recommends:

- The registration of the previous Civil Prison as an archaeological landmark due to its historical, humanitarian and cognitive significance.
- The allocation of a part of this site to create a memorial, a monument or a museum for memory preservation, without contravening the allocation decisions taken by the government to establish public facilities.
- The placement of textual banners on the site indicating history of the landmark, events that took place and names of the victims.

Palais des Princesses in Manouba

Built in 1778, it is among the Beylical palaces and one of the oldest known palaces in Tunisia to date, and is known as Nozha Palace. It is named after the Mother of the Princes, Manana, who died in 1822 and is the granddaughter of Hussein Ibn Ali, founder of the Husainid State, which lasted from 1705 to 1957.

After the announcement of the republican form of government as a substitute for the monarchy on July 25th, 1957, the Bey was overthrown and moved with his family to stay at this palace for a short period of time.

According to some testimonies, the Bey did not stay in the palace, unlike his daughters. Instead, he stayed in the security wing adjacent to the palace.

In 1975, it was converted into a women's prison, then abandoned following the construction of an adjacent new prison. Still, the palace remained within the territory of the prison. Following a visit made by a Commission team who made a video report on the palace, it turned out that the latter has become a neglected landmark and has been used as a warehouse to store equipment, consumables and all other things in excess of the prison. Although the National Heritage Institute has classified it, since 1999, as an organized and protected historic and archaeological landmark, it remained abandoned, neglected and not easily accessible, due to its location inside prison walls.

According to the National Heritage Institute classification, the Palace of Mourad Bey is located in Manouba, Street 2 Mars 1934, and is classified by Order No. 1933 of 31 August 1999.

It has become a residence where people go to enjoy picnics and rest in the fields of Manouba, near the capital Tunis, characterized by its fields with palm trees and vast orchards. It has two front porches that both overlook green gardens. It consists of two floors: The ground floor has a tiled elongated corridor decorated with mosaics and multiple rooms with a soft wooden ceiling that European architects call the Maltese ceiling. The palace has several rooms, which walls are covered with a decorative coat consisting of mosaics, dominated by floral designs and intertwined geometry.

The State paid no attention to archaeological sites and historical monuments after independence. However, despite its flaws, the colonizer used to pay high attention to historical monuments and hastened to classify and preserve them. The best demonstration of this is that numerous historical monuments have been under the maintenance and supervision of the National Heritage Institute since 1922 (for instance, the three military fortresses in Ghar El-Melh). The National Institute of Archaeology and Art was initially established as a scientific institution affiliated to the Ministry of Culture when it was entrusted with the function of the Secretary of State, and was regulated by Order No. 140 of 2 April 1966. The structure of the National Heritage Institute was later reviewed pursuant to Order No. 1609 of 26 July 1993.

Since the early years of independence, most of the historical sites were neither inventoried, nor protected, nor maintained, which explains the destruction of numerous palaces and historical sites. Besides, the registration of historical sites is subject to conditions, most notably the provision of clear property contracts, while several landmarks have none.

The prison of Nadhour in Bizerte

This prison dates back to 1932. It was built by the French colonizer and was intended to be a military fortress. Then, during the regimes of President Habib Bourguiba and President Zine el-Abidine Ben Ali, it was converted into a prison for political opponents. The prison of Nadhour represented a detention center during the period of colonial rule and continued to be as such during independence. Since 1965, the prison was prepared, in the form of a thirty-six foot underground vestibule, to accommodate 18 individuals who were accused of planning the coup attempt. During the colonial period, the vestibule was intended to store weapons and not to jail prisoners. It was a place where extreme hazing and violations were committed against victims, since the day of their entry until the moment they left in 1969. The prison was equipped in an exceptional manner, specifically for the victims, just like their trials. After the release of the victims of the "1962 coup attempt" group, the vestibule in the prison of Nadhour was closed in 1969.

The dredge of Ghar El Melh

This prison comprises three military fortresses in the era of the Ottoman Caliphate that turned into three prisons in which human rights violations were committed from the French colonial era until after independence.

The city of Ghar El Melh dates back to the Punic era, when it was known as "Rus Eshmun" ("i.e., Cape Eshmun"), and was then called "Rusucmona" by the Romans. In the 17th century, it was known for its new name, which is "Porto Farina", which means the port of Farina, after the foreign engineer who built the port.

Ghar El Melh, or Porto Farina, as called by the Italians, is a small Tunisian village in the north of the country near the famous city of Bizerte. It is located between a very large lake, into which flows the largest river in Tunisia (Medjerda) from one side, and the sea from the other side. Narratives indicate that "the secret behind naming the region Ghar El Melh is the multiple caverns that contained salt."

From 1881 to 1956, i.e., during the French occupation of Tunisia, the three fortresses were used as prisons, two of which were for common prisoners; the first fortress was Bab Tunis, and the second one was the middle fortress. As for the third fortress, it was converted to a prison for political opponents and national resisters. However, it is undeniable that the French colonists made sure to value and classify the historical sites.

Gaafour police station

The city police station is located in the center of the city of Gaafour, cité Souk, rue la République, governorate of Siliana and adjacent to the railway station of Gaafour city. The building dates back to the colonial period, when it was used as a prison, and remained as such

after independence. It is owned by foreigners, i.e., the Ministry of State Property and Land Affairs.

TDC conducted a series of field investigations and concluded that the victim, Nabil Barakati, was interrogated at the police station in Gaafour for 11 days, during which he was subjected to various types of torture by the head of the police station and two of his agents. On 9 May 1987, Nabil Barakati was found dead in a drainage canal with a bullet in the head.

Part of this building was abandoned and closed after it was burned during the revolution. This site witnessed horrendous torture of victims, which once led to the killing of one of them: Nabil Barakati. The latter's family as well as communities recommended to turn this site into a memorial place to pay tribute to the victims. TDC addressed a correspondence to the State Property to learn about the real-estate status of the site. However, the Ministry of State Property and Land Affairs corresponded with the Ministry of the Interior over a year ago and has not received an answer yet.

The sites of “Sabbat El Dhlem” and the “Zawit Sidi Aissa”

The early years following the signing of the Internal Independence Conventions and the Protocol of 20 March 1956 Protocol witnessed a growing movement to use an unspecified number of constitutional divisions' headquarters as secret detention centers for opponents of Bourguiba's regime in various regions of the country. Similarly, a number of private headquarters turned into centers of detention, torture and settling of scores and covered several areas of the national territory.

Among these sites, TDC examined "Sabbat El Dhlem" in the "Medina of Tunis", "Bir Tarraz" in Radès, Sidi Aissa Mausoleum in Beni Khalled, the “Palais des Princesses” in Manouba, a farm in Mornag and another farm in Manouba.

Thereby, TDC recommends:

- **The registration of these monuments by the National Heritage Institute as landmarks for gross human rights violations.**
- **The dispossession of real estate that served as the headquarters for the practice of violations for the public interest and putting them at the disposal of the National Heritage Institute to carry out the necessary excavations to explore the water-well and remains of bodies, if any.**
- **Coordination with the municipalities to establish landmarks in these sites.**
- **The consideration of this report and its paper, audiovisual and electronic archival annexes as a general national reference document to be integrated into the educational system in general, with the possibility to block selected sections of documents related to individual identity, privacy and protection of personal data. In this regard, TDC recommends developing international standards on this sensitive issue.**
- **Proceeding with work to uncover the truth and include historical facts in the educational curricula.**

V. Creating symbolic landmarks ⁴⁴⁴

Memorialization processes are only unrestricted when all parties are remembered; the political sequence of events and their repercussions are clarified, and when society, especially key stakeholders, could contribute to the development of transitional justice strategies.

It is imperative to provide public spaces that allow everybody's participation in the debate and that ensure the credibility of the process, as well as their public ownership, as dialogue processes about the past are the most useful among memorialization initiatives of whatever kind.

The independence period was marked by the abolition of some colonial symbols and their substitution with symbols of the official national memory centered mainly on some national figures. Interestingly, however, the majority of streets, roads and schools often commemorated the name of former President Habib Bourguiba, alongside many memorials that were centered in many cities. Besides, national holidays were associated with events revolving around Bourguiba, such as Revolution Day, Victory Day, Evacuation Day and August 03, which was declared an official holiday because it is the former President's birthday.

After November 7th, 1987, the day when Zine El Abidine Ben Ali came to power, many of these symbols were abandoned. Instead, there was a movement towards a new official memory building based on the denial of old memory revolving around the idea of the "Liberating Leader" and "the Founding Father" towards new, more abstract symbols. Nevertheless, these new symbols were underpinned by the principle of reverence through the exploitation of the number "07" and its replication in the names of streets, squares and institutions, as well as the substitution of Bourguiba's statues and name with a giant clock tower often centered in a square in the city center or at its entrance. Added to that, many educational, cultural and sports institutions were named after the date of 07 November, which was also declared as a public holiday.

Following 14 January 2011, the old regime memory was abandoned exactly in the same way; The 07 November squares, streets and institutions were changed to 14 January Squares, Revolution Squares and Martyr Squares.

This memory has always been built on the logic of abolishing the defeated and glorifying the victor in the battle for power, irrespective of multiple perspectives.

Within the framework of a partnership between TDC and international organizations, a survey of literary and cultural initiatives including theater, cinema, poetry, painting and artistic initiatives concerned with gross human rights violations and their documentation was carried out. A survey of places that preserve memories such as schools, institutes, streets and public squares, as well as initiatives undertaken by individuals, groups or municipalities in memory of the victims of tyranny, official dates and celebrations was also carried out.

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The map includes several initiatives tabulated according to the date and location of their occurrence.

Museums: Physical museums⁴⁴⁵

The Museum of the National Memory of Sijoumi

The Museum of the National Memory of Sijoumi is located in the southwestern suburb of Tunis, on the ring road towards Medjez El Bab. In 1982, a martyrs' memorial exceeding five meters of height was constructed in this site to commemorate resisters who were executed by the colonial authorities in this place between 1941 and 1951. In the basement of this monument, the Museum of the National Memory was prepared and equipped with the latest audiovisual installations.

TDC recommends integrating the results of its final report on the events of the National Movement, the liberation battles, the list of male and female martyrs and resisters, whose participation has been proved and who were not previously included, in the history of the National Movement.

The museum of the "Common Tunisio-Algerian Remembrance"

This museum is located in the region of Ghardimaou, which belongs to Jendouba Governorate. It is of great importance to the collective memory and is a symbol of the heroic struggle and sacrifices of the two fraternal peoples of Tunisia and Algeria. It also reflects Tunisia's contributions to support and sustain the Algerian Revolution in the spirit of solidarity and brotherhood uniting the two peoples. The selection of the former headquarters of the Algerian Armed Revolution Command to host the museum makes it even more important in view of its historical value. Therefore, services of the Ministry of National Defense renovated this building while preserving its initial character.

TDC recommends including names of Tunisian female and male resisters who participated in the Algerian liberation struggles, including but not limited to, Taïeb Zalleg and Taher Boukhari.

The Museum of the Revolution in Sidi Bouzid

The city of Sidi Bouzid is located in the Midwest of Tunisia. It represents the spark that ignited the revolution of 17 December 2010- 14 January 2011.

Article 2 of decree-law No. 2011-97 dated 24 October 2011, relating to the indemnification of the wounded and martyred of the revolution of 14 January 2011 states that "the State shall create a museum for the revolution and the course of its events, in order to draw lessons and secure the national memory." The Museum of the Revolution was established in the center of Sidi Bouzid covering an estimated area of 2 hectares, in Mohamed Bouazizi Square downtown.

⁴⁴⁵ See the annex on museums

Thereby, TDC recommends the revision of Decree-law No. 2011-97 by extending the scope of the Museum to become solely dedicated to the Revolution, the course of its events and gross human rights violations committed against victims who resisted the oppressive regime from 1955 to 2013.

Memorials⁴⁴⁶

The Memorial of Barraket Essahel

Since 2011, numerous initiatives by victims' associations have been recorded in commemoration of the victims of gross human rights violations. State organs have also undertaken a number of initiatives.

TDC examined the place called Barraket Essahel and activities carried out by the Association of Justice for Military Veterans with funding from the United Nations Development Program (UNDP).

The memorial was part of a project called "Lumière sur l'invisible" launched by the Association, but the administration modified the memorial initiative and named it after a soldier who fell victim of the terrorist events, therefore turning a blind eye to the victims of Barraket Essahel. **Thus, TDC recommends reconsidering the name of this memorial and bringing justice to the victims of Barraket Essahel.**

Memorial of the Martyrs of Ben Guerdane (Martyrs of Jebel Agri)

A memorial to the martyrs of the battle of Agri was built in Ben Guerdane at the initiative of its municipality. The battle of Agri took place in 1956 in Tataouine Governorate against the French colonizer and ended with the killing of a group of locals.

The memorial does not contain names of the martyrs, which makes the process incomplete and does not ensure restoration for the honor of the victims.

Therefore, TDC recommends that the relevant authorities continue to work on collecting and identifying the remains of martyrs, which are still spread all over the mountain of Agri and adjacent areas, constructing a cemetery for the figures of resistance, organizing an official and decent funeral in a large memorial procession dedicated to them, including their names in the resistance register, creating a memorial yard, and establishing a museum and a memorial bearing their names, in recognition of their sacrifices to gain national independence and to preserve the country's pride and dignity. TDC also calls on France to acknowledge the wrongs it had committed and to apologize to the Tunisian people.

Official cemeteries commemorating resisters and victims of the Bizerte Crisis

The official cemetery of Bizerte:

The city of Bizerte is located in northern Tunisia and overlooks the Mediterranean Sea. The official cemetery is the Martyrs' Cemetery dedicated to Tunisians who fell during the Bizerte Crisis, which led to the complete evacuation on 15 October 1963. The Bizerte Crisis lasted four

⁴⁴⁶ See the annex on memorials

days from 19 to 22 July 1961, and witnessed fierce encounters between the French colonial forces and the Tunisian people of all categories, until the UN Security Council approved a resolution calling for a cease-fire. Thousands of Tunisian victims were killed during the battle and losses were very significant.

TDC recommends the excavation of mass graves where civilians who died during the war were buried, the identification of a nominal list of martyrs and the construction of a memorial bearing their names.

Naming roads, streets and squares⁴⁴⁷

Martyrs Square in Kasserine and a mural bearing the names of all martyrs of the Revolution

Initiated by the Association of Khaldounia and funded under the UNDP, the Martyrs Square was established in midtown Kasserine, with a mural bearing the names of all martyrs of the Revolution. We noticed that the mural and square project has not yet been completed, as the official list of victims has not yet been issued.

Helmi Manaï Square at Bab El Khadhra

Information received by TDC indicate that the victim Helmi Manaï, originating from Bab El Khadhra, Tunisia, was born on 21 November 1987, and died on 13 January 2011. He was the victim of premeditated murder (shot dead) during public protests.

Public squares for victims of the military

The military took the initiative to commemorate its victims by naming public squares and entrances to cities after them, such as Mohamed Ali Charaabi Square in El Fahs.

Naming educational institutions⁴⁴⁸

Many official bodies took the initiative to commemorate victims of the Tunisian revolution belonging to them. The Regional Directorate of Education in Medenine took the initiative to name a secondary school after the victim Narjes Nouira, who died on 13 January 2011, and Dr. Hatem Bettaher from Douz, who was killed on 12 January 2011.

TDC recommends the adoption of standardized criteria for the launch of memory preservation initiatives, by establishing a coordination structure between the Initiator and the National Committee of Toponymy, utilizing the official findings provided in the final report of the Truth and Dignity Commission and adopting the results of investigations carried out by independent bodies relating to memory preservation initiatives.

TDC also recommends reconsidering some landmarks bearing names of persons who committed violations and assaulted the Tunisian people's legacy, such as Charles de Gaulle, Baron d'Erlanger, Mustapha Khaznadar, etc.

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448 See detailed annex

Operators in the field of Tunisian history, including institutions, universities and individuals are called upon to scrutinize the various geographical and historical names in such a way as to reflect facts that would buttress the generations' sense of belonging to a state that respects human dignity and rights.

VI. The reality of memory-preservation for female victims

Whilst article 5 of the organic law on establishing and organizing the transitional justice emphasizes that memory preservation is a right for all Tunisian women and men, and after conducting two field studies, the first is a survey of art and memory initiatives, and the second is a gender-based approach on memory preservation for victims of gross human rights violations, TDC concluded that the level of attention given to the preservation of women's memory does not commensurate with the magnitude of the violations against them.

In contrast to the official national memory perpetuated by the former regime, the collective memory struggles to withstand. In both cases, women are excluded from the memory preservation process. Indeed, apart from initiatives on forms of artistic expression, which include names of some female victims in literature, theater and cinema, no other initiatives were taken to commemorate women in symbolic landmarks, such as the naming of educational or cultural institutions, streets or squares after them. There is not a single memorial honoring women. Instead, memorials are clearly enshrining the stereotypical image of women.

If we consider the example of memorials, such as statues and sculptures related to political victims or actors, and as opposed to the dozens of statues and sculptures concentrated in cities, institutions and public squares such as the statues of former President Habib Bourguiba, Mongi Bali, Farhat Hached, Mohamed Ali El Hammi, Tahar Haddad and others, there is not a single statue or sculpture of a heroine or a female political actor.

Thereby, TDC recommends:

- I- Paying attention to the commemoration of female victims equally with men.**
- 2- Consolidating forms of existing initiatives in favor of women to become more symbolic, representative, public and prominent, given that the memory preservation process concerns society at large.**
- I- Urging the promotion of public debate on preserving memories of female victims.**
- II- Supporting the implementation, publication and dissemination of research and studies on women's initiatives.**
- III- Recommending gendered reporting in order to avoid discrimination between female and male victims.**

VII. Writing and teaching the history of human rights violations⁴⁴⁹

The importance of historical narratives as a cultural heritage and collective identity has always been reflected in all field visits, dialogues, seminars and discussions conducted by TDC. Indeed, the local population in Tataouine Governorate, in southern Tunisia, has been struggling, through the battles for national liberation (most notably the Battle of Jebel Agri), to recover, document and promote their history on the one hand, and to make others recognize it and to object its distortion on the other hand.

Other historical aspects have also been stressed by TDC, including the fact that certain groups are excluded from or portrayed negatively in History studies, such as ethnic minorities (Amazighs), religious minorities (Jews in particular), black communities or the regions of victims. Thereby, TDC sought to identify the circumstances under which the official historical narrative becomes fraught with problems through the prism of transitional justice and ways to overcome them.

This calls for further strengthening the public debate in the context of building the new system, through joint research on ways to develop public policies aimed at national reconciliation.

Through the course of its work, TDC observed that history is always subject to different interpretations. While events can be proven through TDC's work, historical narratives are viewpoints that, by definition, are partial. Accordingly, even when the facts are undisputed, conflicting parties may nevertheless fiercely debate the idea of who is right and who is wrong.

However, historical narratives must rest upon the highest ethical standards that shall be respected and included in the public debate. On 24 March 2017, TDC held a public hearing session on violations that accompanied the independence period and violent conflicts that ensued. The session addressed several new facts, which made 60 specialists in history issue a petition denying TDC's call to review history.

The uproar caused by TDC showed the impact of people's perception, interpretation and, sometimes, distortion of the past, in guiding their understanding of the present and shaping relationships within communities, leading to the denial of alternative narratives, the exclusion of certain groups from the official memory and the negative portrayal of some communities in history textbooks.

Conversely, providing space for different communities to present their perspectives on history fosters mutual understanding and helps develop a sense of common humanity, which promotes reconciliation.

The prevailing perception among some historians that TDC relies on victims' narratives to rewrite history is wrong. After more than four and a half years since the Truth and Dignity Commission has started its activities, it has gained a cognitive and archival record that is seen by observers as a valuable treasure joining both public and private archives, data and

⁴⁴⁹ See detailed annex

information obtained from official and unofficial foreign authorities, together with the victims' private and public accounts, TDC's databases, witness and victim testimonies, research, inquiries and investigations, and their minutes and regulations and medical and genetic tests pending judicial facts to be issued by the competent services.

All the foregoing elements provide an objective revelation of the reality of gross human rights violations committed in the past and a rich material for history writers.

The President of TDC's call for Tunisian historians to rewrite the current Tunisian history (post-1956 Tunisia) based on the archival and cognitive record held by TDC had a major impact on these academic communities. The latter displayed mixed reactions, ranging from the rejection of this call, to its reservation, to commenting on it while stating that instead of "rewriting history", history should be renewed and deepened according to cognitive and national requirements, for historical research is an ongoing process and no one possesses the truth. Only documents and archival sources have the power to support and refute facts. Anything other than this is called interpretation, and history is indeed an interpretation-based science.

These calls and comments highlighted the central role of historians in the process of revealing the truth and clarifying its causes and in preserving the national memory. Nevertheless, they did not put forward clear mechanisms and perceptions of how all parties should cooperate together in order to revitalize this role to support the efforts and work of the Truth and Dignity Commission, which aims at the success of the transitional justice process.

In this framework, TDC's role consists in highlighting various visions and orientations to formulate a clear direction as to the meaning of historical writing and its role in memory preservation. A writing built mainly on the accounts and testimonies of victims, especially that the Truth and Dignity Commission received numerous claims, regarding the victims of tyranny, requesting their commemoration and rehabilitation.

Human communities endeavor to preserve their material and immaterial heritage, as well as all cultural expressions and historical milestones, including the suffering and tragedies, which represent an important part of their memory. The Tunisian society lives through its memory and history and aspires, today, to formulate and preserve its own memory and to cut off with the confiscation of memory and the official narrative of power.

VIII. The reality of teaching Tunisia's history for the 1956-2011 period⁴⁵⁰

Since the establishment of its educational and teaching system in 1958, the Tunisian State has undergone two reform processes. The first reform dates back to 1958, when the Tunisian State initiated the reforms under the supervision of Mahmoud Messadi, Secretary of State for National Education, Youth and Sports, in 1958/1959. Law No. 58-118 dated November 4, 1958, relating to education, was considered the main basis for the Tunisian educational system after independence. Tunisia adopted an educational approach that is open to the

⁴⁵⁰ See detailed annex

French language and culture, while seeking to preserve the Arabic language and Arabizing scientific materials under Mahmoud Messadi, whose name was attributed to the 1958 Education Reform Project, which was itself a cover for another project elaborated by the French expert "Jean Debiesse".

The first reform consists in Law No. 1958-118 dated November 4, 1958 on education. Reforms under this law are known as the Reform of Mahmoud Messadi, Secretary of State for National Education back then.

Through Bourguiba's recommendations, will and clear and recognized policy, this educational reform program sought to overcome the difficulties met by educational programs overall in the primary and secondary levels, and to make education close to Tunisian citizens. In fact, Habib Bourguiba used to say that "Education should be adapted to enable us to pursue civilization and to catch up with what we have missed, and we are determined to do so, at all cost. The recognition of reality paves the way to bring about change." Among the major trends of the 1958 reforms, was the generalization of education and the guarantee of the right to equal opportunities to ensure a comprehensive program that gathers all Tunisians, and within which, character and natural talent development of all male and female children occur, "irrespective of their gender, religion or social class". Reforms also included the establishment of an educational system that, in its secondary level, takes into account the national community's occupational, technical and economic needs on the one hand, and the learner's tendencies and "dreams" on the other hand, to prepare children to fulfill their roles as citizens and human beings to become among the competencies that contribute to the "growth of national activity".

With respect to teaching history, especially history of the National Movement and the State of Independence, personal history has dominated the overall events with a systematic and almost complete exclusion of national figures and significant linkages about the origin and development of the National Movement. Which is considered a violation of the right to know the truth about flagrant human rights violations and serious violations of human rights law.

The general context of teaching history between 1956 and 2013 falls mainly within the substantive frameworks adopted by the State in order to achieve a political bet through historical school-based knowledge. During Bourguiba's era, educational reform bet, in a first stage, on "National Unity" and "citizenship" based on loyalty to the State. In so doing, the overlap between school, as the body in charge of teaching history and as the political power monopolizing official historical production, was obvious, which made curricula and textbook writing subject to strategies drawn up by the existing authority in order to consolidate its social and political position.

By browsing history books on the 1956-1987 period, one can observe that most of these books were the inevitable result of using history by the political power as a means to produce an official discourse of the national narrative and to legitimize a specific group within the State. This reinforced the simplistic and ideological perception of national history and the idea that the Tunisian memory is missing and faked. Since the earliest years after independence, teaching history in Tunisia had been confined to political narratives and a clear conception of

the National Movement history, which was characterized by the selectivity of figures and dates that were considered turning points. Although this approach did not comply with the scientific and historical knowledge, it was loaded with explicit and oriented political content.

Besides all the above-mentioned facts, we can include and cite some examples of the increasing selectivity in teaching history.

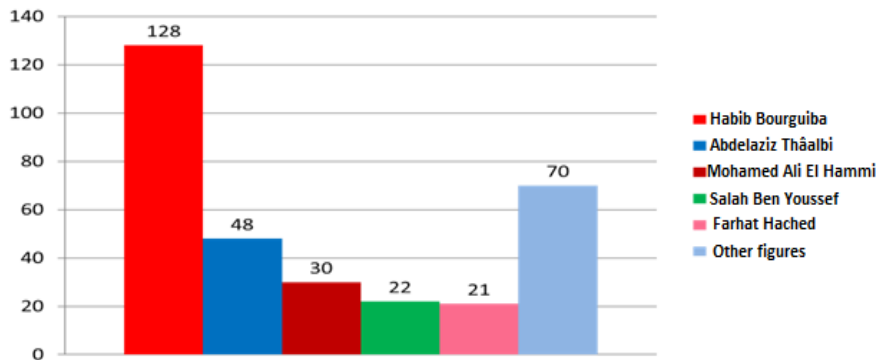
Emphasis in the history of the National Movement is exclusive to the person of Bourguiba, who is the dominant figure in history lessons, even though Bourguiba was not the only figure on the political scene at that time. There were other figures worth being identified.

The concept of leadership was only limited to Bourguiba, or to those who were eliminated and assassinated by the colonial forces, such as Habib Thameur, Farhat Hached, etc.

As for its relation with the trade union movement, the National Movement history is entirely limited to the experience of Mohamed Ali El Hammi and the establishment of the Tunisian General Labor Union by Farhat Hached, while the experience of Belgacem Gnaoui and the coup by Hedi Nouria are totally overlooked.

The definition of the Armed Revolution of 1952 was limited to some well-known figures that were associated with the post-independence Bourguiba regime. Even this definition was intended to show Bourguiba's statesmanship and leadership in dealing with this armed revolution.

*Frequency of national leaders' names in the textbook of the Literary Baccalaureate
(High school degree)*



The strange thing is that this deliberate marginalization was not limited to the rule of Habib Bourguiba, but was also present during the rule of Ben Ali, under which teaching history was based on a new program that avoided the exaggerated glorification of the exploits of the Party and of Bourguiba the Leader. However, it neglected the need for adequate rehabilitation for leaders such as Abdelaziz Thâalbi and Salah Ben Youssef, as well as many

political organizations that played a significant role in the resistance and that remained marginalized in new programs, such as the Zeitounis, communists and resisters.

As a result, political histories remained among the most important chronological milestones presented in history textbooks, which suggest to students the prominent place of politics in human society. History has often shrunk to be confined to wars, conflicts, invasions and revolutions.

In conclusion, teaching history in schools must be consistent with the basic values of scientific approach, which rest upon spreading the culture of reconciliation and peace, the recognition of multiple perspectives of national history and cutting off with the prevailing vision, i.e., the vision of the victor in the political conflict, which displaces the different visions that accumulate throughout history and seeks physical and violent revenge, because one of the goals of transitional justice is to achieve national reconciliation and social peace.

IX. Cultural expressions⁴⁵¹

Self-expression through artistic creativity is indispensable to highlight the suffering of the victims. “Cultural interventions” would greatly contribute to transitional justice. Such interventions include activities that take place outside of the institutions officially responsible for policy-making, such as memorials, cultural expressions and opinion articles in various media and in museums, for example. A distinction should be made between three areas of intervention:

- 1- Intervention at the cultural level
- 2- Intervention through social institutions
- 3- Individual intervention

Overcoming racism, discrimination, exclusion, marginalization, cultures of deep fear and underlying causes of massive human rights violations requires interventions in those three spheres.

Oppressive regimes are very successful at controlling cultural productions, and cultural entrepreneurs are fully aware of the importance of cultural interventions, which greatly contribute to making victims visible and remembering the debt owed to them.

Arts of transitional justice were established to bring the voices of the victims out of TDC and to free them from its short term to be able to persist in a later stage, through literature, cinema, theatre, music, painting, etc, by involving victims in these activities in terms of production, as well as consumption.

Literary expressions

The essential link that is shaped through all cultural expressions is the voices and recollections of the victims, i.e., their oral and narrative memories, which need to be brought out of the self-space to the public space. In doing so, the oppressive regime will be dismantled and the system of gross human rights violations in Tunisia will be revealed. The Special

⁴⁵¹ See detailed annex

Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, pointed out the importance of cultural activities that involve victims, “given their potential to prolong the lifetime of truth commissions' work”. Most transitional justice work targets institutional changes. It is clear, however, that the transformations required to redress past and prevent future violations also call for changes in attitudes, since “These cultural initiatives have proven effective in many comparative experiences in Peru or Sierra Leone”. Creating a cultural space that sustains openness, solidarity and reconciliation between individuals and groups takes us to a variety of expressive spaces, where victims get rid of the burden of their experiences by turning them into literary or artistic creative experiences, and where in-depth dialogue is triggered among all community groups whatever their differences to ward disagreement off and to bridge views.

Literature of Freedom⁴⁵²

The Truth and Dignity Commission organized literary and intellectual seminars on creative productions made by or about the victims. It also developed a platform thereon to hold meetings with innovative victims on the "Literature of Freedom", as opposed to what is referred to as "Prison Literature", thus moving from a negative to a positive memory that transcends the plight towards a space for change and construction for the sake of future generations to guarantee non-repetition.

The memory of pain can be turned into a positive and creative memory when it becomes a memory for hope. Indeed, he who writes about his release from prison and his penitentiary experience under the oppressive regime and does not look forward for a better tomorrow or for the demise of oppressive regimes, remains overshadowed by that negative memory and that personal narrative, which may not be considered a general affair. **In this regard, it is proposed that the term "Prison Literature" be changed into the "Literature of Freedom".**

During the hearing session, victims affirmed that writing in prison is a form of resistance against the oppressive regime.

Many political prisoners used to write their diaries during their prison sentence. Numerous testimonies indicate that they fought to obtain papers and pens to be able to write, and then struggled to get these writings out of prison, as the oppressive regime used to systematically target prisoners' writings.

The raised issues also included the confiscation of writings by the prison administration. Creative victims called for the recovery of these impounded materials, while affirming their existence in the headquarters of the Ministry of Interior.

The significance of creative biography documenting gross human rights violations indicates how hard it is for the novelist to write his biography and to reflect what he has been subjected to in the realism of creative writings, which face many difficulties due to the restriction of their dissemination and their inaccessibility for the masses.

452 See detailed annex

Some victims who used to write their stories pointed out that the reason why the old regime exerted pressure on the Truth and Dignity Commission is that the latter seeks to recall what happened and to point the conflict of memory. By digging up the past, TDC seeks neither to add salt to the injury, nor to split society. It is rather a commitment to the conditions of transition to a democratic system, which requires uncovering the truth, holding perpetrators accountable, providing reparation for the victims and preserving national memory to ensure the non-recurrence of these violations in the future and to achieve national reconciliation.

Moreover, remembering these violations addresses an important message to citizens and officials on the need to reform institutions.

Working on the diverse cultural expressions, including the literary blog in relation with Prison Literature recognized as the features of the narrative identity of victims, and as a special archive documenting violations through written, theatrical and cinematic works, plastic arts, and all expressions converting memory into creative works, is infinite in terms of content and time. In fact, such works affect attitudes and seek to change mentalities and to reconcile with oneself and with others.

TDC recommends:

5. **The inclusion of texts from Prison Literature (Literature of Freedom) in formal educational programs (the Arabic subject).**
6. **The support and promotion of literary, intellectual and artistic initiatives documenting gross human rights violations in Tunisia, by State institutions concerned with cultural affairs.**
7. **Rehabilitation for male and female creative victims by republishing their literary works, especially books that were banned before the revolution.**
8. **Providing male and female prisoners with their writings and personal commemorative items, which are still held in prisons or detention centers.**

Forum Theater

Theater has the potential to open spaces for voicing stories, bridging differences, honoring memories, forging new paths to peace and reconciliation and providing a context for conversation and dialogue.

It is also able to address issues and questions considered as taboo and to create a thought-provoking process in the spectator's mind, encouraging critical analysis of a certain situation. In fact, not only did theater provide for an alternative means of expressing narratives in creative ways, it also had proved to be a manner in which survivors of human rights violations could exteriorize the pain that they had perhaps failed to express in an official political context. As such, theater can have an impact in bringing about social transformation, by providing grounds for victims to reconstruct their lives. Theater is a non-violent form of opposition to violence itself.

Therefore, TDC took a number of foundational initiatives relating to the theater of transitional justice, whereby young creators should perform a theater work that, from their

point of view, discusses human rights violations in front of the victims. The latter can walk onto stage in front of the audience to correct or modify the content of what has been performed. Thus, victims are allowed to speak out and open up to the art audience, and are granted the necessary space to tell their stories.

Over the course of several months, TDC launched a program on the supervision of young male and female amateur theater performers. In a first stage, a scientific symposium on theater and transitional justice was held by a theater expert to exchange ideas and views on what might serve transitional justice, TDC's work, voices and stories of victims on the violations they were subjected to.

Therefore, TDC recommends:

- 1- Providing financial support for civil society as well as the necessary conditions to carry out its work effectively.
- 2- Refraining from interfering with the work of civil society organizations in the field of memorialization through various cultural expressions.
- 3- The State should take positive strides by increasing support for cultural interventions.
- 4- Lifting restrictions on civil society organizations and facilitating access to information.
- 5- Fully respecting and protecting artistic freedom, especially that cultural events and artistic manifestations could allow people, in particular victims, to tell their own recollection of past events in the absence of a public acknowledgement of violations on the part of the State.
- 6- Pursuing the establishment of the Transitional Justice Forum Theater.

The Truth and Dignity Cinema

Cinematography is capable of telling stories, bringing together different views and commemorating the past. Besides its role in documenting human rights violations in artistic ways, it contributes to forging paths for reconciliation and provides a framework for discussion and dialogue, which calls for the promotion of cultural diversity and the emergence of innovative initiatives to preserve the national memory of victims of human rights violations.

In this context, the Truth and Dignity Commission organized a **round table on cinema and national memory preservation for the victims of violations on June 20, 2017 at its headquarters**, with a group of filmmakers, producers and cinematographers to discuss ways to exploit TDC's archives in the creative and cinematic field in order to commemorate national memory. So as to not store it in archival institutions, but rather to deal with it positively, since it represents a significant part of the collective memory and a means to commemorate past human suffering and to achieve reconciliation.

TDC, therefore, recommends that:

- This archival legacy should be converted into cinematic productions and creations in order to remember past events, to recognize a section of the country's history and to

ensure non-return to the times of oppression, non-repetition of past violations and national memory preservation, for the sake of future generations.

- Valuable archives of the Truth and Dignity Commission should be preserved and creators and cinematographers should be granted the right to access them under the legal conditions set in accordance with the laws in force.
- A special fund for documents and archives should be established for cinematographic and television productions, to preserve the collective memory and to convert it into feature films and documentaries related to human rights violations.
- Special allocations and funds should be unconditionally dedicated to the production of feature films and documentaries related to human rights violations.
- A national audiovisual archive institution should be established to compile and document all audiovisual productions made by the various public and private institutions to contribute to the production of documentaries and feature films related to human rights violations under private financing and support from the Ministry of Culture, and to recollect old documentaries and feature films documenting the Tunisian course of events to reconsider the country's history and to archive and digitize old films since the 1960s and 1970s once again, with support from the Ministry of Culture.
- A periodic processing of the National Memory Archives should be carried out by professional specialists in Tunisia in such a way as to remain valid for cinematographic and documentation production.
- Films intended for the youth and primary and secondary school students should be produced and directed by numerous filmmakers, having different visions, to preserve the national memory. They also should be integrated into educational curricula to raise awareness among younger generations regarding their rights and duties, and should be accessible in schools and human rights and citizenship clubs in order to be anchored in young generations' minds and to firmly convince them that violations constitute a crime.
- Material assistance and necessary technical tools should be provided to encourage innovative filmmakers.
- Victims should be involved in documentary production by organizing writing workshops with them.
- Laws shall be enacted to protect creative people and to enable them to access archives of human rights violations to produce documentaries for the future generations.
- A legal framework shall be established to encourage creativity in the scope of documents collected by TDC.
- Public spaces should provide multiple narratives and frequent opportunities for their interaction with each other to help promote the belief that a public space should be inclusive, egalitarian and directed to issues of public interest, rather than of private interest, and to define the necessary conditions to initiate a democratic debate among citizens.
- The establishment of an annual film festival on truth and reconciliation shall be pursued to screen documentaries on violations.
- A Transitional Justice Film Festival shall be organized annually to screen nationally produced feature films related to human rights.

- The Ministry of Culture shall promote artistic initiatives and cultural activities in the field of transitional justice.

Art galleries and other cultural activities

What is referred to as art galleries and other cultural activities are all the different activities that make victims the center of their attention and a key theme in their works. The term also includes the participation of the various civil society actors in bringing human rights and transitional justice issues to the public space to fathom the human rights approach relating to the transitional process.

These activities and works, which above all represent a form of symbolic reparation and memory preservation of gross human rights violations in Tunisia, aim at bypassing this dimension to become rather a guarantee of non-repetition and a reason for changing mindsets and implementing reforms at the level of State institutions and organs, which is required to reform the past.

The importance of these artistic initiatives lies in their ability to extend the Truth and Dignity Commission's term, thereby extending its work over time to commemorate the victims who witnessed gross human rights violations, revealed and dismantled the oppressive and corrupt regime and documented it in various expressions. This is confirmed by the Special Rapporteur, Pablo de Greiff, who believes that such activities “occupy and enhance the moral space vacated in the aftermath of atrocities, and have the potential to strengthen bonds of solidarity within society – so crucial in the wake of conflicts or repression”.⁴⁵³ Commemoration Project:



A Postage Stamp Issuance Program entitled “The Tunisian Post is an Important Partner in Preserving National Memory and Assisting the Transitional Justice Process” for the year 2017.

⁴⁵³ For an elaboration of this topic, see Pablo de Greiff On Making the invisible Visible, The role of Cultural Interventions in Transitional Justice Processes, in Beyond Outreach, Clara Ramez _Barat, ed, New York.

Conclusion

Documents and archives were gathered by either requesting them from the public or private law entities, after corresponding or concluding conventions with them, or through direct communication or physical access to the documents, thus obtainment of copies thereof. On the other hand, some of these archives were given to TDC by the will of their owners.

Thereby, by the end of its term, TDC managed to have a valuable record of documents, archives and information, which needs to be preserved, secured and made available to the public to engage in the process of national memory preservation to draw lessons and to ensure non-repetition of violations in the future.

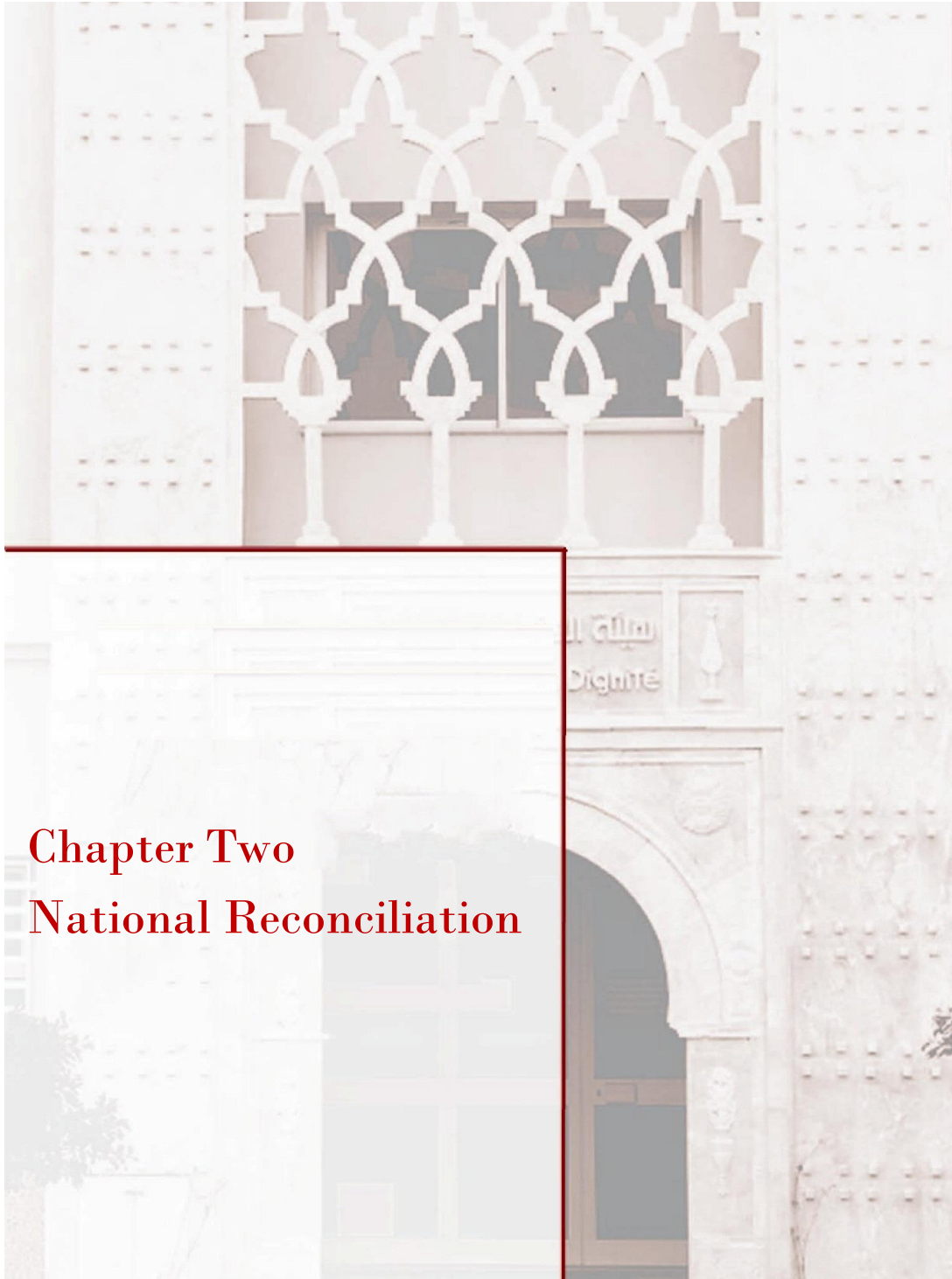
A people's knowledge of the history of their oppression is part of their heritage and must be preserved and secured by taking appropriate measures to preserve such papers, documents and other evidence relating to human rights violations, and by facilitating knowledge of these violations, for revealing the truth of violations is a right guaranteed by law to all citizens⁴⁵⁴. These measures are primarily intended to preserve the collective memory from oblivion and extinction, and, in particular, to prevent distortion or denial of facts.

By the end of TDC's term, this legacy shall be submitted to the National Archives or to an institution concerned with memory preservation established for this purpose. However, in light of its legal framework, current budget and limited human resources, the National Archives will not be able to address this legacy.

Civil society considers that access to TDC's legacy is necessary to preserve memory and commemorate the victims. Nevertheless, the existing legal frameworks of the National Archives do not allow access to information, protection of personal data and respect for the dignity and best interests of victims.

Therefore, transitional justice strategies and reconciliation policies should not neglect cultural rights, as provided for in the Constitution and in article 15 of the International Covenant on Economic, Social and Cultural Rights. All persons have the right to acquire, take part in, benefit from and contribute to culture, especially cultural heritage. Culture shall include both history and memory. Victims shall be able to make their voices heard, and the right to freedom of artistic expression and creativity must be fully respected and protected. Which calls for paying more attention to victims and promoting their participation in memory preservation policies, fostering interaction and understanding among Tunisian women and men, and sharing views on the past and on the design of a cultural landscape that is reflective of cultural diversity within society.

454 Article 2 of the aforementioned organic law no.2013-53



Chapter Two

National Reconciliation

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National Reconciliation

I. Introduction

Besides relying on a number of mechanisms and measures to achieve national reconciliation and to rebuild trust between citizens and the State, the specificity of the Tunisian experience, in the field of transitional justice, lies in its reliance on a novel mechanism, namely the “Arbitration and Reconciliation Commission”. This leads us to address the implementation of national reconciliation at the individual level, at a first stage, and at the collective level, at a later stage. The specificity of the Tunisian experience in the area of transitional justice also lies in dealing with human rights violations and financial corruption violations, under its mandate. Having investigated the cases entrusted to it, The Truth and Dignity Commission found a correlation between the above-mentioned two types of violations.

Notwithstanding the obstacles that hampered the arbitration and reconciliation proceedings by State institutions, especially by services of the State Litigation Officer, the Truth and Dignity Commission managed, through the arbitration and reconciliation mechanism, to conclude eight conventions on arbitration and reconciliation, during which it recovered an estimated seven hundred and forty-five million dinars (745 million TND) for the Tunisian State. Through the arbitration and reconciliation mechanism, TDC also managed to regularize the situation of eleven victims of human rights violations, including two victims of property rights violations that were compensated an amount of seven hundred thousand dinars (TND 700.000).

National reconciliation and transitional justice are measures to uncover the truth, preserve national memory, establish and achieve justice, build a State of law and provide reparations while holding perpetrators of human rights violations accountable. This makes it necessary to search the scope of national reconciliation in the transitional justice process, and methods for implementing national reconciliation in the course of transitional justice.

II. The concept of national reconciliation in the transitional justice process

Linguistically, reconciliation means pacifism, cordiality and eliminating all the causes of animosity. It is derived from the infinitive verb "to reconcile". When we say that a situation was reconciled, it means that all the aspects of corruption were removed. Reconciliation is a multi-dimensional and polysemous term that can be found in the area of psychology and the

social sphere. In the political sphere, we find the so-called national reconciliation, which refers to the common endeavor to abolish past obstacles and their political, legislative, economic, social and cultural persistence, to address the ensuing tragedies and gross violations, and to definitively break with violent solutions in the processing of files and cases subject to disagreement.

Nevertheless, it can be observed that some people believe that reconciliation carries religious connotations, especially in Christianity. It is also possible to talk about reconciliation during the different stages of a country's transition from dictatorship to a new form of democracy. On the other hand, others believe that reconciliation begins as soon as perpetrators of violations are convicted and prosecuted, while some others argue that reconciliation can be proceeded when those involved are held accountable, when the pursuit of truth occurs transparently and without fear, when institutional reforms are initiated, when the need for reparations is recognized, and when the State moves towards actual implementation. The response of former victims to these initiatives would also promote stability and increase the chances of establishing durable peace. Reconciliation has also been defined as a national consensus among the various components of the civilizational framework of society on a comprehensive, integrated, specific and precise plan that is regulated by the content of international law and its preemptory norms. The latter bind the State and its successive governments provided that the conflicting parties accept to sit down together, since reconciliation shall be participatory and interactive. The concept of reconciliation in the transitional justice context is no different from that provided in the private domestic law; it is a procedure aimed at reconciling opponents by searching amicable solutions to the conflict, by either the parties themselves, or through the intervention of another party called the reconciler, mediator or arbitrator.

The organic law N° 2013-53 dated 24 December 2013 establishing and organizing the transitional justice also defined reconciliation as “aimed at consolidating national unity, achieving justice and social peace, building a State of Law and restoring the citizen’s confidence in State institutions.” Reconciliation shall not mean impunity and lack of accountability for those responsible for violations.

It follows that reconciliation aims at constructing a democratic system that cuts off with authoritarianism, and establishing equality between all citizens in various areas, which could help rebuild the citizen's confidence in State institutions, as well as holding all perpetrators of gross human rights violations accountable.

From the perspective of the organic law N° 2013-53 dated 24 December 2013 establishing and organizing the transitional justice, national reconciliation in Tunisia can only be achieved after revealing the truth and holding perpetrators accountable.

The Truth and Dignity Commission undertook the challenging task of investigating patterns of violations committed under the oppressive regime over the period from July 1, 1955 to 2013, through primary and major transitional justice mechanisms, which generally consist in revealing the truth, holding those responsible accountable, providing reparations and rehabilitation for the victims, preserving memory and reforming institutions to reach special mechanisms in the course of transitional justice and reconciliation, such as the arbitration mechanism, and to ensure the implementation of its recommendations by the end of its mandate, added to institutional and legal reforms aiming at establishing the rule of law. This could contribute to the promotion of national reconciliation between all members of society and the State, and especially the restoration of the citizen's confidence in State institutions. Nonetheless, this shall not mean impunity and lack of accountability for those responsible for all violations.

III. Reconciliation in comparative experiences

It is noteworthy that the Tunisian experience of national reconciliation in the transitional justice process relied on mechanisms and measures similar to those used in other comparative experiences such as Morocco, Latin America and South Africa.

The Moroccan experience

“The Equity and Reconciliation Commission” was established at a critical and delicate stage in the process of development that Morocco went through at the beginning of the 1990s, following the political changes that were faced by the State and the political and social components of society. As an instrument of transitional justice, it was one of the fruits of this challenging historical evolution towards addressing issues and cases linked to the past gross violations of human rights. It was established pursuant to a royal decree dated 6 June 2003, ratifying the recommendation of the Advisory Council on Human Rights issued by virtue of article 7 of Dahir No. 1.00.350 reorganizing the Council. To further strengthen its autonomy, the Commission drew up its statute, which serves as a foundational document including a detailed description of the tasks entrusted to it, a definition of the violations falling within its remit, and the methods used in organizing and carrying out its work. This statute was ratified by virtue of Sherifian Dahir no. 1.04.42 issued on 19 Safar 1425, corresponding to 10 April 2004. Therefore, the Equity and Reconciliation Commission is considered a National Commission on Truth, Equity and Reconciliation with non-judicial prerogatives in settling cases of past gross human rights violations. It deals with a long period stretching from the date of Moroccan independence in 1956 until 1999. The final report of the Equity and Reconciliation Commission included a set of recommendations and suggestions in the areas of democracy, the building of a State of law and institutions, respect for human rights and the rule of law, which made the General Secretary of the United Nations refer to the Moroccan experience as one of the five most distinguished of over thirty

experiences, in his report submitted to the Security Council in 2004 on “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies.”

The Peruvian experience

The Truth and Reconciliation Commission (TRC) was established by the transitional government under the presidency of Valentín Paniagua, pursuant to the decree-law of 4 June 2001. Thereby, Peru chose the method of establishment by the Executive Power. Under the above mentioned decree-law, “TRC” was mandated to investigate episodes of political violence, past violence events, incidents and related liabilities. It focused on the period from 1980 to November 2000, and proved that the Peruvian internal armed conflict between 1980 and 2000 was the most intense, extensive and the longest chapter of violence in the history of the Republic. It also addressed the seriousness of the State's limited capacity to ensure public order, security and the fundamental rights for its citizens within the framework of democratic practices.

“TRC” considered that the main and direct cause of the Peruvian internal armed conflict was “the decision of the Peruvian Communist Party-Shining Path,” who is the main perpetrator of crimes and human rights violations. It emphasized that reconciliation is unachievable without the effective practice of justice, be it in terms of providing reparations for victims, holding perpetrators accountable or ending impunity. Indeed, an ethically and politically sound nation cannot be built on the ground of impunity, especially that the most serious human rights violations, committed by military officials, included illegal executions, forced disappearance of persons, torture and cruel and inhuman treatment. “TRC” also condemned the heinous and widespread practices of sexual violence against women.

The Paraguayan experience

Pursuant to article 203 of the Constitution, the Paraguayan Chamber of Deputies adopted on 19 June 2003 Act no. 2225 on the establishment of the “Truth and Justice Commission (TJC)” in Paraguay, which focused on the period from May 1954 until 19 June 2003, date of ratification of the TJC establishment Act. It was entrusted with the tasks of investigating and looking into political, social and cultural circumstances and behaviors of State organs and other structures that committed serious violations of human rights, as well as officially uncovering the truth and proving the State's moral and political responsibilities, at a later stage. It was also tasked with clarifying the link between human rights violations and authoritarian policies of the National State, developing proposals of reparations for victims on the basis of acceptable norms, and preserving victims' memories and testimonies by identifying detention locations of individuals who were victims of violations.

The South African experience

"True tolerance does not entail forgetting the past completely", "Injustice takes the freedom of both the oppressor and the oppressed" and "Courageous people do not fear forgiving, for the sake of peace."

The above are three of the most famous quotes of the late South African leader "Nelson Mandela", who devoted his life to the unification of his people, after the end of the apartheid era in 1994. The South African "Truth and Reconciliation Commission" was established under the Promotion of National Unity and Reconciliation Act no. 34 of 1995, one year after "Nelson Mandela" was elected President of the country in the context of democratic transition to end apartheid and white minority dominance. The Truth and Reconciliation Commission was mainly created to achieve national reconciliation between victims and perpetrators, after identifying all human rights violations. It also played a key role in restoring national unity while preserving the rights of victims of the former regime and without depriving the former ruling class from the opportunity for reintegration. The Commission was granted extensive and exceptional prerogatives to investigate patterns of human rights violations committed by officials and members of opposition organizations over a period of thirty-four years, and to make recommendations, including the provision of financial compensations for victims of human rights violations. Other quasi-judicial prerogatives consisted in granting amnesty to perpetrators under certain circumstances, as a way to bring justice, instead of bringing them to trial. The "Truth and Reconciliation Commission" brought perpetrators, from 1995 to 2000, to confess their mistakes and to ask forgiveness of people they wronged on the basis of hearing sessions, during which those involved in violence acts provided their testimonies on all the abuses committed against the other party, be it Africans or the white minority.

Accordingly, many observers considered that South Africa's experience of reconciliation was successful, as it confronted its past instead of denying it and drew lessons in the areas of political practice and official political discourse.

It has largely achieved its goals of creating a society capable of overcoming the bitter and bloody past and recovering in its aftermath.

After presenting the comparative experiences of some transitional countries in the area of national reconciliation, it can be seen that Tunisia's national reconciliation experience was successful and outstanding, despite the difficulties, constraints and disruptions endured.

IV. The pillars of national reconciliation in the transitional justice process

National reconciliation can be considered a path to which all political and civil bodies, institutions and other components of society contribute, by engaging in the implementation of institutional and legislative reforms, with a view to promoting democratic transition and supporting the building of a State of law and institutions. On its part, the contribution of the Truth and Dignity Commission in Tunisia, in this regard, consists in trying to rebuild confidence between the State and society with all its components. Therefore, TDC sought to direct all its work aiming at revealing the truth, holding perpetrators accountable, providing reparations and rehabilitation for victims, towards promoting this process and achieving national reconciliation, while ensuring that perpetrators of violations are not granted impunity. This requires the search for mechanisms and measures to implement national reconciliation in order to reach reconciliatory outcomes.

1. Overlaps between the mechanisms and measures to implement national reconciliation

With reference to comparative experiences and international treaties, besides the organic law no. 2013-53 dated 24 December 2013 establishing and organizing the transitional justice in Tunisia, the transitional justice process shall begin with truth-seeking, pass through accountability, then reparation and rehabilitation for the victims, to finally reach institutional reforms and memory preservation.

2. Revealing the truth

Article 4 of the organic law no. 2013-53 dated 24 December 2013 “establishing and organizing the transitional justice” defines the mechanism of revealing the truth as "the entirety of methods, procedures and research used to dismantle the authoritarian system, by identifying and determining all the violations, as well as determining their causes, conditions, sources, surrounding circumstances, and repercussions. In cases of death, missing persons, and enforced disappearance, it shall uncover the fate and whereabouts of the victims, as well as the identity of the perpetrators and those responsible for such acts.

The particularity of the violations’ impact on the elderly, women, children, those with special needs, vulnerable groups of society, and the sick shall be taken into account when revealing the truth."

It follows that the first step in the right direction towards the final, comprehensive and fair closure of the case of gross human rights violations consists in revealing their truth and describing events that took place, with a view to ending the abuses that have been committed by the State against people over decades. However, revealing the truth relates to a defined

period of time specified in article 17 of the organic law no. 2013-53 dated 24 December 2013 “establishing and organizing the transitional justice”, as “The Commission’s work shall cover the period extending from 1 July 1955 up to the issuance of this law.” Besides, article 3 of the organic law on transitional justice also mentions the need to identify the nature of violations, stating that "Violation shall mean any gross or systematic infringement of any human right committed by the State’s apparatuses or by groups or individuals who acted in State’s name or under its protection, even if they do not have the capacity or authority to do so. Violation shall also cover any gross or systematic infringement of any human right committed by organized groups." However, the seriousness of violations lies at the discretion of the Truth and Dignity Commission.

Consequently, research and investigation into the events and incidents that constituted a gross or systematic infringement of any human right lead to uncovering the truth of perpetrators of these gross violations, which implies their accountability and punishment, if proven guilty.

3. Accountability

Generally, truth commissions are non-judicial bodies; and the philosophy of transitional justice is not a substitute for, nor a parallel to, criminal justice, but rather completes it. It represents a link in the justice chain at large, and is characterized by a certain particularity during periods of democratic transition. Thus, article 7 of the organic law No. 2013-53 dated 24 December 2013 “establishing and organizing the transitional justice” states that “Accountability falls within the remit of the judicial and administrative commissions and authorities pursuant to the law in force.” Article 8 thereof also states that "Specialized Judicial Chambers should be created by a decree within courts of first instance in the headquarters of appeals courts, and shall consist of judges who have never participated in trials of a political nature, and who will receive special training in the field of transitional justice.

The aforementioned Specialized Chambers should be entrusted with adjudicating cases related to gross violations of human rights, as specified in ratified international agreements and in this law. These violations include namely the following:

- I- Deliberate killing,
- II- Rape and any form of sexual violence,
- III- Torture,
- IV- Enforced disappearance,
- V- Execution without fair trial guarantees.

These chambers are committed also to examine the violations related to electoral fraud, financial corruption, misappropriation of public fund and forced migration for political

reasons, which shall be transferred by the Truth and Dignity Commission.” However, the victims of violations cannot be confronted with the prescription of a crime, the force of res judicata or the non-retroactivity of laws. This confirms the fact that while transitional justice seeks to address past violations to build a better future, reconciliation is unachievable without addressing the files of violations and accessing archives to reveal the truth and the identity of human rights perpetrators and holding them accountable, bearing in mind that people are eager to figure out mysteries of the past, and that they need a comprehensive justice that guarantees their compensation. It could, therefore, be inferred that reaching national reconciliation is possible only if preceded by the stage of accountability of corrupt people, who are responsible for financial and political corruption, and the fair trial of criminals, the restitution of victims' rights and their moral and financial reparation. Accountability also aims at ensuring the non-repetition of violations and revealing the truth, so the new regime would not fall in arbitrariness and fail to respect human rights. Justice is not only confined to the legal dimension, but also includes symbolic and moral dimensions, such as providing rehabilitation for all the former regime's victims.

V. Characteristics of arbitration and reconciliation in the transitional justice process

Arbitration and reconciliation constitute a special mechanism for the settlement of disputes, by a committee elected by the Legislature and entrusted by the parties of the dispute to settle them under an arbitration convention, without resorting to the judicial power.

Article 15 of the organic law No. 2013-53 dated 24 December 2013 establishing and organizing the transitional justice states that: “Reconciliation aims at consolidating national unity, achieving justice and social peace, building a State of Law and restoring the citizen's confidence in State institutions. Reconciliation shall not mean impunity and lack of accountability for those responsible for violations.”

The Arbitration and Reconciliation Commission differs from the traditional arbitration committees, in the sense that parties to the dispute are not free to choose arbitrators, especially as it is commonly acknowledged that the arbitration body is formed at will by both parties. The latter agree to choose one or more arbitrators, provided that their number is odd to be able to adopt the “weighted voting” rule in case of divergence of opinions upon the issuance of the judgment. This procedure is adopted in traditional arbitration or in permanent arbitration centers and institutions, which elaborate lists of arbitrators who have diverse experiences, in order to help the disputants choose the arbitration panel that will consider the dispute.

Reconciliation is divided into individual reconciliation (arbitration) and collective reconciliation (national reconciliation). The latter is defined as a political reconciliation par excellence, between the State as the perpetrator of gross or systematic violations of human rights, and activists of political parties and movements, professional and human rights organizations and other victims of such violations. Reconciliation can also occur among political parties and movements themselves, as organized groups that committed violations against one another over the period from July 1955 until the end of December 2013. The Truth and Dignity Commission seeks, through the prerogatives and mechanisms that it enjoys, to realize these "objectives". It is obliged to provide, in its final report, all the measures to be taken to encourage national reconciliation, as well as recommendations, proposals and actions that promote democratic construction and contribute to building the rule of law. This includes the proposal to hold a broad national conference for national reconciliation between the State, on the one hand, and political parties and movements, professional and human rights organizations, on the other hand, or among political movements themselves, under which confessions and collective apologies are exchanged. This is a deferred measure in Tunisia, which has made important strides in achieving national reconciliation through the promulgation of a consensual constitution in January 2014 and holding pluralistic, democratic, genuine and transparent elections that involved all parties, including figures of the pre-14 January 2011 regime. This led to the emergence of a national coalition government and national opposition movements, thanks to the unity of the Tunisian society religiously, ethnically, doctrinally, culturally and linguistically.

1. The concept of arbitration and reconciliation

The arbitration and reconciliation mechanism draws its capacity, in the transitional justice process, from the specificity and exceptionality of the Transitional Justice Law itself, while respecting the general provisions set out in the Arbitration Code and other legislative texts governing arbitration and reconciliation structures in general. The files of applicants for arbitration and reconciliation cannot be considered after the Truth and Dignity Commission's end of term. During this period, confrontation and defense before the Arbitration and Reconciliation Commission cannot be based on the non-retroactivity of laws, the existence of previous amnesties, the force of *res judicata*, and the prescription of a crime or a punishment.

National reconciliation can, thus, be achieved. In fact, transitional justice is not possible without achieving a successful comprehensive national reconciliation, as the desired and supreme goal of the integrated multi-track transitional justice process. The latter implies revealing the truth about gross and/ or systematic violations of human rights, achieving comprehensive national reconciliation, holding perpetrators of such violations accountable, providing reparations for the victims, implementing the arbitration mechanism with the consent of both parties, reforming institutions by screening administrations and reviewing

the corrupt legislative system. These mechanisms are interdependent and cannot be overlooked or condoned under any circumstances, even in case of an emergency or a force majeure. Otherwise, it would be considered a violation of the Constitution.

The Truth and Dignity Commission's Arbitration and Reconciliation Commission is responsible for undertaking and deciding on files relating to gross human rights violations, financial corruption and misuse of public finance over the period from July 1955 until December 2013. These violations are provided for in article 8 of the Transitional Justice Law including (deliberate murder, rape or any other form of sexual violence, torture, etc), to name but a few; and in the list elaborated by the Truth and Dignity Commission (including prison, administrative probation, etc). However, article 7 of the Arbitration Code states that “No arbitration is permitted in:

- Matters regarding law and order;
- Disputes related to nationality;
- Disputes concerning personal status, except for the financial disputes that ensue therefrom;
- Matters where no reconciliation is permitted;
- Disputes involving the State, public administrative authorities and local communities, with the exception of the disputes arising from international economic, commercial or financial relationships.”

The Arbitration and Reconciliation Commission examines the files, regardless of the extinction of the right of action and prescription of penalties. It also implements the general principles of arbitration, the provisions of transitional justice in the area of arbitration and reconciliation, and broadly speaking, the principles of equity, absolute justice and principles agreed upon in the various customs and international conventions.

With regard to proceedings, the Arbitration and Reconciliation Commission undertakes files, on the basis of a request submitted to the Central Registry Office of the Truth and Dignity Commission by the alleged violator or the victim, whether a natural or a legal person; or based on a referral from the National Commission on investigation into Corruption and Embezzlement. TDC can also take charge of files upon a request by the State, if the latter is affected by one of the violations set forth in law. In all cases, the State shall be an original party to all the files submitted to TDC. Afterwards, the rest of the arbitral proceedings will be launched within the Arbitration and Reconciliation Commission by calling parties to the arbitral dispute to hold a hearing session to listen to them, whether the Claimant or the Respondent, including the State Litigation Officer, in his capacity as the legal representative of the State. The act of calling the Respondent to bring along proofs and the Rapporteur's report, while coming before the Arbitration and Reconciliation Commission, is a fundamental measure in the arbitration process. It aims at protecting the rights of all parties and

promoting the principle of confrontation, as the Respondent can submit all his/ her objections or defenses at the hearing session, especially that attendance is not an evidence of suspicion or conviction.

The Respondent's failure to attend for the second time, after being summoned and within ample time before the Arbitration and Reconciliation Commission, is considered a rejection of arbitration and reconciliation. The case is, accordingly, referred to one of the investigating judges' offices at TDC, to take all the legal procedures including referral to the competent judicial districts.

If both the Respondent and the Claimant approve the arbitration and reconciliation mechanism, they shall sign an arbitration and reconciliation convention in accordance with the existing model, in order to set time limits for the settlement of the arbitral dispute between them, which may last less than six months, and the subject of arbitration and reconciliation, as per their agreement without anyone's interference. As soon as this agreement is concluded between the Claimant and the Respondent, the time limits shall be interrupted. Judicial authorities shall also stop considering the case at hand, as it will be referred to the Arbitration and Reconciliation Commission. Consequently, all adjudicative proceedings shall be suspended; and judicial warrants such as detention orders, travel bans and the freezing of assets, shall no longer be effective, until the issuance of the arbitration award, whose effects differ depending on the violation type.

If the arbitral award concerns serious violations such as murder, torture, rape, etc., its effects shall be relative. As such, the award represents but a mitigating factor when deciding on the punishment by the competent judicial district, which remains competent to hold the perpetrators of those violations accountable.

However, if the arbitral award and reconciliation have to do with financial corruption and misuse of public monies, its effect shall be absolute, as it results in the extinction of the right of action, the case dismissal or the deferment of penalties.

To ensure that the truth of violations, which are subject to arbitration and reconciliation, is revealed, to provide fair reparations for the victims, to preserve their individual and collective memories, and to support the screening process of administrations and institutional reforms, in order to achieve reconciliation, the Arbitration and Reconciliation Commission can only study and address the arbitral file when certain conditions are met. Above all, the person who submits a request for reconciliation and arbitration should present a written confession about the facts that s/he has perpetrated and offer an explicit apology. In cases of financial corruption, the victim or the State should express their consent. The file should also include statements of the facts that led to unlawful benefits and their monetary value. The request is enclosed to the documents proving the veracity of the claims for reconciliation. Besides,

parties to the dispute should also accept to take part in the public hearing sessions. Finally, the arbitral award shall be explicitly accepted and shall be considered as a final decision that may not be nullified or appealed by any means or claim of abuse of power.

Other committees under the Truth and Dignity Commission are also entitled to review all the files submitted to the Arbitration and Reconciliation Commission, including all evidence, and to express their opinion at any stage. If TDC finds out, through its inquiries and investigations, that the requester for reconciliation provided false information intentionally, even after reaching a reconciliation between the parties, or that s/he hid the truth and did not declare what s/he unduly took over, the arbitration proceedings shall be canceled and all effects shall be removed, even if the arbitration case was closed and the prosecution was terminated.

In light of the existing theoretical and practical framework for arbitration and reconciliation mechanisms in accordance with the transitional justice process, as described above, the promulgation of a new parallel law and the appointment of an administrative commission, parallel to the Arbitration and Reconciliation Commission at the Truth and Dignity Commission as a public constitutional body, have become useless and futile. In fact, the legislature's decisions are neither immoderate nor arbitrary; especially that it is the fruit of genuine and transparent democratic elections, following a comprehensive national dialogue led by the National Dialogue Quartet. Three out of the four organizations constituting this coalition disapproved the Economic Reconciliation Draft Law, because it contradicts the course of transitional justice and the Constitution, while the fourth organization approved it and called for making substantive amendments to its original version. In so doing, the National Dialogue Quartet fully deserved the Nobel Peace Prize, fame and people's attention around the world. This success is a victory for the transitional justice process and for the prerogatives of the Truth and Dignity Commission, as a constitutional and public authority.

VI. The general context

The concept of transitional justice evolved as an alternative to the notion of Revolutionary Courts, which emerged in some countries in the eighteenth and nineteenth centuries during the French and American Revolutions and continued until the mid-20th century. It is rooted in the culture of some European Enlightenment philosophers, such as Thomas Hobbes, through his theory on conflicting communities, and Jean Jacques Rousseau, through the Social Contract Theory, which imposes many concessions on all sides to find ad hoc solutions to complicated problems of the past.

Recourse to transitional justice occurs in societies witnessing revolutions or wars, during which human rights crimes and violations were committed. This process, which could be extrapolated from the experiences of different states, aims at moving from an oppressive

totalitarian political environment, where gross violations of human rights and fundamental freedoms occur, to an environment that is favorable for democratic exercise. It may also mean the transition from a period of prolonged armed conflict, or a political conflict punctuated by stages or periods of armed conflict, to an environment of civilian peace within the framework of peace conventions between two or more parties, depending on the nature of each State and its experience.

It was first implemented following the Second World War, which relied on the judicial approach, through the Nuremberg trials in Germany and Tokyo trials in Japan in 1945; the International Criminal Tribunal of former Yugoslavia in 1993; and the International Criminal Tribunal of Rwanda in 1994. This process culminated in the establishment of the International Criminal Court in 1998, as a permanent international body to prosecute war crimes, crimes against humanity and gross human rights violations. In a later stage, the concept of transitional justice evolved following the fall of the Eastern Bloc led by the Soviet Union and the radical changes it brought in Eastern European States. As a result, the idea of trials by judicial commissions was dropped; transitional justice became the integrated path for a set of mechanisms conducive to comprehensive national reconciliation. It was enshrined under Truth commissions or committees established in more than 30 countries from the five continents.

Transitional justice is based on the repudiation and non-surrender to revenge. Justice lies between crime and punishment, therefore allowing the intervention of a third party, i.e., the State, to lay the foundations of transitional justice. The latter is considered a specific kind of justice that does not fall under the same standards and principles governing justice in ordinary circumstances. The great challenge facing communities undergoing a democratic transition, after they emerge from the cycle of violence or dictatorship, is the heavy legacy of a traumatic and bloody past, which is extremely difficult to deal with, especially that the traditional methods of bringing justice and achieving a national reconciliation that breaks with the past and forges the future, are lengthy, complex and ineffective, in most of these cases. That requires recourse to the transitional justice mechanism, which aims to lay the foundations of democracy through seeking the truth of the committed crimes; to deepen the principle of accountability and lack of impunity; to develop a reparation program for victims; to carry out the necessary institutional reforms and work to preserve the national memory, in order to move to reconciliation.

Since 2011, Arab communities, along with the Arabic political lexicon have witnessed the emergence of new terms such as "Revolution", "Transitional Period", "Democratic Transition", "Transitional Justice", "Reconciliation", etc. Even though they existed before, at least in theory, their application in practice was necessitated by the nature of the transitional

phase, which requires digging into their linguistic, jurisprudential and legal concepts, contextualizing and differentiating them from similar terms.

Transitional justice is one of the diverse forms of justice, in its absolute and ideal sense. In fact, it is used in different contexts, depending on its field and purpose. It may refer to ordinary or traditional justice associated with the settlement of disputes by judicial means, such as arbitration and the judiciary; or to social justice related to the equal distribution of wealth and development among the different groups of society and geographical regions of the State; fiscal justice, which means equal taxation; and it is even used by some people to demonstrate divine justice.

The report of the Secretary-General of the United Nations on "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies", which was presented to the Security Council on June 16, 2004, states that: **“The notion of transitional justice comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof, to detect abuses.”**

The concept of transitional justice differs from several similar concepts, namely the "Transitional Phase", the "Democratic Change" or the "Democratic Transition". The "Transitional Phase" has several meanings depending on its uses. In fact, in **economic sciences**, it refers to transition from a socialist to a capitalist system, while in **social sciences**; it refers to the rural-urban movement of communities. However, in **political sciences**, it means the period that the State goes through after independence, or the regime change following a revolution, a coup d'état, or a comprehensive political shift. In this last case, a new system is established covering all social, political, economic and cultural aspects of life, as well as the constitutional and institutional aspects.

The concept of transitional justice differs from that of democratic transition or democratic change, which means moving from a non-democratic stage to the founding stage of democracy, i.e., overcoming the rules of oppressive and totalitarian regimes and replacing them by democratic rules.

The South African experience emphasized this option, despite the different political, social and cultural circumstances, under which the option of accountability was excluded. In this regard, Desmond Tutu, Chairman of the Truth and Reconciliation Commission in South Africa, stressed that: “It was beyond all doubt that members of the security forces would have scuppered the negotiated settlement.”

The Chilean experience represents another example of impunity. In fact, after years of military rule that led to the assassination and disappearance of thousands of people and major human rights violations, before the transfer of power to civilians and following the democratization process, General Pinochet and his associates granted themselves amnesty before handing over the power to civilians, until he was arrested in 2002 under the British judiciary.

There are numerous international experiences in the field of accountability, ranging from collusion and impunity, to the successful prosecution of perpetrators of violations, due to the different political, social and cultural realities of each State and its specificity. However, accountability remains a serious and legitimate claim for a successful transitional justice experience and the passage to democracy through national reconciliation, which will be challenging unless criminals and those responsible for decades of violations are held accountable.

VII. The specific context

Nowadays, Tunisia is undergoing a new phase of changes aimed at breaking with the past and moving towards a future of justice and democracy, through the transitional justice mechanism. The latter ensures the restoration of rights to those who rightfully possess them and prevents the recurrence of oppression. The transitional justice experience is the backbone of the State's transition towards a democratic regime after dictatorship. Following the overthrow of the political system responsible for gross human rights violations, there emerged a need for several urgent measures, including the amendment of restraining laws, the compensation and reparation for victims, and accountability for those responsible.

At the beginning, several legal initiatives, in support of the transitional justice process, were launched immediately after the former President fled the country on January 14, 2011, and following the massive popular revolution in the country. The Constitutional Council intervened, the following day, to announce the final vacancy of the post of President and the temporary assumption of office by the Speaker of the Chamber of Deputies. Tunisia, thus, started a transitional phase, during which successive governments tried to respond to the high expectations, aspirations and demands of the people.

A judicial approach to transitional justice was adopted at the outset. The day after January 14, 2011, arrests and prosecutions of those involved in the killings and corruption were carried out. However, the experience was not brought forward, in the first place, due to the transitional status of governments that lacked legitimacy, the absence of adequate political will and the dire security situation, which was often intentionally invoked to avoid responsibility.

The operationalization of the legal framework for transitional justice witnessed a clear slowdown, although the issue was raised immediately after the Revolution and was codified from the outset within the Constituent Law no. 2011-6 dated 16 December 2011 relating to the provisional organization of public authorities. Article 24 of this law states that among the tasks of the National Constituent Assembly is: “The enactment of an organic law regulating transitional justice, its foundations and its area of competence.” In addition, the decree no. 2012-22 dated 19 January 2012 creating the Ministry of Human Rights and Transitional Justice and fixing its attributions entrusted it with the elaboration of an appropriate legal framework for the implementation of transitional justice. This slowness resulted in serious negative repercussions, mainly the obliteration of some means of evidence, relating to files of financial or administrative corruption; and the use of accountability and truth-seeking files, especially those brought before the courts, to put pressure on certain parties, in order to wrest concessions or obtain material or even political benefits.

The techniques of peacemaking and reconciliation in traditional societies rest upon various mechanisms, including those relating to international conflicts, such as negotiations, mediation, commissions of inquiry, reconciliation, the judiciary, international arbitration and all the means provided for in Chapter VI of the UN Charter relating to the Pacific Settlement of Disputes, on the one hand; and mechanisms relating to the achievement of civil peace and comprehensive reconciliation in national regimes, especially those that witnessed egregious and gross human rights violations, and then moved to a transitional phase, through the activation of transitional justice, with its various acknowledged mechanisms.

The specificity of the Tunisian experience, in the field of transitional justice, is highlighted by its reliance on a new mechanism, i.e., the Arbitration and Reconciliation Commission, added to the set of mechanisms that existed before transitional justice, and that are necessary for national reconciliation. The organic law establishing and organizing the transitional justice mentioned, in its Title I entitled “Definition of Transitional Justice and Determination of Its Field”, the mechanisms to be used, namely revealing the truth, holding perpetrators of violations accountable, providing reparations and rehabilitation for the victims and preserving national memory, in order to ensure the non-recurrence of violations and to reach a comprehensive national reconciliation. Arbitration and reconciliation are not mentioned among these mechanisms and are only indicated under Title II of this law, “The Truth and Dignity Commission”, articles 45 to 50.

In so doing, the legislator aims, on the one hand, to allot space for the definition of this unconventional mechanism, as it was not used in the past transitional justice experiences of many States, which makes the Tunisian experience even more unique. On the other hand, structurally speaking, the legislator aims to include this mechanism within Title I, which is devoted to the recognized areas and mechanisms of transitional justice. This may lead to

conceptual confusion between arbitration and reconciliation, as a mechanism that adds to the existing mechanisms with a view to strengthening and enriching the transitional justice experience in Tunisia, and comprehensive national reconciliation, which is the culmination of a complete and homogeneous path of all the above-mentioned milestones and mechanisms.

The arbitration and reconciliation mechanism is optional. It ensures a flexible and quick settlement of the dispute and provides room for an amicable resolution, by bringing views closer together and aiming for consensual reconciliation. It also preserves privacy and supports national reconciliation, in order to achieve transitional justice goals.

This mechanism is one of the peaceful means of dispute settlement, similar to negotiations, mediation, good offices, commissions of inquiry, reconciliation and judicial methods, such as arbitration and the judiciary. The particularity of the Tunisian experience lies in the act of framing this mechanism through the “Arbitration and Reconciliation Commission”, which is competent to consider and decide on files of violations brought before it, under the provisions of articles 45 to 50 of the organic law establishing and organizing the transitional justice. Actually, this commission does not differ from the recognized arbitral commissions, in terms of impartiality and independence from the parties to the dispute. It plays the role of the mediator between the State and society, whether the file relates to a violation committed by a State institution against an individual or group of people, or vice versa, i.e., when the violation is committed by an individual or a group of people against the State.

The nature of the Arbitration and Reconciliation Commission’s terms of reference differs in that arbitration by reconciliation is different from judicial arbitration. In fact, the arbitral tribunal mandated to settle the dispute is exempted from the application of the rules of positive law regulating the subject-matter of the dispute or general arbitral procedures, such as the Tunisian Arbitration Code promulgated by Law no. 93-42 dated 26 April 1993. This would grant the arbitral tribunal more freedom than the ordinary jurisdiction or traditional arbitration commissions, which are subject to positive law procedures. The Arbitration and Reconciliation Commission seeks to bring the views of the two conflicting parties closer together, based on the rules of absolute justice and equity, which entail principles of transitional justice and, broadly speaking, principles of equity, absolute justice and principles agreed upon in the various international conventions, while ensuring reparations for the victims and achieving national reconciliation.

The Arbitration and Reconciliation Commission is also different from the recognized traditional arbitration commissions in that the parties to the dispute are not free to choose arbitrators, especially as it is agreed that the arbitral tribunal shall be set up by the will of both parties, who agree to choose one or more arbitrators, provided that their number is odd to be able to adopt the “weighted voting” rule in case of divergence of opinions. This procedure is adopted in traditional arbitration or in permanent arbitration centers and

institutions, which elaborate lists of arbitrators who have diverse experiences, in order to help the disputants choose the arbitration panel that will consider the dispute.

However, the Arbitration and Reconciliation Commission consists of five members from among the Board of the Truth and Dignity Commission, including a President and a Vice-President. The Commission also seeks help from rapporteurs, experts in the areas of law, accounting, and medicine and other relevant officials in the field of arbitration and reconciliation. In other words, parties requesting arbitration and reconciliation, from the Commission, are not allowed to choose arbitrators. However, they are guaranteed, through various laws and procedures on the functioning of the Arbitration and Reconciliation Commission, a set of safeguards. The latter consist in the fact that it is prohibited for any Commission member to participate in the deliberations on cases involving a natural or legal person, with whom the former has a personal benefit, a fourth-degree family kinship, affinity or conflicts of interest, no matter their origin, or any other kind of obligations or contracts.

Each party involved in the file brought before TDC, as well as the State and the Public Prosecution, may also initiate action to challenge one of the arbitrators and conciliators, if there are reasons to question his/ her impartiality and independence. The challenge request should be brought before the Board of the Truth and Dignity Commission, which undertakes to hear all parties, including the State Litigation Officer, and decides on approving or disapproving the challenge. In case of approval, the Board of TDC shall appoint a substitute arbitrator from among the other members. This decision may not be appealed by any means or claim of abuse of power.

It is worth noting that arbitration and reconciliation constitute both a single procedure. Although the two terms may seem to be different, they refer to the same measure. Parties can explicitly agree otherwise, provided that the limits and powers of the Arbitration and Reconciliation Commission are identified in the arbitration agreement.

VIII. Arbitration and reconciliation mechanisms

The arbitration and reconciliation mechanism was created in the course of transitional justice under law no. 2013-53 dated 24 December 2013 establishing and organizing the transitional justice, in particular article 45 and thereafter, which stipulates that: “Shall be established within TDC, a commission for arbitration and reconciliation charged of examining and ruling on the violations’ cases, in the sense of the law herein”.

1. Establishing the Arbitration and Reconciliation Commission

Indeed, the Arbitration and Reconciliation Commission was established, organized and structured under article 25 of the Rules of Procedure of the Truth and Dignity Commission

dated 22 November 2014. It started, in August 2015, accepting, processing and studying arbitration and reconciliation cases, whether relating to gross and/ or systematic human rights violations, financial corruption or misappropriation of public monies. Special hearing sessions were held for all parties, including the State Litigation Officer, representing the State in its dual capacity, whether victim or perpetrator of the violation, in implementation of the provisions stipulated in the manual of procedures of the Arbitration and Reconciliation Commission. The latter was adopted by the Board of the Truth and Dignity Commission in July 2015 and clarified the legal and procedural framework on how to deal with the arbitration and reconciliation file, on the basis of flexibility, efficiency and speed.

These rules shall be taken into consideration throughout the stages of the file study within TDC, i.e., since the submission of the request to benefit from the arbitration and reconciliation mechanism, through the hearing of the claimant in a private session, and the hearing of the parties to the dispute in an arbitral session, during which they bring their defenses and supporting documentation, until the conclusion of a convention of arbitration and reconciliation. The following stage consists in holding reconciliation sessions to bring points of view closer together with the help of experts in law, finance, medicine, Sharia, accounting and other specialists in the field of arbitration. When needed, the file could be referred to one of the investigation offices at TDC to verify the veracity of the Claimant's allegations and defenses of the Respondent, in compliance with the provisions of article 47 and thereafter of the penal Code; while taking into account the specificity of the research and investigation work in the course of transitional justice.

Finally, an arbitral award is issued and operationalized by the First President at the Court of Appeal in Tunis.

The Board of the Truth and Dignity Commission adopted the manual of procedures elaborated by the Arbitration and Reconciliation Commission after consulting a number of legal experts specialized in arbitration, and seeking the views of some civil society components concerned with arbitration, reconciliation, fight against corruption and transitional justice. Some of these proposals were accepted as part of the participatory approach adopted by TDC since its inception. The specificities of arbitration and reconciliation in the course of transitional justice were addressed under the manual of procedures, without prejudice to the general principles of arbitration contained in the Tunisian Arbitration Code.

The manual of procedures of the Arbitration and Reconciliation Commission responded to the principles of speed, flexibility and accuracy due to the specificity of the processing of arbitration and reconciliation requests in the course of transitional justice and their significant number (totaling 25,998 requests relating to human rights violations, financial corruption or misappropriation of public monies). Most of the requests were brought by the

victims, while the rest were submitted by perpetrators of violations. The closing date for submitting arbitration and reconciliation requests by the victims was June 15, 2016; while requests by perpetrators of violations continued to be accepted until the end of term of the Truth and Dignity Commission.

The manual of procedures of the Arbitration and Reconciliation Commission was flexible and accurate, in order to expedite the processing of arbitration and reconciliation requests before the end of the Truth and Dignity Commission's term, while attempting to overcome the real and practical difficulties encountered by TDC after it started the processing of arbitration and reconciliation requests. These difficulties consisted mainly in the Respondents' failure to respect the legal deadlines set in the manual of procedures, whether to appear before TDC, to conclude an arbitration and reconciliation convention or to issue the final arbitral award.

In view of the Respondent's reluctance to express his/ her opinion, to submit his/her report or his/her constant rejection of arbitration and reconciliation, the Commission had to request the approval of the Board of the Truth and Dignity Commission on some amendments in the manual of procedures of the Arbitration and Reconciliation Commission, especially articles 7, 11, 17 and 22, in order for the Commission's work to be more efficient and transparent.

The Arbitration and Reconciliation Commission is composed of five members, to be selected from among the Truth and Dignity Commission members by its Board, which shall also select the Commission's President and Vice-President.

2. Functions of the Arbitration and Reconciliation Commission

The Arbitration and Reconciliation Commission is charged of examining and ruling on the reconciliation requests relating to violations, in the sense of the organic law No. 2013-53 dated 24 December 2013 establishing and organizing the transitional justice, after obtaining the consent of the victim, and on the basis of the rules of justice, equity and international standards, in order to provide victims with reparation and rehabilitation and to hold those responsible accountable. It shall take into account the principles of transitional justice and the country's best interest in reaching a comprehensive national reconciliation, behaviors of perpetrators, especially their expression of remorse and their earnest endeavor to provide material and moral reparations when implementing the rules of civil, penal and disciplinary liabilities, at the general level.

At the specific level of the transitional justice process, the arbitration and reconciliation mechanism built on general principles with certain exceptions, as members of the Arbitration and Reconciliation Commission of the Truth and Dignity Commission are not chosen by the parties to the arbitral dispute. The establishment of the Arbitration and Reconciliation Commission within the Truth and Dignity Commission and the selection of its members

occurred under law. Accordingly, the Rules of Procedure of the Truth and Dignity Commission stated that the Arbitration and Reconciliation Commission shall be composed of five members, to be selected from among the Board of the Truth and Dignity Commission, which shall also select the Commission's President and Vice-President.

The fact that parties to the arbitral dispute are not allowed to select members of the arbitral tribunal is not exclusive to this mechanism within the Arbitration and Reconciliation Commission. In fact, members of many other arbitral tribunals are not chosen by parties to the arbitral dispute, such as the ICC arbitration and WIPO arbitration. Members of the Arbitration and Reconciliation Commission shall assume the role of the conciliating arbitrator in the transitional justice process, especially in case parties to the dispute do not reach a definitive reconciliation agreement. In so doing, the arbitral tribunal goes beyond the traditional role of arbitrators in the broad field of arbitration.

The Arbitration and Reconciliation Commission shall not be only charged of examining and ruling on arbitration and reconciliation requests on violations relating to financial corruption, misappropriation of public monies or matters relating to commercial transactions, as is the case with the judiciary. Due to its comprehensive nature, the Arbitration and Reconciliation Commission shall rather examine all arbitration and reconciliation requests, no matter the type of the violation, in accordance with the rules of justice, equity and the applicable international standards relating to gross and/ or systematic violations of human rights, stipulated under the Transitional Justice Law.

3. Requirements for the acceptance of arbitration and reconciliation requests

The arbitration and reconciliation mechanism in the transitional justice process was established under law no. 2013-53 dated 24 December 2013 establishing and organizing the transitional justice, article 45 and thereafter, which states: "Shall be established within TDC, a "commission for arbitration and reconciliation" charged of examining and ruling on the violations' cases, in the sense of the law herein...". The Arbitration and Reconciliation Commission was organized and structured under article 25 and thereafter of the Rules of Procedure of the Truth and Dignity Commission, dated 22 November 2014 and was entrusted with the task of considering and deciding on arbitration and reconciliation cases relating to gross or systematic violations contained in article 8 of the transitional justice law, including cases of financial corruption and misappropriation of public monies.

Therefore, the organic law no. 2013-53 dated 24 December 2013, establishing and organizing the transitional justice and Order No . 2015-03 dated 13 July 2015, of the Truth and Dignity Commission, on the adoption of the manual of procedures of the Arbitration and Reconciliation Commission, set out requirements for accepting arbitration and reconciliation

requests from both, victims and perpetrators. Article 6 of the Arbitration and Reconciliation Commission's manual of procedures states that the latter shall undertake to examine files based on an arbitration and reconciliation request, at all stages of research and investigation within the Truth and Dignity Commission's structures.

Requirements for the victims

Article 10 of the Arbitration and Reconciliation Commission's manual of procedures states that "The request for arbitration and reconciliation cannot be submitted by the victim, his/her heirs or representatives, unless the following conditions are met:

- The request must be enclosed to the documents proving the veracity of the Claimant's allegations.
- Representatives of victims must submit the original copy of the power of attorney.
- Parties to an arbitral dispute may not abstain to participate in public hearings sessions, if the Commission asks so.
- The State's consent to arbitration and reconciliation is not necessary, in case it represents neither a victim nor a perpetrator of the violation", which was confirmed in article 46 of the transitional justice law. In case conditions in the above-mentioned article are met, the Arbitration and Reconciliation Commission undertakes to examine and rule on the violations' cases, in the sense of the organic law establishing and organizing the transitional justice, after obtaining consent from the victim and notwithstanding the extinction of the right of action and prescription of penalties.

Requirements for the perpetrators

Article 8 of the Arbitration and Reconciliation Commission's manual of procedures stipulates the conditions for accepting an arbitration and reconciliation request. The latter shall either be submitted to the Central Registry Office of the Truth and Dignity Commission, or to one of its regional offices or during the consideration of the case throughout the research and investigation process. Article 9 also stipulates that "Shall be considered as conditions to approve the arbitration and reconciliation request by the alleged perpetrator:

- A written confession of the Claimant of reconciliation about the facts that s/he perpetrated and an explicit apology.
- His/Her acceptance to participate in public hearing sessions, if the commission asks so.
- In case the request for reconciliation deals with financial corruption, it shall also include:
 - A statement of facts that led to illegal benefits and their value.
 - Supporting documents proving the veracity of the claims for reconciliation."

Article 46 of the organic law establishing and organizing the transitional justice, paragraphs 2 and 3, also stipulate that: “Shall be considered as conditions to approve the arbitration and reconciliation request, the written confession of the claimant of reconciliation about the facts that s/he perpetrated and the explicit apologies, according to a modal fixed by decision of the commission. In case the request for reconciliation deals with financial corruption, it shall compulsory include statements of the facts causing an illegal gain and its realized value. The request is enclosed to the documents proving the veracity of the claims for reconciliation.

The requests shall, compulsory, mention the approval of the arbitral award, which is considered as final and may not be subject of appeal, or reversal or appeal for misuse of authority.”

If the request for arbitration and reconciliation meets all the above-listed requirements, whether for the victim or the perpetrator of the violation, the Arbitration and Reconciliation Commission shall then initiate the arbitration and reconciliation proceedings.

4. Arbitration and reconciliation proceedings

The Arbitration and Reconciliation Commission assigns rapporteurs, as set forth in article 11 of the manual of procedures on arbitration and reconciliation, and entrusts them with a number of tasks. Article 29 of Order no. 2014-01 states that in order to carry out its work, the Arbitration and Reconciliation Commission may seek help from resource people, experts and external arbitrators.

The Arbitration and Reconciliation Commission is charged of considering reconciliation requests relating to violations, in the sense of the organic law no. 2013-53 dated 24 December 2013 establishing and organizing the transitional justice and the organic law no. 2014-17 dated 12 June 2014 relating to the provisions relating to the transitional justice and affairs related to the period going from 17 December 2010 to 28 February 2011, after obtaining consent from the victim and notwithstanding the extinction of the right of action and prescription of penalties.

The Arbitration and Reconciliation Commission shall undertake, among others, to consider reconciliation requests relating to violations of human rights, financial corruption and misappropriation of public monies. The latter type of arbitration and reconciliation requests shall not be subject to the extinction of the right of action until the implementation of the terms of reconciliation.

With regard to the perpetrators of violations, private hearing sessions cannot be held and their requests for arbitration and reconciliation cannot be considered, unless the following requirements are met:

Filling the form of an arbitration and reconciliation request, which must include:

- A written confession of the claimant of reconciliation about the facts that s/he perpetrated and an explicit apology.
- A statement of facts that led to illegal benefits.
- A statement of the monetary value of these benefits.
- Supporting documents proving the veracity of the claims for reconciliation.
- Commitment to the prior and unconditional approval of the arbitral award, which is considered as final and may not be subject to appeal, annulment or reversal by any means or claim of abuse of power.
- An explicit approval of participation in public hearing sessions.

If the request for arbitration and reconciliation meets all the above-listed requirements, the perpetrator of the violation shall be summoned to a private hearing session and shall fill a form before one of the Truth and Dignity Commission's hearing offices within a reasonable time. The hearing session shall be overseen by the Rapporteur appointed by the Arbitration and Reconciliation Commission's President, under the provisions of article 8 of the Arbitration and Reconciliation Commission's manual of procedures.

The Rapporteur shall summon the Respondent. The summons shall be enclosed to a general report determining the seriousness of the violation, its repercussions and its surrounding circumstances, along with copies of supporting documents, without undermining the protection of victims, witnesses and people dealing with the Truth and Dignity Commission, in accordance with time limits set in the Arbitration and Reconciliation Commission's manual of procedures.

The Respondent shall submit, by the date set in the summons, all his/ her objections, defenses and statement of position concerning the request for arbitration and reconciliation. In case his/her position is negative, i.e., s/he rejects the reconciliation request, procedures relating to the case shall be concluded within the Arbitration and Reconciliation Commission and referred to the research and investigation committee to complete the necessary legal procedures. However, in case the Respondent's position is positive, a convention on arbitration and reconciliation shall be signed, and the mission shall be identified, in accordance with article 17 of the new Arbitration and Reconciliation Commission's manual of procedures, which embodies the agreement of both parties. This convention shall identify the scope of mission and the prerogatives to be granted to the Arbitration and Reconciliation Commission by agreement of the parties.

In case parties to the dispute come up with an amicable solution, the Arbitration and Reconciliation Commission shall decide on the dispute, by issuing a consensual arbitration award, which, according to article 48 of the transitional justice law, shall interrupt any

prescription of penalties and suspend the adjudication of disputes before judicial commissions, while taking all necessary actions and measures to ensure that there is no impunity during the period of the implementation of the reconciliation provisions till the execution of the arbitral award.

Arbitration, reconciliation and hearing sessions are carried out while taking into account the fundamental principles of judicial procedures and the principles of justice and equity; the latter are intended to ensure equality and confrontation between parties to the dispute and to respect the right to defense, honesty and impartiality. Thereby, each party has the right to hire a lawyer for legal representation before the Arbitration and Reconciliation Commission, while the victim may benefit from legal assistance. The Arbitration and Reconciliation Commission may also request the Tunisian Order of Lawyers to designate a lawyer for the victim.

The Arbitration and Reconciliation Commission may reject the request due to lack of jurisdiction or insufficient evidence of violations.

The arbitral award may be consensual, i.e., by agreement of both parties. Otherwise, i.e., if the parties do not reach an amicable solution, the Arbitration and Reconciliation Commission shall issue an arbitral award to settle all the points in dispute. The arbitral award shall include a detailed statement of the facts, the date, the place, the legal description and the legal applicable texts, the affirmation or the negation of the existence of violations and the supporting and opposing evidence, the determination of the level of seriousness of violations⁵ in case they have been proven and charged to the perpetrator, the determination of the nature of the inflicted harms and ways for repairing them.

Following its adoption by the Board of the Truth and Dignity Commission, the arbitral award carries the executory formula once signed by the First President of the Court of Appeal of Tunis, within a deadline of three (3) days, as from the date of its submission. The arbitral award shall be considered as final and not subject to appeal, annulment or reversal by any means or claim of abuse of power.

The implementation of reconciliation clauses, in cases related to financial corruption brought before the Commission, entails the extinction of the right of action, the case dismissal or the prescription of penalties. However, the prosecution, trial or penalty shall be resumed, if it is proven that the perpetrator of violations has intentionally hidden the truth or has not declared what he/she illegally took over. In cases of serious violations, the Arbitration and Reconciliation Commission's decision shall not preclude accountability of perpetrators of violations before the competent courts, but shall still be taken into account when deciding on the punishment.

IX. Outputs of the Arbitration and Reconciliation Commission's work

- The total number of arbitration and reconciliation requests: **25,998 cases**
- The number of arbitration and reconciliation requests relating to human rights violations: **21,177 cases**
- The number of cases relating to financial corruption, misappropriation of public monies and violation of the right to property: **4821 (2517 concern financial corruption, and 2305 concern the violation of the right to property. The latter were submitted for arbitration and reconciliation, as falling under the category of financial corruption and misappropriation of public monies).**
- The number of cases submitted by the State (as a victim): **685 cases**
- The number of cases submitted by the State (as a perpetrator of violations): **0 cases**
- The number of cases examined by the Arbitration and Reconciliation Commission: **3,043 cases (2571 relating to human rights and 472 on financial corruption), after excluding 686 files submitted by the State as a victim.)**
- The number of cases under examination by the Arbitration and Reconciliation Commission: **14 cases (01 concerns human rights and 13 concern financial corruption)**
- The number of cases rejected for lack of jurisdiction: **463 cases (376 on human rights/ 87 on financial corruption)**
- The number of cases rejected by arbitrators: **2535 (2184 on human rights/ 351 on financial corruption)**
- The number of cases referred to the research and investigation committee and to the documentation and archiving department to complete the necessary legal procedures, after rejection of arbitration and reconciliation: **2849 cases**
- The number of cases referred to the Commission of Women for consideration: **75 cases.**
- The number of arbitration and reconciliation conventions: **19 arbitration and reconciliation conventions (06 on human rights/ 13 on financial corruption)**
- The number of arbitral awards: **09 arbitral awards (07 on human rights / 02 on financial corruption)**

1. Arbitral Decisions relating to financial corruption and abuse of public funds

Thanks to the arbitration and reconciliation mechanism, the Truth and Dignity Commission has recovered an amount of seven hundred forty-five million, one hundred sixty-two

thousand, six hundred fifteen dinars, two hundred sixty-seven millimes (745,162,615.267 TND) for the Tunisian State treasury, distributed as follows:

- The file submitted to the Registry Office of the Truth and Dignity Commission under No. **031457-0101**, relating to Mr. “**Moncef Mzabi**”, on which an arbitral award was issued to compensate the State in the amount of TND 1,812,000,000.
- The file submitted to the Registry Office of the Truth and Dignity Commission under No. **019835-0101**, relating to Mr. “**Slim Chiboub**”, on which an arbitral award was issued to compensate the State in the amount of TND 307,000,000,000.
- The file submitted to the Registry Office of the Truth and Dignity Commission under No. **025132-0101**, relating to Mr. “**Salim Zarrouk**”, on which an arbitral award was issued to compensate the State in the amount of TND 33,794,254,216.
- The file submitted to the Registry Office of the Truth and Dignity Commission under No. **026733-0101**, relating to Mr. “**Mohamed Twil**”, on which an arbitral award was issued to compensate the State in the amount of TND 50,070,978,088
- The file submitted to the Registry Office of the Truth and Dignity Commission under No. **026755-0101**, relating to Mrs. “**Lobna Amous**”, on which an arbitral award was issued to compensate the State in the amount of TND 1,763,889,915.
- The file submitted to the Registry Office of the Truth and Dignity Commission under No. **004845-0101**, relating to Mr. “**Imed Trabelsi**”, on which an arbitral award was issued to compensate the State in the amount of TND 235,408,592,414.
- The file submitted to the Registry Office of the Truth and Dignity Commission under No. **032063-0101**, relating to Mr. “**Sassi Bthouri**”, on which an arbitral award was issued to compensate the State in the amount of TND 106,447,980.
- The file submitted to the Registry Office of the Truth and Dignity Commission under No. **022614-0101**, relating to Mr. “**Lazhar Sta**”, on which an arbitral award was issued to compensate the State in the amount of TND 115,094,682,000.

2. Arbitral Decisions relating to human rights violations

- The Truth and Dignity Commission managed to regularize the status of eleven victims of human rights violations, including two victims of a violation of property rights, who were compensated in an amount of seven hundred thousand dinars (700,000TND), distributed as follows:
- The file submitted to the Registry Office of the Truth and Dignity Commission under No. **010716-0101**, on which an arbitral award was issued to regularize its status with the "Real Estate Housing Agency".
- The file submitted to the Registry Office of the Truth and Dignity Commission under No. **010716-0101**, on which an arbitral award was issued to regularize its status with the "Real Estate Housing Agency".

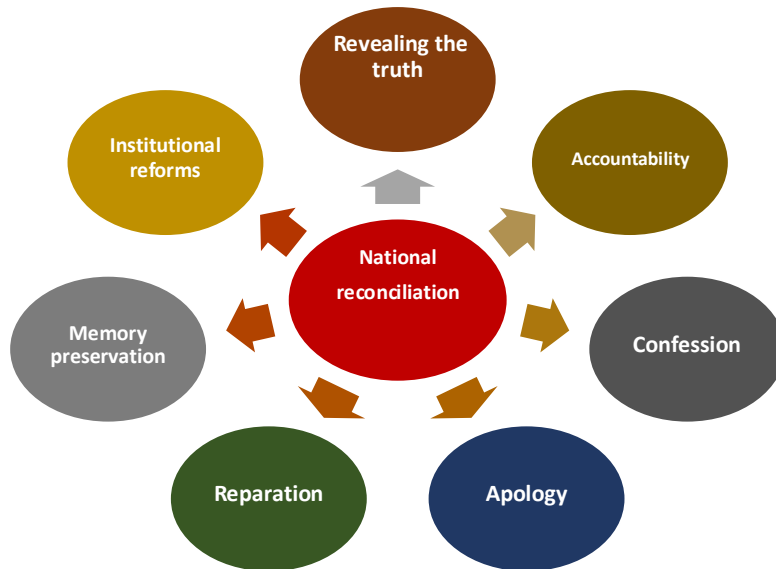
- The file submitted to the Registry Office of the Truth and Dignity Commission under No. **000076-0101**, on which an arbitral award was issued to regularize its status with "SEREPT Company".
- The file submitted to the Registry Office of the Truth and Dignity Commission under No. **011995-0101**, on which an arbitral award was issued to regularize its status with the "Directorate-General of Customs".
- The file submitted to the Registry Office of the Truth and Dignity Commission under No. **022202-0101**, on which an arbitral award was issued to regularize its status with the "National Sanitation Utility".
- The file submitted to the Registry Office of the Truth and Dignity Commission under No. **025428-0101**, on which an arbitral award was issued to regularize its status with the "Ministry of Education".
- The file submitted to the Registry Office of the Truth and Dignity Commission under No. **000926-0501**, on which an arbitral award was issued to regularize its status with the "Tunisian Company of Electricity and Gas".
- The file submitted to the Registry Office of the Truth and Dignity Commission under No. **017118-0101**, on which an arbitral award was issued to regularize its status with the "Ministry of Cultural Affairs".
- The file submitted to the Registry Office of the Truth and Dignity Commission under No. **005530-0101**, on which an arbitral award was issued to regularize its status with the "Tunisian Company of Electricity and Gas".
- The file submitted to the Registry Office of the Truth and Dignity Commission under No. **025443-0101**, on which an arbitral award was issued to regularize its status with Mr. "Mohamed Naceur Trabelsi", to compensate the victim in the amount of 300,000 TND.
- The file submitted to the Registry Office of the Truth and Dignity Commission under No. **004845-0101**, on which an arbitral award was issued to regularize its status with Mr. "Mohamed Imed Trabelsi", to compensate the victim in the amount of 400,000 TND.

X. Tunisians and national reconciliation

The widespread human rights violations and oppressive practices of dictatorships made it necessary for many states to take action against perpetrators of violations and to hold them accountable, in order to bring justice and provide redress for the victims. Efforts should also be made to try to provide direct compensation for many victims who suffered damage and to make perpetrators of violations acknowledge their wrong doings, either individually or collectively. This set of measures would reinforce the collective memory of past violations and promote social solidarity. They also constitute a concrete response to claims for bringing

justice to the victims and help promote reconciliation, by restoring victims' confidence in the State.

Transitional justice is mainly aimed at restoring the dignity of the victims through:



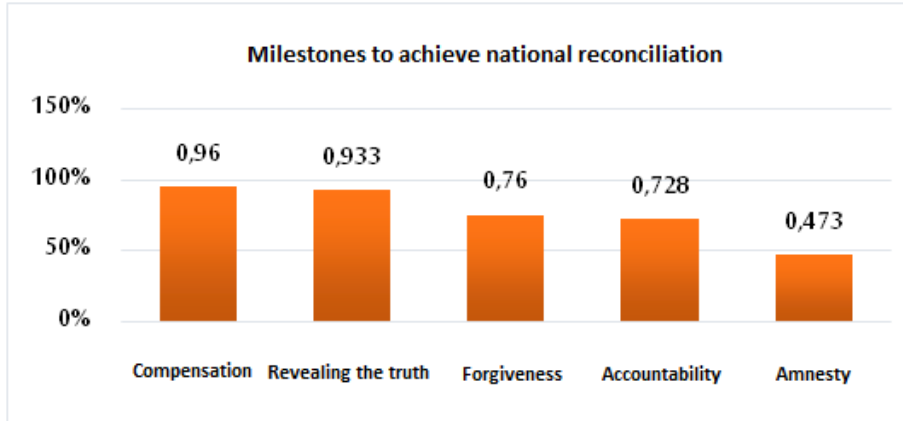
Reconciliation is one of the fundamental pillars for a successful democratic transition towards democracy. When we consider the meaning of reconciliation, we find reconciliation among individuals, i.e., individual reconciliation, which has a remedial, psychological and moral impact on the victim; and community reconciliation, i.e., national reconciliation, which aims to break with the past, by revealing the truth, holding perpetrators of violations accountable and providing reparation and apologies⁴⁵⁵. Studies carried out by TDC confirmed that the above-mentioned goals were called for by the victims and Tunisians in general.

1. Opinions and expectations of the general amnesty beneficiaries

In July 2015, TDC carried out a quantitative study that targeted a sample of general amnesty beneficiaries, under the provisions of decree-law No. 2011-1 dated 19 February 2011, relating to the amnesty, to monitor their views on the measures and procedures they have benefited from, under the aforementioned decree-law, and to know their expectations relating to compensation. Their views on reconciliation were as follows:

⁴⁵⁵ Making Reconciliation Work: The Role of Parliaments - The Inter-Parliamentary Union 2005

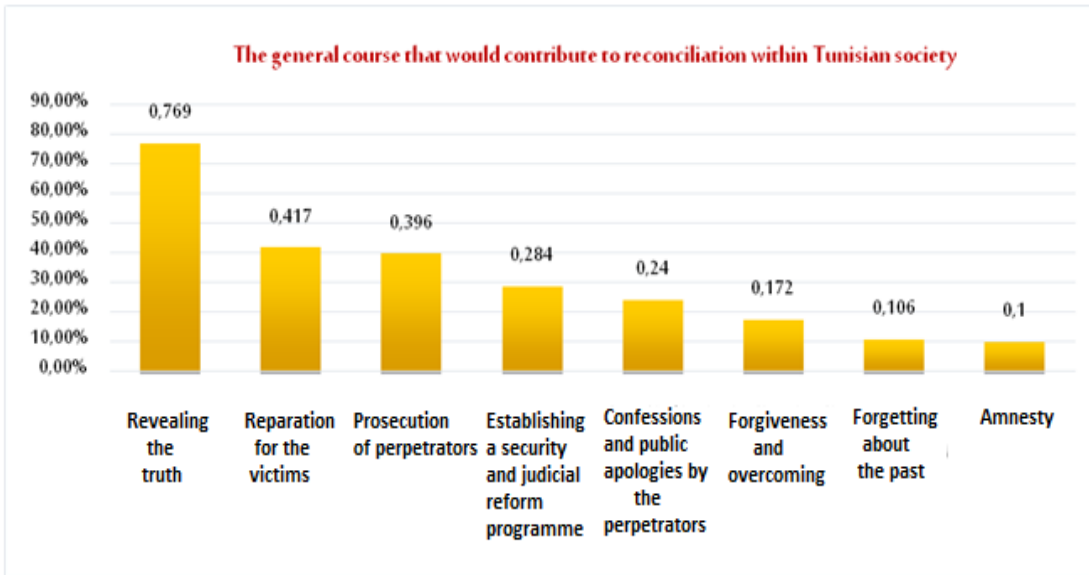
To achieve national reconciliation among Tunisians, the interviewees stressed the need to compensate the victims firstly (96%), then to reveal the truth (93.3%) and to apologize (74%), secondly.



2. National quantitative study No. 1 of Tunisians' perception of the transitional justice process in Tunisia

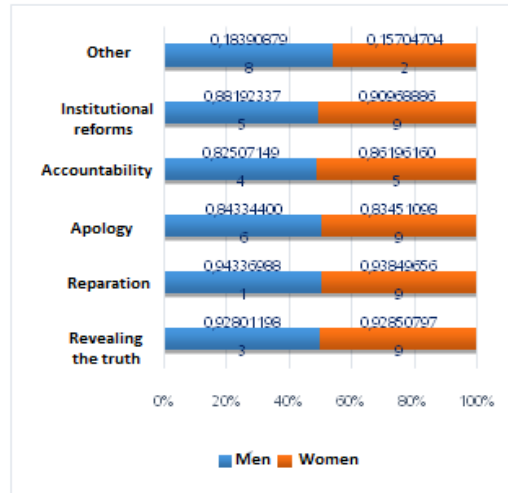
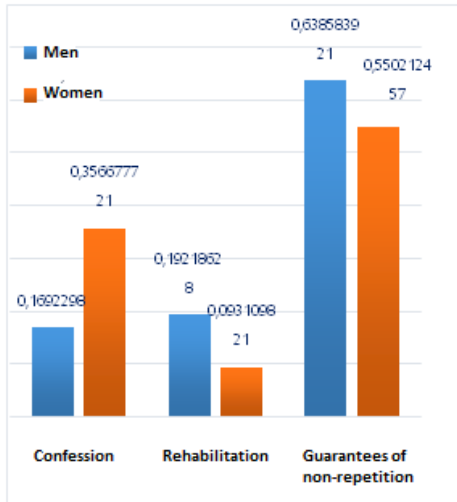
The Truth and Dignity Commission carried out a national quantitative study of Tunisians' perception of the transitional justice process in Tunisia. The study was accomplished over the period from March 25, to April 3, 2015.

This study showed that 17.2% of the interviewees think that transitional justice contributes to achieving reconciliation among Tunisians and rebuilding trust between the people and State institutions. 39.1% believe that transitional justice is necessary to achieve national reconciliation; and 34% expect that transitional justice will lead to reconciliation.



With regard to the question concerning the general course that may help achieve reconciliation within Tunisian society, 76.9% of the interviewees mentioned revealing the truth as an answer; 41.7% mentioned providing reparation for victims; 39.6% answered with the prosecution of perpetrators of violations; 24% answered with public confessions and apologies by perpetrators; 17.2% mentioned forgiveness and overcoming the past; 10.6% mentioned breaking with the past and forgetting about it; and 10% mentioned amnesty.

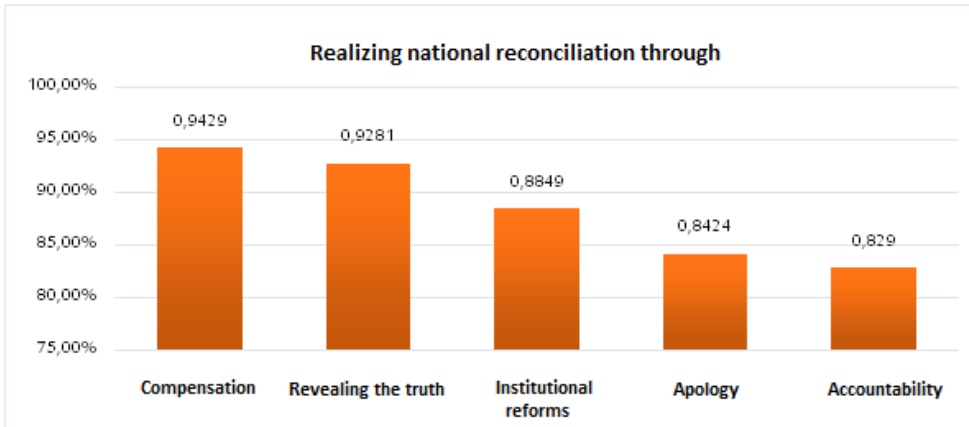
As part of the National Consultation on the Comprehensive Reparations Program, TDC conducted the National Survey on the Comprehensive Reparations Program for Victims of Human Rights Violations, during the fourth quarter of 2017, among a sample of 2045 out of the 30,000 victims heard by the Truth and Dignity Commission. Data collection was conducted by TDC's personnel, in order to ensure confidentiality of data, by phone call, over the period from November 7, to December 5, 2017. A number of questions were asked to monitor the victims' views on national reconciliation. Their opinions can be summarized as follows:



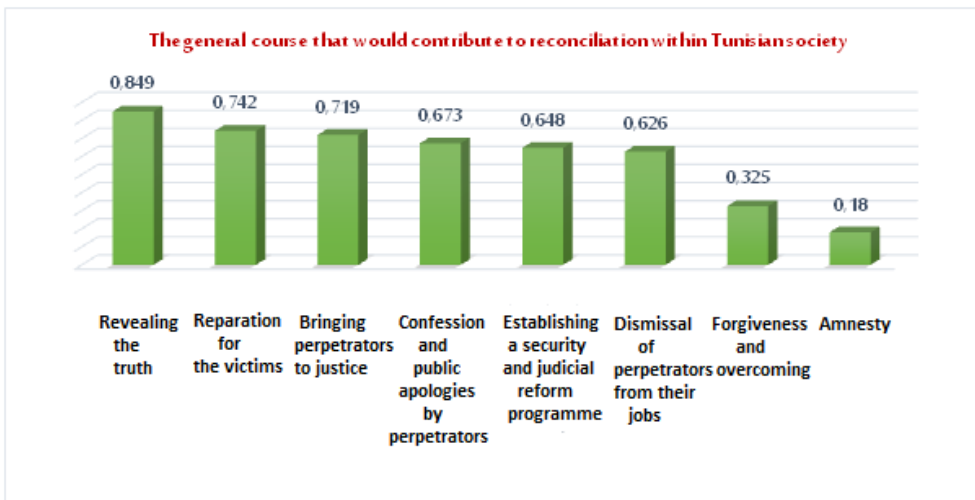
It can be observed that the victims unanimously agreed that compensation, truth-seeking, apology, accountability and institutional reforms are among the mechanisms that contribute to achieving national reconciliation.

3. National quantitative study No. 2 of Tunisians' perception of the transitional justice process in Tunisia

TDC also conducted a second national study on Tunisians' perception of the transitional justice process in Tunisia. The study was accomplished over the period from November 17 to December 13, 2017. A sample consisting of 3,044 people aged 18 years old and over was questioned. The National Institute of Statistics introduced a plan to select a representative sample of 1,350 households distributed throughout the country in rural and urban areas. The study included several questions about national reconciliation. The answers of Tunisians were as follows:



As for the question on the path towards national reconciliation, 94.29% of the interviewees mentioned compensation as the way to reconciliation, while 92.81% mentioned revealing the truth. We also note that a significant percentage of Tunisians (88.49%) consider institutional reforms a prerequisite for achieving national reconciliation, in addition to apologies and accountability of perpetrators.



It can be concluded that Tunisians agree that **revealing the truth** is the way towards reconciliation, which means knowing and recognizing the truth instead of denying it.

We need to face the grim reality to be able to save the future. What we are talking about here is not to **forget** about the past, but rather to **overcome** it.

In view of the above, it can be concluded that **apology** is a fundamental and urgent requirement for the rehabilitation and satisfaction of victims, since the interviewees unanimously agreed on the need for confession and for an official apology. Views differed on the form of the apology; Some think that it should be written and individual, while others prefer it to be oral and public. As for who should apologize, participants agreed that the apology should be officially issued by those at the top of the pyramid of power, on a national day.

Apologizing to the victims of human rights violations embodies commitment to the principles of transitional justice and willingness to seek forgiveness and pardon. It also means to acknowledge and accept liability and thus contributes to:

- Breaking with the past and its remnants
- Guaranteeing non-repetition of violations
- Building trust among members of society and between the State and society
- Establishing pillars of reconciliation
- Achieving stability, peace and justice

Indeed, apology, as defined by Aaron Lazare⁴⁵⁶ (2006), is more than the regretful acknowledgement of a crime. It is rather the offender's constant commitment to change his/her behavior. It also represents a special method of settling disputes, which requires both sides to be honest, generous, modest, committed and brave. It is a value and a political culture that may set a model for State remorse for past violations and contribute to establishing the pillars of democracy.

In order for apologies to contribute to the establishment of pillars of reconciliation and confidence among members of society and between the State and society, through the so-called solidarity and social unity aiming to ensure social peace, they should (according to Elazar Barkan⁴⁵⁷) meet the following requirements:

- Acknowledgment
- Acceptance of responsibility
- Commitment to non-repetition of violations
- Reconciliation between the victims and the State
- Restoration of reputation.

456 Aaron Lazare (2006). "The Future of Apologies", *New England Journal of Public Policy*: Vol.21, Issue 1, article 8.

457 Adapted from Mustapha Boujaabout "Apologies for Serious Violations of Human Rights through the Experiences of Truth Commissions: Between Willingness, Reluctance and Scenarios of Recurrence of Past Violations" Mohammed V University - Faculty of Law - Agdal - Morocco. *Journal of Human Rights Generation*, Issue 25, p. 147

53.3% of Tunisians agreed that national reconciliation contributes to the reduction of individual and collective frustration.

As for the question of whether reconciliation could be realized in Tunisia, 81% of the interviewees answered in the affirmative.

Reconciliation and tolerance are genuine psychological behaviors that we adopt for the sake of our future generations. They constitute a serious agreement to overcome the stages of injustice and oppression.

National reconciliation is a major undertaking that will rehabilitate victims of human rights violations and hold those responsible accountable, without gloat or revenge.

National reconciliation rests upon:

4. The State's reconciliation with citizen victims of human rights violations

The State's recognition of violations ensures that the victims regain their position within their families and within society, thus helping them restore their self-confidence, reconcile with themselves and with others, and eradicate past incidents and their remnants.

The success of national reconciliation can only be achieved by bringing justice to the victims of human rights violations and implementing mechanisms stipulated under article 11 of the transitional justice law, which seek to ensure non-repetition of violations and transition from oppression to a democratic regime that contributes to the consolidation of the human rights system.

5. The victim's reconciliation with his/her family members and with society

- To prevent the transmission of violence that was once inflicted on the victim to future generations within the family and within society.
- To break social isolation and ensure social integration.
- Reconciliation is beneficial for both individuals and society, as it helps the former get rid of their old mistakes and feeling of guilt by enabling them to forgive themselves and others. Thus, reconciliation seeks to achieve co-existence between individuals, by tolerating differences and preserving the rights of others, away from conflicts and prevalence of grudge and hatred.

XII. The attempt to enact the "economic reconciliation" law

Within the framework of breaking with the past and preventing all political conflicts, and following the society's commitment to cease all forms of revenge, retaliation, stalking and to reject calls for retribution; in order to ensure compliance with the standards of good governance, the rule of law and respect for human rights; and after the decisive acceptance of the principle of reconciliation, the remaining problem is whether reconciliation should occur within or outside the transitional justice process.

1. Background of the "reconciliation" law

The transitional justice process aims mainly to avoid repeating past gross or systematic human rights violations in the future, by revealing their truth, holding perpetrators accountable, providing reparation for the victims, implementing reforms of the relevant institutions, and preserving national memory, in order to achieve a comprehensive national reconciliation.

It is a perfectly consensual process from start to finish. In fact, a broad national consensus policy was adopted relating to the organic law no. 2013-53 dated 23 December 2013, which was preceded by an extensive national consultation overseen by technical committees that toured the whole country and listened to all parties, including figures belonging to the pre-14 January 2011 regime. Several parties submitted draft laws on transitional justice. Some of their proposals were introduced to promulgate the organic law no. 33 by a comfortable majority on the same day that all political parties agreed to choose Mehdi Jomaa as Head of the Government, under the auspices of the National Dialogue Quartet. This implied the tremendous, symbolic and historical significance carried by the coincidence of a broad national consensus, and its continuation embodied in the selection of the 15 members of the Truth and Dignity Commission by the screening committee of the National Constituent Assembly, without referral to the plenary session for the selection of members by vote. The Truth and Dignity Commission continued to adopt the same mechanism of consensus and involvement of all parties in the elaboration of its bylaws and the composition of its internal commissions, to the extent of granting them reporting prerogatives, and in the elaboration of the Arbitration and Reconciliation Commission's manual of procedures, which took into consideration the proposals of several overlapping financial, judicial and human rights entities and some political parties, including ruling parties.

On the 59th anniversary of the Independence, on 20 March 2015, Mr. Beji Caid Essebsi, President of the Republic of Tunisia, announced a draft law on amnesty and national reconciliation, which was described by Mr. Mohsen Marzouk, political adviser to the president, as seeking to implement structural and substantive reforms aimed at amnesty and

a comprehensive national reconciliation. On July 14, 2015, Mr. Beji Caid Essebsi presented a draft organic law on economic and financial reconciliation consisting of 12 articles.

The draft law was made unilaterally and individually, without referral to the components of civil society concerned with the transitional justice process and to the Truth and Dignity Commission, which was surprised by the proposal of names of two of its members in the composition of the commission, which will be appointed under the said draft law. Parties of the ruling coalition also complained about their exclusion from the law drafting process, while accepting the principle of reconciliation, in an attempt to address the lack of communication and consensus by proposing subsequent substantive changes to the draft law, so as not to conflict with the Constitution and the transitional justice law adopted by consensus; for the latter are complementary and should both be based on consensus.

This draft law provoked wide controversy and divided opinions between supporters and opponents. The reconciliation law was considered to circumvent the transitional justice process and to be a kind of reconciliation with financial and administrative corruption, which prevailed during the old regime. It also contravenes provisions of article 148 of the Tunisian Constitution. The Tunisian Observatory for the Independence of Judiciary added that approving general amnesty for the corrupt contributes to the establishment of a parallel track to the transitional justice process and encourages impunity, avoiding responsibility, rewarding the corrupt and helping them escape from accountability, according to the statement.

A number of parties also expressed their willingness for reconciliation, as a milestone in the democratic transition. However, they rejected reconciliation that excludes the transitional justice law, i.e., which goes without truth-telling and holding perpetrators accountable.

2. The “reconciliation” law procedures

The content of the draft law was rejected, which resulted in protests and the threat of escalation. The Tunisian Observatory for the Independence of the Judiciary considered that the measures proposed within this draft law help circumvent the course of transitional justice, contribute to its vulnerability, deviate from its noble goals and deny demands of the Revolution and requirements of democratic transition. It also stated that granting general amnesty to corrupt people establishes a parallel track to the transitional justice process and encourages impunity, avoiding responsibility, rewarding the corrupt and protecting them against accountability, according to the statement.

The draft law adopts particular measures and short-term deadlines. **Firstly**, amnesty is granted to public officials and the like, for acts related to financial corruption and misuse of public assets, unless they aim to achieve a personal benefit. However, officials accused of

bribery and misappropriation of public money shall not benefit from these provisions. **Secondly**, this draft law opens up prospects of reconciliation for beneficiaries of acts of financial corruption and misuse of public monies. Reconciliation shall include funds and properties that are still possessed by the person concerned. Thus, funds and properties confiscated for the State shall not be included in reconciliation. The draft law also stipulates the establishment of a reconciliation committee that undertakes to consider requests brought by the concerned parties, which must include a statement of facts that led to illegal benefits and their value, thus ensuring that the truth is revealed, which is among the components of the transitional justice system. The Commission shall decide on the reconciliation requests within a period not exceeding three months, which may be renewed once for the same period. Then, it shall estimate the misappropriated funds or the illegal benefits and offer, to the relevant parties, the possibility of reconciliation, which consists in paying an amount equivalent to their value plus a set percentage for each year from the date of the receipt of the benefit. That would ensure reparation, in accordance with the transitional justice system. The Truth and Dignity Commission takes part in this process, as two of its members are also members of the reconciliation committee. The report elaborated by the reconciliation committee, which includes the outcomes of its work, shall be referred to the Truth and Dignity Commission to use it in the elaboration of its final report. **Finally**, the draft law on reconciliation states that exchange infringements shall be amnestied. This measure aims to settle pending issues and to mobilize hard currency resources for the State. To benefit from this procedure, a declaration on incomes and benefits shall be made, and 5% of their value shall be paid or deposited in special accounts in convertible currency or dinars, or transferred in dinars on the exchange market. For the protection of the rights of others, the draft law states that the provisions contained therein do not impair the rights of others.

In this regard, the Tunisian Observatory for the Independence of the Judiciary called on the components of civil and political society to counteract the draft law on reconciliation and all attempts to obstruct the transitional justice process, while urging to bring the national legislation into full conformity with the provisions of the United Nations Convention against Corruption, including the criminalization of bribery and corruption in the private sector, protection of witnesses, informants and experts and promulgation of the graft law.

3. Incompatibility between the “reconciliation” law and the transitional justice law

The draft law on reconciliation raised two issues. **The first** is related to its constitutionality, its relationship to the Truth and Dignity Commission, and its connection to the stages of transitional justice. **The second problem** is political par excellence. The Tunisian Observatory for the Independence of the Judiciary has pointed out the incompatibility of the national legislation with the provisions of the United Nations Convention against Corruption, in

relation to the criminalization of bribery and corruption in the private sector, protection of witnesses, informants and experts and promulgation of the graft law.

A number of experts in constitutional law have affirmed that the draft law is quite problematic, since it excludes the Truth and Dignity Commission and abolishes its function. In fact, article 148, paragraph 9 of the Constitution stipulates that: “The State undertakes to apply the transitional justice system in all its domains and according to the deadlines prescribed by the relevant legislation. In this context, the invocation of the non-retroactivity of laws, the existence of previous amnesties, the force of *res judicata*, and the prescription of a crime or a punishment are considered inadmissible.” Therefore, the draft law’s incompatibility with the Constitution has to do with the provisions of this article.

- **In terms of content**

This draft law is considered an attempt to save those involved in cases of financial and economic corruption and to re-introduce them in the economic cycle, away from any judicial accountability or public recognition of what they committed, under "amnesty" and "reconciliation", to be approved under the oversight of a governmental committee that will consider and close cases in a completely different path from that of the transitional justice law. The latter stipulates that truth-seeking, accountability and reparation should be carried out by an independent and elected body under control of the Parliament and the Court of Auditors, in such a way as to ensure cooperation with the judiciary without its exclusion or substitution. It is also established that this draft law is based on the elimination of all the provisions relating to financial corruption and misuse of public monies, stipulated in the organic law no. 2013-53 establishing and organizing the transitional justice, which goes beyond mere inconsistency to the extent of incompatibility. Thus, saying that this draft law reinforces the transitional justice law is a mere illusion.

It is evident that the draft law is clearly inconsistent with several articles, especially article 45 of the organic law establishing and organizing the transitional justice, concerning the “Arbitration and Reconciliation Commission” and its most important functions, namely to consider reconciliation requests in cases of financial corruption, in accordance with the provisions set forth in article 46 of the same law. This article requires each party concerned with reconciliation to submit a written confession of the violations perpetrated, an explicit apology and a statement of facts that led to illegal benefits and their value. Obviously, this article rests upon a philosophical belief that digging into the very roots of corruption helps dismantle it and find a radical solution, which is the ultimate goal of the transitional justice law. This issue is, however, absent or excluded from the new draft law. Accordingly, the latter represents a parallel track to transitional justice that contradicts provisions of article 1 of the transitional justice law, on the requirements to achieve transitional justice, including the need to reveal the truth of violations, to hold those responsible accountable and to provide

reparations for the victims. The stipulation of the draft law on the creation of a "Reconciliation Committee", a governmental body that considers reconciliation requests, implies depriving the Truth and Dignity Commission of its most important functions and taking over the role of the competent judicial courts established for the same purpose and entrusted with violations related to electoral fraud, financial corruption and misappropriation of public funds, as provided for in article 8 of the transitional justice law.

- **In terms of the immunization of the Reconciliation Committee's decisions**

Article 5 of the draft law stipulates that the decisions of the **reconciliation committee** may not be nullified or appealed by any means or claim of abuse of power, which is also the case with the decisions of the Arbitration and Reconciliation Commission in the Truth and Dignity Commission, which are immunized under article 50 of the transitional justice law. It is worth noting that **the reconciliation committee**, provided for in the draft law, can be described as administrative and is not subject to any kind of judicial control; which means that we are facing a situation that is odd to the Public Law in Tunisia, as one of the characteristics of administrative decisions issued by an executive power is their appealability by claim of abuse of power.

It should also be noted that this draft law is aimed at immunizing those involved in corruption from accountability before the Truth and Dignity Commission or other judicial bodies, on the basis of cessation of prosecutions, trials or penalties against public officials and their like, for acts of financial corruption and abuse of public assets, with the exception of those relating to bribery and misappropriation of public monies (article 2 of the draft law). However, the transitional justice law is based on the rejection of statutory limitations, as provided for in article 9.

- **In terms of incompatibility with the Constitution**

Above all, it is necessary to clarify that deciding on the constitutionality of a law falls only within the prerogatives of an authority of control of constitutionality of laws, in accordance with the organic law no. 2014-14 dated 18 April 2014 relating to the provisional authority of control of constitutionality of draft-laws. The latter shall consider the constitutionality of draft-laws after their adoption by the Assembly of the Representatives of the People, before their enactment by the President of the Republic and before their publication in the Official Gazette of the Republic of Tunisia. The Authority shall proceed to the control of the constitutionality of draft-laws upon a challenge by the President of the Republic, the Head of the Government or at least thirty deputies, as was the case with the draft law of the Supreme Judicial Council, and shall therefore not consider the constitutionality of draft-laws once submitted to the Assembly of the Representatives of the People. The provisional

authority of control of constitutionality of draft-laws does not undertake on its own to determine the unconstitutionality of a draft-law. Moreover, the draft-law on economic reconciliation may not be challenged as unconstitutional, if decisively adopted by the Assembly of the Representatives of the People after agreeing to change and amend it, so as not to contradict the provisions of the Constitution, the transitional justice law and the prerogatives of the Truth and Dignity Commission as a constitutional body. All the above-mentioned points represented grounds for opponents to challenge the draft law on economic reconciliation.

- **The economic reconciliation draft law’s violation of the provisions of the Constitution**

The economic reconciliation draft law’s violation of the provisions of the Constitution is reflected in inconsistency at the level of article 148 of the Constitution, which binds the State to apply the transitional justice system. In fact, paragraph 9 of the same article states that: “The State undertakes to apply the transitional justice system in all its domains and according to the deadlines prescribed by the relevant legislation.” This paragraph places a constitutional obligation on the State to apply transitional justice mechanisms in reality and the duty to make this process succeed, by supporting prerogatives of the Truth and Dignity Commission and facilitating its work.

The State's commitment to the transitional justice system implies commitment to all its fields and term. The latter include mechanisms of truth-telling, reparation, memory preservation, institutional reforms, functional screening, arbitration, reconciliation and areas of violations set forth in article 8 of the law, to mention a few, including violations relating to financial corruption and abuse of public money. The draft law on economic reconciliation not only undermines TDC's area of competence in arbitration and reconciliation, but also in truth-seeking, functional screening, institutional reforms and reparation.

Following the adoption of its manual of procedures, the Arbitration and Reconciliation Commission of the Truth and Dignity Commission proceeded to examine and consider the various arbitration and reconciliation requests brought before TDC's services, including violations relating to financial corruption and abuse of public funds. It also held private hearing sessions to hear both Claimants and Respondents, and accordingly sought to close cases within a few months before early 2016, by agreement of both parties under an arbitration and reconciliation agreement, provided that there is political will on the part of the State - as victim- to close cases of financial corruption and abuse of public money, by adopting the mechanism of arbitration and reconciliation within the Truth and Dignity Commission.

- **Incompatibility with articles 10 and 20 of the Constitution** These articles bind the State to “ensure the proper use of public funds and take the necessary measures to spend it

according to the priorities of the national economy, and prevents corruption and all that can threaten national resources and sovereignty”. By virtue of Decree No. 2008-762 dated 24 March 2008, Tunisia adopted the United Nations Convention against Corruption, approved by Law No. 2008-16 dated 25 February 2008, which aims to detect, prevent and deter corruption. Pursuant to article 20 of the Constitution, this convention has a higher standard than laws, which need not to contradict its objectives and spirit. However, the draft law on economic reconciliation violates the United Nations Convention against Corruption and article 10 of the Constitution, as it neither ensures disclosure of the truth of corruption and its underlying roots, nor does it address the problems and risks of corruption affecting the stability and security of Tunisian society, thus undermining the mechanisms of democracy and its values, the pillars of justice and ethical principles. The draft law also establishes the policy of impunity, lack of fair and transparent accountability of perpetrators of violations relating to financial corruption and abuse of public money, especially that the reconciliation committee established under the draft law and appointed by the Executive Power lacks impartiality and independence. This completely contradicts the provisions of the chapter on guarantees for the promotion of integrity, honesty and responsibility among public officials, mentioned in the United Nations Convention against Corruption. The said Reconciliation Committee monopolizes all the prerogatives and powers without any supervision, which recalls to our minds Montesquieu’s words: “Everything shall be lost, if all power was placed in the hands of one man or one body.”

- **Incompatibility with article 21 of the Constitution**

This article provides for the principle of equality of citizens in rights and duties, and the State's duty to guarantee all individual and public rights and freedoms. However, the draft law on economic reconciliation contradicts this principle at several levels. At a first level, it distinguished between perpetrators of gross and/ or systematic violations, on the one hand, and perpetrators of violations relating to financial corruption and abuse of public funds, on the other hand. The latter enjoy the exclusive right of amnesty and the possibility of reconciliation with easy procedures and terms, while perpetrators of violations mentioned in article 8 of the transitional justice law, such as murder, torture, rape, etc. are denied this privilege. At a second level, the draft law distinguished between public officials and the like, who are entitled to amnesty, and other perpetrators of violations relating to financial corruption and abuse of public money, who are only granted the right to reconciliation. At a third level, another obvious manifestation of discrimination between Tunisian citizens in the draft law on economic reconciliation, in flagrant violation of the principle of equality, is the distinction between public officials and the like who committed violations relating to financial corruption, such as bribery and misappropriation of public funds and who are only entitled to the reconciliation mechanism, and public officials and the like, who are entitled to

"amnesty". Thus, the draft law seems to only concern a certain category of the Tunisian people, which undermines the public aspect of law and the principle of equality between citizens. However, this distinction between perpetrators of violations, which is a broader concept than crimes, does not exist in the transitional justice law, under which all perpetrators are entitled to the mechanism of arbitration and reconciliation in accordance with article 45 of the same law, which states that: "Shall be established within TDC, a "commission for arbitration and reconciliation" charged of examining and ruling on the violations' cases, in the sense of the law herein...".

- **Incompatibility with article 110 of the Constitution**

Article 110 of the Constitution prohibits the establishment of special courts that would undermine the principles of a fair trial, which has already become a reality following the creation of the reconciliation committee, as a governmental committee that did not consider the most basic and procedural safeguards. The draft law also violates article 130 of the Constitution on the Good Governance and Anti-Corruption Commission, which is responsible for monitoring cases of corruption within the public and private sectors and carrying out investigations into these cases, and which should serve as a reference for advice. In all cases, the decision of the provisional authority of control of constitutionality of draft-laws is critical.

- **Incompatibility with article 108 of the Constitution**

Article 108 of the Constitution grants the right to litigation in two hearings to all citizens, while article 5 of the draft law provides for the irreversibility of the reconciliation decisions, which may not be nullified or appealed by any means or claim of abuse of power. Thereby, the Judicial Power is fully excluded from the draft law on economic reconciliation and is not entitled to carry out any subsequent judicial control over the reconciliation committee's work. However, arbitral awards issued by the Arbitration and Reconciliation Commission of the Truth and Dignity Commission are subject to judicial control, as they are enforced by the First President at the Court of Appeal in Tunis.

4. Impact of the "economic reconciliation" law on TDC' work

After examining the reconciliation draft law, subject of the legislative initiative, the Truth and Dignity Commission issued a statement on July 20, 2015 to inform the public opinion about certain points that were addressed during the meeting held by the General Legislation Committee of the Assembly of the Representatives of the People. On Monday morning, July 18, 2016, the latter heard the Truth and Dignity Commission's delegation concerning the draft organic law, relating to the procedures of economic and financial reconciliation, as part of an ad hoc hearing session.

During this session, the Truth and Dignity Commission's delegation emphasized that transitional justice is an integrated system that is regulated by the transitional justice law, and identified the Truth and Dignity Commission as the sole structure authorized to implement this process and make it succeed. The delegation added that this system is not only legislative, but also institutional. With regard to the proposed draft law, the delegation warned that the multiplicity of committees would create institutional chaos.

TDC also expressed its ability to find solutions to all the cases brought before it, in spite of the procedural impediments encountered when dealing with some State organs. It provided statistical data showing progress in processing arbitration and reconciliation cases within TDC. The delegation also pointed out that State delay in submitting arbitration and reconciliation requests on cases of financial corruption resulted in delays in their consideration. In this regard, the delegation called on the State to speed up issuance of the governmental decree organizing the processing of cases under the arbitration and reconciliation mechanism.

The delegation also referred to the advice of the Venice Commission. The latter raised concerns about legal security for fear of inconsistency between laws, and stressed that there are inconsistent and conflicting competencies between the committee to be established and the Arbitration and Reconciliation Commission of the Truth and Dignity Commission. TDC's delegation spoke about the particularity of the transitional justice process in Tunisia, as this experience belongs to the third generation of transitional justice where human rights violations are associated with economic and financial violations. It also emphasized the link between human rights violations and economic crimes. Enacting the said draft law implies the division of two interconnected components and disturbance of the transitional process. The Venice Commission recalled that the transitional justice process in Tunisia is also distinguished from its predecessors at the international level, thanks to the arbitration and reconciliation mechanism, on the one hand, and institutional reforms to ensure non-repetition of violations, on the other hand.

The President of TDC acknowledged the importance of exchanging views on the content of the presidential initiative and stressed the need to take into account the role of the President of the Republic to achieve the principle of reconciliation, in light of the difficult economic situation prevailing in the country. She emphasized, in parallel, that the content of the draft law, as proposed, does not pave the way towards the intended reconciliation in the absence of its fundamentals, namely truth-telling, justice, reparation and guarantees of non-repetition; as demonstrated by Pablo de Greiff, the UN Special Rapporteur for the promotion of truth, justice and reparation, in his last report.

The delegation stressed the need to respect the legal framework regulating the transitional justice process and stated that the reconciliation draft law is not consistent with the principles

of the Republic, in the fight against corruption, and does not establish independence of the committee to be created. Thereby, it will not lead to reconciliation, but rather to a social rift.

The delegation also noted that the Truth and Dignity Commission considers that provisions of the “reconciliation draft law” convey a negative message to national and foreign investors, to all countries and international financial institutions that require an appropriate environment free of financial and administrative corruption, based on the supremacy of law and independence of the judiciary.

The Truth and Dignity Commission resorted to the Venice Commission to figure out its views on the said draft law. This European Commission is charged of considering the compliance of national laws with international standards and providing consultation for this purpose. The Venice Commission has previously considered the Draft Constitution of the Tunisian Republic dated 1 June 2013, in terms of conformity with international standards.

5. Resorting to the Venice Commission

In 1990, the European Council created the Venice Commission to assist countries wishing to know the extent to which their legislation and legal institutions are in conformity with international standards, in the areas of democracy and the rule of law and institutions. The Commission has 60 Member States, 47 from the European Council and 13 others, including Tunisia.

For thirty-five years, the Venice Commission has sought to reinforce and uphold the values and principles of respect for the law and public and individual freedoms and to spread a constitutional culture consistent with international standards, especially in countries that have gone or are going through a transitional phase from war to peace, or from oppression to democracy. Tunisia, through its public institutions and official organs, has previously consulted the Venice Commission on several occasions, the most important of which was the consultation requested by the National Constituent Assembly during the writing of the Constitution of January 2014. The Venice Commission had indeed contributed to narrowing the gap between the different parties, so as to come up with a consensual Constitution. The Assembly of the Representatives of the People had also recently consulted the Venice Commission on the Constitutional Court draft law, added to other consultations requested by Tunisia from the Venice Commission.

In compliance with the Tunisian legislation and in pursuance of the Venice Commission bylaws, the Truth and Dignity Commission filed, in its capacity as a public constitutional body, a request for consultation⁴⁵⁸ by the Venice Commission, concerning the draft law on

⁴⁵⁸ See the appendices

economic and financial reconciliation that was submitted by the President of the Republic to the Assembly of the Representatives of the People in mid-July 2015.

6. The Venice Commission and the illegitimacy of the economic reconciliation law

The 104th Plenary Session of the Venice Commission was held on 23 and 24 October 2015. Among its agenda items was to consider the request for consultation that was filed by the Truth and Dignity Commission in a letter dated July 22, 2015 concerning the draft organic law on economic reconciliation.

After deliberation, the Venice Commission rendered its opinion by answering five fundamental questions:

- Is the establishment of another transitional justice commission in Tunisia consistent with the Tunisian constitution and transitional justice goals?
- Is the transfer of the Truth and Dignity Commission's mandate to the reconciliation committee consistent with article 148 of the Constitution?
- Does the draft law contain sufficient procedures and guarantees entitling it to be the equivalent of the transitional justice law?
- Will the draft law on reconciliation be able to achieve the transitional justice goals provided for in the organic law no. 2013-53 dated 24 December 2013 establishing and organizing the transitional justice?
- Is there enough harmony between the draft law on economic reconciliation and the organic law establishing and organizing transitional justice?

It can be concluded, from the views of the Venice Commission in response to these questions, that the State's commitment to the transitional justice process and to the fight against corruption carries a constitutional nature. The Venice Commission considered that the measures provided for in the draft law on economic reconciliation do not contribute to revealing the truth and do not allow reconciliation or institutional reforms (point 46), while stressing that the establishment of a new committee, under the draft law, would create a conflict of competence between it and the Arbitration and Reconciliation Commission of the Truth and Dignity Commission, which is difficult to overcome and does not help expedite the transitional justice process or improve its efficiency.

The Venice Commission found that the reconciliation committee provided for in the draft law on economic reconciliation does not provide sufficient guarantees of independence. Thereby, the mechanisms that it will use to decide on reconciliation requests relating to financial corruption and abuse of public funds cannot be considered equivalent to those of the Arbitration and Reconciliation Commission of the Truth and Dignity Commission.

In summary, the Venice Commission did not object to the creation of an additional new institution that will be in charge of economic reconciliation, provided that it adheres to the provisions of paragraph 9 of article 148 of the Constitution, the organic law no. 2013-53 establishing and organizing the transitional justice and the general principles of good governance and transparency. This institution shall also be the subject of consensus of all parties, as required by the Truth and Dignity Commission since the introduction of the draft law on economic reconciliation. The President of the Republic pledged before the Venice Commission to take all its views into consideration and to accordingly make the necessary changes to the draft law before the General Legislation Committee of the Assembly of the Representatives of the People, in order to break the existing constitutional deadlock.

7. Promulgation of the economic reconciliation draft law in the Parliament

The draft law was adopted by the General Legislation Committee of the Assembly of the Representatives of the People after its name was amended and substituted with "Administrative Reconciliation", and was then referred to the Assembly of the Representatives of the People, which enacted it on October 26, 2017, i.e. two years after its submission to the Parliament.

Amendments to the draft law included the chapter on granting amnesty to public officials, by explicitly stipulating that officials and the like shall be granted amnesty from judgments or prosecutions for acts related to administrative and financial corruption, infringement of regulations, abuse of power, abuse of authority or function, or misappropriation of public funds. It was also stipulated that sentences binding public officials to compensate the State, public institutions and establishments or local communities shall be annulled.

The exception of bribery and misappropriation of public funds is singled out in a separate article (3), which reads: "Shall be exempt from the provisions of article 2 of the organic law herein, public officials and the like, if the acts with which they were charged relate to the acceptance of bribes or misappropriation of public funds".

XIII. Difficulties and obstacles impeding the Arbitration and Reconciliation Commission's work

The main difficulties and obstacles that impeded the Arbitration and Reconciliation Commission's work can be summarized as follows:

- The limited number of the commission members and lack of cooperation by the Assembly of the Representatives of the People to fill vacancies. In fact, only three

members have been working since July 2015, even though article 28 of the Commission's Rules of Procedure states that it shall consist of five members. This shortage affected the Commission's performance negatively.

- Lack of cooperation by the State Litigation Officer, who applied for adjournment in more than **4000** arbitration sessions held throughout the term of the Arbitration and Reconciliation Commission. In fact, most of the cases that were considered involved the State Litigation Officer, as Respondent, against the Tunisian State or one of the ministries, especially the Ministry of the Interior. He rejected **2307** cases after applying for adjournment on several occasions.
- Unjustified delays in hearings by the State Litigation Officer, which made the Arbitration and Reconciliation Commission amend its manual of procedures several times.

He submitted, as a victim, 686 cases against the Tunisian State, without specifying the parties required for arbitration and:

- He did not clearly identify the Respondents in 8 cases and confined himself to adding the expression "and others". The Truth and Dignity Commission, accordingly, requested by correspondence, on November 20, 2017, that he provide the names of these "other parties".
- He confined himself to stating "whoever proven guilty by investigation", with regard to the Respondents, in 301 cases. The Truth and Dignity Commission corresponded with the State Litigation Officer, on November 20, 2017, requesting him to accurately identify "whoever proven guilty by investigation", in order to be able to initiate its proceedings.

On November 20, 2017, the Truth and Dignity Commission addressed a correspondence to the State Litigation Officer requesting that he determine his position with regard to 685 cases, the scheduled calendar for their consideration and the intended hearing dates in the nearest future.

- Lack of cooperation by the financial judiciary in the provision of arbitration and reconciliation cases to the Truth and dignity Commission.
- The reintroduction of the draft law on reconciliation to the Assembly of the Representatives of the People, which was considered a disturbing factor for the Arbitration and Reconciliation Commission's work and was systematically targeting the transitional justice process. It was also a confirmation of the lack of political will to address financial corruption, through the arbitration and reconciliation mechanism, and to achieve transitional justice goals.
- Lack of jurisdiction for arbitration and reconciliation in the field of transitional justice, which represented an obstacle to the availability of competent human resources.

- The State' disregard for the accountability of perpetrators of violations.
- Lack of cooperation and responsiveness by a large number of State institutions to make the transitional justice process successful.
- Political tensions that contributed to disrupting and impeding the Truth and Dignity Commission's work, which confirmed the intention to bring the country back to dictatorship and impunity.
- The reintroduction of the draft law on reconciliation represented an external disturbance to the Arbitration and Reconciliation Commission's work, in particular, and the Truth and Dignity Commission's work, in general. This act revealed a huge amount of systematic external conspiracy against transitional justice and the lack of political will to achieve comprehensive national reconciliation. The law on administrative reconciliation was adopted on September 13, 2017 and was published on October 24, 2017 in the Official Gazette.



Part Eight
Institutional Reforms

Security and judicial institution reforms _____

The Truth and Dignity Commission presented a set of recommendations on institutional reforms to address past human rights violations, so as to ensure non-recurrence, to prevent the State from returning to past methods, and to contribute to setting the rules for a better future, by maintaining the Rule of Law.

Introduction

Institutional reforms require, notably, revising legislations, vetting State institutions and its services that turned out to be responsible for corruption and violations, modernizing their programs, restructuring them and rehabilitating their personnel. According to article 14 of the organic law no. 2013-53 dated 24 December 2013 establishing and organizing the transitional justice, and under the provisions of article 43 of the same law, TDC shall:

- Draft appropriate recommendations and suggestions as for political, administrative, economic, security, legal, media, educational, cultural reforms and of administrative vetting, and other recommendations and proposals at its discretion, to avoid relapse into repression, tyranny, violation of human rights and misuse of public monies.
- Draft recommendations, suggestions and measures intended to consolidate democratic structure and contribute to the establishment of the Rule of Law.

These reforms include all State institutions that contributed to set up the authoritarian rule, mainly in the security and the judiciary sectors, and all State bodies, especially the public funds and property oversight body, in addition to dismantling this system and laying the foundations for the good management of public properties.

I. Security and judicial institution reforms

1. The accountability and external monitoring system over justice and security institutions

Since 2011, the Tunisian parliament has ratified many legal texts, mainly decree-laws, in the absence of the original constituent power.

As a result, several decree-laws were issued, with a view to directly organizing the security and judicial institutions and to amending or substituting laws established by the former regime, particularly those considered to be restrictive of freedoms or representing a clear violation of human rights.

These decree-laws constituted a legal framework for the creation of independent interim bodies, which monopolized the advisory and decision-making functions. Among these decrees and laws are:

- Decree-law no. 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.
- Decree-law no. 2011-6 dated 18 February 2011, creating the High Authority for the Achievement of the Revolution Objectives, Political Reform and Democratic Transition.
- Decree-law no. 2011-10 dated 2 March 2011, relating to the creation of a national authority independent for the reform of the sector of information and communication.
- Decree-law no. 2011-41 dated 26 May 2011, relating to the access to the administrative documents of public bodies, which was substituted by the Organic Law no. 2016-22 dated 24 March 2016, related to the right of access to information.
- Organic Law no. 2013-43 dated 21 October 2013, relating to the national authority for the prevention of torture.
- The Organic Law no. 2016-61 dated 3 August 2016, preventing and combating trafficking in persons.
- The Organic Law no. 2017-59 dated 24 August 2017 on the Good Governance and Anti-Corruption Instance.
- The Organic Law no. 2018-51 dated 29 October 2018 on the Human Rights Body.

Accordingly, TDC recommends the following:

- Activating the principle of access to information in the reform process of justice and security institutions.
- Promoting the principles of transparency, integrity and accountability within the independent bodies, such as the Independent High Authority for Audiovisual Communication (HAICA) and the National Anti-Corruption Authority (INLUCC)
- Establishing all the independent constitutional bodies. For instance, the law on the establishment of the Human Rights Commission was adopted in October 2018. However, it has not started its activities yet; it is expected to begin its work by the end of 2018.
- Establishing the Constitutional Authority for Sustainable Development and for the Rights of Future Generations. In fact, the draft law relating to this authority was submitted to the Assembly of the Representatives of the People on October 9, 2018 by the Presidency of the Government.
- Completing the composition of the Constitutional Court,

- Providing the political support necessary for the effectiveness of these institutions
- Providing physical and human resources, by offering the necessary budgetary allocations within the required time limits.
- Activating cooperation between the various State agencies, including the security and judicial apparatus.

2. Parliamentary oversight: An accountability tool for judicial and security institutions

Oversight may take various forms. For example, but not limited to, article 145 of the Rules of Procedure of the Assembly of the Representatives of the People, adopted on 24 February 2015, provides that: “One or more members may submit to members of the government written questions in a concise form, through the President of the Assembly of the Representatives of the People.” Article 146 of the Rules of Procedure also stipulates that: “Each member may, during a plenary meeting, ask oral questions to members of the government”. However, the Assembly of the Representatives of the People has not published figures on the oversight role until recently. In fact, the activity report of the Assembly of the Representatives of the People, for the first quarter of the fourth session, indicated that 28% of the oral and written questions concerned the national security and defense aspect.

Parliamentary committees also play an important oversight role in this area, especially when holding hearing sessions with officials representing the executive power, since the accountability of the security and the judiciary institutions, in this context, remains complete and comprehensive. In this regard, we can refer to the hearing session held by the Security and Defense Committee on 3 January 2017 for Mr. Ghazi Jribi, the Minister of Justice, to discuss the situation of prisons and detention centers in the country over that period.

The Rules of Procedure also allow the deputies to establish ad hoc committees of inquiry, in accordance with article 59 of the Constitution, as another oversight mechanism. These committees shall enable them to shed light on some incidents that show the executive power’s reluctance to provide certain necessary information. In this regard, four parliamentary committees of inquiry were established in 2016 and 2017.

TDC notes that the deputies do not exercise these oversight prerogatives fully and effectively, due to a number of reasons, including insufficient knowledge of the procedures on this subject on the one hand, pressure exerted by the executive power and social actors and the lack of responsiveness and cooperation shown by administrations concerning such matters, on the other hand. This explains the lack of efficiency of this oversight mechanism, which has brought no significant result, at least since 2014. These committees have not imposed any

form of strict accountability for some human rights violations perpetrated by some State institutions.

3. Transparency and the right to access information

The lack of available and updated information and the ensuing impairment of the principle of transparency remain a major concern for civil society structures in the performance of their oversight roles. The organic law no. 2016-22 dated 24 March 2016, related to the right of access to information, which entered into force on 24 March 2017, requires each administrative structure to have its own website, where the information access manual intended for use by citizens and civil society is published. It also binds every public structure to appoint a full-time employee, as in charge of access to information, and to publish his/her name and various public telephone and electronic addresses for the public.

In general, the Ministry of Justice is distinct, in this respect, from the Ministry of the Interior in that it continuously provides information on the ongoing reforms in the area of justice. In contrast, the data provided by the Ministry of the Interior on the reform path in the security sector seem to be scarce, if at all, especially information related to the monitoring and evaluation area. A cell was set to follow up reforms within the State security apparatus, but we have not been able to confirm this information from official sources. Nonetheless, the Ministry of the Interior has an official website that contains many statistical details, which represents a good initiative in general. Still, it should be further enriched and supported by updated information and statistics, since article 6 of the organic law related to the right of access to information obliges all public structures to publish, update and make public the following information:

Type of information related to the public structure	Publication on the website of the Ministry of the Interior	Publication on the website of the Ministry of Justice
Policies and programs of public interest	Were partly published, except for the public policies	Were partly published, except for the public policies
A detailed list of services provided to the public and the certificates delivered to citizens, the documents necessary to obtain them, conditions, time limits, procedures, parties and stages relating to their provision	Done	Done, but less than the Ministry of the Interior (probably because of the nature of the information)
Legal, regulatory and interpretative texts governing its activity	Done	Done
The assigned tasks, the structural organization, the address of the headquarters and sub-headquarters, means to access and communicate with it and a detailed description of the budget	Done (Except for the headquarters)	Done (Except for the sub-headquarters). As for the budgets, only the 2014 and

allocated to it.		2015 budgets were published
Information related to its programs, especially achievements in its area of activity	Done	Undone
A nominal list of the agents in charge of access to information, containing data set forth in article 32, paragraph 1, of this law besides their professional emails	Done (Information are available on another website, which is "opendata.interieur")	Done (Information on the website are not easily accessible)
A list of the available electronic or paper documents relating to the services it provides and resources allocated to them	Done	Undone
The scheduled public procurements, whose budget has been approved, and which the structure intends to conclude and the results of their implementation	Undone	Undone
Reports by the oversight bodies, in accordance with the international professional standards	Undone	Undone
Conventions that the State intends to join or to ratify	Undone	Undone (under review)
Statistical, economic and social information, including the results and reports of detailed statistical surveys, in accordance with the requirements of the statistical law	Done (Statistics related to the ministry's activity are available but without the results of the statistical surveys)	Done (Statistics related to the Ministry's activity are available, with the exception of the results of the statistical surveys)
All information related to public finance, including detailed budgetary data at the central, regional and local levels, data on public debt, national accounts, distribution of public expenditures and key indicators of public finance.	Undone	Undone
The available information about social programs and services	Undone	Undone

The Tunisian legislation needs to enact more efficient laws, for example, a law on the classification of information within the State, since the current classification is not based on any legislative text. Instead, it rests upon arrangements that do not protect the right of citizens to access information and do not ensure an adequate interaction between security institutions and oversight structures, within the framework of guaranteeing non-recurrence of human rights violations and fighting corruption.

4. The accountability and internal monitoring system over justice and security institutions

Combining **the external accountability mechanisms** with the **internal disciplinary measures** (accountability and discipline) is the best way to prevent the recurrence of human rights violations.

The internal measures of accountability and discipline are administrative decisions made to prohibit abuses, errors or acts of disobedience committed by public officials. Given the sensitive nature of the judicial and security functions, these two sectors disproportionately require the implementation of such measures within the institutions.

Judicial measures include the creation of the Supreme Judicial Council, the establishment of a disciplinary council to adjudicate claims. Each council (judicial, administrative and financial) should have its own disciplinary council. Claims against a judge must be reported to the Minister of Justice or to the President of the Supreme Judicial Council. In all cases, the claim shall be referred to the Inspectorate-General of Judicial Affairs, which is in charge of investigating cases.

The Ministry of the Interior's structural system had included the **Inspectorate-General for National Security** apparatus until 2011, when this structure **was accused** of covering up abuses committed by security forces officers against citizens and encouraging or ignoring such practices (inhuman treatment, corruption, disobedience of orders, etc.), with a decline in its activity.

In 2017, the Central Inspectorate of services of the Ministry of the Interior was reinstated, pursuant to the governmental decree no. 2017-737 dated 9 June 2017, amending decree no. 91-543 dated 1 April 1991, organizing the Ministry of the Interior. Nevertheless, little information has been published about the structure's activities; and the number of files that were submitted, investigated or adjudicated or statistics on claimants have not been declared. It is important that this sector have an effective and transparent internal accountability body to ensure the respect of Tunisians' fundamental rights.

These measures are often based on generally accepted rules adopted by the employees themselves and transferred to each new employee. It seems that the security forces do not have a code of conduct and ethics, although this project has been under preparation since **2015** by the Ministry of the Interior, in partnership with the United Nations Development Program (UNDP). After the ratification of this document, TDC considers that:

- Programs should be established to consolidate these values among employees,
- Program oversight should be activated by the internal (the central inspectorate of the Ministry of the Interior's services) and the external (constitutional bodies and parliamentary oversight) accountability structures of the security institution,

- Cooperation and coordination, within its mandate, should be carried out with national, regional, international and UN mechanisms, organizations, associations and human rights administrative structures,
- Citizens' concerns in the field of human rights and public freedoms should be taken into consideration, their queries should be handled, people should be guided, and petitions and complaints related to the said field should be received and processed, in coordination with the various structures relevant to the Ministry,
- Analyses and studies on the field of human rights and public freedoms should be carried out, and proposals aimed at disseminating the culture of protecting human rights and guaranteeing public freedoms and mechanisms aiming at achieving this objective, within the Ministry of the Interior, should be developed,
- Legal texts relating to the field of human rights, in connection with the activity of the Ministry of the Interior, should be drafted, and opinions on the subjects and drafts of the legal texts presented in the field should be expressed,
- All data and information relating to the field of human rights and public freedoms should be collected and documented, and contribution to the elaboration of awareness and awareness-raising productions, education, training and coaching programs in the field should be made, and
- Opinions should be expressed on training programs targeting the internal security forces that are relevant to human rights and public freedoms.

5. Constitutional reforms

The new constitution provides for a list of rights and freedoms recognized in many constitutions around the world, including equality in rights and duties, the right to life, the right to respect for human dignity, the right to private life, the inviolability of the home, the confidentiality of correspondence, communications and personal data, the freedom of movement, opinion and thought, expression and freedom of publication for all citizens. The same section also referred to the right of access to information, academic freedom, freedom of scientific research, the right to asylum, the necessity of respect for the presumption of innocence or the right to the assistance of a lawyer and all civil and political rights, in addition to the economic and social rights to form a mass of rights and freedoms. This set of rights is put on top of the Tunisian law system.

General regulations governing rights and freedoms

These rights and freedoms are not only affirmed, but are also emphasized in Article 49 of the Constitution, which provides that **“The limitations that can be imposed on the exercise of the rights and freedoms guaranteed in this Constitution will be established by law, without compromising their essence. Any such limitations can only be put in place for reasons necessary to a civil and democratic state and with the aim of protecting the rights of others, or based on**

the requirements of public order, national defense, public health or public morals, and provided there is proportionality between these restrictions and the objective sought. Judicial authorities ensure that rights and freedoms are protected from all violations. No amendment may undermine the human rights and freedoms guaranteed in this Constitution.”

This general restriction of fundamental rights and freedoms enables the development of a framework to implement the Constitution, by imposing an inventory of domains that may limit individual and collective freedoms, including the requirements for national defense, security and public interest.

Even if the legislator tries to restrict the rights, which represent the cornerstone of rights and freedoms in Tunisia, some of them are absolute and cannot be affected by any restrictions. For instance, there are restrictions on the right to bodily integrity, which prohibit torture in all circumstances and are not subject to any exception. However, other rights are necessarily subject to restrictions, given the need to regulate the sphere of social and political interactions, as well as the need to regulate the foundations of coexistence, in order to determine the extent of individual freedom while interacting with others.

The clause will only be effective when applied to legal texts. So far, the aforementioned law related to the right of access to information is the only law that explicitly restricts rights provided for by the Constitution. Article 24 of this law stipulates that: “The concerned structure cannot refuse a request to access information, unless it undermines public security, national defense or international relations relevant to these two aspects, or third parties’ rights to protect their private life, personal data and intellectual property. These areas shall not be considered as absolute exceptions to the right of access to information and shall be subject to the assessment of damage resulting from access, provided that the damage shall be serious, whether immediate or subsequent, and shall be subject to the assessment of the public interest resulting from the submission or non-submission of information, for each request. Proportionality between the interests to be protected and the purpose of the access request should be taken into account.”

The state of emergency, special measures and guaranteeing inalienable rights

Article 49 constitutes one of the pillars of the non-repetition of human rights violations in the new Tunisian legislation. However, the latter seems to be inconsistent with provisions that were previously enacted. The most obvious example, in this regard, is decree no. 1978-50 dated 26 January 1978, regulating the state of emergency, which “empowers the Governor in the areas referred to in article 2 above, and as required by the exigencies of security or public order, to:

- Prevent the movement of persons and vehicles
- Prevent any strike or reluctance to work, even if it is decided before declaring a state of emergency

- Organize the residence of persons
- Prohibit the residence of any person who attempts, by any means, to obstruct the activity of public authorities
- Resort to harnessing persons and resources that are necessary for the successful functioning of public departments and activities of vital interest to the nation.”

The decree adds that: “The Minister of the Interior and the governor may temporarily order to shut down the showrooms, the beverage shops and the meeting places of any kind, throughout the territory subject of the state of emergency. Meetings that would compromise or continue to compromise national security shall also be prohibited.” In general, the said decree is incompatible with the provisions of article 49, as it undermines the content of many rights (presumption of innocence, protection of personal data, freedom of association, etc.) without a time limit for declaring the state of emergency.

Article 80 of the Constitution also stipulates that: “In the event of imminent danger threatening the nation’s institutions or the security or independence of the country, and hampering the normal functioning of the state, the President of the Republic may take any measures necessitated by the exceptional circumstances, after consultation with the Head of Government and the Speaker of the Assembly of the Representatives of the People and informing the President of the Constitutional Court. The President shall announce the measures in a statement to the people.” However, in the absence of the Constitutional Court, the successive Presidents of the Republic, since 2011, have automatically extended the state of emergency.

The number of days in which the state of emergency was declared in Tunisia per year

Year	2011	2012	2013	2014	2015	2016	2017	2018
Number of days under the state of emergency	345	360	348	78	180	365	365	365

The consolidation of human rights and the respect of international standards

- **Ratification and implementation of international treaties and conventions on human rights⁴⁵⁹**
- **International cooperation for the security and judicial institutions reform**

The security and the judiciary sectors have become two distinct areas for international cooperation, since the revolution in Tunisia. Many organizations established partnership

⁴⁵⁹ See Appendices

conventions with the Ministries of Justice and the Interior to provide support, in order to start the reform process of many aspects of the security and judiciary facilities.

The Support Program for the Reform of Justice (**PARJ**) was jointly developed, in 2012, by the Tunisian Government (Ministry of Justice) and the Delegation of the European Union to Tunisia to monitor, support and evaluate the reform efforts relating to the judicial institution.

Another program to support the promotion of justice for children in Tunisia was jointly developed by the Ministry of Justice and UNESCO, to strengthen the capacity of actors from different departments and courts working in the area of judicial protection of children.

The Ministry of the Interior, on its part, concluded several partnership agreements with international organizations, mainly the partnership agreement with UNDP. This Program was established in 2013 and it is expected to last until **2019**; it should eventually provide the security forces with a code of conduct and ethics. It also aims to establish Community Policing and support the Ministry of the Interior, in order to develop the apparatus and performance of the inspectorates-general of the National Police and National Guard.

Cooperation programs are national plans for the development and reform of the security and judiciary sectors. In addition to poor transparency with regard to these public policies, it seems that the Ministry of the Interior operates without a **publicly available and documented action plan**, except for the security forces sector-based strategies. However, a White Book on national defense and security was developed in 2015. Its publication was repeatedly announced, but remained mere ink on paper.

The Justice institution is subject to more transparent planning. In fact, The Ministry of Justice announced the “Strategic Plan to Reform the Judicial and Prison System” in 2015. This document was developed by the Minister of Justice, Human Rights and Transitional Justice and the Interim President of the Commission for the Supervision of the Judiciary, adopting a methodology based on “consensual and participatory principles”. The text outlines four goals to be achieved by 2019:

- To support the transitional justice process
- To concretize the aspirations to establish a State of Law
- To review the penal system
- To modernize the judicial and prison system

According to the document that was elaborated, these objectives are based on five main themes:

- Freedom and independence of the judicial power
- Promoting the professional ethics of the judicial and prison system
- Developing the judicial institution’s quality and protecting the rights of litigants

- Strengthening communication, interaction and partnership mechanisms in the judicial and prison institutions

Regardless of the content of this plan, the Ministry of Justice's policy respects significantly the principle of institutional transparency provided for by the new Constitution. The text is detailed, which will allow any citizen, institution, or civil society organization to monitor the development and assess the degree of completion of reforms. The Ministry of the Interior should launch such an initiative.

Legal safeguards taken to address past human rights violations and to avoid their recurrence

The legislative reforms that led to the establishment of independent institutions to enforce respect of the Constitution and the law, to monitor the judicial and security sectors and to provide relevant recommendations were already mentioned in this report. Other laws contribute to ensuring the non-recurrence of human rights violations, by providing direct legal and judicial safeguards to individuals.

As such, the law **No. 2016-5** dated 16 February 2016, amending and completing some provisions of the Criminal Procedure Code, is one of the most significant changes in the Tunisian legislation after 2011. It has been repeatedly noted that detention centers have often been **places of torture and inhuman and degrading treatment**, and more generally, places where all individual rights are denied. The presence of a lawyer in the arrest phase is now a fundamental right that will help resist such practices. Although no assessment of the degree of application of this law has yet been published, its symbolic and legal value actually makes it possible to resist practices that violate international standards.

Tunisia has ratified all international obligations **against torture**. However, **article 101** of the Penal Code remains incomplete, referring to the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). It is clear that the Tunisian law defines torture as being only practices aimed at obtaining information or confessions, while the text of the Convention extends this definition to include punishment, intimidation or unjustified pressure. Thus, the Penal Code may require a rapid change in this area.

The phenomenon of torture is a rooted practice in Tunisian history, as it affected tens of thousands of victims of different generations and groups of society, whether activists or citizens. It has been a systematic practice and a "**governance mechanism**" for decades, which resulted in a sense of injustice, oppression and hostility towards various State institutions, especially the security services. The revolution, which paved the way to democratic transition, represented the hope for thousands of victims of torture, as well as for human rights defenders, to provide redress for victims and follow the perpetrators of torture. Everyone had high hopes for the large-scale reform process launched in the country. However,

the difficulties that faced the democratic transition, the heightened terrorist threat, and the weak human rights culture formed a general context that promoted continued torture and impunity.

The International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	The definition of torture according to the article 101 of the Tunisian Penal Code
<p>The term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/ her, or a third person information or a confession, punishing him/ her for an act s/he or a third person has committed or is suspected of having committed, or intimidating or coercing him/ her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.</p>	<p>The official or similar person equivalent person, who subjects a person to torture, during the exercise of his functions or in the order to exercise of his functions them, shall be punished by imprisonment for eight years.</p> <p>Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted upon a person for the purpose of, inter alia, obtaining information or confessions from him or a third party, punishing him or her for an act that he/she or a third party has committed or is suspected of an act that he/she or a third party has committed or is suspected of committing, intimidating or pressuring him/her or intimidating or to put pressure on a third person, or where the pain or suffering is inflicted for any other reason based on any form of discrimination.</p>

Judicial or legal safeguards also lie in the courts responsible for the trial of civilians. **Military courts** have been an **exceptional judicial system** for a long time, and still persist today. **Article 110 of the Constitution** did not address this issue, as it provided in the same time that: "No special courts may be established, nor any special procedures that may prejudice the principles of fair trial". However, "Military courts are competent to deal with military crimes. The law shall regulate the mandate, composition, organization, and procedures of military courts, and the statute of military judges."

During the first weeks after the revolution, the Military Justice Code underwent amendments aimed at drawing clear lines between civil and military justice. However, the decree-law no. **2011-69** dated 29 July 2011, amending and completing the Military Justice Code does not prohibit the latter from trying civilians; and the Tunisian Penal Code has not been amended in this regard. Many civilians continue to be tried and brought before military courts for crimes including, for example, the exercise of freedom of expression.

The counter-terrorism policy and the urgent need for safeguarding human rights

By the early 1990s, political opponents of the regime and human rights activists were besieged and prosecuted after their accusation of terrorism..

Following the adoption of law no. 2003-75 dated 10 December 2003, relating to the support of the international efforts of fight against terrorism and the repression

of money laundering, the exploitation of the "war on terrorism" has become a systematic policy to criminalize any opposition and to rein in the entire public space. In fact, this law provides for harsh punishments incompatible with the gravity of the acts committed and has been implemented without respect for the minimum human rights. Therefore, hundreds of young people, from popular neighborhoods, were arrested after being **snitched on** for practicing **religious rituals**. They were **tortured, arbitrarily arrested**, tracked and tried in circumstances that did not comply with the fair trial conditions. Their families were subjected to collective pressure and sanctions, while prisoners themselves were subjected to administrative control upon their release from prison.

In 2015, following the most striking terrorist act that had ever occurred in Tunisia after the revolution, the new **anti-terrorism legal framework** was ratified by the quick adoption of the draft law against terrorism, **without consulting the experts and civil society**. The latter condemned the draft law and considered that it did not comply with the requirements of the Constitution, since its provisions did not respect human rights and international treaties (death penalty, disclosure of the professional secrecy, loose definition of the terrorist offence, which opens the door for interpretation by the law enforcement officers).

This law should be reviewed in order to be consistent with the provisions of the Constitution of the Republic of Tunisia and the international treaties regarding human rights, in order to ensure that the war on terrorism is not used as a means of suppressing human rights activists and political opposition, with the obligation of review of all legal provisions relating to the penal matter and its compliance with the requirements of the 2014 Constitution.

Reform of the prison system and detention centers

The justice sector is not limited to administrations and courts. It is worth recalling that the General Directorate of Prisons and Rehabilitation (**DGPR**) is also an institution under the supervision of the Ministry of Justice, pursuant to law no. 2001-51 dated 3 May 2001, relating to prison and rehabilitation executives and employees.

There are two basic elements for the efficiency of the justice institution:

- **Regarding the Ministry of Justice:** The volume and duration of cases held before the Tunisian courts consist a threat to everyone's fundamental right to a fair trial. This right is further threatened by the situation of persons in pre-trial detention, who sometimes spend the possible longest period without being brought before a judge. For instance, out of a total of **2,806,802** cases registered before the ordinary courts during the **2013-2014** judicial year, **2,005,508** cases were adjudicated. Tunisian prisons suffer from violations of law and international standards. **Overcrowding** is one of the main problems facing the prison system. This not only affects the security, conditions and cleanliness of prisons, but also the working

conditions and safety of prison employees, in addition to delays in time limits and complicated legal procedures without taking into account people with special needs.

The Ministry of Justice developed a national strategy for the **2015-2019** period to reform the prison sector. It is expected that the preliminary results enable a comprehensive assessment of the changes that have been made. The statement issued by the ministry, in conjunction with the publication of the aforementioned strategy, stated that: “The daily transfer of arrested suspects to the courts for their prosecution has become a major impediment to the management of prisons, since the number of those detainees represents half of the total number of prisoners. For example, the Prison of Mornaguia, which transports 400 detainees, or more, daily to courts in Greater Tunis by means of 5 **old cars**, which has negative consequences on the prison institution and employees’ safety. This example gives a microcosm of the current situation in terms of the prison administration potentials, which is further aggravated by the fact that more than fifteen prison institutions suffer from security disorders, due to the destruction of part of the buildings or some of its internal equipment.

- **Regarding the Ministry of the Interior**, efficiency depends on the role of national security forces in the maintenance of security. This can be measured through crime and delinquency statistics. The Ministry of the Interior published some figures on its open data portal without being updated since 2015.

A draft law, which continues to provoke significant protests among civil society, was passed for the first time in 2015. It is about “restraining attacks on the armed forces” and threatens to **grant the security forces an absolute mandate** to act uncontrollably, which may fuel a culture of impunity.

It is also necessary to take into account some of the actions of the Ministries of Justice and the Interior, which lead to a slowdown of processes. In fact, the Criminal Record (B3) is created by the courts and is ultimately used to handle cases, but its administration rests with the Ministry of the Interior structures. The National ID Card, administered solely by the Ministry of the Interior, also contains important information so the lack of direct access by the courts to this record prolongs the time necessary to deal with cases.

II. The oversight system development

The oversight system is mainly based on a set of principles aiming at establishing good governance, such as transparency, integrity and efficiency. However, the deficiencies in this section require quick development of the various aspects of oversight, both in terms of the legislative framework, or the means, and material potentials of the various control structures.

1. Pillars of the oversight system effectiveness

Effective control, today, is both preventive and framing, aims to serve administrations, managers and decision-makers, and can intervene in a timely manner to ensure an effective oversight process.

The oversight of public funds contributes to ensuring the effectiveness of public management. It is a key tool to reduce the management risks, to fight corruption and to facilitate decision-making that enshrines good governance.

The administrative and financial oversight reform process falls within the changes in Tunisia and the reform processes that most State institutions are undergoing, which aim mainly at establishing good governance rules, mainly those related to improving the performance and efficiency of the administrative work, on the one hand, and further deepening the principle of accountability and fighting corruption, on the other hand.

The new administrative organization provided for in section VII of the Tunisian Constitution, which establishes the rule of decentralization and the principle of free management, requires the re-employment of oversight structures, through the establishment of mechanisms to regulate the relationship between the central and local authorities, and how to exercise legitimacy oversight over the work of these authorities and assess their performance.

The administrative oversight system in Tunisia consists of the following structures:

- **The General Committee for the Control of Public Expenses**

It was created by virtue of the order dated 20 May 1912, which sets its functions and scope of intervention. It is an oversight carried out at the commitment stage, concerned with the proper implementation of the budget, in accordance with the arrangements in force and its suitability with the preparations for the budget through the advance approval on spending commitments proposals. Its intervention includes the validity of State expenditures, public institutions and local communities.

The General Committee for the Control of Public Expenses belongs to the Presidency of the Government, consists of 26 central offices and 25 regional offices, and currently has 130 controllers.

- **The Committee of State Controllers**

It falls under the auspices of the Presidency of the Government and was established by virtue of decree no. 2002-2131 dated 30 September establishing the Prime Ministry structures. Its intervention includes various aspects of the activity of the public facilities and public institutions that are not administrative in nature, by making sure that these structures are properly implementing the laws and arrangements governing public procurement and following up their financial situation.

- The structures of general control

They consist in The High Committee of Administrative and Financial Control, the General Public Service Control Authority (under the Presidency of the Government), the general oversight body of the Ministry of Finance and the general oversight body of the Ministry of State Property and Land Affairs. The general control structures are concerned with controlling State departments, public institutions, local communities, offices, national companies, para-public companies and, in general, all structures directly or indirectly benefiting from the financial intervention.

- Administrative and financial inspectorates

These are structures belonging to the relevant ministry. They are in charge of financial and administrative inspection before directorates and institutions under the relevant ministry.

- Public accountants

They are officials appointed by the Minister of Finance to oversee the legitimacy of the collection and expenditure orders issued by the authorizing officers and holding and storing funds and the execution of collection and expenditure orders in addition to the maintenance of accounts and its submission to the competent authorities.

- Procurement committees

Procurement committees conduct special control, in accordance with the provisions of the decree regulating the public procurements prior to the award of the procurement, by examining the validity of the procedures for resorting to competition and transparency of the procedures of contracting and checking that the offers comply with the administrative, financial and technical specifications. The procurement committees are distributed according to their reference point and the value of purchases to local procurement committees, regional procurement committees, ministerial procurement committees, facility procurement committees, as well as the high committee for procurements.

- The General Public Service Control Authority

The General Public Service Control Authority, under the auspices of the Presidency of the government, was created in 1970 and ensures the development and implementation of the recruitment policy in the public sector.

- Political oversight

It is exercised by the Assembly of the Representatives of the People on a prior and subsequent basis. The prior oversight by the Assembly of the Representatives of the People consists in the ratification of the Finance Law, while subsequent oversight consists in the ratification of the budget closure.

- Judicial oversight

The financial judicial oversight consists of the control conducted by the Court of Auditors.

The latter is the supreme institution for the control of the management of public finances. It is competent to control the good management of public funds, in accordance with the principles of legitimacy, efficiency and transparency. It decides on auditors' accounts, assesses the management methods and considers management errors and related financial disciplinary cases. The legislative power and the executive power help to oversight the implementation of the finance laws and to close the budget.

As for the current Court of Auditors (which will be replaced by the Court of Auditors provided for in the 2014 Constitution), it has judicial power over public auditors, examines curious behaviors in this area; it can raise its competence with respect to the accounts whose liquidation is assigned to the administrative authority, and also has an oversight power towards the payment administrators. In addition, it is entrusted with the consideration of accounts and the economic and financial management of public facilities. It also carries out assessment missions, including the results of economic and financial intervention of the State, the governorates and municipalities, in accordance with the provisions of the law no. 68-8 dated 8 March 1968 organizing the Court of Auditors.

The most important changes in the status of the Court of Auditors concerned mainly the organic law no.2008-3 dated 29 January 2008, which gave this court many powers in the field of management control. However, it did not reduce the pressure of many of the material and substantive problems facing the court, especially in the field of its work independence. In fact, it is witnessing a large intervention by the executive power, especially in terms of recruitment within the court. Nonetheless, the work of the Court of Auditors evolved after the revolution, especially with the publication of the different control reports that it has carried out and the exercise of control over the accounts of political parties and the financing of election campaigns.

The general legislation committee within the Assembly of the Representatives of the People is currently discussing the draft organic law no. 2016-38, fixing and organizing the Court of Auditors' jurisdiction and procedures, through which the new Court of Auditors will be established. This draft-law includes an extension of the scope of oversight over the management of the court, so it comprises the evaluation of the performance of bodies subject to the oversight taking into account the criteria of effectiveness, efficiency, economy and environmental preservation. It raised the possibility that the Court of Auditors could follow up the results of observations and recommendations that are communicated to the structures subject to the oversight and, where appropriate, to the supervision bodies of those structures.

As for the financial discipline court, which was established by virtue of the law no. 85-74, it is a judicial discipline court in the financial field that punishes for errors committed against the

State, local communities and public institutions, with a view to the good management of public funds to which the secondary payment administrators of the State's and of public institutions and mayors appointed by virtue of a decree.

- **The internal control of public facilities**
- **Other forms of control: civil society – media – citizen, etc.**

2. Problematics

The situation of the administrative and financial control system has been diagnosed on several occasions, with particular emphasis on the following points:

- Multiple oversight bodies with similarity and overlap in many of their functions, where the number of control structures is as follows:
- There are 4 bodies that belong to the Presidency of the Government: The General Committee for the Control of Public Spending, the General Public Service Control Authority, The Committee of State Controllers and the Higher Commission for Procurements).
- There are 3 bodies outside the Presidency of the Government: the general oversight body of the ministry of finance, the general oversight body of the ministry of State Property and Land Affairs and the High Committee of Administrative and Financial Control (Presidency of the Republic)
- The internal audit units and ministerial inspectorates.
- Lack of coordination and exchange of information between these different structures despite the complementarity of their functions.
- Lack of mechanisms to schedule the functions and work of the oversight bodies and the consequent misuse of the oversight bodies' efforts, mainly in terms of the sectoral and geographical coverage of the different management structures.
- Lack of a sector-based vision in assessing the public policies
- Lack of material and human resources available separately for each structure (83 controllers at the General Public Service Control Authority, 42 controllers at the Committee of State Controllers, 130 controllers The General Committee for the Control of Public Spending and 50 controllers at the Higher Commission for Procurements).
- Lack of mechanisms to follow up the subsequent oversight missions' reports and the implementation of the recommendations issued by them.
- The diversity of interventions to affect the oversight structures through different methods and at different levels.
- The work of the oversight structures focuses on checking compliance with laws and regulations to limit their role in evaluating the performance and the cost effectiveness.

- Lack of comprehensive vision for reforming and improving the public oversight system, and the lack of relevant sufficient political will, in addition to the negative competition between many oversight structures.
- Inadequate oversight environment increasing the difficulties of the oversight intervention
- Lack of performance orientations and objectives for each oversight structure and deficiencies in the drafting of the oversight reports.
- Insufficiency of the functional autonomy being granted and the protection being provided (only 05 statutes / absence of governing bodies for the oversight bodies guaranteeing collective decision and sufficient functional autonomy / absence of objective criteria for appointing heads of bodies and sufficient safeguards for the adoption of the term of office character.)
- Weak coordination between the oversight structures and lack of overarching coordinating structure that contributes to the unification of orientations and follow-up of the performance of the structures and the evaluation of their work, which leads to wasting the limited capacities of these structures and increases the cost of their intervention.
- Extreme weakness in material and human resources
- Weak regulatory framework organizing most oversight structures work
- Weak deterrent capacity when examining breaches due to lack of immediate and timely intervention and weak interaction with the oversight reports.
- Overlap in the oversight functions, this requires a review of the structure in accordance with the management system per objectives.
- Lack of legalization of the cooperation and integration relations between all oversight structures and lack of guidance.

3. Recommendations

- Accelerating the promulgation of a law concerning the Court of Auditors, in order to ensure that the fundamental values of the financial judge functions' performance are upheld, namely:
 - **Independence, objectivity and impartiality in accordance with the Constitution and international standards:** that is, being free from any pressure of any kind and source, which would limit the ability to perform oversight functions with the required integrity. The Court members should not be influenced by preconceived notions of parties subject to oversight. The financial judge must be very serious and objective.
 - **Political neutrality:** The Court judges may not engage in a political party and must stay away from political influence.
 - **Avoid conflicts of interest**
 - **Efficiency**

- Consolidating the immunity mechanism for the financial judge and simplifying its lifting procedures, when necessary
- Creating an oversight service within the Court of Auditors concerned with public life and ensuring transparency and financing the work of political parties, associations and electoral campaigns.
- Promoting the functional autonomy of the oversight structures through:
 - Strengthening their regulatory framework
 - Setting up boards of the oversight bodies, ensuring sufficient consistency for their management
 - Assigning heads of the structures to sessions of limited duration, which ensure their independence in making decisions
 - Enabling oversight structures, when inspecting violations that rise to the level of crime, to deal directly with the concerned parties, including the judiciary, without having to wait for the approval of the heads of the structures or ministers, provided that procedures should be organized so as not to cause abuses.
- Granting the heads of the oversight structures powers to issue assignments orders to carry out an oversight mission without waiting for the Minister of Supervision.
- Providing the necessary incentives and protection for the controllers, through ensuring a continuous career path without direct or indirect disruption.
- Facilitating the movement between different oversight structures and to the management structures to enrich the experience of oversight officials.
- Establishing an overarching coordination structure for the different administrative oversight bodies to:
 - Ensuring sufficient coordination between the oversight structures
 - Establishing a risk map, by compiling the oversight reports in an information technology system and processing its data, so as to provide risk data in each area of public management and each public structure to facilitate the programming of the oversight tasks by focusing on high-risk areas.
 - Establishing common standards in conformity with the international standards for the work of the oversight structures and to evaluate their performance.
 - Enhancing material resources
 - Boosting human resources
 - Providing deterrent capacities for the oversight structures
 - Establishing a comprehensive vision for the system of public administrative oversight and to focus on improving the oversight environment

- Developing the information technology and communication systems
- Encouraging the management structures to accelerate the establishment and consolidation of the advanced defense line against the management dangers.
- Establishing continuous monitoring and periodic evaluation of the performance of the oversight structures and their work.
- Standardizing the work of the different oversight bodies.

The reform and the improvement of the administrative oversight system is a necessity and a prerequisite for improving the management system, valuing limited public resources, addressing the risks of corruption and ensuring the effectiveness of public management.

III. Tax system reform

Given the importance of the tax system in financing the budget resources and its role in jump-starting the economy, the Truth and Dignity Commission conducted a field survey⁴⁶⁰ on the Tunisian perception concerning tax collection prepared by the Institute of Statistical Studies and Data Analysis, during the period from October 17, 2018 to November 3, 2018.

This survey aims at identifying the Tunisian citizen's knowledge, perception and expectations of the tax collection system. It focuses on the following topics:

- **Knowledge of tax collection and opinions about it**
- **Acceptance and approval of citizens**
- **Equality and justice**

Perceptions of the citizen towards the tax collection system

An initial sample of 1350 households was identified, picked in two phases and distributed by major geographical regions (North, Center and South) and areas (Urban and Rural), i.e. a sample ratio of about 0.05%. This ratio was enhanced in the Greater Southern Region, where the sample ratio was set at 0.10% while it was 0.04% in the North and Center. In fact, the number of households residing in southern Tunisia is 13.5% of all households, compared to 35.5% in the centre and 51% in the north. The sample was drawn at the National Institute of Statistics using the sampling frame of the household surveys from the last general population and housing census in 2014⁴⁶¹. Here are the main conclusions of this survey:

With regard to **the citizen's perceptions of the tax collection system**, we note that most of the respondents do not have confidence in the tax administration, where the percentage of those who do not trust the tax collection departments is 52%. On the other hand, only 4% trust the

⁴⁶⁰ See the full survey in the appendices

⁴⁶¹ See the results of the results of the field survey of citizens' expectations about the tax collection

tax collection departments. This situation directly affects the degree of satisfaction of the citizen on the tax system, where the degree of dissatisfaction reached 61%.

It should be noted that the lack of satisfaction and confidence in the tax system, confirms that the contribution is based solely on its compulsory nature. In fact, 76% of the respondents stated that they do their tax duties only for its compulsory nature. However, it is important to note that 68% of them consider that there is no relationship between tax evasion and citizenship values.

Most respondents believe that the parallel market affects tax revenues in a negative manner significantly (43%) or on average (38%), compared to 17% who do not see any impact. This was confirmed by the respondents in the south-east (54%).

Conclusion

It can be drawn from this survey that a climate of ignorance and dissatisfaction dominates the relationship between the citizen, who is required to pay taxes, and the tax system, which represents the basis for the State's financial independence.

We note also the dominance of dissatisfaction in all regions, except for the North-East. Most respondents believe that tax evasion does not affect the citizenship values and does not require punishment. In addition, most of the respondents in the South-East believe that the parallel market has no impact on the tax revenues of the State.

All of this leads us to emphasize the need for tax system reform, by establishing tax justice and equality and promoting transparency, simplification of procedures and reduction of tax payment percentages.

IV. The youth and childhood sector development

Although there is an official discourse that promotes youth and childhood, this sector still suffers from many problems.

I. Common issues

- Inter-ministry coordination difficulty
- Lack of organic laws that would regulate all bodies in the childhood and youth sectors
- Large spread of the phenomenon of uncontrolled institutions and overlap in the specifications between the relevant ministries in addition to the lack of deterring radical solutions to eliminate the phenomenon, without forgetting the lack of coordination between the intervening parties and the slow administrative procedures.

- Circulars specifying the working hours, whether to open and close the institutions or the working hours of the officials are not in line with the nature of the institutions, the objectives and the purpose for their existence (institutions close in the most cases at 6 pm, cultural institutions closed on Saturday and Sunday ...).
- Poor distribution of officials operating in the institutions.
- Weak and inefficient basic training, which is not based on the needs of the professional reality on the ground and the requirements of the pedagogical educational work (lack of specialization / focus on general horizontal knowledge and lack of specialization in procedural issues and applied skills).
- Training courses abroad are confined to the Ministry staff, even those who are not specialized within the framework of Parties quotas and loyalties
- The working hours of the institutions are not in line with the free time of children and young people
- The intensity of school time and its impact on the turnout of children and youth for activities
- Lack of consideration of the real problems of the sector and lack of responsiveness to reform the educational system and improve the institutions' services and develop their budget
- Lack of sufficient attention to the field of educational officials and guidance and inspection officials training
- Lack of an organic law governing the inspection body
- Many random programs that are not related to the real needs of the sector.
- The absence of a vision to develop the resources of the institutions and to establish oversight mechanisms that they maintain and do not hinder their programs, which are of a special nature different from the rest of State institutions.

2. Training-related issues

- Lack of continuous training by the central supervision authority.
- Inexistence of a real structure linking the two higher institutes under the dual supervision of the Ministry of Higher Education and the relevant ministries.
- Inadequate training in the higher institutes (The Higher Institute of Childhood Officials of Carthage Dermech and the Higher Institute of Animation for Youth and Culture in Bir El Bey) to the requirements of the sector and the labor market.
- Misuse of the two higher institutes, despite the convergence of orientations and overlap in the age groups attracted by the institutions on the ground.
- Central concerns taught in the higher institutes are often linked with the specialties of teachers and not with the quality and specificity of training. In addition, contracting with the staff of teachers is often subject to friendships and loyalties.

- Lack of training of teachers in the field of operational activities, mainly in the basic training phase, with absence of relation to the reality of field work and professional needs for some materials.
- Lack of national training for inspectors and pedagogical assistants
- Conflict in the contents of the training subjects and the lack of unification of visions and general strategies of the sectors despite its convergence in addition to the lack of unification of orientations and visions
- Absence of a national center for rehabilitation and continuous training for teachers in office and pedagogical supervisors.
- Disparity between levels of trainers and their dependence on self-training and personal experiences in the absence of a uniform and systematic training.

3. Administrative and financial management-related issues

- Reluctance from the self-management of institutions according to their nature and specificities, and ongoing work on the centralization of decisions
- Consolidated procurements are a major dilemma that hinders the work of institutions and limits the quality of services provided.
- Lack of flexibility in the active involvement of civil society and private institutions based on the principles of good governance
- Lack of transparency in providing financial support for some institutions and not others
- Underdevelopment of the legislative and legal arsenal related to the administrative and financial aspects in the management of the different sorts of institutions
- Lack of the maintenance of media units and ongoing problems with the Internet

4. Recommendations

- Unifying the supervision of the childhood and youth sector
- Activating the Higher Council for Childhood, which was created according to decree no. 575 dated 12 March 2002, and was transformed into the Joint Higher Council for Youth, Childhood and Culture.
- Changing the character of the educational, entertaining and cultural institutions (children's clubs, youth centers and cultural houses) into family clubs.
- Activating inter-ministry coordination and networking even at the budgetary level.
- Strengthening decentralization and local governance, in order to further develop institutions.
- Constructing new institutions that take into account the specificity and nature of the region (maritime space is different from Sahara space), as well as the real needs of its inhabitants.

- In the first stage, seeking to transform a certain number of institutions (which fulfill some preliminary conditions, especially in terms of area and location) to family clubs and to transform small enterprises into innovation or innovators clubs according to the specialization (music, theater, drawing, technology and media ...)
- Activating the network mechanism with relevant civil society structures, according to contracts of objectives and outcomes.
- Promulgating organic laws related to all various bodies and institutions.
- Reviewing old decrees, orders and circulars.
- Making the sector more strategic in terms of investment.
- Redrafting the map of the regional intervention priorities.
- Activating the work of the National Observatory for the Protection of Children and the National Observatory for Youth and providing the competent material and human resources (holders of higher diplomas; a Master of Research, at least).
- Neutralizing the childhood and youth sector from any political, doctrinal and ideological tension.
- Enforcing dealing with associations, based on contracts of objectives and results.
- Increasing the number of inspectors and pedagogical assistants to support the follow-up and training efforts.
- Supporting the capacities and efficiency of pedagogical supervisors, through continuous training programs.
- Reviewing training programs at the higher institutes and private and public training centers.
- Developing pedagogical guides, by making them more procedural and in line with modern pedagogical approaches.
- Modifying the content of specifications.
- Supporting the continuous training for pedagogical supervisors and teachers (training of trainers)
- Encouraging observatories to develop field studies and researches to diagnose the real situation of education and to elaborate development plans.



Part Nine
General Recommendations

The Truth and Dignity Commission's recommendations consist of the following central concerns: an official apology to compensate the victims of tyranny; institutional reforms to strengthen the State democratic structure; civil, political, economic and social rights reforms; the recommendations to combat corruption and misuse of public finance and recommendations for national memory preservation. All these recommendations are detailed in TDC's comprehensive final report⁴⁶².

I. The official apology and compensation of the victims of tyranny

TDC stresses that the national reconciliation can only be achieved by apologizing to victims for the violations they were subjected to. Pursuant to the article 39 of the law, the victims are natural and legal persons as well as regions who have been the victims of severe or systematic violation.

Since apologizing for violations to peoples constitutes a cornerstone of compensation mechanisms, and as included in the Compensation Framework Decision, TDC recommends that:

The President of the Republic of Tunisia, as the symbol of the State, should apologize to all the victims of tyranny who were subjected to human rights violations by State organs, in the period covered by the transitional justice law through the following forms:

- A statement by the President of the Republic of Tunisia to the victims of the period covered by the transitional justice law, and a nominal certificate from the text of apology to each victim. This shall be on the occasion of the inauguration of a memorial commemorating the victims and may be established in a square called "Apology Square".
- Writing a summary of the apology statement on the memorials in all the governorates' centers and in particular those concerned by violations.
- Announcing that the day of the apology will be a national holiday, under the name of "Reconciliation Day", on its margins an exhibition commemorating the victims is held.

The President of Government, as responsible of implementing compensation decisions pursuant to the decree no. 2018-211, shall ensure the implementation of individual and

⁴⁶² <http://www.ivd.tn/rapport/>

collective compensation decisions issued by TDC for the benefit of victims of severe human rights violations.

The Government's responsibility is also to provide victims with sufficient and effective compensation through the implementation of compensation procedures set by TDC through the Comprehensive Compensation Program of the [general framework decision](#)⁴⁶³ fixing the compensation and rehabilitation criteria for victims of human rights violations.

II. The institutional reforms responsible for promoting the State democratic structure

The institutional reforms aim at addressing the past human rights violations, so as to prevent the recurrence of violations and to protect the State from any return to past methods and contribute to building the rules of a better future through the preservation of the rule of law. This requires the reform of institutions, especially the review of legislation and the screening of State institutions and their facilities, which have been found responsible for corruption and violations.

1. Reforms for the implementation of justice

The new constitution entrusted the judiciary with the responsibility to protect rights and freedoms, to uphold the rule of law, to protect the democratic system from crimes of grave human rights violations and complex crimes of corruption, to ensure peaceful transfer of power through effective judicial oversight of the election integrity by adjudicating electoral disputes and close oversight on funding of the electoral campaigns...

The reform of the judiciary requires, essentially, the completion of its independence so that it can fulfill its constitutional role as an authority that ensures the administration of justice, the rule of law and the protection of rights and freedoms through working to introduce a set of reforms in accordance with the international standards for judicial independence. Therefore, TDC recommends that:

- The Judiciary Supreme Council should be strengthened by providing all possible resources to ensure the proper functioning of its work and its independence.
- An organic law should be enacted to guarantee the independence of the judiciary in accordance with article 115 of the Constitution, especially the independence of the Public Prosecution from the Ministry of Justice, to make the career path of the judicial police officers under the supervision of the Public Prosecution, to review the

463 The general framework decision no.2018-11 of 29 May 2018 fixing the compensation and rehabilitation criteria for victims of human rights violations

<http://www.ivd.tn/محن-الضرر-الجبر-الإطارى-القرار/>

methods of appointing judges and all employees of courts and judicial institutions by placing it under the auspices of the Judiciary Supreme Council based on scientific and ethical competence levels.

- Justice should be reorganized in such a way as to ensure the administrative and financial independence of the different categories of courts: judicial, administrative and financial, to free the administration of justice from subordination to the executive power as one of the most important entrances that enabled the executive power during the tyranny period to interfere in the functioning of the judiciary and prevent it from guaranteeing the rule of law, to enforce it towards all and to protect rights and freedoms.
- A law criminalizing all interference in the judiciary and any disruption of the implementation of judicial decisions from any party should be enacted.
- An organic law of the Court of Auditors should be promulgated pursuant to the article 117 of the Constitution, guaranteeing the independence of this institution from the executive power; a special pole within the Court of Auditors should be established, exclusively in charge of the control public life, by examining the extent to which Parties and associations respect the law and monitoring all irregularities that may occur in revenues and expenses, especially during election campaigns. Human and material resources should be provided to achieve this purpose. Judges of the Court of Auditors should receive standard training at the High Judiciary Institute.
- An organic law guaranteeing the independence of the Administrative Court from the executive branch should be enacted according to Chapter 116 of the Constitution. In order to ensure the efficiency of the work of the court and the implementation of its rulings. This law should ensure that the competence of the suspension of execution to not be under the authority of the first president. The formation of administrative judges should be a joint training in the Judicial Institute. A professional ethics charter should be issued to ensure commitment of judges to political neutrality and avoid conflicts of interest, in addition to the establishment of a department competent within the administrative court to hear cases of abuse of authority where the Ministry of the Interior is a party.
- The litigation time limits should be reduced, while respecting fair trial guarantees by strengthening the judiciary body with human resources.
- Specialized judicial chambers in the first instance courts should be established to try crimes committed in or around the barracks by military personnel. Civilians should not be referred to military judiciary in accordance with the provisions of the constitution and the international standards. As a transitional step, the Military Justice Code should be amended to fix the substantive jurisdiction of the military courts and to make them exclusively competent in crimes committed by military

personnel within and around the barracks, in accordance with the provisions of the article 110 of the Constitution.

- Court protection should be provided through imposing appropriate penal and administrative sanctions on anyone proven to be involved in exerting pressure on judges and witnesses and keeping documents and evidence. This requires, in particular, confronting the impunity of some security unions with the required vigor in such a way as to enable the specialized penal chambers to function effectively.
- A judicial police body, under the supervision of the Ministry of the Interior, working under the authority and supervision of the presidents of courts and public prosecutors, responsible for securing courts, notifying summons, executing the judicial warrants and enforcing orders, should be created.
- The principle of immunization against dismissal should be upheld as a fundamental guarantee for the independence of judges, while respecting the competence of the Judiciary Supreme Council concerning discipline, promotion and shift in judgeships in accordance with the law and the international standards for the independence of the judge.
- A code of ethics for judges should be enacted like the charter adopted by the Court of Auditors judges and its employees and should be applied to all judicial bodies.
- Work of the judicial departments, specialized in the transitional justice, should be supported **in terms of the stability, devotion and protection of their judges**, deepening their training, supervising and motivating them in their tasks for the crucial role of the success of these departments in establishing the first judicial practices.
- The training programs of judges should be reviewed to ensure more effective fulfillment of the new role entrusted to them pursuant to the Constitution and it is necessary to keep pace with the modern technological developments in interrogation and investigation.
- Judges should be provided with a decent level of pay and work conditions that will enable them to perform their job to their best and that will immunize the independence of their decision.
- The declaration of the original or additional asset should be implemented along with the role of the Judiciary Supreme Council in taking the necessary measure in case of violation.
- A law to protect witnesses and victims in cases involving human rights violations, corruption and manipulation of State institutions should be enacted.
- The institution of the sentence enforcement judge in terms of number of staff, allocations and resources should be Strengthened
- Time limits for sentencing and time limits for appointing hearings to consider the originating motion after the suspension of execution should be set.

- The decisions and judgments issued in the penal matter should be posted on the official websites.
- The material resources it needs should be provided as it is the independent institution to which the Constitution entrusted the task of ensuring the proper functioning of the judiciary and ensuring its independence.

2. Reforms to establish a security body that protects the country and watches over the citizens' tranquility

A comprehensive reform of the security sector goes through restructuring, introducing more transparency, oversight and practices that respect rights, and establishing sound professional values based on the consistency between providing security for citizens and protecting their rights, in line with the international standards, and interrupting allegations of conflicts of security efficacy while guaranteeing public freedoms, respecting human rights with the obligation to protect constitutional institutions. Therefore, TDC recommends that:

- Various laws and statutory instruments governing the security sector should be compiled in a standard **code**, while ensuring their conformity with the Constitution and the international standards.
- **The impartiality of the General Directorate of National Security should be ensured** to be exclusively subject to the security requirements and free from any political exploitation. The appointment of its Director-General should not change with the change of the Minister and recommended by the Council in charge of legislation (by the Committee of the armed forces upon proposal of the Presidency of Government). The scope of the powers and responsibility the Director-General of National Security should be expanded so to give him the necessary authority to run the security body with independence and impartiality. Moreover, he must submit a periodic report to the relevant committee of the Chamber of Deputies.
- **The inspection bodies** depending to the different security structures should be **restructured** (Ministry of the Interior, General Directorate of Risk Prevention, Customs and others) through adopting the principles of transparency and parliamentary oversight of its organization, procedures and working methods (and submitting candidates for senior positions in the sector to be heard by a specialized parliamentary committee).
- **An intelligence agency independent** of the Ministry of the Interior should be created under the supervision of the Presidency of the Republic and submitted to parliamentary oversight, with exclusive powers in intelligence and counter-espionage. It provides its reports to the President of the Government and the President of the Republic.

- “A **police control body**”, which is independent of the security structures, should be established.
- Authorized grants for public authorities ("**black boxes**") should be submitted to the supervision of the Court of Auditors.
- The continuous **training** of security officers should be intensified; the General Directorate of Training should be made one of the most important directorates, supervised by the most efficient officials, contrary to what is currently in force, where officers and officials fallen into disfavor are appointed to supervise it.
- Security personnel should be taught about the deviations which affected the security bodies during the oppressive regime and different forms of involvement of some security departments in protecting a corrupt system and its involvement in committing serious violations against citizens and supporting this by allocating visits to places where the violations⁴⁶⁴ were committed.
- The extent to which **the Code of Conduct of the security personnel is respected** should be strictly overseen by the internal and external accountability structures of the security and external institution (constitutional bodies and parliamentary oversight). The accountability mechanisms and the internal discipline measures should be more effective by activating the general inspectorate of internal security and making it more transparent by declaring the number of files submitted, investigated or considered. Statistics on complainants should be posted to prevent the recurrence of human rights violations.
- It is necessary to work to abide by discipline and fix standards to identify persons authorized by the Ministry of the Interior to attend public and media events and restrict the intervention of representatives of security unions as provided for by laws and regulations with the necessity to impose appropriate sanctions on the offending parties.
- **The security cameras** should be widely used in all security premises where citizens are received or detained with the need to install it, in particular, at the halls used for arrest and interrogation. Recordings should be archived to be submitted before courts. With the need to restrict the control of these equipments, adopt non-porous information technology system, impose penalties for any misuse and place supervision of these equipments under the authority of the Public Prosecution.
- The draft law on definitively restraining assaults on the armed forces should be repealed as it contains provisions that violate rights and freedoms and provide some immunity for abuses and violations; this contravenes the obligation to end impunity.

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- **Field commanders** should be **protected** by a law when they refuse orders to shoot, torture or ill-treat for their knowledge of the situation in which they are. Officials who refuse to execute illegal higher instructions should be granted legal protection.
- It is necessary to determine the framework within which intelligence agencies are allowed to collect and store data and criminalize any excess. Any intelligence action shall be subject to mission order to which the Public Prosecution may refer in the event of a citizen's complaint of undue surveillance and abuse of authority.
- The private life of citizens should be respected, including **the criminalization of any violation of the inviolability of the home or the confidentiality of correspondents** and any breach of personal data not based on judicial order.
- The use of firearms against demonstrators should be prohibited and, where necessary, non-lethal means (such as water, rubber bullets...) that are both effective and at the same time guaranteeing the right to life should be used to maintain order.
- The use of force should be limited to lawful purposes for law enforcement. No exceptions or excuses shall be permitted outside the cases provided for by law; appropriate penalties for violators shall be included, provided that the use of force in all cases should proportionate to the legitimate objective to be achieved and officers should exercise restraint in the use of force
- The surveillance and information system should be dismantled; the security body should be purified from the elements involved in the violations, and the necessary material and moral incentives should be prepared to enable them to be rehabilitated in specialized centers.
- **The archives of this system should be delivered** to a special organization competent to preserve memory to be created for this purpose, while guaranteeing the right of every citizen to have access to his file under judicial supervision.
- It is necessary to work on involving the security body representatives in reconstructing the violations victims' memory.
- Security cooperation with other countries should be developed to serve the national interests on the basis of national values and options generated by the removal of the authoritarian system while rejecting any response to other purposes that may contravene international safeguards of the individual's rights.

3. Reforms to complete the democratic structure by strengthening the independent bodies

The Administrative and financial autonomy is the main pillar of the independent public bodies. In order to ensure this principle, a number of safeguards must be established that

include all stages of the establishment and accomplishment of functions by these bodies, therefore TDC recommends several reforms, including:

In relation to the nomination's process of members

- Adopting the principle of separation between the nomination body and the voting body in the selection of members
- Relying on specialists to suggest nominations, after which members are selected
- Adopting the prescribed criteria for evaluation and determination of nominations during a public session and a transparent process.
- Determining the exemption and separation criteria between the body responsible for the elections and the body responsible for the exemptions
- Setting specific mechanisms and deadlines to fill vacancies
- Activating the impartiality and independence conditions of members, so that they are far from political and partisan rivalries
- Activating the expertise, competence and integrity conditions for the members
- Scientific competence assurance and submission of the members to a psycho technical test to verify the psychological and moral balance.

In relation to the exercise of functions by the independent bodies

- Explicitly recognizing the regulating power granted to these bodies in their area of competence, the prevention of any interference in their work by any party and the criminalization of all actions aimed at disrupting their work and interfering in their functioning
- Providing all safeguards ensuring the absence of any structural or financial relation between the independent bodies and other governmental institutions.
- Preparing the budgets of the independent bodies independently and its presentation directly to the parliamentary committee in charge of finance within the Assembly of the Representatives of the People, without submitting it to the prior approval of the Ministry of Finance departments.
- The necessity of establishing partnership relations between the independent bodies and the different authorities such as the special parliamentary committees and the concerned governmental bodies.
- Adopting a participatory policy involving as many political actors as possible, including legislators and civil society with a view to build trust among all parties and these bodies.

In relation to the oversight over independent bodies

Such oversight should be effective without prejudice to the independence of bodies. The latter should abide by the principle of transparency. To achieve this approach, TDC recommends:

- Adopting a subsequent financial oversight by the Court of Auditors, which, in turn, should play a steering and advising role for the different bodies to adopt the cautious financial conduct rules and respect of the legitimacy principle to ensure the achievement of the required efficiency
- Controlling the legitimacy of the independent bodies' decisions and their abidance by the law, taking into account the particular specificity of these decisions and limitation of the possibilities of appeal by the administrative court
- Consolidating the principle of the independent bodies' oversight by the Assembly of the Representatives of the People through discussion of annual reports and holding dialogue sessions with them.
- Consolidating the principle of access to information, as a component of good governance, posting the bodies' work and decisions and the periodic reports on their activities and media outreach in order to keep with transparency and the right of citizens to obtain information to extend their power to oversight them and establish confidence in these bodies.
- Issuing a code of ethics ensuring that members avoid conflicts of interest and their commitment to political neutrality.

In relation to the promotion of independent bodies

- Removing all articles of the organic law on the common provisions between the independent constitutional bodies, which contravene the provisions of the Constitution and undermine the independence of these bodies.
- Establishing the independent constitutional bodies provided for in article 6 of the Constitution, which have not been yet created, in particular **the audiovisual communication commission, the human rights commission, the good governance and anti-corruption commission, the sustainable development and the rights of future generations' commission** and assurance of the independence of these bodies as required by the Constitution.

4. Governance reforms in institutions under the executive power

Institutional reforms require, in particular, the review of legislations and the screening of State institutions and facilities that have been found responsible for corruption and violations, updating their methods, restructuring them and rehabilitating their employees. The supervisory system is based mainly on a set of principles that aim to establish good governance, such as transparency, integrity and efficiency. In this context, TDC recommends the following:

- The abolition of the Ministry of State Property as a ministry established in 1990 by Ben Ali regime to facilitate the appropriation of State property and the distribution of its departments to the competent ministries.
- The promulgation of a law guaranteeing the independence of the institution of the State general counsel and making it a neutral institution that ensures the interests of the State far from political rivalries.
- The promulgation of a law regulating the official printing press, in line with the provisions of the Constitution and setting limits for its role in publishing and documenting functions to the legal and regulatory memory of Tunisia. Any oversight role of the legal department of the Presidency of the Government on this institution shall also be abolished; and representatives of the independent bodies, especially the access to information committee, shall be introduced in the composition of its board of directors.
- The promulgation of an organic law that reorganizes the departments of the Presidency of the Government, in accordance with the provisions of the Constitution.
- Updating the legal and procedural system of the public funds management.
- All State institutions must commit to the respect of the law on access to information through structural (the creation of a cell on access to information and a full-time officer) and political (advance announcement of the policies to be implemented and the results to be achieved, as well as the publication of all necessary documents to be followed including the assessment and accounting reports) reforms.
- The enhancement of IT systems used in all areas of administrative and technical management while ensuring the overlap between all information technology systems in the different public structures.
- The implementation of coordination and follow-up structures in all public structures and assurance of the periodicity of these meetings to follow up the completion of projects and programs.
- The activation of the procurement accomplishment in a consolidated manner and the creation of procurement centers, which is a procedure stipulated in the public procurement organization arrangements. This mechanism ensures several advantages, including quantitative aspects (saving costs resulting from the volume of procurements), qualitative aspects (the increase of efficiency, enhancement of specialization and knowledge, reduction of corruption risks and achievement of public policy objectives: saving energy, sustainable development)
- Strengthening the income control (such as expenditure control) to ensure proper implementation
- The adoption of flexible working hours for some categories and specialties of public officials with the introduction of duty periods before and after the daily

administrative working hours (for example from 6 am to 8 pm) and duty periods during the weekly rest days (Saturday and Sunday).

- The acceleration of human resources allocation between structures and institutions, in a way that provides solutions to the phenomenon of misallocation and employment of public officials in public institutions and establishments.
- Strengthening all forms of mobility of public officials, including partnership with the private sector.
- Undertaking deep review of the legal framework related to the civil service and public establishments, and trying to minimize the gap between them and the different ministries and sectors based on scientific and carefully studies data and using extensive consultations with the relevant parties involved.
- The reconstruction of staff remunerations based on the criteria of productivity, merit and efficiency and not seniority, motivation of officials by reference to their achievement of objectives and relying on a serious evaluation mechanism.
- Seeking to activate the program contract mechanism between public institutions and establishments and the supervision authority and promotion of the culture based on objectives.
- The enhancement of the positive experience of compiled administrative services (eg MSA).

5. Reforms related to the oversight bodies

TDC recommends that the functional independence of the oversight structures shall be enhanced through:

- Establishing a standard platform that combines all oversight reports of all oversight bodies and serves as a data bank available in the field of anti-corruption, in order to facilitate access to information for the different concerned parties, to facilitate the exchange of data between the different oversight structures and to ensure that there is no conflict in dealing with the same file by more than one body in order to establish the principle of efficiency and to uphold the transparency concept.
- Establishing the risk map, by compiling the oversight reports in an information technology system and processing its data, as to provide risk data in each field of public management and each public structure to facilitate the programming of oversight tasks by focusing it on high risk fields.
- Establishing boards of the oversight bodies which ensure sufficient consistency in their management
- Assigning heads of the oversight structures for limited terms of office to ensure their independence in decision-making

- Enabling the oversight structures when inspecting violations that rise to the level of crime to deal directly with the parties concerned, including the judiciary, without having to wait for the approval of the heads of structures or ministers to be organized to do so to avoid abuses.
- Granting the heads of the oversight structures powers to issue assignments orders to carry out an oversight mission without waiting for the Minister of Supervision.
- Providing the necessary incentives and protection for the controllers through ensuring a continuous career path without direct or indirect disruption
- Establishing common standards in conformity with the international standards for the work of the oversight structures, selecting their members and their submission to a psycho technical test, assessing of the structures performance and excluding any conflict of interests.
- Completing all pillars of the management approach, according to the objectives in the field of public finance, and the competent structures have to contribute to strengthening the role of accompanying or parallel oversight of a preventive nature, developing their performance and intervention formulas and expanding the scope of oversight bodies to include also oversight the ability to perform reports.
- Enabling the different oversight structures to have substantial functional independence and protection in carrying out their oversight role, updating the legal framework regulating these bodies using a democratic style of governance that guarantees collective decision, as well as adopting a number of objective criteria in appointing the heads of oversight bodies.
- Adopting a code of conduct for all public controllers that establishes integrity, neutrality and independence.
- Installing a sound disciplinary apparatus for each oversight body to intervene when inspecting abuses.

6. Reforms related to the right to life and the right to liberty and security

The phenomenon of torture is a rooted practice in Tunisian history, as it affected tens of thousands of victims of different generations and social groups, whether activists or citizens. It has been a systematic practice and a “**governance mechanism**” for decades, which resulted in a sense of injustice, oppression and hostility towards various State institutions, especially the security services. The State should take all legislative and regulatory measures to restore confidence in the State institutions by ensuring the non-recurrence of human rights violations.

7. Prevention of torture or cruel, inhuman or degrading treatment

In its recommendation to the State, TDC asserts that it takes prompt and effective measures to prevent acts of torture and ill-treatment throughout the country, whatever the reason, and that it also takes firm steps to end the impunity of perpetrators and the State should:

- Extend the scope of criminalization to include all material and moral acts that can be legally adapted as acts and practices that constitute torture; extend the list of those under proceedings pursuant to the international law and the international treaties ratified by the Republic of Tunisia.
- Explicitly provide, in the Penal Code, cases that are considered cruel, inhuman or degrading treatment, and establish a punishment commensurate with each situation.
- Initiate training of officials to enforce law, doctors, public officials, lawyers and anyone involved in the prohibition of torture and cruel, inhuman or degrading treatment or punishment.
- Declare publicly that it initiates investigations and prosecutions against direct perpetrators of acts of torture and those responsible for ordering in all cases, and formally warn its employees that anyone who commits acts of torture, or accepts the practice of torture, exposes himself to personal accountability before the law and to appropriate criminal prosecution and penalties.
- Ensure that all complaints of torture and ill-treatment by public officials, including police and prison staff, are promptly, effectively and impartially investigated by an independent administrative mechanism in which there is no institutional or hierarchical link between investigators and perpetrators, while assuring the principle of presumption of innocence, punishing persons found guilty, and providing victims with compensation (while respecting the competence of the National Authority for the Prevention of Torture).
- Ensure that all persons under investigation for acts of torture are stopped from carrying out their work without prejudice to their financial rights until the issuance of a judgment.
- Bring to justice those who are suspected of committing acts of torture and ill-treatment and provide the necessary legal and procedural protections and safeguards to the judges to whom cases are referred so that they can render appropriate judgments free from material and moral pressure from any party.
- Ensure that the investigative works of the first instance examining magistrate in all crimes are recorded by video and audio while taking measures which protect personal data and ensure the protection of witnesses and victims.

- Ensure that defendants and their lawyers have access to video and audio recordings of interrogations, at no cost to the defendant, and that such recordings can be used as evidence in court.
- Ensure that victims of torture have an enforceable right to fair and adequate compensation.
- Criminalize the practice of enforced disappearance.
- Implement and respect all human rights treaties; provide the Tunisian State with all its international obligations, in particular to follow up the concluding observations of international bodies such as the Committee against Torture and all UN human rights bodies and mechanisms.
- Work to amend the Penal Code so to ensure that article 101 bis of the Penal Code is in conformity with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; amend the article 101^{ter} of the Penal Code to ensure that any act committed by a public servant or his equivalent, which is a participation in an act of torture, does not remains unpunished.

8. Forms of violence and sexual assault, including rape

The State has to:

- Develop a comprehensive program to address the phenomenon of violence, including sexual violence and rape, by inmates, prison staff and security personnel in all detention facilities, especially in women's prisons.
- Train law enforcement officers in the field of respecting human rights and of republican security values.
- Adopt, in its legislation, a definition of sexual violence crimes that includes the elements provided for in article 8 (2) (e) of the Rome Statute of the International Criminal Court and to consider that its occurrence constitutes conditions for punishment aggravation
- Explicitly state that it is compulsory to bring all allegations of sexual violence, in particular rape, to an independent doctor as soon as possible and before an investigation is initiated and it is also possible to conduct psychological examinations to determine the consequences of the complainant's mental state and the doctor must, in any case, draw up the relevant report as soon as possible after the incident.
- Coordinate in the field of judicial monitoring of detention conditions between the competent authorities, ensure thorough investigations in all allegations of sexual assault in detention centers, punish perpetrators and provide medical and psychological rehabilitation to victims and activate the witness protection program.

9. Detention and deprivation of liberty

The State has to:

- Ensure that solitary confinement remains an exceptional measure, in cases predetermined by law and limited in time.
- Continue to intensify its efforts to make conditions in places of detention in conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).
- Continue to reduce overcrowding in all detention places, including through the renovation and construction of facilities in accordance with international standards, implement the amended laws that provide alternatives to detention in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).
- Ensure that detainees are provided with adequate physical and health conditions, including bathing facilities and latrines, sufficient high-quality food, adequate space for each prisoner, natural and artificial lighting, adequate ventilation, health care, outdoor activities, and family visits without unfair restrictions.
- Separate healthy prisoners from those suffering from infectious diseases in all detention facilities, provide specialized medical care in the hospital and other specialized medical facilities for prisoners suffering from diseases and provide them with adequate ventilation devices.
- Amend laws to allow effective access for judicial oversight of all places of detention and enable independent monitoring bodies to visit all places of detention regularly and unpredictably and to hold private meetings with detainees.
- Strengthen the role of pre-trial judicial oversight as an alternative to pre-trial detention; to give the judge the role of criminal mediation in some misdemeanors and crimes that are not a threat to public security.
- Adopt measures to suspend the execution of prison sentences with probation by the judge after consulting a psychologist and a sociologist.
- Revise the organic law governing prisons, including the mechanisms to deal with detainees' complaints, expand the list of persons entitled to visit detainees and ensure that prisoners have access to a lawyer without prior authorization.
- Activate and expand the scope of the labor penalty for the public interest.
- Adopt the financial penalties, house arrest or electronic surveillance if the act does not constitute a threat to society or public security.
- Abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.

- Repeal the article 230 of the penal code and all legislative or regulatory provisions that affect individual freedoms and concern the citizen private life.
- Adopt the principle of gradual enforcement of medium and long-term sentences using the controlled temporary leave or gradual restricted release in order to facilitate the reintegration of the prisoner in normal life and his adaptation to the external environment.
- Adopt a general philosophy in the field of rehabilitation and social reintegration, which should be translated through a range of criminal measures allowing avoiding and minimizing detention, either before trial, during sentencing or during its execution.
- Formulate a comprehensive and coherent strategy for the inclusion of alternative sanctions and take measures aiming at expanding the scope of care and rehabilitation centers so to include the most vulnerable groups which are subject to alternative sanctions
- Use all appropriate means, in particular health care, education, vocational guidance and training, social assistance methods, physical sports and personal development, depending on the individual needs of each prisoner, taking into account their social and criminal characteristics, their physical and mental abilities and talents, and the term of imprisonment.
- Take into account the rehabilitation and reintegration programs for female prisoners and their future after their release.
- Provide, mainly in women's prison, medical visit and medical equipment necessary to provide pre- and post-natal care and treatment to the prisoner and her baby.
- Increase the legal protection for patients, health personnel and medical escorts working in prison institutions and make them non-administratively affiliated to prison institutions so that they can play their role without restrictions.
- Provide legal protection of medical ethics and professional confidentiality in prison institutions.
- Take effective measures against violations of the rules that protect the provision of health care.
- Strengthen the capacity of the health system within prisons, provide access to health care and provide neutral, effective and safer care.
- Provide prisoners with a document containing the necessary information about their rights, particularly with regard to the right to health.
- Revise the Penal Code, as to ensure its conformity with the requirements of the Tunisian Constitution and the international treaties through identifying exceptions in such a way that there is no place for wide interpretation in the reference.

- Criminalize any procedure for submitting a citizen to administrative control and any form of quarantine for travel without judicial order.
- Punish any violation of human rights through act, encouragement, justification or incitement and criminalize denial of past violations through act, encouragement or justification.

III. Civil, political, economic and social rights reforms

Article 49 of the Constitution asserts the protection of rights and freedoms. However, the implementation of these provisions still requires measures to make them effective. Therefore, TDC recommends:

1. Civil and political rights recovery

- The settlement of the legal status of persons arrested and / or tried or convicted on the basis of insufficient evidence or judicial error and who have been pardoned or granted the right to pardon or who have been released upon the expiry of the sentence.
- The suspension of all administrative measures restricting access to identity documents and passports without relevant judicial order.

2. Freedom of association and establishment of political parties

TDC recommends the enactment of an organic law on Associations that respects the following criteria:

- Adopting the declaration system upon establishment. In fact, the establishment of the association is a legal fact decided by the persons wishing to establish it, and the State intervenes only to register the new association and save its file through the Secretary General of the Government. In case of violation of some establishment formalities, the executive power shall only demand to rectify the breach within reasonable time limit.
- Ensuring that the general management of the associations or the entity entrusted with receiving the establishment report does not interfere in setting the objectives of the associations and changing their statutes.
- Explicitly identifying the role of the official printing press when publicizing associations and not exercising discretion in rejecting publicity through expressly stipulating the obligation of publicity when the representative of the association submits an announcement in the Tunisian official printing press stating the name, subject matter, purpose and headquarters of the association, accompanied by a copy

from the written notice by a bailiff or by a written copy of the letter, proving the date of dispatch.

- Providing associations with public funding under objective conditions that ensure equality between them.

TDC recommends the enactment of an organic law on political parties that respects the following criteria:

- Ensuring the freedom of establishment of political parties without restriction provided that the party's activities are not inconsistent with the requirements of the Constitution.
- Explicitly stipulating that parties must refuse to use violence in any form. Parties shall be forbidden to form militias or resort to hate speech as a tool for political action. Attempts to disrupt the activities and demonstrations of rival parties shall be also punished.
- The dissolution or refusal of registration of a party shall be only through the judiciary with safeguards of fair trial.
- Party funding shall respect the accountability and transparency principles. A legal ceiling for private donations - a ceiling for electoral expenses shall be set.
- Political parties, with respect to public funding, shall fulfill the minimum requirements. These terms shall be reasonable and non-discriminatory.
- It is forbidden to illicitly use the public resources and receive financial assistance or other privileges and benefits in parallel ways (such as mock development projects, study offices), especially those received from institutions or bodies whose members are responsible for managing them.
- The explicit provision in the law that no party may receive any assistance secretly or fraudulently. Whoever violates the measures shall be punished by depriving it from running for national, regional and local posts for varying periods according to the seriousness of the breach, in addition to the possible consequent criminal dimensions.
- Each political party shall have in its statute mechanisms to oversight its accounts at the national level and supervise its accounts at the regional and local levels. It should also be submitted for audit by the competent State bodies.

3. Revision of freedom restricting laws

It is necessary to promulgate an organic law that replaces the decree no. 1978-50 dated 26 January 1978, governing the **emergency state** in accordance with the constitutional principles and the international standards and ensuring that any restrictive measure of rights and freedoms should be justified by a real necessity and based on legal basis and that anyone subject to such a measure can exercise his right to object without hindrance.

The decree-law no. 1969-4 dated 24 January 1969 governing the public meetings, processions, defiles, demonstrations and crowds should be amended.

The organic law to combat terrorism and money laundering should be amended in line with the constitution and the international standards. This requires:

- The careful checking of the terrorist acts definition in order to preclude any interpretation that would criminalize mere expression of opinion or exercise the legitimate right to demonstrate, protest and participate in public life.
- Limitation of retention periods to 48 hours renewable once.
- The abolishment of restriction on the right of the defendants to prepare their defense provided for by the articles 68 and 70.
- The regulation of the resort to private hearings.

4. Protection of the rights of minorities and the fight against all forms of racial discrimination⁴⁶⁵

The right to a distinct identity

TDC recommends that Tunisian Amazighs, Jews, Christians and other minorities be entitled to participate fully in political, cultural, religious, social and economic life provided that they should have an active role at the national and regional levels in decisions concerning them.

The right to practice and develop culture, language, religion, customs and traditions

TDC recommends that the freedom of conscience and freedom of belief, provided for by the Constitution regarding the religious minorities, shall be strengthened through taking the necessary legislative and administrative measures so that they can freely practice their religious rites and engage minority religious leaders in all awareness-raising activities.

Fighting all forms of racial discrimination

It is necessary to combat and prevent hate speech and ideas or theories of superiority based on racial superiority racial hatred.

Efforts should be made to reduce the social stigma that black or dark-skinned people are experiencing and help them reach decision-making positions locally and nationally.

Any behavior or statement that undermines the rights of members of the Jewish minority must be addressed under the pretext of retribution from Israeli aggression.

5. Addressing discrimination against women

- To amend all legal provisions establishing discrimination against women.

⁴⁶⁵ See details in the section on compensation

- To amend the cultural and social patterns of behavior of both men and women to achieve the elimination of traditional customs and all practices based on stereotypical roles of men and women.
- To take targeted measures in favor of the most disadvantaged women in the labor market, especially those working in rural areas.
- To combat occupational segregation, develop tools to evaluate jobs and eliminate all injustice or discrimination against women.
- To improve the representation of women in decision-making posts in public bodies and continue efforts to achieve gender balanced representation in economic institutions using tools, including special measures.
- To raise awareness and train the judicial body officials and members of the security forces on all forms of violence against women and promote awareness campaigns targeting the general public.
- To establish health centers and institutions with all specialties related to sexual and reproductive health and psychologists provided that these institutions should bear names of women victims of human rights violations and should be constructed mainly in less favored areas in terms of health services.
- To give priority to poor households headed by women in social security programs.
- To establish training and integration centers for women, encourage women to launch projects by simplifying the procedures for obtaining loans and extending payment terms.

6. Addressing discrimination against persons with special needs

- To revise and redraft the definition of disability referring to the reference Convention.
- To include, in our national law, a definition of reasonable accommodation and ensure that such arrangements are applied in accordance with the article 2 of the Convention, and in particular ensure that the law expressly recognizes that the denial of reasonable accommodation is a form of discrimination based on disability.
- To include in our anti-discrimination legal texts an explicit prohibition of discrimination based on disability, and ensure that this prohibition is included in all laws, especially laws governing elections, employment, education and health.
- To ascertain that institutions providing care for children with disabilities have sufficient human resources and personnel who went on special training that meet appropriate standards, that they are subject to regular monitoring and evaluation and that grievance procedures accessible to children with disabilities are developed.
- To review laws that authorize the agency and guardianship and take measures to develop laws and policies replacing the agency/guardianship system in decision-

making because of the degradation of persons with disabilities as fully-existing people with a system called assisted decision-making.

7. Addressing discrimination against children

- To create the post of the “Probation Officer” provided for in the Child Protection Code, review and strengthen the procedures and methodology of legal mediation to achieve the desired educational goal.
- To create an independent and effective mechanism to receive and deal with children's complaints within the juvenile justice system.
- To consolidate the use of deprivation of liberty as a last resort and expand the scope of alternative penalties such as controlled release and civil service.
- At the security centers, the National Guard and all juvenile detention facilities, human resources must include qualified psychologists to deal with children.
- To establish a control system that promotes law enforcement and enshrines the effective protection of children's rights in detention centers.
- To provide specialized mental health and social service institutions to be in charge of children at all levels. It can also play a role of control of the detention and correctional centers and have the authority to intervene with the concerned authorities in the event of a grave breach of the stipulated laws and which are a danger to the child.
- To work to protect the child during the investigation and trial, respect the privacy of this category, listen to the child once in the presence of a psychologist with audiovisual recording so as to refer to the latter where necessary so that the child will not be heard many times.
- To develop juvenile detention centers in such a way that rehabilitation and reintegration are the pillars of their existence.
- To punish those responsible for juvenile detention with adults, either in detention centers or in prison institutions.
- To work to reduce the imbalance regarding children's access to services and its availability in different regions, and the disparity between urban and rural areas. These imbalance aspects are reflected in a set of demographic and social indicators. (Example: school dropout and attendance rates, success rates in high school diploma exam ...).
- To take all the necessary measures to ensure that the principle of “the best interest of the child” is adequately incorporated into all legal provisions and is practically applied in judicial and administrative decisions and in programs, projects and services affecting children.

- To integrate and practically apply the principle of “respect for the views of the child and facilitate its implementation” within the family, at school and in society, as well as in institutions and within administrative and judicial procedures.
- To create an enforcement mechanism and procedures consistent with the articles 19 and 39 of the Convention on the Rights of the Child, especially in the field of prevention, victims identification, reporting, referral, investigation, treatment, social reintegration and follow-up.

8. Addressing discrimination against the elderly

- To enact a special legal system for the protection of the elderly in a manner that ensures and promotes human dignity, guarantees equity between different age groups, and provides older persons with access to social and legal services to enhance their independence, protection and care.
- To develop comprehensive strategies to face the increase in the number of older persons with mental illness.
- To create an elderly protection officer post in the regions. He shall receive applications and complaints, and work to find solutions for those in need, and keep the data record on the older persons in his region, including data and demographic, health, social, economic and services information on candidates and users of services and protection.
- To make the retirement age flexible while finding a system allowing a gradual transition from working life to self-employment.
- To enable older persons to benefit, in appropriate levels, from institutional care that provides them with protection, rehabilitation and social and mental stimulation in a safe human environment.
- To change the law governing the residential premises to prevent the non-renewal of the lease agreement or the order to leave against an older person over 70 years for not paying the rent as well as for private and public shelters.
- To revise the Penal Code to consider the age of the victim of physical or sexual abuse as sufficient reason to justify the preventive or provisional suspension of the offender also, to consider the age of the victim as one of the criteria for assessing the risk and the circumstances of the aggravation of the punishment, and to double the penalty if the abuse is committed by the officials entrusted with the enforcement of the law.
- To stipulate explicitly the obligation to report ill-treatment of a person in a vulnerable situation including the elderly. It is necessary also to stipulate the obligation to report for medical and social welfare officers, prison officers and State representatives without justifying the obligation to reserve and maintain the professional secrecy.
- To train caregivers and health professionals in the field of geriatrics and gerontology and extend the educational programs on the health of the older persons to

professionals in the social services sector, from those working in formal and informal institutions providing such services.

- To raise the amount of pensions entrusted to the veterans in a manner consistent with their situation or the situation of their assignees and commensurate with the requirements of the economic and social situation so as to ensure them a minimum of decent living. This can be a kind of rehabilitation for them and recognition of their struggle, which establishes the respect between generations and the culture of valuing the role of adults in general within the community.

9. Addressing discrimination against the youth

- Working to involve young persons in all matters related to them through involving them at all stages when posing problems, conceptualizing and implementing solutions.
- Establishing the participation values among young persons, through educational institutions, media and civil society.
- Encouraging political education and leadership development programs among young persons so as to develop their knowledge of political systems and the rights and duties of citizens.
- Encouraging political parties to allow young persons to participate in leadership positions⁴⁶⁶.
- Supporting the values of citizenship among young persons, develop the spirit of loyalty to the homeland and preserve public property by all possible means, especially through cultural works
- Eliminating the challenge for young persons to access funding, so that they can succeed in establishing projects, through developing the current banking system, especially the Tunisian Solidarity Bank and the small and medium-sized enterprises funding bank (BFPME).
- Adopting the social and solidarity economy approach through accelerating the development of a legal framework that allows associations and any form of civil organization to practice a commercial or agricultural activity, provided that its area of activity shall be strengthening the private sector, its competitiveness and reducing the burden on the public sector⁴⁶⁷.
- The State shall provide young unemployed or graduates who are looking for job with health coverage until they have access to work enabling them to receive social coverage for a reasonable period not exceeding five years.

⁴⁶⁶ See recommendations related to the Parties Law

⁴⁶⁷ See the proposal of the social and solidarity economy

IV. Reforms related to environment protection and addressing environmental pollution

TDC recommends that an Independent Constitutional Commission, in charge of **sustainable development and the rights of future generations**, should be established as soon as possible and it is necessary to ensure that the project “Agenda 21” for the protection of the environment and the achievement of sustainable development is effectively implemented. It also recommends the following:

- Accelerating the enactment of a legal code for environmental protection that includes all texts and provisions relating to the environment and updating it in accordance with the natural and economic circumstances.
- Revising the orders and the applicable texts of the provisions pertaining to hazardous, unhealthy and disturbing establishments contained in Title VI of the Labor Code by:
 - Compensating the inhabitants and restoring houses affected by environmental pollution.
 - Imposing strict and disciplinary penalties on institutions that violate environmental protection rules.
 - Strengthening the environmental control mechanism for all factories polluting the environment through the appointment of a specialist in environmental safety to control the institution's respect for the amount of permitted gas discharge.
 - Conducting serious studies to address the environmental disasters caused by chemical plants.
 - Conducting studies on diseases caused by environmental pollution.
 - Realizing an afforestation program that surrounds the factories of the chemical complex and large areas of the mining basin cities in order to reduce the problem of air and water pollution.

V. Symbolic compensation and memory preservation recommendations

1. Victim areas compensation

TDC recommends that marginalization should be resisted as it is a systematic process that prevents a group from enjoying the various rights, opportunities and resources normally available to members of a community and initiatives to encourage full participation in the economic, social, political and cultural life of the society in which they lived should be taken⁴⁶⁸.

⁴⁶⁸ See details in the compensation section

2. Turning the original sites of violations into centers for memory preservation and victims commemoration

Among these sites, we can mention:

- Registering the former Civil Prison of 9 avril as an historic landmark due to its historical, humanitarian and cognitive importance
- Registering the sites of Sabbat Edhalem and the Mausoleum of Sidi Aissa, in Beni Khalled, by the National Heritage Institute as a landmark for gross human rights violations
- Continuing to work on collecting and identifying the remains of martyrs, which are still spread all over the mountains of Agri, Bouhlal and adjacent areas, constructing a cemetery for the figures of resistance, organizing an official and decent funeral in a large memorial procession dedicated to them, including their names in the resistance register, creating a memorial yard, and establishing a museum and a memorial bearing their names, in recognition of their sacrifices to gain national independence and to preserve the country's pride and dignity. TDC also calls on the French State to apologize to the Tunisian people for the violations committed against them during the colonial era.
- Allocating a sufficient budget for the restoration and rehabilitation of the Palais Des Princesses or Palais Mourad Bey in Manouba, under the supervision of the National Heritage Institute, turning it into a center to preserve the national memory of women victims of violations and provide an entrance for it to become accessible to all citizens.
- Registering the Civil Prison of Ennadhour in, Bizerte, as a site for gross violations of human rights and turning part of the corridor leading to the basement and the section to the right of the corridor and the basement into a museum to preserve memory.
- Turning the symbolic sites of violations into sites to preserve the national memory by making it a site for visit and introducing the hidden national history
- Working to continue the research and investigation to uncover the official and unofficial sites of gross violations of human rights, especially the farm of “Naassan”, “Mabrouka 1”, “Mabrouka 2” and other secret prisons, which TDC has not been able to locate and which have been for decades secret sites of torture and turn them into national memory sites.

3. The creation of symbolic sites

a. Memorials and naming streets

- To erect a national memorial commemorating victims of serious human rights violations.
- To establish memorials and sculptures in open locations such as streets, squares and institutions that have witnessed grave human rights violations.
- To establish commemorative signs near the detention centers and the central, regional and local security services, which are still operational and witnessed the death of victims of torture.
- To name streets, roads, squares, parks, educational and cultural institutions after the victims who died or were missing due to serious human rights violations, in order to avoid all references to the commemoration of the authoritarian rule by the dominant designations in the public space, such as the streets of Habib Bourguiba in all cities of Tunisia and the proper commemoration of his name.
- To review the names of many streets in order to ensure that they are linked to collective memory, namely the deletion of names that have been associated with grave human rights violations, such as Taieb Mhiri and others who have been involved in violations, or that represent an affront to the dignity of the people, such as Charles de Gaulle Street in the Capital and other Tunisian cities, whose name was associated with the killing of thousands of Martyrs in the Battle of Bizerte. TDC recommends in this regard to be called instead “The evacuation” or “Martyrs of Bizerte”.
- To call on the French State to begin closing the French military cemetery in Gammarth and retrieve its location to allocate it to revive the national memory.
- To create an independent national structure to review the nominations and approve other nominations that commemorate the national memory instead of the Toponymy National Committee created pursuant to the decree no. 1299 of 26 February 2013.
- To revise the name of the memorial in Barraket Essahel.

b. Physical museums

A big national museum in the Capital called the "**National Dignity Museum**", in memory of the grave violations of human rights, should be established. It shall include all the information related to the violations found in Tunisia between 1955 and 2013, a register of victims, photos, videos, films, documents, public testimonies of the victims, all the effects related to the violations, the map of memory museums in different regions and the map of the different memorials. It shall value all the data and conclusions reached by TDC and the different publications and audiovisual products.

- To include the results of its final report regarding the events of the National Movement, the liberation struggles and the list of martyrs, resistance fighters who have been checked and not previously included in the history of the National Movement at the Museum of the Martyrs of the Homeland in Sijoumi.

- To create the Tunisian-Algerian Shared Memories Museum and include the names of Tunisian resistance fighters who participated in the Algerian liberation struggles including but not limited to, Taieb Zalleg and Tahar Boukhari.
- To create the Tunisian-Palestinian Shared Memories Museum and include the names of Tunisian resistance fighters who were involved in the Palestinian resistance.
- The need to pay attention to commemorate women victims in an equal manner with men.

4. Impartial dealing with history

- To break with the official or “National” narratives of history, ensure much room to continuous modernization that reflects discoveries and faithfully communicates the complexity of the Tunisian process and its contexts when writing contemporary history, resist the policy of exploitation, ideology and marginalization in dealing with the memory and the identity.
- To call for the establishment of a laboratory whose task is to lay down general principles on the multiple visions of Tunisia's contemporary history.
- To launch a broad national dialogue on the review of the educational system that takes into account the human rights contents
- To activate the decree no. 2011-97 of 24 October 2011, mainly the article 5, in order to include a subject on the 17 December 2010 - 14 January 2011 “Revolution of Freedom and Dignity” in the history books to appreciate the sacrifices of its martyrs, to establish the values of freedom, dignity and social justice and to consolidate the principles of democracy for which Tunisians fought.
- To revise the legal texts relating to the functions of the Higher Institute of Contemporary History of Tunisia in line with the archival legacy of the national memory and draw upon it to write the history of human rights violations between 1955 and 2013 with impartiality, credibility and independence away from political exploitation.
- To value the role of Tunisian women in national history.

5. The promulgation of a law on the archives of violations and the establishment of a memory preservation institution

This law should also refer to the modes of access and their time limits, the mode of access to documents and types of documents that can be accessed, the rights of victims to access to archives or files of interest to them and their right to modify the data contained in documents issued by official authorities at the time of tyranny from 1955 to 2013.

This law should also indicate that all archives relating to human rights violations during the period dealt with by the Truth and Dignity Commission should be carried over to the section dedicated to the archives of violations in the National Archives, while ensuring its physical integrity and the unity of its place of preservation. It should indicate also measures to protect witnesses and victims, to protect personal data, the dignity, the well-being and the benefit of victims when accessing to this archive. It should stipulate the authorization of victims or their families to access to their confidential statements or to use their own data and the authorization to use or publicize their images or voices. This section should also contain penal provisions in case of violations of its provisions relating to destruction, forgery, fraud, embezzlement, negative affection of personal data, dignity or interest of victims, or exposing witnesses and victims to the risk of assault through violation of access requirements.

6. The creation of an institution specialized in national memory preservation

TDC recommends the creation of an institution to preserve the national memory of human rights violations, which will set and define the national policy in memory preservation and commemorate the victims. It is an institution with legal status and financial and administrative independence and is headquartered in Tunis and can open branches within the territory of the Republic.

It also recommends that prison memos and literature be included in literary books taught at high schools and at the faculties of arts.

7. Archives' retrieval from abroad⁴⁶⁹

The Truth and Dignity Commission recommends that the Tunisian competent authorities open negotiations regarding the recovery of historical assets withheld from national and international public opinion and related to the history of Tunisia, including the events of Bizerte and the subsoil assets, most of which are located in France. It can draw on the archive map prepared by TDC during the research and investigation about the historical heritage of Tunisia after the independence.

VI. Recommendations to combat corruption and abuse of public funds

It is known that corruption consists of the transfer or the reduction of the income balance sheet which impacts on the financial resources of the State the fact that may causes the dependence of the future generations. Corruption provokes the bankruptcy of the State and

⁴⁶⁹ See detailed appendix

its inability to fulfill its obligations and confiscate its economic sovereignty. Financial corruption is evident, too, in the quest of material benefits whether directly or indirectly following an illegitimate pursuit. After explaining and detailing the mechanisms used for this purpose, TDC made the following recommendations:

1. In the real estate field

- **In order to reduce** the abuse of authority or occupation and the personal exploitation of available information and data to achieve a private interest, TDC recommends **modifications on the real estate-related legislative texts** by stipulating that long-term **urban development** plans should be prepared and **published** within reasonable period of time (at least 50 years).
- **In order to limit the abuse of authority**, especially in terms of changing the nature of real estate, TDC recommends that amendments and changes to the urban development plans and land nature should take effect **only after a reasonable period of its approval** (at least three years).
- **In order to reduce** the use of the mechanism of expropriation of the public interest for personal purposes, TDC recommends **updating the legislative texts** in the expropriation section to bind the administration to return the expropriated property to its original owners if the project is not completed within a reasonable period (five years at most).
- In order to reduce the corruption in real estate matters and the risks of money laundering and tax evasion, TDC recommends updating the personal income tax and corporate tax code to subject the real estate added value of **the tax to 35%** and calculating it without updating by **10%** for each ownership year and imposing justification of the sources of financing the deduced expenses.
- **In order to reduce** the spread of corruption, it is necessary **to break with the policy of impunity** and establish accountability through the adoption of legislations and procedures establishing the criminal responsibility of those in charge of the management of public real estate institutions (the Real Estate Housing Agency, the Industrial Real Estate Agency and the Tourism Real Estate Agency) for each violation of public real estate procedures and policy.
- According to the files received by TDC to obtain real estate concessions without real obligation and within the framework of further **rationalization of the exploitation of national real estate inventory**, TDC recommends the provision of practical and controllable requirements in each real estate concession (sale in symbolic dinar, priority projects, economic lots) and the establishment of effective oversight and follow-up mechanisms.

2. In the banking and financial field

- In order to reduce the phenomenon of obtaining **bank financing** in the absence of the necessary requirements, to early realize the economic difficulties and to rationalize the cost of bank financing, TDC recommends the generalization of the obligatory risk assessment for the continuation of activity for each application for a loan exceeding a certain threshold (three million dinars) or which is of a certain size or total bank obligations. An assessment agency (*scoring*) shall submit a report in this regard.
- Since corruption requires blackout to be prevailed, TDC recommends the **establishment of a climate of transparency** in banking transactions, encouraging civil society involvement in the oversight and the amendment. TDC recommends also the passage of legislation necessary for the publication of data on bank financing for each natural or legal entity or a group of companies whenever the value of bank commitments exceeds **30 million dinars**.
- In order to reduce the phenomenon of inflation induced by the public finance, TDC recommends that the possibility of financing the purchase of treasury bonds by banks with loans from the Central Bank be canceled.
- **In order to reduce** the prevalence of corruption in bank lending and recovery and to activate the civil society oversight, TDC recommends that the payment legislative and procedural measures be taken to **publish a comprehensive list** of debts written off or classified by banks and mention the beneficiaries and the framework in which they were made.
- By examining and analyzing the files received, TDC concluded that there was an overlap in the functions of the Central Bank. Accordingly, TDC recommends preventing the Central Bank from interfering in the appointment of officials in banks and limiting its role to amendment and oversight.
- TDC realized that there is a conflict of interest whenever officials move from oversight institutions to management positions in banking institutions due to the lack of independence of the oversight structures. Accordingly, TDC recommends the passage of the administrative regulations necessary to deprive the Central Bank employees from joining banks within 5 years from leaving their original duty stations.
- According to the files it studied, TDC realized the weak oversight over financial transactions and the spread of the phenomenon of data leakage and exploitation in the capital market. On this basis, TDC recommends:
 - Obliging the Capital Market Authority and the Tunisian Stock Exchange to regulate a set of indicators able to detect data leakage and exploitation in the capital market.
 - The establishment of an independent structure to control the trading of shares progress on the capital market and the assurance of absence of violations.

- Developing a strict penal system regarding the leakage of strategic excellent confidential information “Délit d’initié” (insider trading) and enforce the application of the penalty of confiscation of property against every person found to be and by virtue of his position leaking this type of information.
 - Creating a Central headquarters for confidential and strategic information and oblige employees to perform legal oaths while undertaking to comply with a honor code
 - Adopting the disclosure of assets mechanism for all employees in this central headquarters
- Reviewing the legal framework of the second market and establish requirements and criteria for entry into this market
 - Preventing contribution to the project « *cotisation sur idée de projet* »
 - The company wishing to be listed in the second market should publish its full financial situation for the last three years with a statement of the total bank loans obtained and the value of its guarantees.
 - Reviewing the mechanisms and requirements of reduction and increase in the company's capital.
 - Developing an accurate and strict legal framework regarding the company's shares buyback (*le rachat par la société de ses propres actions*)
 - The necessity of activating the role of the Financial Analysis Committee in the Central Bank by expanding its powers, strengthening its oversight role and establishing its independence from the Central Bank.
 - Activating the role of the Central Bank in controlling external currency flows.
 - Establishing a unit within the Financial Analysis Committee in charge of investigating, researching and collecting data regarding the companies registered in the tax committees and strengthening coordination with the other countries to identify the scope of activities of these companies.

3. The protection of natural resources

- The Truth and Dignity Commission recommends that necessary measures be taken and that legislation that can prevent public officials in natural resources-related areas from engaging in any activity in relation to their original subject of employment as a wage or investor five years after the end of their duties in the administration be adopted and that impose sentences entailing deprivation of freedom for each violation.
- Introducing changes in the Hydrocarbons Code to impose annual audits from independent structures regarding the expenses of the exploration, research and exploitation companies to verify the reality of the operations achieved, the

appropriateness of the process and its value, and the concerned companies should publicize the audit reports.

- Assigning a structure in the Ministry in charge of energy to keep, analyze and exploit the geological database within the framework of respecting the sovereignty of the State over its resources.
- Approving a model contract, review the methods of calculating taxes on petroleum activities and to draw on the experience of the Organization of Petroleum Exporting Countries and publishing the full texts of the agreements in the Official Gazette.
- Reviewing previous oil and gas exploitation conventions, mainly those where Tunisia, as partner, had a 0% quota of production.
- Obliging companies operating in the field of prospection and mining in Tunisia to publish the financial statements in the Official Gazette and on the website of the Ministry in charge of energy.
- Restructuring this institution to separate its divergent functions:
 - Conducting petroleum studies
 - Ensuring the improvement and training of Tunisian executives
 - Contributing to research, mining and exploitation
 - Collecting and controlling petrol taxes
- Establishing an independent public oversight structure for the annual control of the tax revenues of companies operating in the field of energy exploration and mining.
- Supporting the Energy Committee of the Assembly of the Representatives of the People with independent experts to be suggested by the professional structures supervising the sector from those meet the requirements of independence, impartiality and integrity.
- Strengthening the capabilities of the National Agency of Environment Protection to monitor pollution resulting from petroleum activities and activating its role within the required standards.

4. Public governance

- TDC recommends the necessity to break with the public accounting system in the public sector and the adoption of the accrual basis accounting in accordance with the international public sector accounting standards, to ensure the credibility of public financial data.
- Reviewing the legal system for the appointment of senior officials in the fields of oversight, auditing and contracts in order to establish the principle of rotation and transfer of power and to adopt objective criteria based on efficiency.
- Simplifying the function of pre-oversight over public management and develop information technology systems in accordance with the international standards of

internal oversight and create the occupation of management control and internal audit in each public institution and give it full independence to carry out its tasks in an optimal manner.

- Enacting projects aiming at consolidating the different bodies of the public oversight structures into a unified, efficient, independent oversight structure with integrated actions.
- The need to simplify procedures, reduce human intervention, identify deadlines and procedures and making them accessible to the public, facilitate complaint, enable citizens to follow up action on complaints filed and decide on them in a reasonable time.
- The need to review the current legal system to defame corruption, highlight its mechanisms, publish a list in its perpetrators or its responsible, and abolish all responsibilities assigned to them.
- Assigning higher education institutions to evaluate the candidates in the entrance examinations for training in higher schools of administration.
- Publishing the oversight and inspection reports, follow up the implementation of recommendations, punish and follow up officials in the public administration who have been found implicated or inaction or omission to refer suspects to disciplinary boards and the judiciary is noticed.
- Taking a set of measures to strengthen the internal oversight system through:
 - Restructuring the administration to reduce the overlapping of responsibilities for public service provision.
 - Strengthening digital administration and establishing an electronic assessment and follow-up system of the services performance progress within the legal deadlines.
 - Developing indicators of the employee's productivity and establishing the principle of accountability and punishment when inspecting when they are found declined.
 - Adopting annual procurements programming and developing and publicizing a public procurements database.
- Taking the necessary administrative procedures to limit the in-kind privileges of public officers, to approve that they should be stipulated in the public financial data and to prevent the set-off of expenses and revenues.

5. Public institutions' privatization

- The need to review the legal texts creating the committees supervising the structuring of public institutions and support them with independent professionals chosen by drawing lots from among lists suggested by their professional structures.

- To change the legal texts related to the divestiture of State-owned enterprises and take the necessary administrative procedures to publish the financial statements of the enterprises to be privatized for the previous ten years by all available means.
- To change the legislations to oblige enterprises concerned by privatization to be subject to 03 separate evaluations by experts.
- To amend the legislation and approve:
 - The deprivation of the owners of the competing institutions and those responsible for their management from participating in the invitations to tenders.
 - Publicizing the specifications
 - The publication of the results of submitting tenders and undertakings transferred to the tenderers annually on the Ministry of Finance website and obliging them to follow up and monitor their compliance.
- The need to amend the current laws of the Commercial Companies Code and the Commercial Code and relevant texts in order to create assessment institutions that submit their work annually to the institutions concerned to consider the financial situation and risks related to the continuation of the activity according to the internationally recognized scientific methods.
- To review legislation on collective procedures in order to:
 - Establish safeguards without prejudice to the rights of the original investors in the enterprises experiencing economic difficulties by providing an opportunity for a rescue program consistent with the sustainability objectives.
 - Establish follow-up and monitoring mechanisms for the implementation of the rescue or referral program and establish penal responsibility to the structures responsible for the follow-up.

6. Tax collection

The need to compile the legislative texts in the tax matter in one code and cancel all special and exceptional texts.

To review the statutory instruments in order to:

- Develop the interlocking information technology system and create a data bank
- Train the oversight officers and provide them with the working mechanisms
- Further establish safeguards for the taxpayer against the administration abuse
- Approve the penal accountability of oversight officials to reduce the abuse of the discretionary authority
- Create of a tax evasion matrix to fix the annual in-depth oversight program to make effective intervention.

- Further develop initial oversight mechanisms by providing them with a broad database.
- Impose sentences entailing deprivation of freedom for every tax evasion or false declaration when a certain ceiling is exceeded.

The importance of promoting a climate of tax and commercial legislative stability and adopting a clearly defined guideline.

To adopt the relevant legislation by prohibiting work related to its original function for the tax collectors at least five years before leaving it.

The need to enact legislation to publicize taxes to include wealth in addition to consumption and income and activate the role of wage earners and others in the system of oversight and evaluation of the tax privileges granted periodically.

7. Ways to address the State's weak internal resources

- Changes in the hydrocarbons code in such a way that all production should be sold to a public enterprise for the prices applicable in the world market and deduce the royalties of exploitation and the payment of the exploiting party within the limit of the part to which it belongs.
- To migrate from the public accountancy code to the International Public Sector Accounting Standards (IPSAS),
- To restructure the public oversight bodies into risk-based distribution and adopt analytical approaches to identify violations;
- To adopt penal sanctions for financial violations;
- To approve the necessity of publishing the financial data pertaining to any enterprise that benefits from an concession for operation with the State or any public structure;
- Annual publication of all data related to research and exploration of subsoil assets;
- To strengthen the boards of public enterprises with experienced members from outside the public service.

8. Ways to address the dispersion of oversight bodies

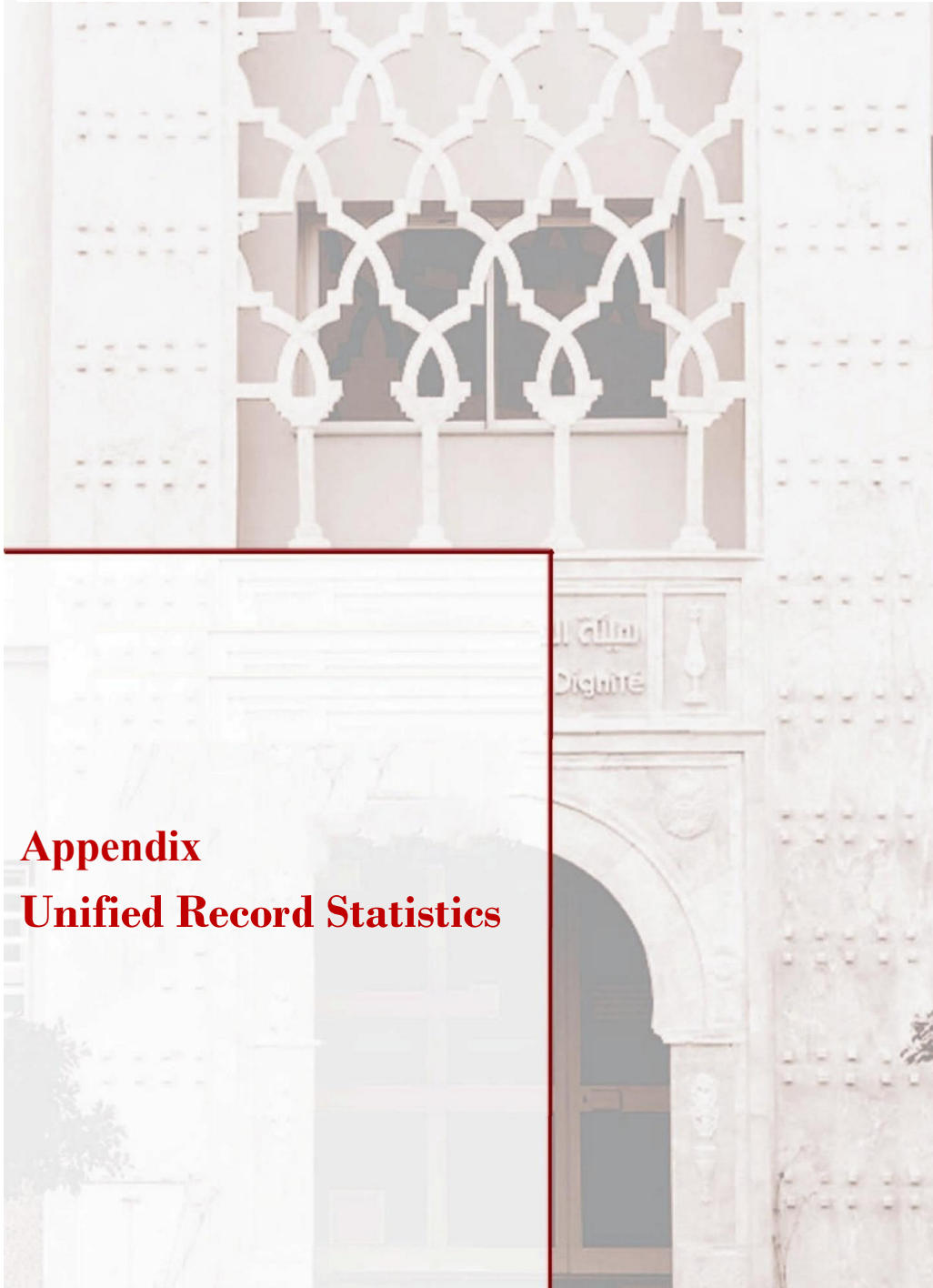
- To abolish the material pre-oversight and simply proceed to the procedural pre-oversight
- To disseminate the function of internal control and auditing in each public enterprise and grant it complete independence to carry out its tasks in an optimal manner;
- To consolidate the oversight structures into an autonomous structure that mandatorily publishes all its reports,
- To separate the higher training stages between the management and the oversight.

9. Ways to protect the tax system

- To review the legal texts governing the financial transactions with foreign countries to bring them in line with the rules of good governance.
- Further tighten the follow-up and control of the return of Tunisian export crops and the price of services provided by Tunisian institutions abroad.
- To control the payment of the import operations carried out by the Tunisian institutions, in order to avoid illegal payment of prices.
- To adopt a standard procedures manual between the different customs offices when completing the import operations, which takes into consideration the customs system to which the goods are dispatched, especially when dispatched to consumption in the local market.
- To fix the maximum time limits and the powers of the customs officers for each stage of the import procedures, to avoid extortion and bribery.
- Further tighten the control over the totally exporting companies, as it has been proved through many files that these companies exploited differential treatment, especially directing their declarations into the green hallway for smuggling operations, it came clear also that some smugglers exploited the customs symbols of these institutions without their knowledge to avoid control.
- To deal severely with parties involved in customs, through:
 - o Continuous monitoring of the customs agents' books at the customs to prevent them from enabling third parties to register suspicious declarations.
 - o Further severe behavior at the issuance of entry badges to persons belonging to the customs agents, and verify the existence of employment contracts and registration in the National Social Security Fund to avoid intruders and brokers
 - o Preventing any person who does not hold a permit from entering the customs departments and completing procedures for third parties, whether this third party is the owner of the goods or a customs agent.
- A comprehensive review of the customs legislation, in particular the customs code, through identifying the principles and rules governing customs' work and limiting the articles that give absolute discretion to the administration which allow it to violate the law and violate the constitution, including but not limited to:
 - o **Article 6** which allows the regulatory authority to violate the law by suspending, reducing, restoring, or upgrading the customs duties, whereas **article 65** of jurisdiction the legislature.
 - o **Article 14** gives the customs administration the possibility of not returning the fees and the taxes to the importer, despite the fact that the error is proven on the side of the administration and its payment was illegal.

- **Article 46** authorizes the Customs Director-General to violate the legal procedures of the customs operations.
- **Article 90** authorizes the Minister of Finance to violate the legal rules set by the legislature regarding the entry of goods into the spaces of logistics activities.
- **the Constitution** stipulates that “Regulation of tax rates and tax base, percentages and procedures for collection thereof” falls within the exclusive .

- To activate the **Reconciliation and Tax Testing Committee** set forth in the code (issued by the law no. **2008-34** dated **02/06/2008**, which entered into force on January 1st, **2009**) and which has not seen the light till now, as its competence relates to the resolution of disputes between the administration and customers with regard to the declarations data related to the type of goods, their origin or their value. Here, the explanation is that the customs administration is not ready to compromise its powers to make decisions that are enforceable by the declarer, and deprive him of his right to sue before the committee which guarantees impartiality through its composition (Judicial magistrate, Counselor from the Administrative Court and two competent assistants) and its procedures (equal treatment of the administration and the declarer).



Appendix
Unified Record Statistics

Unified Record Statistics**For victims of human rights' violations and embezzlement of public funds****Submitted to the Commission**

In accordance with the provisions of the Organic law No. 53 of 2014 issued on December 14, 2013, relating to transitional justice and its regulation, especially Chapter 39, point 3, stating the "Preparation of a unified record for victims of violations" by the Truth and Dignity Commission.

In implementation of the Commission's decision of December 31, 2019, the unified record of victims of violations will be published below.

1. The number of files submitted to the Commission: 62720

During the period between December 15, 2014, the date files submission was opened, and June 15, 2016, the date files submissions was closed, the Truth and Dignity Commission accepted 62720 complaints by individuals, groups (from minorities, organizations, political parties, national organizations, and unions), as well as by the Tunisian state. Among them are 11931 women and 50789 men.

2. Distribution of the files in which the victim's status has been proven by nature of the violation

The submitted files included 47468 files related to human rights violations of all kinds, including:

- Gross or systematic violations of political and civil rights
- Gross or systematic violations of economic, social and cultural rights

They also included 16337 files related to other violations stipulated in Chapter 8 of the Transitional Justice Law. These are:

- Financial corruption and embezzlement of public funds
- Systematic marginalization and exclusion of regions or groups
- Electoral fraud

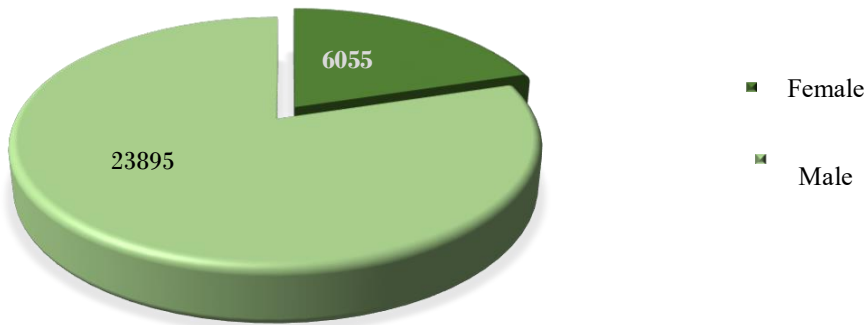
The submitted files were related to various political, intellectual and social camps; they were also related to racial and religious minorities, as well as to victimized regions.

3. Files that do not meet the Commission's criteria: 33854

- Rejected: 23065
- Classified: 7665
- Combined (Duplicate Files): 2951

4. Distribution of gross or systematic violations files: 29950

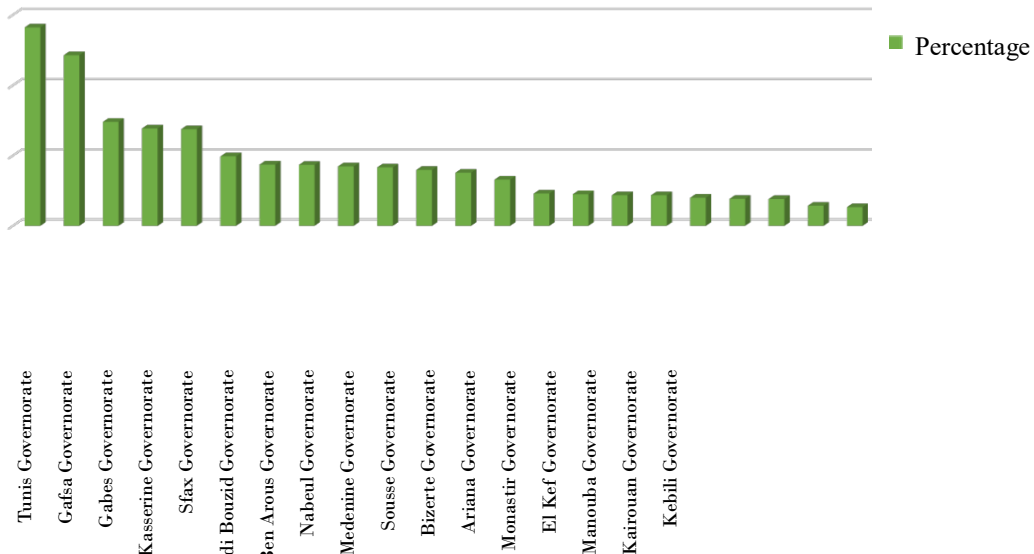
Gender	Number of Files
Female	6055
Male	23895
Total	29950

Figure 1. Distribution of files by gender**5. Distribution of files of victims of human rights violations and embezzlement of public funds, by governorate**

Governorate	Number of Files	Percentage
Tunis Governorate	4226	14,11%
Gafsa Governorate	3634	12,13%
Gabes Governorate	2216	7,40%
Kasserine Governorate	2077	6,93%
Sfax Governorate	2060	6,88%
Sidi Bouzid Governorate	1484	4,95%
Ben Arous Governorate	1305	4,36%
Nabeul Governorate	1299	4,34%
Medenine Governorate	1266	4,23%

Soussa Governorate	1247	4,16%
Bizerte Governorate	1191	3,98%
Ariana Governorate	1131	3,78%
Monastir Governorate	986	3,29%
El Kef Governorate	689	2,30%
Manouba Governorate	673	2,25%
Kairouan Governorate	653	2,18%
Kebili Governorate	652	2,18%
Jendouba Governorate	599	2,00%
Tozeur Governorate	576	1,92%
Mahdia Governorate	572	1,91%
Tataouine Governorate	428	1,43%
Beja Governorate	398	1,33%
Siliana Governorate	378	1,26%
Zaghuan Governorate	175	0,58%
Kairouan Governorate	35	0,12%
Total	29950	100%

Figure 2. Distribution of files of victims of Human Rights violations and embezzlement of public funds by governorate



6. Distribution of the files in which the victim's status has been proven, by nature of the violation

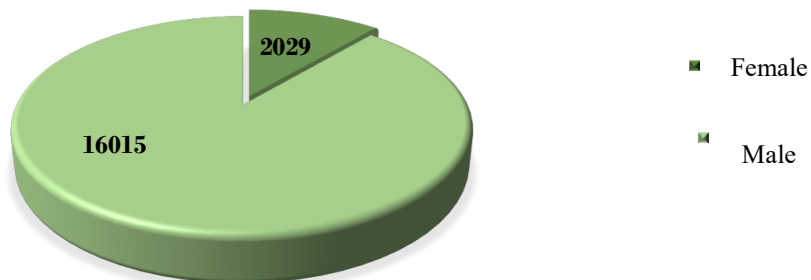
The submitted files included human rights violations of all kinds:

- **Gross violations related to political, civil and economic rights: 17649**
- **Systematic violations related to social and cultural rights: 8417**
- Other violations mentioned in the Transitional Justice Law:
 - **Financial Corruption and embezzlement of public funds: 3266**
 - **Electoral Fraud: 368**
 - **Systematic marginalization and exclusion of specific regions or groups: 290**
 - **Minority Files: 4**
 - **Files in which the file applicant has the status of a witness of a violation: 173**

7. Distribution of gross violations files by gender

Nature of Violation	Female	Male	Total
Gross violations	2029	16015	18044

Figure 3. Distribution of files by gender

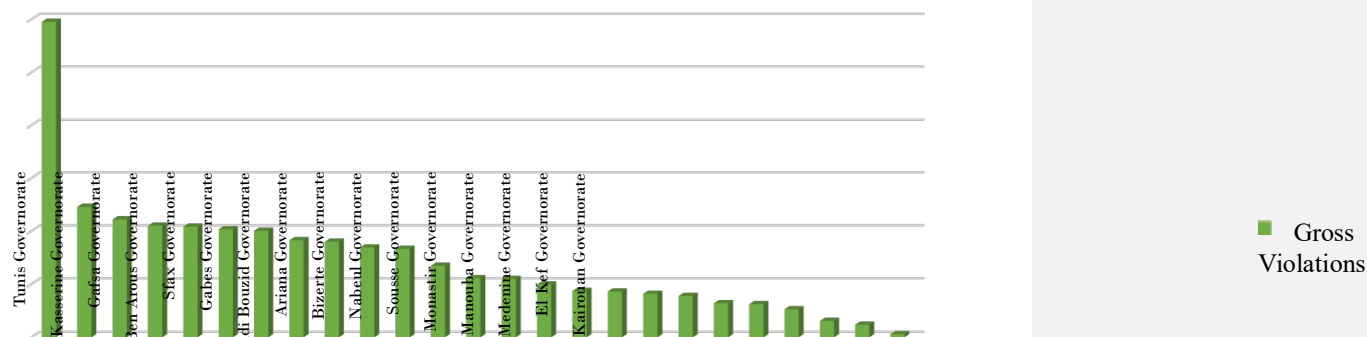


8. Distribution of gross violations files by governorate

Governorate	Gross violations
Tunis Governorate	2978
Kasserine Governorate	1228
Gafsa Governorate	1110

Ben Arous Governorate	1050
Sfax Governorate	1041
Gabes Governorate	1016
Sidi Bouzid Governorate	1002
Ariana Governorate	913
Bizerte Governorate	899
Nabeul Governorate	845
Sousse Governorate	832
Monastir Governorate	673
Manouba Governorate	555
Medenine Governorate	548
El Kef Governorate	496
Kairouan Governorate	435
Kebili Governorate	430
Jendouba Governorate	409
Mahdia Governorate	388
Tozeur Governorate	320
Beja Governorate	312
Siliana Governorate	263
Tataouine Governorate	154
Zaghuan Governorate	118
Kairouan Governorate	29
Total	18044

Figure 4. Distribution of gross violations files by governorate



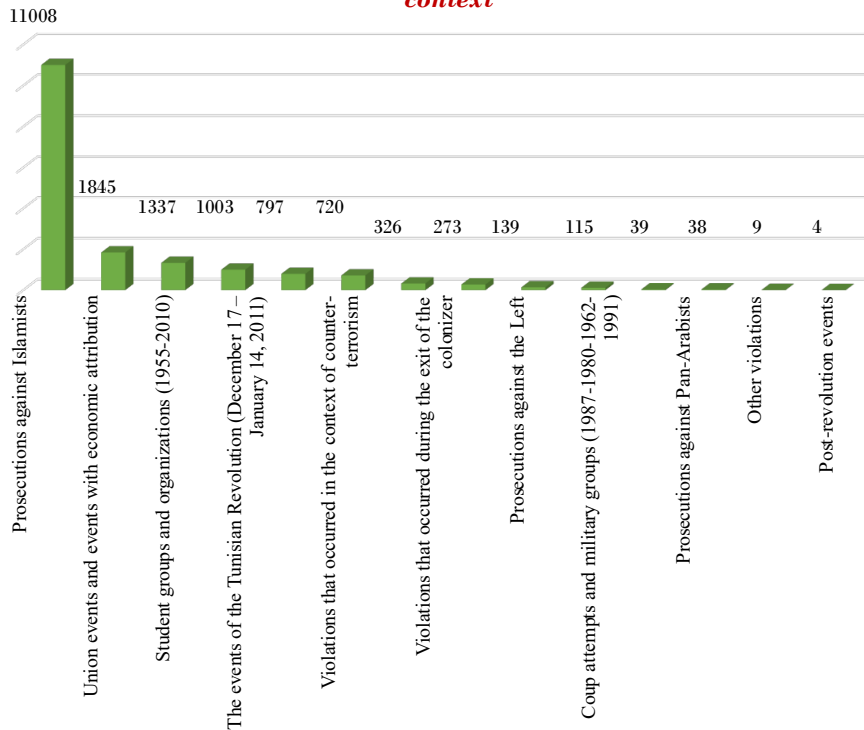
9. Gross violations of political, civil and economic rights, according to context: 17649

Gender	Number of Files
Female	2008
Male	15641
Total	17649

Context	Total
Old regimes during various political transformations 1957-1987-2011	9
Violations that occurred during the exit of the colonizer	720
Coup attempts and military groups (1987-1980-1962-1991)	273
Student groups and organizations (1955-2010)	1337
Union events and events with economic attribution	1845
Prosecutions against the Left	326
Prosecutions against Pan-Arabists	139
Prosecutions against Islamists	11008
Violations that occurred in the context of counter-terrorism	797
Violations against Human Rights activists	38
Violations against minorities	4

The events of the Tunisian Revolution (December 17 – January 14, 2011)	1003
Post-revolution events	39
Other violations	115
Total	17649

Figure 5. Gross violations of political, civil and economic rights, according to context

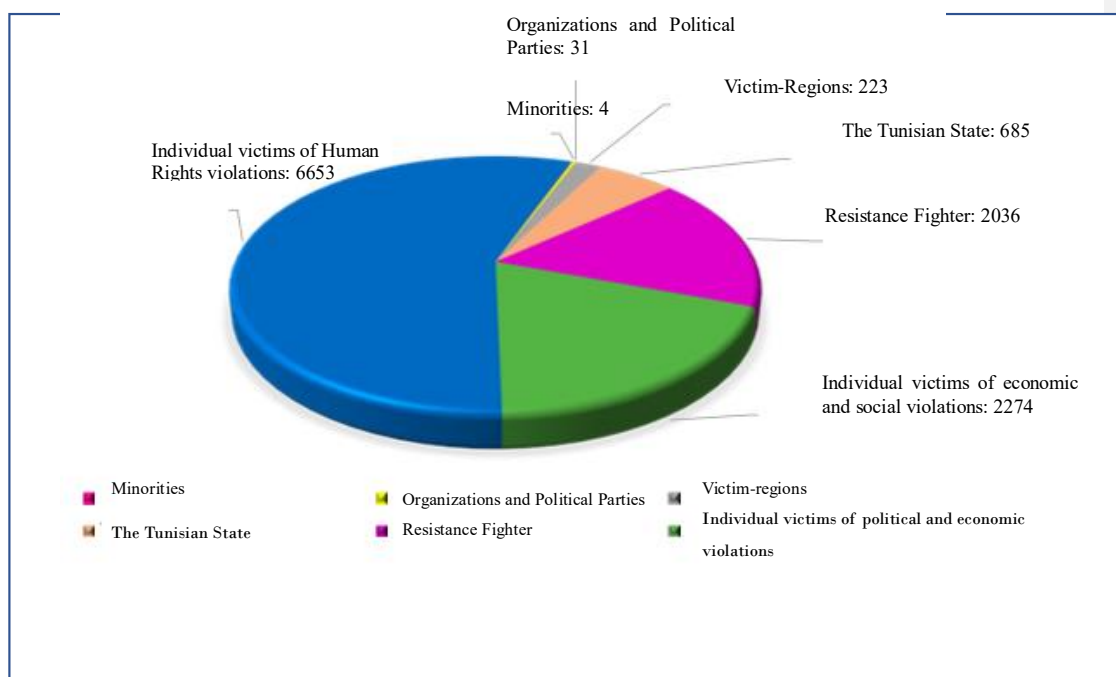


10. Distribution of Systematic Violations files

Decision Type	Female	Male	Moral Entities	Total
Individuals victims of Human Rights violations	3702	2951		6653
Individuals victims of economic and social violations	242	2032		2274
Resistance fighter	32	2004		2036

The Tunisian State			685	685
Victimized Region			223	223
Organizations and Political Parties			31	31
Minorities			4	4
Total	3976	6987	943	11906

Figure 6. Distribution of Systematic Violations Files

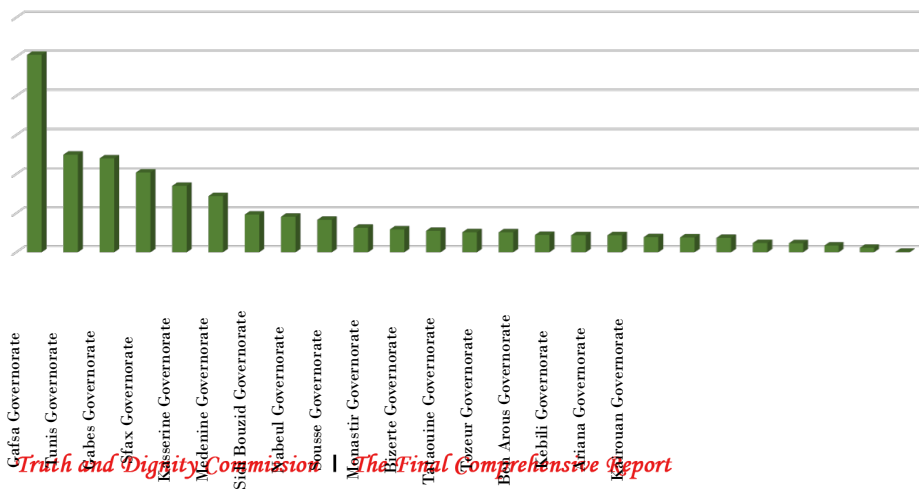


10. Distribution of Systematic Violations files by governorate

Governorate	Human Rights	Economic and Social	Moral Entities	Victimized Region	Resistance Fighter	Total
Gafsa Governorate	232	1982	1	13	296	2524
Tunis Governorate	1183	3	13	18	31	1248
Gabes Governorate	605	98	1	18	478	1200
Sfax Governorate	907	27	1	13	71	1019
Kasserine Governorate	668	15	1	17	148	849

Medenine Governorate	340	1	3	17	357	718
Sidi Bouzid Governorate	257	5		19	201	482
Nabeul Governorate	435	1	1	4	13	454
Sousse Governorate	387	5	1	8	14	415
Monastir Governorate	294	5	2	4	8	313
Bizerte Governorate	269	1		1	21	292
Tataouine Governorate	194		1	9	70	274
Tozeur Governorate	90	113		3	50	256
Ben Arous Governorate	226	3	3	6	17	255
Kebili Governorate	132	2		7	81	222
Ariana Governorate	190	5	2	1	20	218
Kairouan Governorate	203	1		1	13	218
El Kef Governorate	136	6	1	6	44	193
Jendouba Governorate	96	1		41	52	190
Mahdia Governorate	167	1	1	2	13	184
Manouba Governorate	113				5	118
Siliana Governorate	81		1	9	24	115
Beja Governorate	80		1	2	3	86
Zaghuan Governorate	49			2	6	57
Kairouan Governorate	3		1	2		6
Total	7337	2275	35	223	2036	11906

Figure 7. Distribution of Systematic Violations files by governorate

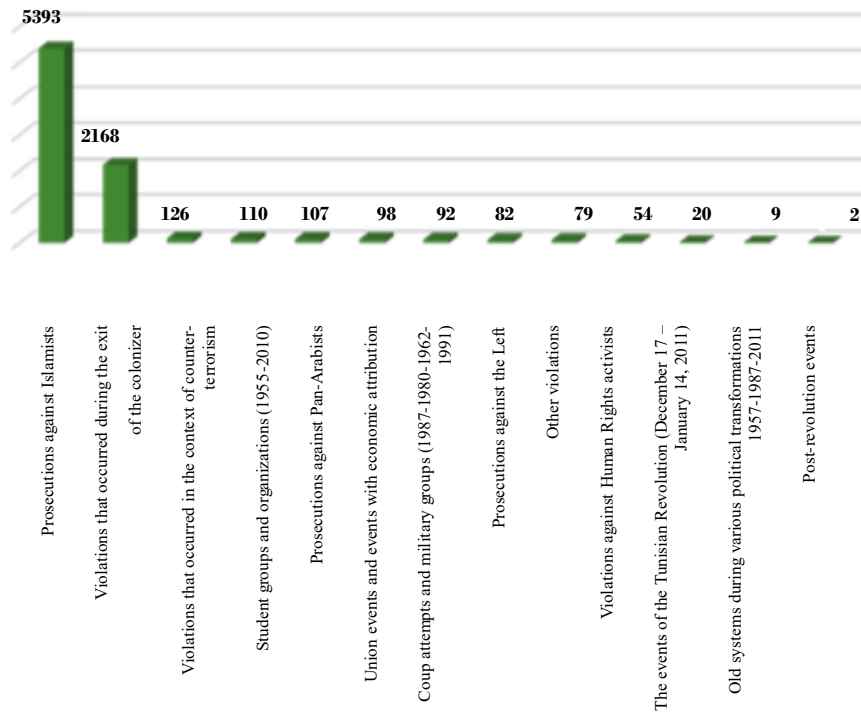


12. Systematic violations of social and cultural rights, according to context: 8417

Gender	Number of Files
Female	3678
Male	4739
Total	8417

Context	Human Rights	Economic and Social	Moral Entities	Total
Old regimes during various political transformations 1957-1987-2011	9			9
Violations that occurred during the exit of the colonizer	2159	9		2168
Coup attempts and military groups (1987-1980-1962-1991)	91	1		92
Student groups and organizations (1955-2010)	107		3	110
Union events and events with economic attribution	170	4	1	98
Prosecutions against the Left	76		6	82
Prosecutions against Pan-Arabists	107			107
Prosecutions against Islamists	5389	3	1	5393
Violations that occurred in the context of counter-terrorism	124	2		126
Violations against Human Rights activists	45		9	54
The events of the Tunisian Revolution (December 17 – January 14, 2011)	20			20
Post-revolution events	2			2
Other violations	55	15	9	79
Total	8353	34	29	8417

Figure 8. Systematic Violations of social and cultural rights



13. Financial and Administrative Corruption files: 3226

Decision Type	Female	Male	-	Number of Files
Individuals victims of financial and administrative corruption	73	330		2364
The Tunisian State			646	646
An Economic and Social Group	230	943		2174
Organizations and Political			4	4

Parties				
Total	303	2273	650	3226

14. Distribution Financial Corruption and Embezzlement of Public Funds by governorate

Governorate	Number of Files
Gafsa Governorate	1928
Tunis Governorate	715
Tozeur Governorate	110
Gabes Governorate	99
Sfax Governorate	58
Beja Governorate	48
Nabeul Governorate	44
Ariana Governorate	31
Kasserine Governorate	29
Ben Arous Governorate	26
Sidi Bouzid Governorate	26
Mahdia Governorate	23
Sousse Governorate	20
Bizerte Governorate	14
Monastir Governorate	9
El Kef Governorate	9
Medenine Governorate	8
Kairouan Governorate	6
Siliana Governorate	5
Manouba Governorate	5
Kebili Governorate	5
Zaghouan Governorate	4
Tataouine Governorate	3
Jendouba Governorate	1
Total	3226