

AMERICAN UNIVERSITY OF BEIRUT

TRANSITIONAL JUSTICE, STRUCTURAL VIOLENCE, AND
THE LIMITS OF THE TUNISIAN EXPERIENCE:
THE CASE OF THE VICTIM-REGION CONCEPT

by
CYRINE NOUREDDINE GHANNOUCHI

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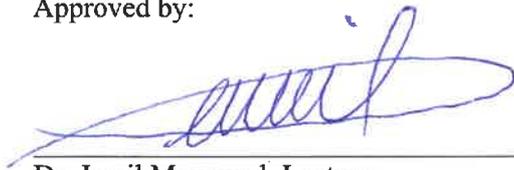
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ABSTRACT OF THE THESIS OF

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Title: Transitional Justice, Structural Violence, and the Limits of the Tunisian Experience: the Case of the Victim-region Concept

Three years after the Tunisian uprising that ended Ben Ali's authoritarian rule, the National Constituent Assembly voted law 53-2013(TJ law) to institutionalize the country's journey of transitional justice and to establish the Truth and Dignity Commission (TDC) as an independent truth-seeking body. In July 2020, the Commission's final report was published in the Tunisian Gazette. The 2000-pages document, celebrated as a milestone in post-uprising Tunisia, is the result of more than five years of work and multiple collaborations with different parties including local and international civil society organizations (CSOs) and expertise amid political instability.

Under article 10, paragraph 3, of the TJ law, the definition of victimhood is extended to include any region that suffered marginalization and systemic exclusion. In a country marked by crystallized fault-lines and severe regional disparities, art. 10 para. 3 became known as the victim-region concept. This niche aspires to address social injustices and their geographic manifestations under collective reparation of damage and the establishment of guarantees of non-recurrence. The vagueness of the law was leveraged by elite actors, particularly NGOs, to tackle violations of economic and social rights (ESRs), which is an emerging trend in the field of TJ that calls for the widening of its scope beyond the traditional focus on political and civil rights. The victim-region niche hence presented a site of bargain opposing competing agendas of involved state and non-state actors.

This thesis argues that these actors' approach(es) to the victim-region concept failed to grasp the complexity of Tunisia's political geography of marginalization. The interpretation and instrumentalization of this niche hindered its potential to challenge the status quo, and consequent methodological and discursive limits put possibilities of genuine change in jeopardy. As a chiefly discursive field, resulting accounts could equally accentuate a narrative of victimhood fueling already existing social divides while depoliticizing the problem and overlooking the intricacy of its root causes and consequences, hence serving the perpetual reproduction of the system in place rather than its dismantlement.

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CHAPTER 1

INTRODUCTION

The Tunisian uprising that toppled former president Ben Ali in 2011 put the country on the contentious pathway of regime change. After decades of authoritarian rule, Tunisia was set to become the MENA region's newest democracy. One of the many milestones of this journey looks at the past under an institutionalized process known as transitional justice. In Tunisia, the Organic Law on Establishing and Organizing Transitional Justice¹ (TJ Law) was voted by the National Constituent Assembly (NCA) in December 2013. The law marked the foundation of the Truth and Dignity Commission (TDC) as an independent truth-seeking body with a four-years multifaceted mandate². The TDC effectively started its mission in mid-2014, it addressed 62720 files and recorded and archived 49654 secret hearings³. In July 2020, the TDC submitted its final report to the central authorities⁴, a 2000-pages document later published in the Official Gazette. The nucleus of this thesis was shaped at that very moment after a quick review of the Commission's report, with a special focus on its chapter on victim-regions⁵.

¹ Journal Officiel de la République Tunisienne. 105. Loi organique n°2013-53 du 24 Décembre 2013 relative à l'instauration de la justice transitionnelle et son organisation. <https://legislation-securite.tn/fr/node/44087>.

² According to Hayner's classification of truth commissions' mandates as narrow, moderate, or multifaceted.

see: Hayner, Priscilla. 2011. *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*. 2nd ed. New York: Routledge.

³ TDC official website. Home page <http://www.ivd.tn/?lang=en>

⁴ The report was finalized and published online in 2019. Only an executive summary of 600 pages is available in English. The full report is available in Arabic and accessible at <http://www.ivd.tn/rapport/>

⁵ 400 pages were dedicated to victim-region files in the final report's Arabic version

The victim-region concept *per se* has no evident legal grounds. It is the result of an array of interpretations conducted by various actors, local and international, of the third paragraph of the TJ law's article 10 (herein art. 10, para. 3). Art. 10 defines victimhood under the TJ law, and para. 3 is a novel extension of this definition that encompasses a spatial dimension. It considers any region, or *mintaqah*⁶, that has been subject to marginalization and systemic exclusion as a victim. In a country marked by crystallized fault-lines and severe regional disparities, the victim-region niche, quickly seized by Civil Society Organizations (CSOs) and then extensively discussed by the TDC, aspires to stand as a legal notion ensuring collective reparation of damage and the establishment of guarantees of non-recurrence. Here lays the foundation of this thesis that shaped its scope to answer the following questions: is TJ, via a truth-seeking mechanism, the proper venue to address the political geography of Tunisia? How would a non-judicial body address long-standing state-led unbalanced regional planning and consequent social injustices? How would it be leveraged to challenge the status quo and to change Tunisia's geographies of marginalization, and by whom?

This thesis focuses on Tunisia as a case study to examine the importance of its TJ experience on the regional and international level and to explore how instructive the victim-region niche could be. To contextualize the debate, the overarching conceptualization of this work has been based on three complementary pillars defined thanks to an extensive literature review. The first pillar is the need to understand TJ as a political project, which invites a reflection on how actors involved in the process tend to

⁶ As stated in the Arabic version of the TJ law. The translation of *mintaqah* from Arabic to French and/or English permits various "interpretations" other than "region". It can be translated as "zone", "area", "district", etc. In Tunisia, laws are issued in Arabic and in French, the Arabic version being the final resort in case of conflicting terminology/meaning between both versions. For this thesis, we adopted the term "region" for it is the most commonly used in the literature on the topic.

depoliticize it and, more importantly, why they do so. Put briefly, there is no trade-off between law and politics in practice⁷ as it is recurrently argued in critical scholarship. This leads to the second pillar that is the significance of an understanding of the evolution of TJ as a discursive field, and a site of bargain, where agency of involved actors is subject to the limits set by inherent power dynamics⁸. The third pillar of this discussion is that TJ processes do not take place in a vacuum, hence the necessity of a context-based approach to such experiences, one that equally considers the historicity of the field. These points serve as guidance for more recent debates. In line with the scope of this thesis, they set the cornerstones of a reflection on calls to rethink TJ mechanisms and to widen their scopes and mandates. In this regard, addressing violations of economic and social rights (ESRs), often kept at the periphery of TJ's traditional focus - that is violations of human, political, and civil rights-, is an emerging trend in the field. Roughly, this new debate opposes two conceptual stances. For liberals, such an endeavor is necessary as long as it is in line with TJ as a liberal peacebuilding project. In other words, their argument acknowledges the need to rethink TJ only to incorporate further development-based elements of the liberal agenda, where the establishment of guarantees of non-recurrence of ESRs violations is linked to matters of international security and peace. For postcolonial scholars, the task at hand is more complex and presents an opportunity but also a threat to justice. For these scholars, TJ can only survive if liberated from its neocolonial rationale and anchored in indigenous justice⁹.

⁷ Vinjamuri, Leslie, and Jack Snyder. 2015. "Law and Politics in Transitional Justice." *Annual Review of Political Science* 18: 303-27.

⁸ Mullin, C. and Ian Patel. 2016. "Contesting Transitional Justice as Liberal Governance in Revolutionary Tunisia". *Conflict and Society: Advances in Research* 2(2016): 104-24.

⁹ An-Na'im, Abdullahi Ahmed. 2013. "Editorial Note: From the Neocolonial 'Transitional' to Indigenous Formations of Justice." *The International Journal of Transitional Justice* 7 (2013): 197-204.

More importantly, it is essential to seize TJ as a moment of dismantlement of both authoritarian and colonial roots of injustice. Finally, a prompted TJ process and a premature evaluation of such an experience as successful should also be approached as a form of political instrumentalization especially from the international community.

The victim-region concept falls under this emerging trend of the incorporation of ESRs in TJ or, to be more accurate, was shaped for such a purpose. However, widening the scope of TJ and overloading a truth commission's mandate add to the complexity of the process, and equally holds risks of irretrievable failure¹⁰ that this thesis tries to discern. The topicality of this thesis is also illustrated by a brief comparison of two key documents, namely the 2004 UNSG report on "*The rule of law and transitional justice in conflict and post-conflict societies*" and its follow-up report issued in October 2011, i.e. only a few months after the uprising in Tunisia sparked and snowballed around the MENA region. Both reports, while having the same normative framework, present two different discourses. In fact, the 2004 report is a downstream reflection built on precedents and lessons learned, while the 2011 report has been promptly formulated in response to the MENA uprisings as an attempt to set the tone for "what's next" and seize the moment to position the UN on the forefront of "a historic opportunity" for peacebuilding and international security. Addressing ESRs has also a regional dimension as almost all MENA uprisings were triggered by, or based on, demands for social justice. The international promotion, or instrumentalization, of the Tunisian experience as a successful model could be driven by the need to position the country as a regional catalyzer yet, as of April 2021, only Tunisia established a TC as a mechanism to investigate its past in the post-uprisings MENA region. Whether the

¹⁰ Salehi, M. 2021. "Trying Just Enough or Promising Too Much? The Problem-Capacity-Nexus in Tunisia's Transitional Justice Process". *Journal of Intervention and Statebuilding* [Online]

international community will succeed in its endeavors or not is probably a premature question. What should be retained is that it is indeed a moment for the rise, or the fall, of TJ in its liberal understanding.

This said, the political dynamics around TJ are not exclusively international. Domestic power politics are equally important, and the victim-region niche here presents itself as an interesting site of bargain by serving as an example of how ‘truth’ or the reality of the marginalized is rather elite-based, despite the victim-centered rationale of TCs. The TDC’s findings and recommendations under the victim-region section are a perfect illustration of these elite narratives. Indeed, the Commission’s efforts fail to grasp the complexity of Tunisia’s political geography of marginalization. This reflection represents the starting point of this thesis and has been drawn based on a mapping of the entire process that defined the elements of the victim-region niche as a discursive field. The analysis is based on an interpretivist approach, looking exclusively at the elite sphere. In brief, the thesis proceeds with a critical discourse analysis of key documents made publicly available by elite actors. The analysis looks at 1- the 2004 and 2011 UNSG reports to grasp the narrative of the UN, a primary international actor in the Tunisian TJ process. These reports are key to the discussion as they define the UN normative framework on “Transitional Justice and the Rule of Law” and how it evolved. 2- the TDC’s final report and the TJ law, representing state actors’ narrative, and 3- the narrative of selected non-state actors via their submitted files on behalf of a given region. This narrative is complemented with fieldwork where semi-structured interviews have been conducted with official representatives of two NGOs that have chiefly shaped the victim-region concept.

This thesis argues that the victim-region niche as teleologically invested by different actors has methodological and discursive limits that put possibilities of genuine change in jeopardy. Seized as a site of bargain, the victim-region concept was carved by state and non-state actors to channel their competing agendas while depoliticizing the problem and overlooking the intricacy of its root causes, hence serving the perpetual reproduction of the system in place rather than its dismantlement. Within power dynamics forcing political continuity rather than rupture or transition, the discourse conveyed through the victim-region niche fails to grasp the territorialities of social injustices in Tunisia and accentuates a narrative of victimhood fueling already existing social divides and the sustainability of the status quo. The thesis builds on a postcolonial conceptual framework drawn from the set of arguments it reviews. It adopts the definition of violation of ESRs as a form of structural violence¹¹ for its entire rationale. Structural violence is defined as a systemic condition imposed to a group of individuals that hinders their access to their rights, all rights. It departs from approaches based on the divisibility of rights and it also calls for the examination of colonial structural violence for justice to truly prevail.

This thesis is divided into four chapters. *The first chapter* is based on an extensive literature review to define key elements of the conceptual framework. It tries to understand how TJ is commonly defined within its global context, how and why it evolved, and what does the postcolonial literature brings to the debate. Throughout its sections, the chapter gradually introduces the scope of the thesis that is the share of ESRs in TJ and the relevance of the debate in the post-2011 uprisings MENA region. *The second chapter* introduces the Tunisian TJ experience and its ESRs-related niche as

¹¹ Evans, Matthew. 2016. "Structural Violence, Socioeconomic Rights, and Transformative Justice." *Journal of Human Rights* 15 (1): 1–20.

a case study. Throughout its sections, the chapter examines the potential of art. 10 para. 3 in addressing ESRs and its relevance in the Tunisian context to then introduces the article's key elements namely "the region as victim", and conditions of victimhood, i.e. "systemic exclusion", "marginalization", and the element of intent. The chapter builds on previous sections to pinpoint how art. 10 para 3 presents a discursive field where conflicting interpretations stemming from diverging agendas are likely to undermine the overall process. The last section is dedicated to the methodology set to address the thesis's questions and to draw evidence for its main argument. *The third and fourth chapters* offer an extensive mapping of the entire process and power dynamics around the victim-region niche, from its making to the TDC's final findings. Yet while the third chapter is a cross-analysis of all elements of the defined discursive field in the search of answers to set questions, the fourth chapter provides a thorough synthesis of the entire thesis to deliver the argument.

This thesis does not pretend to bridge a gap in relevant scholarship but to convey an interdisciplinary understanding of a controversial aspect of TJ proceedings. It also offers a timely reflection on the TJ experience in Tunisia in response to early literature where conclusions have been drawn before the release of the final report of the TDC and with a singular focus on political and civil rights. As it will be explained under the methodology, the thesis should conclude by establishing an 'interpretation of interpretations' of a specific niche in a specific context. Its limits are defined by this very specificity as well as the methodological choice to discard the non-elite sphere for this venture. It, however, bears hope of providing elements that could lead to further research projects, projects that question experiences labeled as exceptional with widely

mediatized celebration, but also projects interested in how some Western scholarship calling to rethink Western models end up, intentionally or not, infusing more of them.

CHAPTER 2

AN INTRODUCTION TO TRANSITIONAL JUSTICE

This chapter introduces key elements of the conceptual framework. It tries to understand how TJ is commonly defined within its global context, how and why it evolved, and what does the postcolonial literature brings to the debate. Throughout its sections, the chapter gradually introduces the scope of the thesis that is the share of ESRs in TJ and the relevance of the debate in the post-2011 MENA region.

2.1. In the Search of a Definition of TJ: Dichotomies and the Liberal Project

This section looks at how TJ is commonly defined and why its promotion as an exclusively legal and technical process is important for the international community's liberal agenda. The section provides a summary of scholarly arguments that reflect on the interplay between law and politics in TJ, and those that deny such dynamics. It sets the grounds for the consideration of TJ as a discursive field.

In the academic sphere, questions such as “*what is post-conflict justice*”, “*for whom*”, and “*how to reach it*” remained mostly downstream reflections drawing elements of response from a wide range of precedents. With the emergence of the liberal TJ discourse, debates continue to oppose its promotion as a successful model to it being a mechanism designed for mere surface scratching¹². Early discussions on “what TJ is” drained scholars in the search of a consensual definition for a while, but most contemporary scholarship now agree on the definition of TJ as set by the UN, at least as a starting point. In this regard, the 2004 report on “The rule of law and

¹² Maddison, Sarah, and Laura J Shepherd. 2014. “Peacebuilding and the Postcolonial Politics of Transitional Justice.” *Peacebuilding* 2 (3): 253–69.

transitional justice in conflict and post-conflict societies” presented by the then-Secretary General Kofi Annan to the Security Council is still considered as a key document where TJ is defined as:

“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 (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof¹³.”

Whether for peacebuilding, democracy, or the rule of the law programs, language has always been an important leverage for the UN to channel its agenda and to shape a global political consciousness. TJ is no different. The definition falls under the report’s third section aiming at “articulating a common language of justice” indeed. While this thesis adopts this definition to ensure its alignment with the common understanding of TJ in terminological terms, it holds reservations on the implied depoliticization of TJ but also assumptions nurtured by its meticulous UN formulation. In fact, TJ, in its very wording, already invites a binary, or dichotomic, understanding where “transition” refers to a set of antagonisms such as past vs. future, conflict vs. peace, impunity vs. accountability, old order vs. new order, division vs. cohesion, rendering it a teleological concept¹⁴, while “justice” speaks to an exclusively legal perception which conceals its inherent political dimensions. The UN definition cited above builds on this and infuses a lexicon of legal connotations (judiciary & non-

¹³ United Nations Security Council. 2004. *Report of the Secretary General on the rule of law and transitional justice in conflict and post-conflict societies*. S/2004/616. pp. 4

¹⁴ Maddison & Shepherd. *Op. cit.* pp. 257

judiciary, accountability) as a response to -exclusively- societal endeavors with the optional support of the international community, all being possible thanks to “mechanisms” implying that the process is technical. But the reality of the field is very much different.

The interest of the UN in diffusing and promoting “a common language” has been subject to critical reflections on TJ as part of the global liberal project¹⁵ embedded in the peacebuilding paradigm¹⁶. Apart from the fact that TJ can take place during a conflict and does not necessarily ensure a linear ‘transition’ from a state A to a state B, such a definition is aligned with transitology theories that overlook the possibility of post-conflict coexistence of the old and the new ‘orders’, i.e. that of a political continuum, or political hybridity¹⁷. It is plausible to consider that the UN has a specific meaning-shaping approach, one that should ensure consensus on uncountable levels while leaving room for possibilities, yet contouring TJ’s essence created a site for interpretations, instrumentalization, and normative framing that added to the complexity of the process, making it a discursive field par excellence.

In their interesting analysis of the interplay between law and politics in TJ, Vinjamuri and Snyder pinpoint the positioning of TJ under “cross-pressures” opposing

¹⁵ Nagy, Rosemary. 2008. “Transitional Justice as Global Project: Critical Reflections.” *Third World Quarterly* 29 (2): 275–89

¹⁶ Sriram, Chandra Lekha. 2007. “Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice.” *Global Society* 21 (4): 579–91.

¹⁷ See:

Cavatorta, Francesco. 2015. “No Democratic Change ... and Yet No Authoritarian Continuity: The Inter-Paradigm Debate and North Africa After the Uprisings”. *British Journal of Middle Eastern Studies* 42(1).
Rivetti, Paola. 2015. “Continuity and Change before and after the Uprisings in Tunisia, Egypt and Morocco: Regime Reconfiguration and Policymaking in North Africa.” *British Journal of Middle Eastern Studies* 42(1).
Hinnebusch, Raymond. 2015. “Change and Continuity after the Arab Uprising: The Consequences of State Formation in Arab North African.” *British Journal of Middle Eastern Studies* 42(1).
Keskes, Hanen, and Alexander P Martin. 2018. “Orientalism and Binary Discursive Representations of Tunisia’s Democratization: The Need for a ‘Continuity and Change’ Paradigm.” *British Journal of Middle Eastern Studies*.

“political behavior” to the apolitical judgement of law¹⁸. In other words, the authors see TJ as a site of bargain between accountability and political dynamics, i.e. between legal expectations and political incentives, where law and politics are not mutually exclusive¹⁹. Vinjamuri and Snyder’s rejection of normative discourses on TJ, whether realist, constructivist, or liberal, is justified by the complexity of TJ in practice which is not grasped by such normative frameworks. The authors hence call for an empirical reflection that looks at sites of bargain. Such an argument is particularly relevant to the expansion of the spectrum of TJ mechanisms which, apart from being a direct contextual result, translates attempts to overcome shortcomings²⁰, to reach an optimal template and to force a “one-size-fits-all” technocratic and decontextualized solutions²¹. TJ also went from a process of “judicialization of accountability” to “legalization and bureaucratization” led by INGOs²² and international experts, the role of the latter being identified by the UN as a must²³. The shift from special tribunals and international courts to domestically led truth commissions is key to our discussion. It perfectly illustrates and endorses the argument on the need to consider TJ as an empirical and discursive political field. Yet while this shift may suggest that TJ went from being a

¹⁸ Vinjamuri & Snyder. *Op. cit.* pp. 304.

¹⁹ *Ibid.* pp. 305.

²⁰ Stanford Encyclopedia of Philosophy. 2014. “Transitional Justice.” [Online] <https://plato.stanford.edu/entries/justice-transitional/>

²¹ Nagy. *Op. cit.*

²² Vinjamuri and Snyder. *Op. cit.* pp. 310; Nagy. *Op. cit.*; Sriram. *Op. cit.*
Kochanski, Adam. 2020. “Mandating Truth: Patterns and Trends in Truth Commission Design.” *Human Rights Review*, no. 21. pp. 127
The ICTJ is the most recurrent example

²³ S/2004/616. pp. 20

global project in servitude of the liberal international order (LIO) to a more locally grounded process, the reality is very much different.

In a brilliantly structured editorial note, Sudani lawyer An-Naim opens the 2013 issue of *The International Journal of Transitional Justice* by rejecting the “paradigm” of TJ all together²⁴. His argument, and strong criticism of the very literature he was invited to introduce, calls for the acknowledgement of TJ as a “neoliberal” project and the consideration of “indigenous” justice as an alternative²⁵. An-Naim says having no objection on the universalist character of TJ yet sees in it an internationalist model of justice proper to the peacebuilding doctrine, which is clearly stated in the 2004 Annan report to the UNSC, consistently reinstating “the rule of law” as TJ’s primary aim²⁶. An-Naim describes TJ in neocolonial terms as a “correction of a deviation” led by the West, i.e. transition as a return to the colonial script of peaceful societies living up to international standards. It is, in his view, a disregard of local traditional practices of justice coded in sustained international efforts to standardize the process and to keep it dependent on Western expertise and financing.

An-Naim’s argument is eloquently radical yet not unprecedented. He himself recognizes that a growing body of scholarship does implicitly adopt such an anti-colonial stance, often through the same liberal thinking patterns, tools, and language. Indeed, his call for “indigenous, organic and integral justice” is echoed in critical western scholarship stressing the need to more context-based, bottom-up and locally designed TJ mechanisms. Nagy, for example, underlines that international pressure of

²⁴ An-Na’im. *Op. cit.*

²⁵ *Ibid.*

²⁶ S/2004/616.

standardization of TJ, by the forced streamlining of local experiences, is leading to “worrying ways” of depoliticization and impoverishment of the process(es)²⁷. Yet Nagy does not question the relevance of TJ but rather highlights gaps and suggests reforms. On a milder note, Sriram looks at how the subscription of TJ in liberal peacebuilding overlooked traditional practices in the course of its design and contaminated TJ with the very shortcomings of peacebuilding, forcing ‘still-fragile’ societies to promptly adhere to democracy by the imposition of imported standards²⁸. According to the scholar, this is likely to further destabilize societies and to ‘unintendingly’ lead to the resurgence of conflict.

In sum, TJ has grown to become a field of study and practice entrenched in contexts, discourses, scales, scopes, and mechanisms, which resulted in an increasingly complex area of expertise now having its own epistemic community²⁹. Indeed, TJ is also a process of knowledge production, an aspect often overlooked by scholars. Its truth-seeking aim, or ‘right to truth’ principle, that characterizes TCs, is based on the deconstruction and reconstruction of the past, which produces (or even creates) a reality, or in TJ terms, ‘the’ truth as seen by the expert elite. Elitism is in fact identified as one of TJ’s shortcomings for, despite calls for and adoption of victim-centered approaches, the entirety of the process remains in the hands of a few³⁰. Just as the peacebuilding paradigm undermined TJ by its subscription in the internationalist

²⁷ Nagy. *Op. cit.* pp.275

²⁸ Sriram. *Op. cit.*

²⁹ Jones, Briony. 2020. “The Performance and Persistence of Transitional Justice and Its Ways of Knowing Atrocity.” *Cooperation and Conflict* 0 (0): 1–18.

³⁰ Robins, Simon. 2012. “Transitional Justice as an Elite Discourse: Human Rights Practice Where the Global Meets the Local in Post-Conflict Nepal.” *Critical Asian Studies* 44 (1). pp. 4

agenda, the gap between discourse and practice in the human rights field also tainted TJ's consideration of victims' rights as needs, identified and selectively met through an elitist lens. Simons summarizes all the above by stressing that

“the human rights discourse from which transitional justice emerges [...] represents a wholly Western tradition, challenging its claims to universality. Critiques of contemporary approaches to transitional justice are centered around its embodiment in institutional approaches, either national or supranational, its continuing dominance by a legalist agenda, and the fact that it is steered by perspectives deriving almost exclusively from elites³¹.”

The 2004 Annan report embraces most of this scholarly criticism in a tactful finesse while staying faithful to its core motives. At first glance, the wording of the document echoes the above arguments, but not without insisting on the role of the UN. In fact, the document is one of the pillars set for a “new” UN, better equipped to overcome its shortcomings towards the accomplishment of its essential objectives of conflict prevention and peacebuilding. The UN approach to TJ comes under various forms but has always been part of its “rule of law” agenda guided by an internationalist spirit towards international security and conflict resolution and prevention. More importantly, there were cases where TJ was a substantial component of peacekeeping missions with a focus on institutional reforms in the judicial and the security sectors³². UN recommendations on best practices and its promotion of specific mechanisms naturally followed the same course of evolution, and the said report is methodologically based on “lessons learned” recommending to “avoid the imposition of externally

³¹ *Ibid.*

³² S/2004/616. pp. 5

imposed models”³³, intentions and resulting practices aside. The report also contains numerous “warnings” on forcing “premature elections” leading to “cosmetic electoral democracies” and to the failure of TJ³⁴. The report’s recommendations are a clear attempt to provide an exhaustive framework for future TJ processes worldwide but also to position the UN as a leader expert on the matter, promoting the role of the international community as unavoidable while emphasizing its firm belief in context-based approaches as long as they comply with the UN’s “normative foundation”³⁵.

To complement this discussion, there is a persistent question that is at the heart of the debate on the interplays between law and politics in TJ. The question on the motives that make a given country opt for TJ looks at a complementary aspect which is domestic power politics. And though scholarly answers are more complex than it seems, they do endorse the argument on TJ as a political discursive field. In brief, three factors lead to the adoption of a TJ process. The first factor is identified as transitional advocacy networks, or pressure from the international community³⁶. The second factor is based on the diffusion theory, or the neighboring effect, which explains the likeliness of a country to opt for a specific TJ mechanism as based on geographically or culturally close experiences, as observed in Latin America and Africa for example³⁷. The third

³³ *Ibid.* pp. 21

³⁴ *Ibid.* pp. 8

³⁵ *Ibid.* pp. 5

³⁶ Kim, Hun Joon. 2019. “Why Do States Adopt Truth Commissions After Transition?” *Social Science Quarterly* 100 (5): 1485–1502.

³⁷ *Ibid.*

O’Loughlin, Ciara. 2016. “Fighting Fire with Fire: Resistance to Transitional Justice in Bahrain.” *Conflict and Society* 2 (2016): 125–41.

Nauenberg, Saskia. 2015. “Spreading the Truth: How Truth Commissions Address Human Rights Abuses in the World Society.” *International Sociology* 30 (6): 654–73.

factor pinpoints power balances between old and new elites³⁸. In this regard, we retain O’Loughlin’s argument based on a government approach analysis³⁹. The argument is drawn from social theory of resistance⁴⁰ and acknowledges that TJ does not necessarily take place in a radically new political setting but also within a political continuum where old and new elites continue to negotiate a political order in the making. In addition to the role of the international community (or transnational advocacy networks), and diffusion theory (or the neighborhood effect), O’Loughlin explains resort to TJ in general, and specifically to TCs, as political choices that could also be dictated by a weak judiciary system, the crystallization of TJ as a norm, as well as by competing elites, old and new, with “no clear victors or vanquished”⁴¹. She however takes the discussion to a deeper level by considering resistance as a motive of resort to TJ and identifies three forms of resistance that are key to this thesis.

The first form of resistance is defined as “spoilers’ territory” where old or still-in-power elites block the TJ process as a means of self-preservation. Vinjamuri and Snyder also stressed the importance of assessing the impact of TJ processes to immunize the deterrent rationale from “spoilers”, i.e. the undermining of justice by political parties whose interest are put in jeopardy or those resisting any norm change⁴². The second form is ideological resistance, recalling An-Naim argument, where there is a conflict with the local understanding of justice processes and the consideration of TJ as a neocolonial project of an imperialist dimension based on false universalism.

³⁸ O’Loughlin. *Op. cit.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.* pp. 128

⁴² Vinjamuri & Snyder. *Op. cit.*

Ideological resistance could also have a milder form where there is no reject of TJ as a whole but rather resistance to one of its mechanisms, mainly amnesty. The third form of resistance is, according to the author, the most dangerous one as it subjugates TJ to political manipulation, i.e. the elite in place does not reveal its rejection of TJ but rather adopts it as a political cover to hijack justice from within.

O'Loughlin's analysis is of a particular interest to this thesis as it looks at a case study from post-uprising MENA, namely Bahrain. The relevance of this resistance-based analysis will be retained in full as critical to the understanding of power balances that shape TJ processes, but also to comment on the prospects of TJ in MENA countries. It is unlikely for this thesis to depart from 'common' scholarly lenses addressing the question of TJ, at least in terminological terms, for matters of space and time. Building on existing terminology and key concepts around TJ, this thesis aims at providing evidence to endorse critical scholarly positions that call for the understanding of TJ as a political project by looking at a recent example in the MENA region, namely the Tunisian experience. The next section looks more closely at truth commissions (TCs) for they have been the most widespread TJ mechanism adopted in the past two decades, but more importantly, for matters of relevance to the purposes of this thesis and its case study. The next section also introduces the debate calling for the necessity to rethink traditional mechanisms of TJ, especially TCs, and for the incorporation of further forms of violations under TJ. The violation of ESRs is here discussed as the main illustration of the debate. The section highlights how liberals endorse such an argument only to force shaping a new development-based template for TJ. It sets the grounds for the understanding of how TCs work and how ESRs are being considered under such an umbrella to then introduce stances from postcolonial scholars.

2.2. Resisting standardization, recreating templates? On widening the scope of TJ

2.2.1. A brief history of the evolution of TJ

Most scholarship on TJ commonly refer to the Nuremberg trials as a starting point when sketching a genealogy of the field⁴³, though the concept *per se* was sculpted in the eighties, mainly in Latin America, and thrived after the Cold war. And while there is no consensus on clear demarcations of TJ phases⁴⁴, its evolution is fundamentally influenced by major shifts in global discourses under the prevalence of the liberal order, the rise of postcolonial approaches to universalism and internationalism including the call for a new definition of the principle of self-determination and that of sovereignty, the emergence of human rights as a branch of public international law marking a turn towards individual accountability flagged by the establishment of the International Criminal Court (ICC), but also the UN endeavors to reposition itself and upscale its relevance often questioned during and after the Cold war, the changing nature of conflicts from interstate to intrastate ones, and the collapse of authoritarian regimes. At the heart of it all are mass atrocities and crimes, but also oppression and cross-scale inequalities. Simply put, TJ in its current form seems to have no specific birthdate. While reviewing the literature, it became clear that dressing a classic historical overview of TJ based on a systematized apolitical chronology is inconceivable for three main reasons.

Firstly, TJ only makes sense within its local, regional, and global socio-political contexts, and does not operate within a vacuum. The history of TJ is intrinsic to the world's modern history. And while often presented as an apolitical project, TJ has

⁴³ Early prominent scholarship led by Teitel, Sikink, and many others. For a full account, see Vinjamuri and Snyder.

⁴⁴ Maddison & Shepherd. *Op. cit.*

always been shaped by, or trapped in, global politics. Secondly, dressing a historical account highly depends on one's positionality. It is also an endeavor that does not fall under this thesis's scope. We hence prefer to think of TJ's evolution as a historical continuum where every event and experience brought significant input to the discussion. These two points could be fairly summarized by quoting Maddisson and Shepherd who consider

“writing the history of transitional justice such that it relies upon [...] markers of Western modernity in its myths of origin encourages the association of transitional justice with a particular, contextually specific brand of Western liberalism that has been characterised as both paternalistic and asymmetrical [...] and it constructs a specific cartography of both justice and violence that renders ‘the international community absent from the scene of violence and suffering until it intervenes as a heroic saviour.’⁴⁵”

Thirdly, TJ came in different forms, or mechanisms, that continue to coexist to-date. These mechanisms range from rough justice, amnesties, domestic trials or ‘doing nothing’ (all these marked the pre-90's period), to ad hoc international tribunals (such as the ICTY), mixed tribunals, the ICC, universal jurisdiction, and truth commissions⁴⁶. The evolution of TJ mechanisms and the prevalence of one mechanism over the others in a specific context constitute a fair indicator of TJ's history and evolution. This resulted in a number of shifts that could be summarized as 1- a shift from punitive to restorative justice which has been translated in 2- a shift from a perpetrator-centered to a victim-centered approach and 3- from individual to collective justice, as well as 4- a shift from exclusively judicial mechanisms to mixed mechanisms including non-judicial

⁴⁵ Maddison & Shepherd. *Op. cit.* pp. 260

⁴⁶ Vinjamuri & Snyder. *Op. cit.*

venues which has been translated in 5- a spatial (from courtrooms to bureaus) and communitarian (lawyers and judges to experts of different backgrounds) shifts. These shifts offered an array of possibilities perceivable in the rise and predominance of truth commissions.

2.2.2. Truth Commissions and development-based approaches to TJ

In her “*Unspeakable truths*”, which became the handbook on the matter⁴⁷ reflecting on more than forty examples of TCs, Hayner states that TCs are characterized by four main features: 1-they are official bodies sanctioned by the state, which guarantees legitimacy, 2-they are temporary, 3-they deal with the past, and 4-they investigate patterns of abuse rather than specific cases to then issue reports with recommendations. This is also the exact definition provided by the 2004 Annan report and it offers a comprehensive introduction to what a TC is, but it is also important to note that such bodies are non-judiciary, their recommendations are non-binding, and they have no prerogatives of law enforcement even if mandated to work closely with tribunals. TCs rather represent a victim-centered⁴⁸ moral standing of a soft nature, which makes bargain between, and adherence of, conflicting parties smoother⁴⁹. As a primarily truth-telling mechanism, a TC can have a long list of objectives, a narrow, moderate, or multifaceted mandate and robust or limited prerogatives⁵⁰. The Kenyan experience is still considered the most ‘extreme’ example to-date with a TC covering 18

⁴⁷ Hayner. *Op. cit.*

⁴⁸ Andrieu, Kora. 2010. “Transitional Justice: a new discipline in human rights”. Mass Violence and Resistance Research Network. SciencePo Paris. [online]

⁴⁹ Kochanski. *Op. cit.* pp.123

⁵⁰ *Ibid.* pp. 131

objectives⁵¹, yet it is the South African Truth and Reconciliation Commission (TRC) that stands as a defining moment. The South African experience, for many reasons, enjoyed a strong international support at the time, but its promotion as a successful model that ‘ended’ apartheid quickly became subject to criticism and, later, to an acknowledgement of its failure⁵². Though we do not have the space to look at this interesting example extensively, what should be retained is the role of the TRC in the introduction of reconciliation, or the “amnesty-for-truth” principle as a primary component of TJ. Its ‘forced’ success led to discarding the principle years later, which is implied, in fine, in the 2004 Annan report. A remarkably brilliant analysis of the TRC report has been conducted by Mamdani in 2002⁵³, from which interesting methodological pathways can be drawn.

The motives to adopt a TC for mechanism are no different from adopting TJ in general. Still, the exponential resort to TCs became a site of scholarly inquiry. Apart from international ‘advocacy’ and the neighborhood effect, the soft nature of such a venue tends to be more appealing to competing elites, old and new, but also to ‘continuing’ elites where there is no ‘regime change’ but rather the need to address past abuses to express a political will for a fresh start (e.g. the case of Morocco). Another explanation, discussed by Nauenberg, is the promotion of rationalized myths about the importance of truth telling, which involves an array of actors, mostly international, leveraging previous experiences⁵⁴. These politically constructed rationalized myths

⁵¹ *Ibid.*

⁵² Hayner. *Op. cit.*

⁵³ Mamdani, Mahmood. 2002. “Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa.” *Diacritics* 32 (3/4): 32–59.

⁵⁴ Nauenberg. *Op. cit.*

portray truth as a synonym of justice evidently leading to reconciliation and non-recurrence and TCs as objective bodies that can produce a comprehensive account of the truth⁵⁵. The predominance of TCs is, anyway, far from being endorsed by solid empirical evidence of efficiency. Measuring the impact of TCs remains an unresolved question indeed, and premature conclusions on their success or failure are rather a manifestation of political instrumentalization of the process. To the many possibilities offered by TCs, there is a long list of limits and challenges that heavily depend on their immediate context. Aspirations for justice are often pressing societal needs and TCs take time to reach their goals, if ever. A public misunderstanding of the role of TC resulting in unmet expectations could also affect the credibility of the process⁵⁶. And as stated in the 2004 Annan report,

“truth commissions are invariably compromised if appointed through a rushed or politicized process. They are best formed through consultative processes that incorporate public views on their mandates and on commissioner selection [...] Strong public information and communication strategies are essential to manage public and victim expectations and to advance credibility and transparency⁵⁷.”

Simply put, even if a TC comes as a response to social calls for accountability based on a participatory approach, societies do not directly decide on the “technicalities” to be deployed nor do they enjoy equal powers and territorialities throughout the process.

⁵⁵ *Ibid.* pp. 659

⁵⁶ *Ibid.*

⁵⁷ S/2004/616. pp. 17

The discussion on TCs continues to evolve going from downstream criticism to upstream investigations of the full, or possible, potential of TCs, now becoming the norm. This should be cautiously considered as overcoming discursive and operational gaps often leads to the emergence and crystallization of new discourses and new models with their own new loopholes. International attempts to make development-based approaches part of the answer to the shortcomings of TJ should be no surprise. In fact, ESRs have always been part of the international agenda and their significance was further endorsed in 1966 with the adoption of the *International Covenant on Economic, Social and Cultural Rights* by the UNGA and its entry into force in 1976. ESRs have also been leveraged in humanitarian discourses, state-building, international security, and the UN different sustainable development programs. The interconnectedness of all these UN endeavors is embodied in the specific model of one of its prominent agencies, namely the UNDP. The 2004 Annan report states that addressing issues such as “*unequal distribution of wealth and social services*” and “*denial of the right to property*” fall under TJ’s imperative to prevent the resurgence of conflict when such socioeconomic aspects are identified as root causes⁵⁸. Yet this is all what the 24-pages report says about the matter, without direct reference to ESRs. The incorporation of ESRs is hence a recent trend in justice, seized with a sharper tone by the 2011 follow-up report characterized by two focus points that are the rule of law and the international security agenda. Socioeconomic inequalities, war and/or authoritarian economies, marginalization, exclusion, discrimination, and corruption have been long kept at the periphery of TJ⁵⁹. And it is possible to find a wide range of scholarly explanations to

⁵⁸ S/2004/616. pp. 3-4

⁵⁹ Nagy. Mani. Evans. McAuliffe. *Op. cit.*

such a practice such as the assumption that ESRs are less grave than criminal, political, and civil issues and are unfavorable to judicial action⁶⁰. The traditional focus of TJ on political transition is also based on the assumption that socioeconomic reforms will naturally follow consequently⁶¹. There is also a misunderstanding of ESRs and all what they entail in terms of obligations⁶². And while there is a consensus among scholars that TCs are the most suitable TJ mechanism to address ESRs, there are two distinct trends that characterize this debate. The first trend, endorsed by liberal scholars, does not look at the limitations of TJ caused by its internationalist origins and conception, but rather invites the incorporation of further elements of the liberal development-based agenda into the process. The second trend is found in postcolonial literature. It estimates that TJ in its liberal understanding is ill-conceived, and that development-based approaches are unrealistically optimistic and even harmful to the understanding of the complexities of socioeconomic justice. The second trend also calls for the consideration of structural violence instead of the incorporation of ESRs in liberal terms.

The next section focuses on postcolonial literature that calls for the acknowledgement of the colonial root causes of conflicts and the need to address violations under colonialism as well as the colonial heritage perpetuated by authoritarian regimes in servitude of the elite. This literature considers that a TJ timeframe that overlooks the colonial era is unlikely to succeed in setting solid foundations for post-conflict social justice, including guarantees of non-recurrence of

⁶⁰ McAuliffe. *Op. cit.* pp. 82

⁶¹ *Ibid.*

⁶² Schmid, Evelyne, and Aoife Nolan. 2014. "“Do No Harm”? Exploring the Scope of Economic and Social Rights in Transitional Justice." *The International Journal of Transitional Justice* 8 (2014): 362–82

violence. The section aims at introducing one of the thesis key conceptual frameworks that is structural violence.

2.2.3. Postcolonial literature and structural violence: Thinking TJ as a historical continuum

Advocacy to shift from transitional to *transformative* or *distributive* justice is on the rise across all schools of thoughts. For postcolonial scholars, this translate further shifts in TJ, mainly from individual to collective justice and from “direct and bodily personal violence”⁶³ to structural violence, i.e. violence embedded in political, social, and economic systems that is not perpetuated by direct action on individuals but by a condition of social injustice⁶⁴. There is indeed a serious critical body of postcolonial works that focuses on the importance of addressing social injustices, including those afflicted under colonialism, in the absence of which TJ processes are prone to “lose credibility”⁶⁵ and become obsolete⁶⁶. For TJ to survive, it is crucial to rethink its very aim as to serve “*forward-looking purposes than the ostensibly backward-looking emphasis*” of traditional TJ⁶⁷, i.e. to look at the past with the purpose of serving the future and be constructive beyond its reparative aim.

⁶³ Evans. *Op. cit.*

Moyo, Khanyisela. 2015. “Mimicry, Transitional Justice and the Land Question in Racially Divided Former Settler Colonies.” *The International Journal of Transitional Justice* 9 (2015): 70–89.

⁶⁴ *Ibid.*

⁶⁵ Mani, Rama. 2008. “Dilemmas of Expanding Transitional Justice or Forging the Nexus between Transitional Justice and Development.” *The International Journal of Transitional Justice* 2 (2008). pp. 254.

⁶⁶ Moyo. *Op. cit.*

⁶⁷ McAuliffe, Padraig. 2014. “The Prospects for Transitional Justice in Catalyzing Socioeconomic Justice in Post-conflict States: A Critical Assessment in Light of Somalia’s Transition.” *Northeast African Studies* 14 (2). pp. 78.

The debate is based on structural violence often being a cause of conflict or an aggravating factor that cannot be ignored anymore as this is likely to lead to conflict renewal⁶⁸. Mani, for example, reflects on justice and development not as a trade-off but as necessarily complementary, yet this should be rigorously considered while bearing in mind the many dilemmas it faces such as the cost of TJ processes, the efficiency of available mechanisms in going beyond the traditional scope of TJ, and the unstable socio-political atmospheres during which TJ takes place⁶⁹. Moyo insists on the need to a wider understanding of post-conflict justice for it to survive, yet only if its liberal agenda is condemned and the colonial roots of post-independence law are acknowledged and surmounted⁷⁰. Moyo's argument is very much aligned with An-Naim's yet rather operates from within the 'system' instead of its total rejection, seeing in it an opportunity of change if genuinely seized. Moyo's analysis of postcolonial policies and legal frameworks as a continuity of colonial ones is key to this thesis. And "whereas transitional justice's foundational concepts [...] were invented by patriarchal societies and colonial masters and are sometimes appropriated for neocolonial ends, transitions create opportunities for members of former colonies to input into this discourse."⁷¹. On a similar note, Maddison and Shepherd argue that the future of TJ can only make sense by overcoming its "arbitrary" timeframe, i.e. by looking at colonial roots of conflict (historical injustices) along with their post-independence perpetuation (contemporary benefits) and not only at the recent

⁶⁸ *ibid.*

⁶⁹ *Ibid.*

⁷⁰ Moyo. *Op. cit.*

⁷¹ *Ibid.* pp. 71

manifestations of conflict as if separated from “structural colonial violence”⁷². The authors consider the silencing of this aspect of TJ as one of the field’s most significant failures and a space of western political instrumentalization where TJ is portrayed as an opportunity for “indigenous” societies to live up to the West’s standards of peaceful democracies thanks to the “impartial” support of the international community, which perpetuates the understanding of history as “written by the victor”. Drawing on this postcolonial literature, we agree with an understanding of TJ not only as a means to restore justice but also a foundational momentum to dismantle authoritarianism as well as colonialism once and for all. This means that it is unconceivable for a country that has once been colonized to reflect selectively on its past and to consider post-independence political systems as separate from colonial remains for there is no such thing as clear historical cuts between the colonizer and the colonized but rather “mimicry”⁷³.

We are however particularly interested in the analysis built by McAuliffe that we find difficult to summarize yet meeting a set of conceptual elements particularly relevant to this thesis. McAuliffe highlights the teleological, technical, utopian, and project-management-like features of arguments considering socioeconomic justice as a natural outcome of traditional TJ, which is a conception that only reinforces the templatization and decontextualization of the process but also ignores TJ as a site of political bargain and resistance. Indeed, the author builds his argument on the political economy of ‘transitional’ phases and considers that:

⁷² Maddison & Shepherd. *Op. cit.* pp. 255

⁷³ Moyo. *Op. cit.*

“incoming democratic regimes may not organize their political programs on [the basis of socioeconomic reform], the outgoing regime may do so only to the extent that civil-political power is traded for the retention of economic power, power sharing among elites may be preferred to distributive justice for the communities they purport to represent, or peace may rest on a structurally unequal status quo⁷⁴.”

To illustrate the debate on structural violence under TJ, the question of land-related injustices is recurrently used as an example. In a guiding note focusing on how *“inequality in landholdings, illegal or unjust dispossession, and other land-related abuses are articulated as [...] a background or structural cause of conflict⁷⁵”*, Huggins suggests that TCs are more likely to offer the best setting to address these issues, more via value-based local approach than a legalist international one. Yet due to the complexity of land-related injustices, expectations should remain low while working on putting such a problematic on “the public agenda”. Still, the risk of jeopardizing a TJ process by incorporating such an aspect of conflict remains elevated. It is here a key point for this thesis where we understand land-related abuses as also including capture of resources and their unjust distribution, unbalanced regional planning, and consequent phenomena such as the rise of non-agricultural sectors on the expenses of agricultural lands, migration, and the rural-urban divide. And as this thesis also aims at participating in future debates on TJ in the MENA region, we would like to note that integrating land tenure, property rights, and “ethnically disputed territories⁷⁶” is particularly relevant to Syria as they have been widely leveraged by the Syrian regime

⁷⁴ *Ibid.* pp. 85

⁷⁵ Huggins, Chris. 2009. “Linking Broad Constellations of Ideas: Transitional Justice, Land Tenure Reform, and Development.” *Transitional Justice and Development*. ICTJ. pp. 2

⁷⁶ *Ibid.*

to ensure its sustainability before and during the war⁷⁷. Beyond the specificities of the Syrian case, authoritarian land tenure mechanisms are widespread techniques used to endorse the political elite by the enrichment of the economic elite, both being often the same, which ensures a security belt for autocrats. These techniques range from place annihilation (the case of downtown Beirut for example), accumulation by dispossession (such as the case of the reconversion of coastal cities to touristic hubs in Tunisia as part of the shift towards liberalism), to urbicide and demographic engineering (the case of Syria). The next section provides a historical overview on different forms of TJ in the MENA region before and after the 2011 uprisings. It also looks at the relevance of TJ in this region from an international perspective and builds on key notions drawn from previous sections, namely the need for a context-based understanding of TJ and the extent to which this is in line with, or in opposition to, the liberal project. It finally introduces the Tunisian TJ experience and its ESRs-related niche as a case study.

2.3. TJ in the MENA region

Which MENA countries embarked on TJ experiences via a truth-seeking mechanism? And what are the prospects of TJ in a war-torn region? What does the 2011 UNSG follow-up report on TJ says? The section is a brief overview to introduce the Tunisian experience as a case study.

⁷⁷ Based on personal research papers conducted towards the fulfillment of the PPIA program course requirements

2.3.1. Post-conflict justice under authoritarianism

It is difficult to say that the MENA region has a history of TC practice prior to the 2011 uprisings, except for Morocco and Algeria. Some scholars do not consider the Algerian experience as transitional justice. Other scholars add further examples such as Iraq. In terms of truth commissions, only Morocco is unanimously discussed as pre-uprising TJ. Morocco established “the National Commission for Truth, Equity and Reconciliation” in 2004 by royal decree, a decision via which the new king Mohamed VI wanted to prove that his reign will not perpetuate the legacy of human rights violations of his late father, Hassan II. The commission operated for a year and a half with a limited mandate and a ‘no-naming of perpetrators’ rule, investigating Morocco’s post-independence history⁷⁸. This experience took place in a political continuum and resulted in a set of reparations for victims, constitutional reforms, and an official apology. Its protection of perpetrators is thought to be one of the reasons why it had little international resonance⁷⁹. As per Algeria, an “Ad hoc inquiry commission in charge of the question of disappearance” was established by presidential decree in 2003 to investigate the well-known “black decade” horrors opposing the state to armed Islamist groups. The commission had an 18-months mandate that did not include identification of perpetrators nor granted the commission access to official security archives. The final report was followed by a “Charter of Peace and National Reconciliation” granting amnesty to security forces and alleged sentences (and even amnesty) to members of the armed Islamist groups⁸⁰.

⁷⁸See: Human Rights Watch. 2005. Morocco's Truth Commission Honoring Past Victims during an Uncertain Present. 17(11-E): 1-51 [Online]

⁷⁹Fombad, Charles Manga. 2012. “Transitional Justice in Africa: The Experience with Truth Commissions.” Global Lex Program, New York University Law School. [Online]

⁸⁰ *Ibid.*

The next section discusses the relevance of TJ in MENA to the international community. It builds on elements related to the liberal discourse as introduced earlier. The section is a comparative analysis between two key documents that are the 2004 Annan report on TJ and the rule of law and its 2011 reviewed version. It particularly looks at the share of ESRs in both documents and the overall evolution of the UN discourse in this regard.

2.3.2. Post-2011 TJ and the UN blueprint: the 2004 Annan report, reviewed

The uprisings spreading all over the MENA region presented a crucial test to which the UN responded very promptly, seizing the moment to lead and impose itself at the forefront of power balances and new norms in the making. Under the promotion of the rule of law UN agenda, the 2004 report has been followed by a reviewed version issued in October 2011, i.e. a few months after uprisings in Tunisia, Egypt, Libya and Syria kindled and snowballed. Whether this UN project will succeed or not is a different, and probably too premature, question, yet the tone was set, and the document's introduction clearly states that:

“Timing is critical in all our endeavours. In the Middle East, North Africa and elsewhere, grass-roots demand for greater accountability, transparency and the rule of law is driving political changes at a breathtaking pace. As the present report is being drafted, rapidly developing situations in Côte d’Ivoire, Egypt, Libya, South Sudan, the Syria Arab Republic and Tunisia are placing significant demands on our expertise, testing the limits of our capacities. To date, the United Nations rule of law sector has never faced such stark challenges, or such historic opportunities.”⁸¹

⁸¹ S/2011/634. pp. 3-4.

A few months before issuing the report, prosecutions of former political leaders were already taking place and the international community was already selectively involved in post-uprising ‘justice’. Yet the inconsistency of the responses may have urged the UN to rectify the course of events and to “correct a deviation” to quote An-Naim. In fact, in the year 2011, “former Tunisian President [...] was tried in absentia, and the International Criminal Court (ICC) issued arrest warrants for Libyan leader[s]. Meanwhile, Yemeni President agreed to step down in a deal that guaranteed his immunity from prosecution” and later, former Egyptian President’s trial started in early August⁸². According to Aboueldahab, it became clear that all this is likely to “*weaken global accountability norm claims*” as domestic and international actors hold “*competing accountability agendas*” and as these early symbolic prosecutions were mere attempts to deviate attention from the wider picture of human rights violations and impunity in the region.⁸³

The 2011 UNSG follow-up report builds on its 2004 precursor but with a sharper, more ‘corporate’, wording and a consistent emphasis on international security. It recognizes ESRs violation as a problem of governance that poses international threats and leads to conflict and should be addressed by TJ mechanisms to avoid the resurgence of violence. The report’s approach to ESRs is however far from being based on the human rights discourse but on a bluntly expressed necessity of containment for the sake of international peace. Indeed, the report states that the lack of “economic opportunity” and distrust between governments and the marginalized create “feelings” that could be

⁸² Aboueldahab, Noha. 2017. *Transitional Justice and the Prosecution of Political Leaders in the Arab Region: A Comparative Study of Egypt, Libya, Tunisia and Yemen*. Oregon: Hart Publishing.

⁸³ *Ibid.*

easily invested by “radicalized ideological movements [that] often stand ready to harness these sentiments, inciting marginalized groups, unemployed youth and criminal elements to challenge the established order through violent means⁸⁴.” Such a discourse is intriguingly aligned with that of former, or still-in-power, MENA autocrats whose first responses to the uprisings built on ‘fear’ and the description of rising social riots as ‘acts of terrorism’ that governments should firmly face to prevent chaos and reinstate public order and the rule of law. Throughout the document, and apart from adding a gender-based focus to TJ agendas, justice is portrayed as a moment of containment and re-establishment of law order, including institutional capacity-building of key sectors such as the police and the carceral sectors⁸⁵, by the international community and for the international community. Traditional, or “indigenous” justice mechanisms are described as “informal” justice where UN efforts should also be invested to bring them ‘closer’ to its standards.

The 2011 UNSG report and consequent international involvement in the Tunisian TJ process to force its promotion as a successful example could be explained by international attempts to make Tunisia a regional catalyzer⁸⁶. Yet almost a decade later, it is not (yet) the case. Indeed, while almost all MENA countries have experienced different degrees of socio-political unrest resulting in different responses and political landscapes, there is still an international insistence to standardize the debate and preserving resort to TJ as a norm. The prospects of TJ projects in Libya, Syria, Lebanon, or Iraq are under discussion at various levels with one question in mind:

⁸⁴ S/2011/634. pp. 4

⁸⁵ *Ibid.* pp. 10

⁸⁶ *Ibid.* pp. 11

would the uprisings mark a new shift in TJ processes, the birth of new mechanisms dictated by the specificities of the context, or the opportunity for TJ to reconnect with its locally grounded original rationale?⁸⁷. And while such questions have solid grounds when considered within the historicity and the cyclic evolutionary pattern of TJ from the 80s to-date, especially the Latin American and the east European “waves”, their primary loophole is the consideration of the MENA region as a homogenous entity. In other words, it is unlikely for MENA countries to all have the same answer to transition, or to transit at all⁸⁸, let alone to generate a new model of TJ. What should be retained is that it is indeed a moment for the rise, or the fall, of TJ in its internationalist and liberal terms.

2.3.3. Ten years later: a state of the field

Which countries embarked on TJ experiences? Through what mechanisms? And what are the prospects of TJ in a war-torn region? The uprisings that marked the MENA region and other countries around the world in the past decade are perfect examples to highlight the topicality of the debate on TJ. Indeed, most recent waves of discontent were not triggered by mass crimes, at least as a first spark, but rather on grounds of socioeconomic distress and deprivation from civil rights. This put social inequalities and corrupted regimes at the center stage, from Tunisia in 2010 to Lebanon in 2019, and defined reclaimed justice as inevitably having socioeconomic dimensions along with demands to cut ties with impunity. Yet, as put by Salloukh, “*negotiating new forms of government and law and rectifying the injustices of the past will be neither*

⁸⁷ Aboueldahab. *Op. cit.* pp. 4

⁸⁸ Salloukh, Bassel. 2014. “The Arab World after the Popular Uprisings: A Spirit Restored?” In *Transitional Justice and the Arab Spring*, edited by Kirsten J Fisher and Robert Stewart. pp. 32.

*uncomplicated nor unilinear processes*⁸⁹”, and in the MENA region, these processes face and present a large spectrum of demands and challenges⁹⁰. As this thesis aspires to draw some lessons of regional relevance based on the Tunisian experience, we here briefly dress an overview on the state of the field in some MENA countries.

After 2011, a sustained international attention promoting the Tunisian post-uprising experience as a successful template, participated in shaping a public understanding of the country often in rupture with the reality on the ground. It also confined further scholarship on other MENA experiences within the necessity of setting the Tunisian example as a starting point from which analyses are drawn by comparison. Broadly, transitology and exceptionalism have been the main lenses through which early reflections on political change in the region were built, a trend that shortly faced solid criticism denouncing an exclusively west-centric understanding of democracy and calling for more historically and geopolitically grounded analyses⁹¹.

Apart from the need to think the uprisings as an ongoing movement of political ‘reordering’ and not necessarily that of regime change, and outside a binary understanding opposing pre-uprising to post-conflicts, or authoritarianism to democracy in western terms, there is clearly more to consider when engaging with related scholarship. First, it is important to pinpoint trends emanating from the assumption that TJ has become an unavoidable milestone in any pathway towards socio-political reconstruction, which is inherently vital to the internationalist project. Second, such approaches, based on an understanding of the MENA region as a homogenous entity,

⁸⁹ Salloukh. *Op. cit.* pp. 31

⁹⁰ *Ibid.*

⁹¹ *Supra*, note 18.

are rather reductive and do overlook context-based specificities on a multitude of scales and aspects. Ten years after the first wave of uprisings, only Tunisia established a ‘post-authoritarianism’ fully institutionalized TJ process via a truth-seeking mechanism. Attempts in other countries remain very limited and rather led by the international community within the range, or “menu”, offered by already established judicial and non-judicial TJ venues. Much of the discussion refers to the resurgence of political Islam’s illiberal agenda as an impeding factor for it is normatively in contradiction with the liberal spirit of TJ⁹². We prefer, however, to avoid the specificities of such an argument and to rather adopt a more distant approach by the consideration of power dynamics of old and new political elites, regardless of their ideological stances.

⁹² Salloukh. *Op. cit.*

CHAPTER 3

THE CASE OF TUNISIA AND THE MAKING OF THE VICTIM-REGION CONCEPT

The chapter starts with an enumeration of pre-TDC elements of TJ in post-uprising Tunisia and the process's key documents and actors. It then looks at how the TJ law defines victimhood and introduces art. 10 para. 3. and its pillars, namely "the region as victim rationale", and conditions of victimhood i.e. "systemic exclusion", "marginalization", and the element of intent. In its third section, the chapter unfolds the thesis's argument.

3.1. Paving the way to the TDC: early elements of TJ and the 2013 TJ law

In her account on early elements of TJ in Tunisia, Andrieu pinpoints that the first form of transitional justice was announced by Ben Ali himself on the eve of his departure on January 13, 2011. On that day, for his last speech, he promised to establish a truth-seeking commission to look at security forces violence against protestors⁹³. Between February and October 2011, a temporary transitional government created three commissions, namely 1- The Inquiry Commission on Crimes and Abuses Committed During the Revolution, 2- The Inquiry Commission on Corruption and Embezzlement, and 3- The Commission for Political Reform. The decree-law on general amnesty granted to political detainees and then various laws on reparations for victims of different abuses focused on prompting compensations and closure without addressing

⁹³ Andrieu, Kora. 2016. "Confronting the Dictatorial Past in Tunisia: Human Rights and the Politics of Victimhood in Transitional Justice Discourses Since 2011." *Human Rights Quarterly* 38 (2). pp. 269.

the past or searching for the truth⁹⁴. Further scattered elements of post-conflict justice, including the prosecution in abstensia of the former president and other political figures, triggered divisive debates that marked the political and public sphere. The 2011 elections opened the door to the discussion of a more institutionalized justice process. In January 2012, a Ministry of Human Rights and Transitional Justice was created. In December 2013, the Organic Law on Establishing and Organizing Transitional Justice⁹⁵ (hereby the TJ Law) was voted by the National Constituent Assembly (NCA) marking the foundation of the Truth and Dignity Commission (TDC). At the time, the NCA was still lagging behind its own agenda, that is to draft, discuss and vote a new Constitution, which passed only in December 2014.

The TJ law came after several attempts to institutionally ‘face the past’ and among an increasingly polarized political landscape, but also away from early public debates opposing opinions of complete political rupture with the past (tabula rasa, no transition) and those of transitional justice and reconciliation⁹⁶. The TJ law sets the TDC as the solemn independent body in charge with a four-years mandate renewable only once for up to one year maximum⁹⁷. In a highly tense context marked by political assassinations and instability, security risks and a neighboring war in Libya, a dire socio-economic situation, and the emergence of ideological conflicts, the TDC started operating in mid-2014 to document 60 years of silenced history. Its mandate covers the period extending from July 1st, 1955 to December 2013, i.e. from the day of the

⁹⁴ *Ibid.*

⁹⁵ Journal Officiel de la République Tunisienne. 105. Loi organique n°2013-53 du 24 Décembre 2013 relative à l’instauration de la justice transitionnelle et son organisation. <https://legislation-securite.tn/fr/node/44087>.

⁹⁶ Andrieu. *Op. cit.*

⁹⁷ TJ law. Article 18

declaration of Tunisia's internal autonomy, or domestic independence, from French colonialism to the TJ law's entry into force. The UN celebrated the establishment of the Commission describing it as "a bright spot of hope for the UN" in the words of its Secretary General. Other UN senior staff stressed the importance of the Commission's success for Tunisia's transition to democracy⁹⁸.

The scope of the Commission's mandate, as defined by the law, encompasses "*any gross or systematic infringement of any human right committed by the State's apparatuses or by groups or individuals who acted in the State's name or under its protection [...] or by any organized groups*"⁹⁹. The TDC, set to investigate and to document such violations, has a wide range of prerogatives related to TJ's areas of competence as defined by the law, namely revealing the truth, determining responsibilities, and ensuring accountability, developing plans of reparation, rehabilitation, and non-recurrence, issuing recommendations as deemed necessary especially for institutional reform and corruption, and preserving collective memory. "Gross violations of human rights" are defined under Article 8 as those in line with ratified international conventions and as stated by the TJ law, the latter only enumerating a few examples such as "*deliberate killing, any form of sexual violence, torture, enforced disappearance, and execution without fair trial guarantees*." This differs in nothing from precedents and international standards. In fact, the interest dedicated to TJ in the past two decades resulted in an important body of literature mainly focusing on human rights violations, and the Tunisian TJ law is the result of a

⁹⁸ UNDP. Press Statement: Tunisia launches Truth and Dignity Commission. 9 June 2014. [\[Online\]](#)

⁹⁹ TJ Law. Article 2.

series of consultations with international experts. It draws its key elements from precedents with ‘adjustments’ to the local context.

The TDC proceedings would finally take more than five years, flagged by the country’s first public hearings ever, live broadcasted on national television in 2017. The Commission was also a site of contestation, often exposed to serious questioning of its impartiality and disapproval from different political factions as, during its existence, Tunisia held two presidential elections and had six governments and three cabinet reshuffles¹⁰⁰. In brief, the TDC offered an additional opportunity for the old and the new elites to leverage and to instrumentalize such a process for more power gain. Still, in July 2020, the TDC’s final report¹⁰¹, a 2000-pages document, was finally published in the official Gazette. 62720 deposited files were screened, including 221 files of victim-regions, and 49654 secret hearings were all recorded and archived¹⁰².

Under the terms of reparation and rehabilitation, article 10 of the TJ law defines a victim as “(1) *any individual, group or legal entity having suffered harm as a result of a violation [...] and (2) their family members as well as any person who was harmed while intervening to prevent the violation*”. In the article’s third paragraph, the definition of “victim” is extended to include “(3) *every region which was marginalized or which suffered systematic exclusion*”, where “region” is ‘a’ translation of the Arabic word *mintaqah*¹⁰³ as in the law’s original Arabic version. It is here a central point for this thesis as, by the consideration of a “region” -i.e. a spatial entity- as a victim, the

¹⁰⁰ Between 2013 and mid-2020.

¹⁰¹ The report was finalized and published online in 2019. Only an executive summary of 600 pages is available in English. The full report is available in Arabic and accessible at <http://www.ivd.tn/rapport/>

¹⁰² TDC official website. Home page <http://www.ivd.tn/?lang=en>

¹⁰³ As stated in the Arabic version of the TJ law. *Al-mintaqah* can be translated as “region”, “zone”, “area”, “district”, etc. see *Supra*, note 6.

Tunisian experience is likely to shed light on the potential -and the risks- of the integration of structural violence and social injustices in TJ processes. This said, there is no clear formulation or reference to ESRs in the article, nor in any other article of the law. This raises core questions about the motives behind the adoption of para. 3, on how it has been interpreted to address ESRs and by whom. The next section contextualizes art. 10 para. 3 based on a literature review. It introduces the correlation between spatial victimhood and ESRs as defined by relevant actors and examines the potential of the article in the Tunisian context.

3.2. Is Article 10 paragraph 3 a consideration of ESRs? Contextualizing the niche

The vagueness of article 10, para. 3 and the lack of further key definitions made it difficult to be utilized. However, such a textual haziness was quickly seized by Civil Society Organizations (CSOs) and independent individuals/inhabitants to undertake procedures towards grievances filed on behalf of a given region¹⁰⁴ based on the essence of the text and on concerted efforts of interpretation. CSOs relied on legal and statistical tools but also resorted to similar international experiences and frameworks. The “victim-region” concept came to light and the first file in this regard was submitted by a local NGO, the Tunisian Forum for Social and Economic Rights (FTDES) in 2015, establishing the Kasserine Governorate as a victim¹⁰⁵. By the end of Phase I, the TDC received 221 files under para 3. of art. 10 and dedicated an entire section to its discussion where it recognizes the legal and technical difficulties inherent to the victim-

¹⁰⁴TJ law. Article 52

¹⁰⁵ Tunisian Forum for Economic and Social Rights. “Request to declare the region of Kasserine as “victim””. Submitted to the Truth and Dignity Commission, Tunis office in 2015. With the technical support of Avocats Sans Frontières.

region niche¹⁰⁶. It however aligned its methodology with submitted studies and established a series of recommendations based on the same rationale adopted by NGOs while including further indicators and fieldwork findings collected by TDC staff. More importantly, the TDC concluded by granting or denying the status of victim-region based on its interpretation of its mandate and of conditions of victimhood, namely marginalization and systemic inclusion. According to the Commission, the state is the solemn entity responsible for harm done but also of the implementation of guarantees of non-recurrence and collective reparation, mainly by linking the reparation program to an alternative development program, supporting decentralization, and designating independent constitutional bodies¹⁰⁷ as watchdogs of non-recurrence guarantees.

The introduction of ESRs, and more broadly, social justice, is an aspect that cannot be discarded in the Tunisian context. During a webinar on the likeliness of reemergence of authoritarianism in Tunisia, Nessryne Jelalya, the executive director of al-Bawsala¹⁰⁸, rightfully commented on the TDC final report as a crucial document that helped deconstructing former authoritarian systems and understanding how they worked and what ensured their sustainability¹⁰⁹. She continues by pinpointing four main mechanisms of the authoritarian toolkit, namely 1-the oppression of the public sphere and of the political life, 2-torture and the carceral system, 3-institutional obsolescence, and 4- the political capture of national wealth and resources. The consideration of a region as a victim on grounds of marginalization and systemic exclusion is hence inscribed in

¹⁰⁶ TDC Final Report. Arabic version. Part II, Chapter IV. pp. 187-566

¹⁰⁷ TDC Final Report. *Op. cit.*

¹⁰⁸ Leading local NGO acting as a watchdog / observatory of the parliament, the state budget, municipalities, and lately the TJ process.

¹⁰⁹ Jelailya Nessryne. “Les craintes du retour de la dictature sont-elles justifiées? ». Webinar organized by L’Art-Rue. November 6, 2020. <https://www.facebook.com/LArtRueTunisie/videos/1084355915326647>

the investigation of these mechanisms, especially the capture of national wealth and resources and their unjust distribution. Still, the victim-region concept, in practice, raises several questions as per the extent to which its shaping, use, and discussion by involved parties succeeded in making the TJ process the proper venue to address structural violence and to tackle long-standing inequalities. The main argument of this thesis comes in response to these questions.

Tunisia is an African, Mediterranean, country with a wide mix of ethnicities all forming what is now known as the “Tunisian identity”, with a majority of Muslim Sunnis and a ‘shrinking’ Jewish community (and no statistics on the Christian community). This country of almost 163,000sqKm, bordered by Algeria (West) and Libya (East), with a coastline of some 1300km (including Africa’s extreme North point) was colonized by France from 1881 to 1956 yet, unlike Algeria, French colonization came under the form of a “protectorate” of an already-existing Tunisian state ruled by a Beylik regime. Tunisia counts some 12M habitants today and is a semi-presidential/ semi-parliamentary Republic. It had two presidents under the first republic (1956-2011), and four (so far) under the second Republic. The country is internationally classified as a non-oil developing country while being a ‘privileged’ European partner with low to no openness on other markets such as sub-Saharan countries, Asia, or Latin America. The country’s geographical closeness to Europe, and especially to Italy, makes it one of the continent’s key spots for undocumented migration and hence of a great security concern to Europe. Tunisia is administratively divided into 24 governorates, which are sub-divided into delegations and districts, all being defined by central authorities based on ottoman and French colonial heritage. The country has also a customary division into 6 economic sectors that are: the North-East, the North-West, the Central-West, the

Central-East, the South-West and the South East. Its capital city, Tunis, is also its political and economic capital with more than 3M inhabitants. Denying the existence of clear fault-lines could not have been a peripheral question when addressing the ‘past’. Regional marginalization and systemic exclusion are prominent features of the country’s political geography.

The very dynamics of the uprising(s) took place along, and because of, these patterns of exclusion. In fact, the 2010-2011 uprising is not an isolated moment, as the country has had several social protests and movements faced by violent repression prior to the uprising, the most significant one being the 2008 events that took place in the mining basin in the South. It was clear that what led to the uprising is indeed a structural problem of unbalanced development plans, unjust national wealth distribution, and growing kleptocracy. Apart from the TJ Law, the 2014 Constitution also guarantees the right of marginalized regions to affirmative action, or “positive discrimination”¹¹⁰. Indeed, early popular demands have been all about social justice as the cornerstone of a new social contract, still in the making. Years later, the overall situation remains unchanged. Apart from the political leverage of marginalization during electoral campaigns, remedies to regional disparities remain ink on paper. Regardless of the methodology applied, all studies, whether international or local, academic or NGOized, reflect the same reality opposing coastal regions to inland ones¹¹¹. According to the National Institute of Statistics (NIS)¹¹², “although the inequalities decreased to a certain extent at national level from a Gini coefficient of 34.4 in 2000 to 32.7 in 2010, they

¹¹⁰ Constitution of the Republic of Tunisia. 2014. Article 12: *The state shall seek to achieve social justice, sustainable development and balance between regions based on development indicators and the principle of positive discrimination.*

¹¹¹ Literature reviewed for this proposal

¹¹² More commonly known as INS (French acronym for *Institut National des Statistiques*).

were due more to a decrease in intra-regional inequalities that fell from 23 in 2000 to 20.1 in 2010”, while inter-regional inequalities and polarization grew deeper during the same period¹¹³. This led to increasing “feelings of identification and alienation of the citizens of disadvantaged governorates” as “average standards of living became increasingly unequal between regions”¹¹⁴. It is this very reality that motivated and is reflected by art. 10 para. 3 at the risk of failing to be the proper venue to overcome structural violence.

For decades, the capital city, Tunis, witnessed cephalic growth and a similar concentration of investments was sustained along the coast on the expenses of the rest of the country¹¹⁵. The failure of a socialist experience under Bourguiba and the shift towards a liberal model were key demographic moments as they generated mass migration towards the coast¹¹⁶. Despite attempts to remedy exponential urban expansion, the mid-eighties crisis pushed Tunisia to adhere to the International Monetary Fund’s plans of structural adjustment paving the road to privatization and to a more pronounced neoliberalism¹¹⁷. International agreements and the country’s insertion into global markets required infrastructural readiness, and at the time, only coastal cities were ready to embrace globalization, leaving inland regions out of the plan¹¹⁸. The middle classes created by Bourguiba and sustained by Ben Ali were key to the

¹¹³ National Institute of Statistics. 2012. “Measuring Poverty, Inequalities and Polarization in Tunisia 2000-2010.” pp. 7

¹¹⁴ *Ibid.* pp. 24

¹¹⁵ Riadh, Bechir. 2018. “The Tunisian Revolution and the Role of Regional Development Disparities in Its Outbreak.” *Contemporary Arab Affairs* 11 (3): 69–84.

¹¹⁶ *Ibid.*

¹¹⁷ King, Stephen. 1999. “Structural Adjustment and Rural Poverty in Tunisia.” *Middle East Report* 210 (Spring).

¹¹⁸ Riadh. *Op. cit.*

preservation of socioeconomic stability¹¹⁹, and the economic elite enjoyed the protection of the ruling class while serving it in return. Authoritarianism grew strong and kept being upgraded¹²⁰ only to reposition itself more comfortably. Such a narrative is quite common across the MENA region, yet looking at pre-independence root causes should be part of the deconstruction of consequent socioeconomic policies and phenomena. This does not mean denying the responsibility of post-independence regimes in reinforcing inequalities, but historicity should be inherent to ‘unveiling the truth’ as the TDC mandate dictates, especially on how those regimes’ foreign policies permitted to France to reshape and perpetuate its exploitation of its former colony. However, the TDC was commissioned to only investigate post-1955 events, discarding almost the entirety of the colonial era. While having been an authoritarian tool, socio-spatial marginalization and the country’s main fault-line date back to pre-independence¹²¹ and continue to be sustained ten years after the uprising. From the colonial era to the second republic, the status quo of Tunisia’s political geography has been kept intact, if not deepened. However, little acknowledgement of the role of French colonialism in setting the grounds for regional imbalances and initiating socioeconomic engineering can be found in the literature, the focus being almost exclusively on post-independence economic policies. The rationale behind such a choice, as defined by the law, is hence to discard colonial structural violence.

It is equally important to look at the post-uprising perpetuation of such patterns, a diagnosis enjoying growing consensus, as studies show that the overall situation is

¹¹⁹ Motadel, David. 2020. “The Myth of Middle-Class Liberalism.” *New York Times*, January 22, 2020.

¹²⁰ Heydemann, Steven. 2007. “Upgrading Authoritarianism in the Arab World.” Working Paper 13. The Brookings Institution.

¹²¹ Sadiki, Larbi. 2019. “*Regional Development in Tunisia: The Consequences of Multiple Marginalization.*” Brookings Doha Center. January (2019). 1-15.

only getting worse. Indeed, the emergence of new political actors came hand in hand with the economic elite's consolidation of privileges and power and, as put by Meddeb, "the post-2014 political settlement reflected the willingness of Tunisia's well-established political, economic, and social elites to rebuild the old coalition that sustained the authoritarian regimes"¹²². Meddeb here refers to the post National Dialogue landscape, a moment led by the so-called Quartet and rewarded with a Nobel prize for peace, which only reinforced, or served, a stubborn international narrative on Tunisian exceptionalism. At the time of writing this thesis, media outlets and academic platforms worldwide are 'celebrating' the Tunisian uprising's tenth anniversary and reflecting on what has been achieved in the past decade. The answer is simple though, at least in terms of socioeconomic indicators: nothing has changed. According to the Tunisian Social Observatory, the year 2020 was marked by a number of social mobilizations as high as those documented in 2011¹²³. The trend is sustained throughout 2021's first quarter, regardless of the extent to which the Covid-19 pandemic exacerbated socio-economic struggles.

The next section introduces the thesis's argument. It builds on previous sections to pinpoint how art. 10 para 3 presents a discursive field where conflicting interpretations stemming from diverging agendas are likely to undermine the overall process. The section also aims at narrowing the scope of the discussion by defining aspects that will be addressed in the next chapters and acknowledging those to be discarded.

¹²² Meddeb, Hamza. 2020. "Tunisia's Geography of Anger: Regional Inequalities and the Rise of Populism." *Carnegie Middle East Center*. pp. 3

¹²³ The Tunisian Social Observatory. 2021. Monthly report on Social Movements: February 2021. Tunis: FTDES [\[Online\]](#)

3.3. Unmaking the victim-region concept, unfolding the argument

This thesis looks at the victim-region concept for it is a sparsely explored niche of TJ tackling spatially manifested structural violence and social injustices. For such a purpose, art.10 para.3 of the Tunisian TJ law presents the perfect opportunity to explore how the status of victim is attributed to a spatial entity, here ‘region’ and its habitants, and how collective damage is addressed by a tool rather designed to remedy violations perpetuated on individuals. The choice is hence driven by the incorporation of ESRs and their geographical manifestations in a process highly marked by the singularity of its purpose and usage and in a context of political change and continuity -and not rupture. The question that lays behind such a choice is on the extent to which TJ is the proper venue to tackle structural violence. Focusing on the specificities of the TC mechanism, paths to be investigated will also try to answer questions on *who shaped the concept, why was it adopted, what narratives have been deconstructed and what ‘truths’ have been (re)constructed*. In brief, the thesis only looks at one chapter of the Tunisian TJ experience, that is collective reparation for victim-regions, and hence at how the victim-region discourse has been produced and what it produced in consequence both socially and politically. The entirety of this reflection is based on the final works and findings of the TDC to explore the specific niche of victim-region, its incorporation, and its discussion, but more importantly, its prospects in the Tunisian context and beyond.

Aspiring to be inscribed in upcoming debates on the soon-to-be resumed Tunisian TJ process, and acknowledging scholarly discussions on TJ in general, the thesis *argues* that the victim-region concept, as shaped by elite actors, has methodological and discursive limits that bring more harm than good to the

marginalized and that serve the perpetuation of the system in place and not its dismantlement. These limits stem from the seizure of the victim-region niche by state and non-state actors who invested the vagueness of the law to impose teleological interpretations serving their competing agendas in a post-uprising country witnessing political continuity rather than rupture or transition.

Methodological limits refer to the decontextualization and to the depoliticization of socio-spatial inequalities and structural violence. This means that root causes and consequences of marginalization have been discarded throughout the process.

Decontextualization refers to historical and spatial fragmentations, or selectivity, which makes an account for ‘the’ truth behind inequalities incomplete and in contradiction with the TDC mandate, at least partly. In the case at stake, historical selectivity is set by the law, i.e. the mandate of the TDC covering the period extending from 1955 to 2013, while spatial selectivity is due to a legal void, i.e. the absence of a definition of ‘region’. Decontextualization also looks at how measures recommended by the TDC are not context-driven and do not acknowledge Tunisia’s institutional frailty. *Depoliticization* looks at how a strictly development-based approach that discards a wider systemic reality is unlikely to counter long-standing authoritarian patterns. It would rather lead to the reproduction of the same neoliberal models and the enrichment of the same elite, pushing boundaries of inequalities and discontent only a bit farther yet maintaining key aspects of territorial disequilibrium. Such an approach also sets a clear cut between ESRs and human rights, where ESRs are defined by a set of technical indicators and are addressed as needs to be met and not as rights to be restituted.

Discursive limits refer to two moments of the making of the victim-region concept. The first moment is summarized by art. 10, para. 3 as a site of bargain and a discursive field

involving state and non-state elite parties. The power dynamics that marked this sphere involve international and domestic agendas, alliances, and resistance for self-preservation. These dynamics are investigated to understand why the victim-region concept failed in challenging the status quo and in initiating a different public debate on old and new patterns of structural violence. The thesis exclusively looks at the elite sphere for agency of non-elite actors has been made possible only within the limits dictated by the elite despite efforts to promote the process as participatory. The second discursive moment is defined by the final narrative of the TDC that reproduces official discourses and maps social divides as already present in the public imaginary by reiterating an unquestioned traditional understanding of marginalization and exclusion. The TDC's overall approach is likely to reinforce victimhood and social stigmatization as the notion of victimhood, voiced yet left unassessed, is prone to ignite already-existing social divides, known in Tunisia as "regionalism", or *jihawiyat*. It also exposes the TJ process to public misunderstanding, political cooptation, and populism as regional victimhood is constantly leveraged for electoral purposes and political positionality which is only fueling hatred and deepening cleavages. The TDC's self-attributed capacity to grant the victim status to a given region, and not to another, based on a very limited set of socio-economic indicators is here the starting point of the analysis as it will be discussed under methodology.

This thesis does not pretend to bridge a gap in relevant scholarship but to convey an interdisciplinary understanding of a controversial aspect of TJ proceedings. It also offers a timely reflection on the TJ experience in Tunisia in response to early literature where conclusions have been drawn before the release of the final report of the TDC and with a singular focus on political and civil rights.

3.4. Methodology

Scholarship reflecting on TJ generated a space of inquiries on best methodological ‘practices’ to apprehend such a complex process from different perspectives and for different purposes. However, little (to no) endeavors have been dedicated to how to adapt these methodological approaches to the many shifts of TJ as a ‘new’ field of study. We refer here to one major development that is the shift from a perpetrator-centered to a victim-centered process and from the narrow understanding of a victim as an individual who has been subject to direct harm to the ‘tricky’ definition of a victim as also a spatial entity, as our case study suggests. The question that triggered the entire rationale of this research project is whether TJ, via a TC mechanism, is the proper venue to address spatially manifested structural violence or not. Borrowing methodological frameworks from different disciplines is hence inherent to the question, and is as necessary as valid, especially with regards to the procedural shift from courtrooms (and hence from legal studies) to offices of non-judicial expertise. And while this thesis does not offer an alternative to such limits, it aspires to shed light on the many challenges posed by overburdening TJ processes, including those of a sheer methodological concern.

Guided by conclusions drawn from the literature review, this thesis adheres to the consideration of TJ as a *discursive field*, and hence adopts an exclusively *interpretivist* approach. Such a choice is largely inspired by the works of Preysing whose book discusses Tunisia’s TJ process from 2011 to 2013, i.e. before the TDC started operating, as one of the many post-uprising sites of competing political forces, new discursive formations and the exercise of power they involve¹²⁴. Preysing’s

¹²⁴ Preysing, Domenica. 2016. *Transitional Justice in Post-Revolutionary Tunisia 2011-2013: How the Past Shapes the Future*. Politik und Gesellschaft des Nahen Ostens. Springer Fachmedien Wiesbaden.

discursive field covers a different set of elements and actors than what this thesis considers, the only shared element being the international community. In her book's second chapter, Preysing details her methodology by recurrent references to post-structuralist literature and aligns her approach with the works of scholars such as David Howarth and Reiner Keller (with a critical discussion of those of Foucault and Fairclough). We adhere to the skeleton of her methodological framework, that is the investigation of a given TJ aspect as a discursive field shaped by competing agendas and power dynamics, regardless of her main argument and conclusions.

The thesis does not aim to design an evaluation, or an interpretation, framework to assess the incorporation of ESRs in TJ processes in general but to highlight the limits of arguments calling for the extension of the TJ scope via a context-based critical discourse analysis (CDA) of key texts. It investigates underlying dynamics and sites of conflict and/or concurrence that marked the consideration of ESRs in the Tunisian case but also at new or old meanings that dominated the discussion whether towards their formation, redefinition, replacement, instrumentalization, or crystallization. This is particularly relevant to the discussion as the incorporation of ESRs in TJ has been made possible by the capture of a textual, or discursive, void at the level of art. 10 para. 3. This void, or open possibility of meaning-formation, has been seized by CSOs first, and constituted a site of power exercise.

3.4.1. Main elements of the discursive field

While acknowledging the wide range of actors involved in the Tunisian TJ process, and as we adhere to arguments on TJ being an elitist process but also one with

its own epistemic community, we choose to look at three actors representing three contingent discourses, namely:

1- the UNDP representing the international community, noting that other UN offices and agencies, such as the OHCHR, have been involved in the process, but we chose to focus only on the UNDP for it is the main agency through which technical and financial support has been channeled and for it has been the primary vis-à-vis for local state and non-state actors.

2- relevant Tunisian state institutions (the NCA and the TDC), We are not interested, as part of the elite sphere, in the accounts of political parties expressed in reaction to the TDC's proceedings as we also consider the NCA to be inherently representative of the political landscape at the time. This said, the local political landscape is considered when relevant for the understanding of domestic power dynamics and the role of alliances or resistance that affected the process.

3- NGOs involved in the process. The choice to focus only on NGOs, and not grassroots associations for example, is dictated by the special interest that the TDC dedicated to the input of NGOs and their participation in the process. This is clearly stated in the Commission's report. NGOs mainly participated as primary applicants or chose to provide support to local GAs and individuals by provision of thoroughly elaborated studies. For this thesis, we will look at the role of two NGOs that will represent two sub-case studies as detailed below.

This selection of actors should meet a fair triangulation of sources by respectively looking at 1- the UNSG 2004 and 2011 reports, 2- the TJ law and the TDC final report, and 3- two files submitted by NGOs. Apart from interviews planned to supplement the narratives of NGOs from both a '*subject position*' and a '*speaker*'

position’ viewpoint¹²⁵, all other documents are official texts available in open access and have been analyzed as primary data. This also implies that we adhere to the consideration of both “linguistic and non-linguistic practices¹²⁶” and the ways in which they interact.

The UNSG reports and the TJ law should give a sense of the extent to which international and national discourses diverge or converge, but also the normative frame within which other actors operated based on their own passive or active interpretations. The TDC report should be the most significant document to the discussion as it *supposedly* represents ‘the sum of all parts’, the entirety of five years of multi-scale collaborations under the premises of a non-judicial body, the solemn outcome of the entire process, and an example of what a TC can achieve. The examination of NGOs files, limited to two, is supplemented with fieldwork based on semi-structured key informant interviews (KII). Chosen files represent two case studies and involve participating NGOs that had two different approaches in terms of the typology of the applicant, the interpretation of art. 10 para. 3, the methodology, and other relevant variables to ensure a comprehensive understanding of the process (see Table 1). The selection of these criteria was guided by preliminary findings deduced from a first screening of the TDC final report and their mapping to identify procedural patterns.

The first case study is the Kasserine file for it is the first file submitted and for its consideration as a pilot file with a leading role. The file was submitted by a local NGO with the support of an international one and adopted a ‘region-as-governorate’ rationale. *The second case study* is the Ain Draham file submitted by a local grassroots

¹²⁵ Preysing. *Op. cit.* pp. 44

¹²⁶ *Ibid.* pp. 55

association (GA) based on a study conducted by the Transitional Justice Barometer Project -a partnership involving Kawakibi Democracy Transition Center, the Centre for Applied Human Rights at the University of York and Impunity Watch. The Barometer project adopted a participatory approach putting local citizens on the forefront of the process. The project is represented by the Kawakibi Center, a non-primary applicant, and its methodology translates *al-mintaqah* as a zone or an area, i.e. beyond established administrative divisions. The table below gives a comparative overview on both case studies:

Organization	FTDES, local NGO	Kawakibi Center , regional NGO (MENA)
In partnership with	ASF, Tunis-branch (Belgium-based NGO)	A coalition of international partners
File	Kasserine governorate. Pilot file	Two studies for two zones
Submission date	2015	2017
Involvement in the TJ process	After ratification of the TJ law	Before ratification of the law
Modality of participation	Submission in the name of the NGO on behalf of the region (primary applicant)	Support to local grassroots associations & independent individuals by provision of two studies (not an applicant)
Interpretation of region	Region as governorate	Region as a zone of any scale
Interpretation of marginalization & systemic exclusion	Based on socio-economic indicators and the element of intent	Based on socio-economic indicators

Table 1: Comparative overview on case studies, by author

Two discursive elements will serve as focal points of the analysis, namely 1- the genesis of art. 10 para. 3 and its interpretation(s), and 2- the TDC discussion of submitted files and consequent victim-status determination (VSD). Bearing in mind that

the victim-region concept is discussed under collective reparation where the state is held as solemn responsible, the analysis will also try to identify possibilities of norm change, if any, and directions set for further phases of TJ.

We acknowledge the existence of other elements of analysis and response beyond the discursive field that we are here delimiting¹²⁷, as well as what we purposefully chose to exclude for practical reasons and in respect to the limits of the thesis. This project's discursive field overlooks two elements by 1- focusing on elite discourses and discarding non-elite ones (i.e. the voices of habitants of victim-regions), and 2- investigating only one aspect of the multifaceted TDC mandate, that is collective reparation for victim-regions, while strongly acknowledging that a discussion of ESRs and social justice in the Tunisian context remains incomplete if not including two other chapters of TJ that are institutional reform and economic crimes (or corruption).

3.4.2. Conducting fieldwork in times of a pandemic, and other practical and ethical considerations

- ***Language***

While all documents cited above are available in English, we chose to avoid the traps of translated versions as translation is an interpretation in itself. In other words, documents originally written in a language other than English have been analyzed in their original language. This applies to the TJ law and to the TDC final report. It is an important matter here as 1- both documents have been originally discussed and drafted in Arabic, which is also the primary official language of Tunisian legislation and public administration, 2- translations made available online are voluntary efforts of

¹²⁷ *Ibid.* pp. 43

international organizations such as the ICTJ, and 3- the TDC final report's full version is only available in Arabic, a shorter version available in English is a selective translation provided by the ASF. It is here important to note that resort to the Arabic version of the report was a crucial choice as it is the only integral version dedicating a total of 400 pages to victim-regions. The mapping of all files as detailed in Chapter III is the author's solemn effort based on information enumerated and described by the TDC in Arabic. When reviewing other versions, discrepancies have been spotted between numbers provided by the TDC in the Arabic version of the report and those included in the Unified Record Statistics annexed to the English version. For example, the Arabic version states that 221 files were received while the English version counts some 223. A total of 37 files were submitted on behalf of the Jendouba governorate according to the Arabic version while the English version states 41 files. One file has been submitted on behalf of Bizerte governorate according to the English version while no traces of any file for this governorate could be found in the Arabic version.

- ***Key Informant Interviews (KIIs)***

To keep the scope of this thesis focused, and due to its limits in time and space, we chose to supplement the discussion with two KIIs only, while hoping that future research would include more voices. As we excluded non-elite applicants as well as any prospects of large-scale fieldwork, interviewees are representatives of selected CSOs at the managerial level. They are public figures who are used to speak in public on behalf of their organizations. Ethical considerations are hence very limited. Still, in line with the recommendations of the Institutional Review Board of the American University of Beirut, and due to the on-going pandemic, the consent form guaranteed the right of

interviewees to choose whether to be interviewed via phone / an online platform (of their choice) or in a professional or public environment with full respect of sanitary measures. Both interviews were conducted during a phase of minimal to no restrictive state measures. They finally took place respectively in a public and in a professional setting with strict physical distancing and no health consequences have resulted from these in-person meetings. Interviews have been audio recorded with the interviewees' consent. Recordings and full transcriptions remain confidential. Interviewees' identities will be kept anonymous throughout the discussion. Reference to the input of KIs goes as the following: FTDES official representative for the first case study, and Kawakibi official representative for the second case study.

KIs were invited to respond to questions to which publicly available material offers no responses. They were also asked to reflect on their participation in the process in retrospection. In other words, KIs were requested to share their comments on their interpretation of selected documents, on spaces of negotiation throughout the process, and on whether the final TDC report met their expectations or diverged from its essence in terms of collective reparation for victim-regions, and hence concluded by setting a certain power balance in stone.

- *Positionality*

This thesis does not pretend, nor aspire, to deliver an 'objective' account but one at peace with the author's personal intellectual subjectivity, whether in terms of normative stances or those of motivations behind certain choices. As a Tunisian with an academic background in urban planning, the author's personal quest of interdisciplinarity dictated the scope of this thesis. It is an attempt to connect socio-legal

studies to regional planning and global and national public policy at times of unprecedented destitution and the complete absence of vision at all levels in Tunisia. It is also an endeavor to put this positionality in servitude of further, timely needed, reflections on TJ in the MENA region.

CHAPTER 4

MAPPING THE PROCESS: ACTORS, POWER DYNAMICS, AND SITES OF BARGAIN

The TDC's discussion of victim-region files falls under Part Four: Damage repair and rehabilitation, Axis II: Collective damage repair, Section Three: Repair for victim-regions. A thorough review of the said section was the starting point of this research project. This screening and mapping exercise helped discerning two questions that this chapter discusses.

The *first* question looks at actors involved in the process and the dynamics through which they operated with a focus on the motives behind the TDC's interest in NGOs' participation and work. The *second* question investigates sites of bargain, i.e. how the legal void related to the terms "region", "marginalization" and "systemic exclusion" has been invested by different actors and whether the resulting range of interpretations affected the methodological consistency of the TDC or not. The prevalence of the "region-as-governorate" rationale poses further questions on why this specific interpretation marked the overall TDC narrative while in contradiction with the definition of "region" it sets as a starting point. More importantly, the victim status determination (VSD) processed by the TDC calls for the deconstruction of the narrative of victimhood on grounds of spatial entities and the methodology adopted to define the geographical manifestations of marginalization and systemic exclusion.

The first section of this chapter is a discourse analysis focusing solemnly on the TDC's discussion of victim-regions files. It provides an extensive review of all 400 pages throughout which the 221 submitted files are documented and commented. This

constitutes the starting point of the thesis and the first exercise that helped formulating its questions. The second section introduces two case studies of NGOs that participated in the process and which input is deemed worthy of further examination to complement the analysis and to provide further elements of response. Semi-structured interviews have been conducted with official representatives of the chosen organizations and findings are here analyzed to understand the power dynamics that marked the processing of victim-region files. The third section looks at art. 10 para. 3 as a discursive field by examining how different actors interpreted key terms of the law and by trying to understand their motives, methodologies, purposes, and the narratives they worked on promoting.

4.1. Where it all started: Deconstructing the final report

The TJ Law as well as the TDC did not offer guidance on eligibility or what a victim-region file should include. There were also no predefined limits on the number of files to be received per region. Submissions were open to all and the first file was deposited in 2015. Two years later, the TDC conducted six workshops addressed to CSOs representatives in all six economic sectors¹²⁸. The workshops were meant to discuss key aspects of art. 10 para 3. that would help the Commission better interpret the article and address the submitted files. The workshops are also part of the TDC mandate for its investigative fieldwork in completion of files' processing. The final report documents all files and is organized by governorate. This section looks at the geographic distribution of files and the typology of applicants. All the below maps and

¹²⁸ Tunisia is divided into six economic sectors, or regions. It is only customary and for economic planning and statistical purposes.

graphs have been developed based on a quantification of the TDC findings yet only to offer a qualitative summary and examination of the process.

4.1.1. Mapping the process as documented by the TDC

4.1.1.1. Geographical distribution of files

Files have been submitted on behalf of 21 governorates out of 24. The TDC specified that files were received from all governorates except Ariana and Manouba. However, no traces of any file from Bizerte could be found in the final report. Map 1 shows the total number of files per governorate and per bracket. Of all 21 participating governorates, only one governorate exceeded 30 submissions, namely Jendouba in the Northwest (37 files). When mapped per economic sector, it is possible to explain the concentration of the highest number of files in the Northwest by the consideration of the weight put by Jendouba.

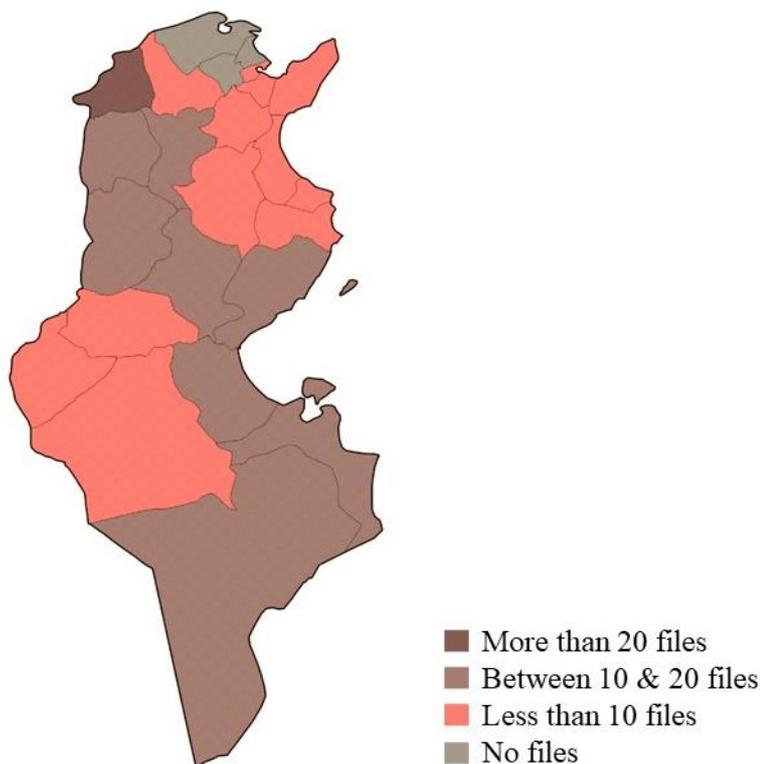


Figure 1: Map of number of VR files per governorate – by author

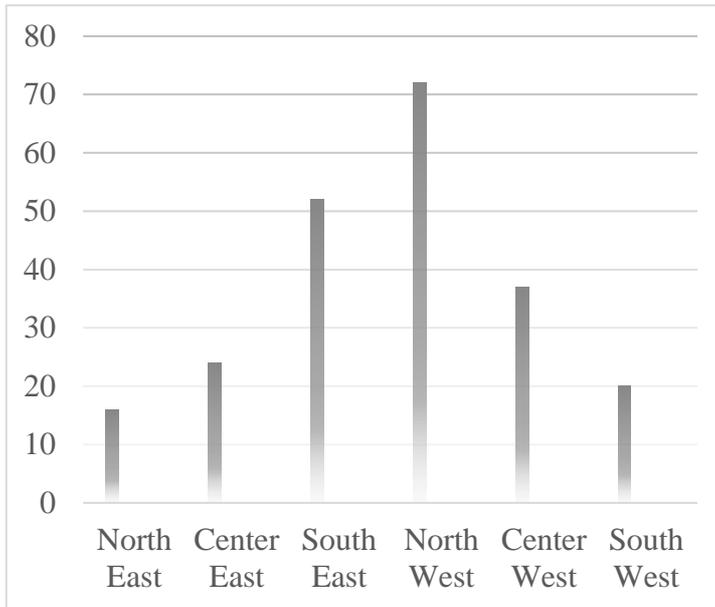


Figure 2: Number of files per economic sector – by author

Discrepancies between governorates as well as the absence of submissions from three governorates pose questions on the inclusiveness of the process, equal opportunities in terms of means and resources to access it, as well as the role played (or not) by the TDC to remedy to the shortcomings of the application process. It is important to bear in mind that the number of files per governorate does not translate the geographies of social injustices in any way. This correlation remains, however, subject to examination when relevant -especially when considering whether the number of files per governorate influenced the attribution of the victim status or not. To answer these questions, it is important to have a closer look at the typology of applicants.

4.1.1.2. Typology of applicants

It has been possible to identify five types of applicants organized by number of files submitted per type as the following:

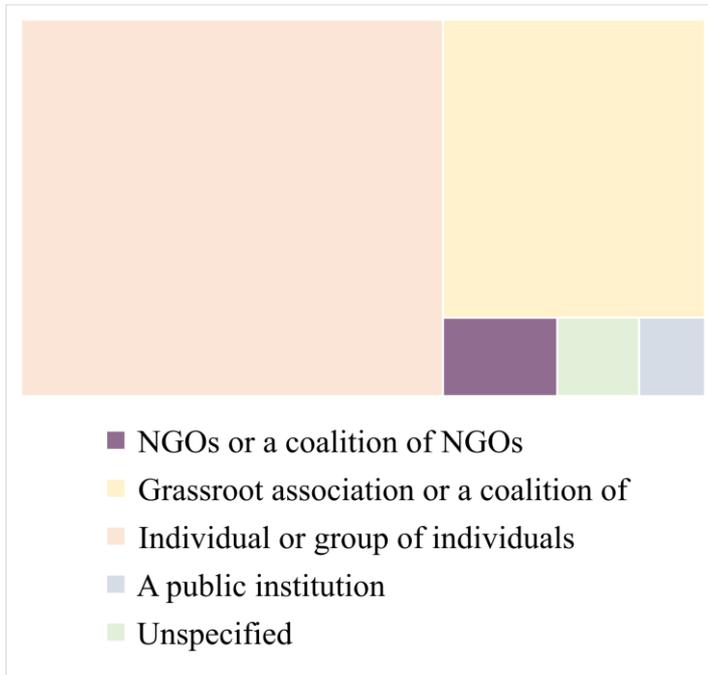


Figure 3: Typology of applicants per number of files submitted – by author

The high number of independent files, submitted by individuals or groups of individuals, reflects a shared perception of victimhood on grounds of spatial marginalization and exclusion and the significance of the niche offered by the article to the public. However, a special focus on the involvement of NGOs in the process has been dictated by the very words of the TDC. Indeed, in its introductory note, the TDC addressed a special mention to files submitted by NGOs for they included “*objective and methodological studies*¹²⁹”, implying that their consistency confers them a special value, while files submitted by grassroots associations (GAs) and independent individuals “*only included general information with no statistical or official references*¹³⁰”. The comment could, in fine, translate a biased interest in favor of NGOs as primary applicants but also an uneven consideration of files or their hierarchal

¹²⁹ TDC Final Report. Arabic version. pp. 209

¹³⁰ *Ibid.*

assessment based on unclear standards. This also refers to questions on inclusiveness and the principle of equal opportunity of access.

The share of NGOs in the process is among the lowest, which could suggest that the process is not NGO-ized. Yet the weight put by NGOs to seize the opportunity offered by art. 10, para. 3 and their leading role cannot be assessed quantitatively. Map 2 locates NGOs direct involvement in the process. By direct involvement, we refer to files submitted in the name of an NGO, or a coalition of, on behalf of a region. The map does not show indirect support provided by NGOs to other types of primary applicants, such as the case of the Kawakibi Center that worked on two studies handed to local habitants to support their applications. The map shows that the geographic scope of NGOs involvement is rather limited to inland regions, and that no NGO-led endeavors have been channeled to cover governorates with no applications (North, in grey). NGOs worked on 6 out of 24 governorates (25% coverage).

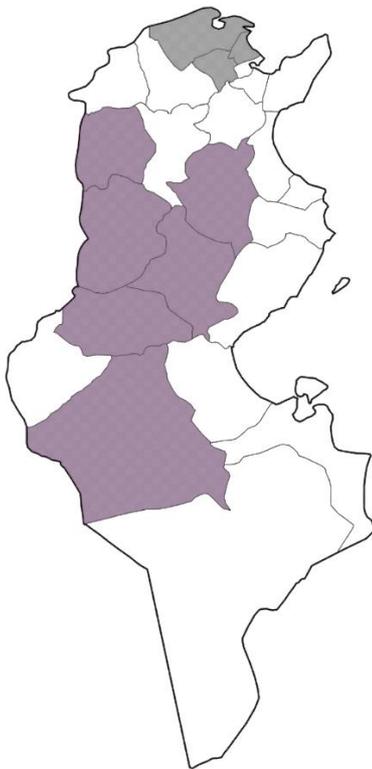


Figure 4: Map of NGOs as primary applicants – by author

This said, and though differences in number of files per governorate cannot be explained by the geographies of NGOs participation, the absence of applications from three governorates poses questions on NGOs, and CSOs more broadly, selective involvement in the process as well as the role of the TDC in terms of outreach. And while no NGOs submitted two files for the same region, which reflects potential coordination of efforts or avoidance of conflicts, GAs and individuals proceeded with no collaboration as some regions were subject to duplicates (more than one file).

Inclusiveness, representativity, and legitimacy of applicants will be explored more extensively in the sections below. This section raises an additional question though, that is the influence of NGOs on the process and on the TDC's methodology and findings, despite their limited participation, quantitatively and geographically. What role did they play? and why the TDC dedicated a special interest to their involvement?

4.1.2. On the interpretation of "region"

The final range of interpretations is dictated by a legal void. As previously mentioned, no legal definition of "region" – *or mintaqah* - has been provided by the TJ law nor is it already defined by any other Tunisian law. A mapping of all submitted files revealed that applicants had indeed different interpretations of the term. It has been possible to identify six scales of interpretation of what a region is, half of which reproduce, or rely on, spatial entities as defined by the state, i.e. along administrative borders. These entities are the governorate, the delegation, and the sector¹³¹. Interpretations that go beyond a state-centered understanding resorted to other sub-

¹³¹ Respectively: العمادة، المعتمدية، الولاية.

scales, namely “the city”, “the neighborhood”, and to the more ‘open-ended’ “zone”. A screening of all files helped drawing the following results:

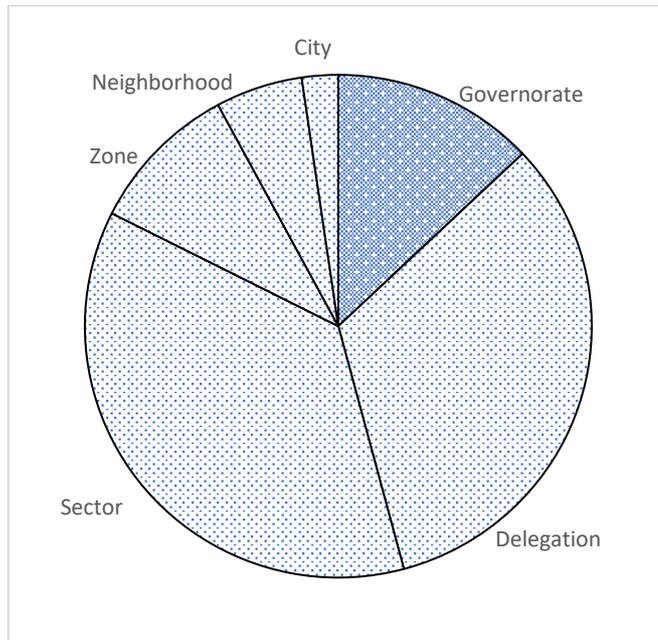


Figure 5: Interpretation of "region" - all files (ratio) – by author

The graph shows that interpretations on grounds of administrative units largely prevail (83%). However, the share of the “region-as-governorate” interpretation is the lowest among state-centered definitions. Only 17,6% of all files applied on behalf of a neighborhood or a zone or a city, i.e. adopted a no-state-centered interpretation of what a region is. It is also possible to note that no applicant interpreted the term “region” at a scale that goes beyond the main administrative unit (governorate), i.e. no file has been submitted on behalf of two governorates or more for example, or on behalf of a region that transcends macro administrative frontiers.

Such a definition is central to the entire process as the victim status is attributed on grounds of the gravity of marginalization and systemic exclusion of a well-defined

spatial entity. In its general introduction to the victim-region section, the TDC recognizes the vagueness of art. 10 para.3 as a challenge and tries to remedy such a legal void by combining insights from submitted files to a few scholarly references and the conclusions drawn from the workshops it initiated. The TDC clearly states that it finally adopts the following definition:

“a region is any socio-geographic space regardless of whether it corresponds to an administrative unit or not. This means that a region can be a governorate, a delegation, a sector or even a neighborhood.”

However, this ad hoc effort did not add much to the discussion. Moreover, the methodology of the TDC throughout the victim-region chapter contradicts its rather-open definition of the term “region”. Indeed, the TDC organized files per governorate but also attributed the victim status by governorate, even to those regions with no region-as-governorate files. Overall, applicants and the TDC reproduce a state-centered understanding of region. The map below offers an additional outlook on the interpretation of “region”, the first site of bargain.

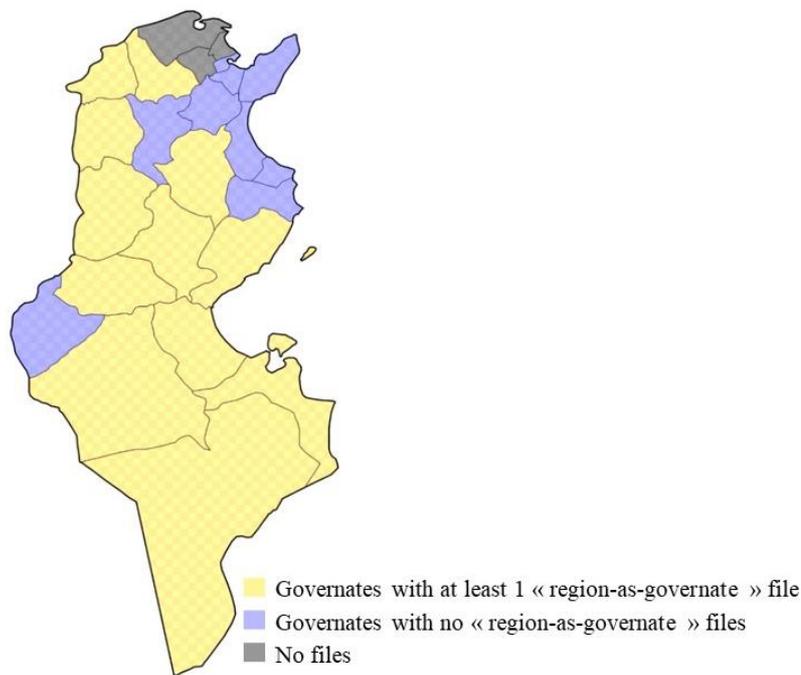


Figure 6: Map of files per scale - region as governorate – by author

***4.1.3. On the interpretation of “marginalization” and “systemic exclusion”:
introducing VSD and the element of intent***

The determination of the victim status is conditioned by two intertwined elements that are 1- proof of marginalization **OR** 2- proof of systemic exclusion. The TJ law did not define these terms nor what constitutes a proof, which opened another site of interpretations. However, the term “systemic” implies the element of intent, i.e. the intention of the wrong-doer, as a condition. This is at least a common understanding shared by applicants and the TDC alike but also the most significant element on which the Commission relied to attribute or to deny the victim status to a given region. This said, there is no clear phrasing of the TDC’s prerogatives to attribute the victim status to regions. This raises questions on the interpretation of the TDC mandate and the qualifications of its staff considering that the very nature of this aspect of TJ is related

to the political geography of Tunisia and hence requires specific expertise beyond the traditional TJ scope of mass violations of human rights.

The TDC dedicated a few paragraphs to the definition of “marginalization” and “systemic exclusion” showing no keenness in providing a solid and clear terminological framework. It is difficult to grasp the rationale of the TDC indeed, and much of the narrative contains contradictions or lack of argumentation. This set of definitions is also a downstream effort that comes at the end of the entire process and after closure of the call for files submission. According to the report, and based on perspectives from Western sociology,

- Marginalization is a form of discrimination or unfair and persistent deprivation resulting from social, economic, and political tracks that reduce the chances of a group of people to thrive.

- Marginalization defines the distances between individuals or groups of individuals and the center of power, resources, and mainstream values. It describes the social and economic reality of those living outside traditional social frames.

- Marginalization is associated to the violation of economic and social rights such as the right to employment, the right to a decent livelihood, the right to education, and the right to health.

- Marginalization is also the action of systemically preventing full or partial access to all rights and opportunities and resources normally available to members of the group and considered as essential to the fulfillment of social cohesion such as housing, employment, health security, participation in the civil life.

– Social marginalization is the exclusion of individuals or groups based on their health conditions, race, religion, class and their deprivation from full participation in the social, economic, and political life of the society they live in.

It is here possible to find a matching understanding of marginalization with structural violence, yet it remains clear whether the TDC adopted the principle of indivisibility of rights or not, and whether this range of definitions has been considered in its entirety when processing files.

As per the term “exclusion”, the TDC keeps the confusion intact and considers it as a substitute for inequality and as not necessarily defined on grounds of poverty. The text later narrows down the discussion to focus on *social* exclusion without justifying this exclusively social scope. It then defines it as:

“social dissolution that signals the incapacity of participation in social activities at the individual level as well as a decline of participation and access to social solidarity. Social exclusion also takes various forms combining economic and social deprivation, discrimination, and disempowerment. These forms can be channeled through social and institutional mechanisms leading to the impediment of access to rights, services, and opportunities”.

The TDC later links the discussion on social exclusion to vulnerability and stresses the interconnectedness of marginalization and social exclusion.

The TDC discussed the term “systemic” as a condition for VSD only much later under its working methodology. It recognized the difficulties faced to prove the systematic character of exclusion and marginalization for “*authorities do not disclose their marginalizing policies and do not adopt such policies openly*”. The need to trace systemic exclusion based on indicators was introduced at this stage and tied to economic, social, cultural, and political “*poverty*”. Much of the lexicon used in this part

also touches on elements of structural violence yet without any clear reference to this notion per se. The TDC then establishes a nuance between “economic strategies that produced deprived or poor groups, which are the categories that were ineligible to embark on these strategies” and “the regions that were systemically targeted by the political authority [...] in order to weaken them to prevent any threat they may pose on that authority or as a form of punishment for disobedience”. Little of what followed lifted vagueness especially that key notions remained unclear and used interchangeably throughout the document. However, one crucial point for VSD was reached that is the need to prove the intention of the wrong doer, here the state, in exercising systemic exclusion and marginalization. In conclusion, the TDC states that:

“a region subject to systemic exclusion is a region that has been intentionally marginalized, which means that it has been economically impoverished, politically oppressed, socially stigmatized, and culturally disbarred; and when it voiced demands and needs, it was faced with neglect. [...] this definition should be tied to social justice¹³².”

One would wonder how such a definition is not valid to the entire country when under authoritarian rule. Below is the list of indicators the TDC defined to prove intent:

¹³² TDC Final Report. Arabic version. pp. 205. Translation by author.

Indicator	Sub-indicators
Health	Number of hospitals and healthcare facilities, bed capacity, geographic distribution and access Number of doctors and medical staff per habitant Average life expectancy Child mortality rate
Access to knowledge and Education	Number of schools and teaching staff Enrollment rate School dropouts Literacy rate
Economic	Unemployment rate Poverty rate Economic activities (industrial, agricultural, touristic, etc.)
Decent life standards	Connectivity to tap water Connectivity to the sewage system and sanitation networks Environment Connectivity to electricity Number of paved roads

Table 2: Indicators defined by the TDC to prove the element of intent – by author

Assessment of these indicators considers their evolution through time and by comparison to other regions and/or to the national average. These indicators, largely referring to developmental studies, are those that can be easily quantified. The list did not include qualitative indicators in line with the methodology, namely access to political, social, and cultural rights. This adds more vagueness on whether the TDC proceeded based on an understanding of exclusion and marginalization that focuses solemnly on ESRs or considered all rights, including political and civil, as indivisible. What is clear is that this is the framework set for VSD as analyzed below.

4.1.4. Mapping the TDC's narrative of victimhood

As shown by the map below (Figure 7), the TDC granted the victim status to 11 governorates (in green) and denied it to 10 governorates (in red). Except for Tozeur, all inland governorates were granted the status. And apart from Jendouba, Gabes &

Mednine, all remaining coastal governorates were denied the status. When combined with governorates with no files (in grey), the majority of the coastal governorates (10 out of 13) are not considered victim-regions. VSD was also granted to the entire governorate regardless of whether a “region-as-governorate” file has been submitted or not. For example, there is no region-as-governorate files on behalf of Siliana (only sub-scales), yet the TDC granted the victim status to the entire governorate.

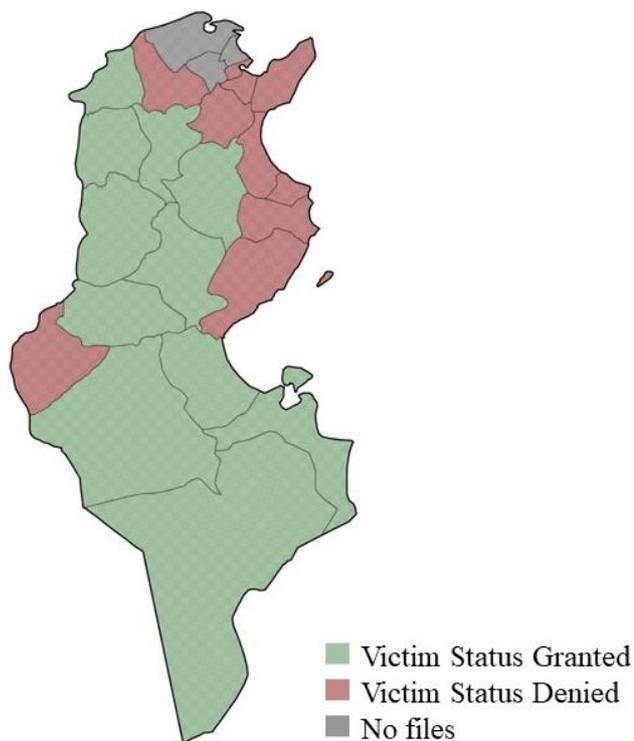


Figure 7: Victim Status Determination by the TDC – by author

In its final comments on every region, the TDC resorted to a standardized format where it determines whether it considers the region as a victim or not. The below is a translation of the TDC final comments for regions determined as victims¹³³:

¹³³ Translation from Arabic to English by the author

“Based on the above, it is clear that, for decades, the state failed to meet its commitments toward [name of governorate] that are primarily exemplified in the respect and the protection and the activation of economic, social, cultural, environmental and developmental human rights as well as basic rights and the guarantee of their enjoyment. The failure of the state is manifested as the following:

- Doing what it must have forgo by the expropriation of the region’s resources and the deprivation of the region from their exploitation
 - Forsaking what it must have done by obviating action and failing to meet its commitments related to planned projects in the region
- This is translated by socio-economic indicators that highlight deprivation of the region from access to rights and basic services, which resulted in [unemployment, decaying infrastructure, etc. -slightly customized sentence depending on the region]. This makes the state responsible for the region’s intentional marginalization, and on these grounds, the governorate of [name] is considered a victim-region that suffered from marginalization and systemic exclusion. We will hence address a series of recommendations revolving around the necessity to permit to the region and its habitants accessibility to rights and basic services and job creation to participate in uplifting the region.”

Inconsistencies are easy to discern as, in some instances, the TDC does recognize marginalization but does not consider that there were enough proof of systemic exclusion. The victim-region status has been denied on these grounds for 10 governorates, though the TJ law did not condition spatial victimhood as necessarily meeting both elements. This also shows that the TDC relied on one single interpretation of region when deciding VSD, that is the region-as-governorate rationale. For example, four suburban neighborhoods located in the outskirts of the capital city of Tunis have been denied the victim status for “their closeness to the city center, Tunis, and all the infrastructure and advantages it offers” -knowing that no file has been submitted for the governorate of Tunis as a whole. For these 10 governorates, the TDC recognizes that “some (sub)regions in these governorates have been neglected by the state and deprived from development which led to their marginalization” but [the indicators related to the entire governorate] “do not prove the element of intent / marginalization and systemic

exclusion”. [Partial] marginalization “is rather the result of unbalanced development plans in the governorate”, and the situation of these (sub)regions “do not reveal consistent and holistic marginalization and exclusion”. In sum, regions that are not administratively defined as governorates yet are parts of a governorate where the state met its developmental responsibilities, according to the TDC, cannot be considered victim-regions even if marginalization is proved.

Inconsistency and poor argumentation of the victim status raise serious questions on the TDC’s capacity in dealing rigorously and methodologically with the victim-region concept but, most importantly, on the narrative the TDC aimed at conveying. Furthermore, and when screening other chapters of the TDC report, it is possible to easily find regions addressed as victims under other articles and chapters, especially under “human rights violations” and “corruption”. For example, the region of Barraket es-Sahel was denied the status of victim region based on socioeconomic indicators yet was addressed as a victim of human rights violations “with severe political and socioeconomic consequences” under a different section. This translates an understanding of ESRs as dissociated from human rights and the establishment of a clear cut and fragmentation of rights. The mapping of final VSD results shows a strong reiteration and approval of Tunisia’s geographies of marginalization as present in public discourse and the popular imaginary, opposing privileged coastal cities to forgotten inlands. The TDC, in its analysis and interpretation, did not offer additional insights and rather ended up stating the obvious. Such a discourse pinpoints spatial fragmentation as a structural methodological limit and opens the door to questioning the TDC agenda and its motives behind a rather teleological interpretation. These inquiries will be discussed more extensively under Chapter IV with insights from conducted interviews.

4.2. IOs, NGOs and those in-between: elitism, resistance, and bargain

This section reviews all key elements defined and discussed in previous sections from the perspective of NGOs that were involved in the process. The chapter investigates art. 10 para. 3 as a discursive field and a site of bargain between different actors thanks to inputs collected from semi-structured interviews with official representatives of two NGOs. It looks at power dynamics at the elite level to then comment on how different agendas shaped the victim-region concept and its outcomes.

4.2.1. Power dynamics: reconstructing the puzzle

Looking at elite power dynamics around art. 10 para. 3 comes in line with reviewed scholarship that calls for the consideration of interplays between law and politics and the consideration of TJ as an empirical field and a site of bargain as chiefly argued by Vinjamuri and Snyder. This said, it is difficult to isolate this discussion on power dynamics around the victim-region niche from those characterizing the Tunisian TJ process in general. The selection of two examples to illustrate the discussion was based on an extensive analysis of the TDC report then a screening of publicly available submitted files. As explained in the methodology, the choice was based on a set of criteria that would guarantee a comprehensive understanding of the process by looking at different methodologies and levels of involvement. Key informants generously shared their narratives and engaged in an in-depth reflection on the victim-region niche. It was also surprisingly favorable to discover that the choice of these two NGOs had more to offer than what expected as interviewees, highly ranked, disclosed insider information on the power dynamics at the elite level and throughout the TJ process,

even before the establishment of the TDC. This was particularly useful to contextualize the discussion and to understand the role played by the international community.

4.2.1.1. The UN template and the significance of the Tunisian case

The UN was heavily involved in the Tunisian TJ process thanks to the positioning one of its prominent agencies, the UNDP, at the forefront. The UN channeled its technical and financial support through the agency by provision of consistent assistance to the NCA, CSOs, and later the TDC. In An-Naim terms, dependence on Western expertise and funding did condition the Tunisian experience. This section discusses the role of the UN in the Tunisian TJ process as narrated by the interviewees and by comparison to the 2011 UNSG and the TDC narrative. It focuses on how the UN template has been negotiated and the extent to which the organization worked on the promotion of Tunisia as a regional catalyzer.

In a press release dating back to June 2014, the UNDP celebrated the launch of the TDC proceedings with these words:

“The Truth and Dignity Commission is the fruition of a long, participatory process of national dialogue that was supported jointly by UNDP and OHCHR, since 2012. The dialogue contributed instrumentally to the drafting of the transitional justice law, ensuring that victims’ voices were heard and civil society’s expectations concerns were incorporated¹³⁴.”

¹³⁴ UNDP. Press Statement: Tunisia launches Truth and Dignity Commission. 9 June 2014. [\[Online\]](#)

The UNDP was the primary vis-à-vis of Tunisian state and non-state actors, and both KIs interviewed for the purposes of this thesis have directly engaged with UNDP representatives on several occasions.

According to the Kawakibi representative, who was also a member of the committee that drafted the TJ law, the discussion on the consideration of ESRs under TJ was already in place ahead of the UN presence. It was led by NGOs, including the Kawakibi Center. Later, the UNDP insisted on adopting a participatory approach, or large-scale consultations, to draft the law, and the victim-region concept emerged from these consultations with the public:

“[the concept] was shaped by victims. They did not formulate it as such but, when expressing grievances related to ESRs violations (poverty, unemployment), there is something that is recurrently mentioned which is “I’m a victim because I live in X region”. They do not identify themselves as victims for who they are but because of where they live.”

Opening the process to the public, beyond elite spheres, was hence a UNDP-led endeavor in line with UN recommendations. Indeed, and as discussed in Chapter I, the 2004 Anna report insisted on the necessity to “incorporate the views of the public” for a TC to succeed. It is this very “bottom-up” approach that pushed for a widening of the scope of TJ in Tunisia, especially in terms of definitions and timeframes. This does not mean that the UN did not have a ready-to-use template for Tunisia. According to both KIs, for the international community:

“the socio-economic and the political are two separate tracks. For them, resolving the political will guarantee ESRs in consequence. And they openly say that “I have my standards, I see in Tunisia a case study that meets these standards, and that’s it¹³⁵”.

Yet

“if [the consideration of ESRs] could be a solution for development then so be it, this is how they took it. The title does not matter. You can name it structural adjustment, you can name it TJ, whatever! There was resistance from international TJ experts at first, they said that “this is not TJ” but did not present solid arguments. Throughout negotiations, they started saying “okay, why not”, and the UNDP was one of the first parties to say so. It has a development-based mandate after all, it is somehow a form of development plan¹³⁶”

When asked about whether the UN discourse throughout the TJ process in Tunisia was openly based on the liberal peacebuilding and international security rationale, interviewees did not provide a firm affirmation but did not deny the possibility of such motives. Both interviewees said having no idea on the 2011 UNSG report that addresses ESRs as part of the need to contain consequences of socio-economic injustices and to guarantee non-recurrence of poverty-generated violence and its costs on the international community. Nonetheless, interviewees have strongly insisted on the keenness of the UN to keep the process short and to wrap it up within a maximum of two years.

“They were in a rush, so they wanted to limit the themes, indicators, and dimensions to reach a final result as fast as possible¹³⁷.”

¹³⁵ From the interview with FTDES official representative

¹³⁶ From the interview with the Kawakibi Center official representative

¹³⁷ From the interview with FTDES official representative

It seems that the UNDP tried to limit the potential of the TJ law afterwards and to recapture what it initiated to keep the process on track, the UN track. According to the interviews, the international community was prompting the shift to a democracy that meets Western standards without the consideration of the context's fragility and the destabilizing consequences in absence of solid institutions¹³⁸. With intentions to work on art. 10 para. 3 getting real, tensions between NGOs and the UN soared as this 1- challenges international efforts of standardization and 2- could delay closure. The FTDES representative, who worked on the pilot victim-region file, said having fought this resistance in person for the FTDES was the first local NGO to bring art. 10 para. 3 to light:

“After the ratification of the law, when we started considering this niche under art. 10 para. 3, we had to engage in a fight with the UNDP because they are not entitled to bring a ready-to-use model and impose it on us. They strongly tried to resist any efforts that would push them to change indicators. For them, TJ is only about HR violations, torture, and that's it, then you just close the file and move on. We did not invent anything though, but we were lucky that art. 10 para. 3 existed. Otherwise, we would have been unable to do anything. So fortunately, we interpreted it, we worked on it and defended its potential. And we told them that we will impose this even if it takes denouncing their practices, because it's not acceptable. The TDC is not their hostage. Yes, they are financing it and offering trainings and monitoring, but this does not grant them the power to impose templates.”

The UNDP hence had two different approaches throughout the process. The first stance was rather marked by a push for a bottom-up model resulting in the drafting of the TJ law, the second more inclined to enforce a top-down model and to limit the very possibilities the agency agreed on creating at first. Yet such a shift does not translate an inconsistency in the agency's vision for TJ in Tunisia. This difference in form serves a

¹³⁸ Cf. Nagy

single objective in substance, that is to “check all the boxes of a predefined model”. Moreover, giving voice to the public does not mean equal access to the process between elite and non-elite actors, which is valid to all the elite sphere this thesis investigates. In fine, this also reveals that the UNDP underestimated power dynamics of the local operational context, of the potential of art. 10 para. 3 and of its relevance in the case of Tunisia. Indeed, the victim-region concept offered a site for non-state actors to channel their own agendas as well, an opportunity not to be missed regardless of the pressure exercised by the UNDP. Competing motives explain much of the tension that obviously marked dynamics between the UN and NGOs, especially local ones. There was resistance from both sides, more than cooperation or mere mimicry. When asked about whether the UN joined the process “to correct a deviation¹³⁹”, both KIs strongly agreed:

“They didn’t want to just correct the process or harmonize it, they wanted to monopolize it and to standardize it. They were relying on Tunisia as an experimental laboratory just to say “all is good, there is a TJ model that worked in the region”. That’s it. There is no doubt as per the wicked intentions of UN agencies¹⁴⁰.”

“To correct a deviation, yes! Absolutely. International organizations are very norms-oriented, what worked in Nicaragua works in Tunisia and what worked in Tunisia works in Burundi, and vice versa. In our case, I would say that the incorporation of ESRs under the victim-region concept became a norm that they would sell to Nepal for example. They really would have wanted to come and find us proceeding via popular tribunals like in Rwanda, but unfortunately for them it was not the case. They bring standards that already exist and try to make them work here, and if it doesn’t then fine, they’ll consider adding a niche or two, that would also work elsewhere, and so on¹⁴¹.”

¹³⁹ Cf. An-Naim

¹⁴⁰ From the interview with FTDES official representative

¹⁴¹ From the interview with the Kawakibi Center official representative

The UN intentions to promote the Tunisian model as a successful outcome of international peacebuilding efforts were confirmed by the interviewees. This, however, does not necessarily answer the question on the UN's plans to position Tunisia as a regional catalyzer in the MENA region. The question is also unlikely to have a simple answer as it strongly depends on how "success" is defined, by whom, and based on what standards. The FTDES representative did confirm that leveraging the Tunisia model as a catalyzer was part of the UN plan, at least in the very beginning. The Kawakibi representative, thanks to his organization's experience and regional scope of work, provided insightful elements of response:

“When Tunisia adopted a TJ process, it started to become a model especially for Libya. Tunisia and Libya have always had a small lag between their processes, Tunisia being a step ahead at each phase, whether when it comes to elections, a new constitution, etc. Then the rupture happened when Libya had to choose between TJ and the exclusion law. They opted for the exclusion law, the law on “the immunization of the revolution”, and they excluded the entire Ghaddafi regime. The pro-Ghaddafi factions got armed to fight the new regime in the making, and this is how it became a civil war. This is where our experiences diverged, though Tunisia was there too at some point. And this is how TJ became appealing to other Arab countries as a gateway to avoid civil wars. The Tunisian model lost its outreach very recently, based on the process's results. If we reflect on results from a normative point of view, we failed. But if we consider its soft impact, I'd say that TJ saved us from the exclusion law, it reminded us of, and documented, violations in Tunisia.”

This, however, remains open to further investigation. As per the dynamics that characterized power balances between the UN and Tunisian state officials and institutions, namely the NCA and the TDC, no solid evidence has been gathered from fieldwork to draw conclusions, except the privileged partnership flagged by the UNDP's technical and financial support.

4.2.1.2. Domestic alliances and the TDC

Though this section does not provide an exhaustive account on the political landscape in which the TDC had to operate, it gives an overview on how resistance from the old and the new political elites have jeopardized TJ in Tunisia. The establishment of a consociational ruling system between former President Essebsi, elected in 2014, and the country's prominent party, the Islamist movement of Ennahdha, severely weakened the TDC. NGOs then became the Commission's backup allies, which fairly explains their privileged positioning in the TJ process:

“After 2015, the flame went fragile. People saw that the entire state apparatus was against TJ in Tunisia, others simply don't like Sihem Ben Sedrine, others realized that Ennahdha loaded the process and then failed it. It just kept a position to save face because some of its deputies have worked on the process. It was part of the deal with Essebsi to fail TJ and approve reconciliation. The old and the new elite agreed to let go of the process and to reconcile without all that TJ trouble. It is ironic how people tend to forget that, in 2011-2012, those who fought for TJ were the democrats in general, while Ennahdha was against it even if it was already in the government and having the TJ ministry. But it's Ennahdha & CPR who issued the immunization of the revolution law. Then came this political deal at the top level on the expenses of TJ. Some agreed to just let it go and silence the TDC and the process, others started to openly express their opposition, including democrats, to the entire process, and to the TDC President and to reconciliation. It was the tree that hid the forest¹⁴².”

This explains much of the shortcomings as the TDC was left out by state actors and had to find ways to contour the hurdles of its operating environment. Being failed by the state also means difficulties to sustain public consensus around, and credibility of, the Commission as well as resources. Indeed, the extension of the TDC mandate by one year, which is guaranteed by the TJ law, was a highly contentious moment.

¹⁴² From the interview with the Kawakibi Center official representative

According to article 18 of the TJ law, the extension is to be solemnly decided by the TDC and to be justified and simply communicated to the Parliament. In February 2018, the TDC announced its decision to extend its operations by one year, blaming the gap on the lack of responsiveness of state institutions, only to face resistance from the ruling elite. Strong interplays between law and politics took place during the month that followed, and the extension was set to be voted by the Parliament, then rejected with no quorum¹⁴³. The TDC enjoyed the support of several CSOs¹⁴⁴ and pursued its plans of extension regardless of the vote. A joint statement with the government, constitutionally required to endorse TJ¹⁴⁵, was issued in April 2018 and set deadlines and obligations clear, yet no additional state funding was granted to the Commission. The UNDP accompanied this extension financially¹⁴⁶. In brief, two forms of resistance could be discerned based on O’Loughlin’s argument, namely 1- masked resistance, i.e. the adherence of political elite to TJ only to jeopardize it from within, and to a lesser extent 2- spoilers’ resistance, i.e. rejection of TJ by the old and the new elite for purposes of self-preservation. It is, however, the narrative of the FTDES official representative that is specifically relevant to the victim-region niche:

¹⁴³ Session held on March 26. Votes as the following: 68 rejections, 2 abstentions, and no approval. see for example: Amnesty International. 2018. Les tentatives d'obstruction au travail de l'instance Vérité et Dignité portent atteinte aux droits des victimes et menacent la justice transitionnelle. Public statement: Tunis. 17 April 2018 [\[Online\]](#)

¹⁴⁴ See: Coalition of NGOs. 2018. L’ARP se prépare à dissoudre l’IVD et à anéantir l’ensemble du processus de justice transitionnelle. Tunis : ASF [\[Online\]](#)

¹⁴⁵ see for example: Amnesty International. 2018. Amnesty se félicite de l’engagement du gouvernement à permettre à l’IVD de finaliser sa mission. Press statement: Tunis. 29 May 2018 [\[Online\]](#)

¹⁴⁶ UNDP. 2018. Rapport annuel sur le soutien à l’opérationnalisation du processus de justice transitionnelle en Tunisie. Tunis : UNDP [\[Online\]](#)

“Ben Sedrine is a very smart person, polemical but smart. She understood the dynamics within which TJ was about to take place. She knew that the composition of the TDC is based on political affinities so it could be shattered in pieces at any moment, that she needs allies and that it is very important to have the Forum as an ally. She knew that she could rely on us to back her up if she facilitates our work on the victim-region niche. We did not know back then that we will participate this extensively in the chapter, but she knew well before we do. Later, we provided the methodology and accompanied the writing of the entire chapter.”

This explains the strong influence of the FTDES approach to art. 10 para. 3 on the TDC methodology and processing of victim-region files, particularly the adoption of a region-as-governorate rationale and the reliance on a set of socio-economic indicators to prove marginalization and systemic exclusion. How the FTDES invested its privileged position to channel its agenda is discussed in the next section as well as Chapter V.

4.2.2. Investing the void: textual vs. teleological interpretation and the role of NGOs

The previous section helped understanding that actors involved in the process had rather competing agendas, which does not exclude the existence of sites of consensus but strongly highlights political resistance. It is clear that the international community had the most pressing need to reach its objectives dictated by the liberal peacebuilding rationale regardless of procedural details and the potential, or risks, that the TJ law holds as a text. As per the TDC, its final findings reproduced a narrative of spatial victimhood that already marked the public imaginary for decades, opposing the coast to inlands, without deconstructing its causes. The TDC discourse on geographically manifested social injustice was based on a traditional understanding of marginalization and on state-induced national divides. This section discusses how

NGOs equally invested the legal void in art. 10 para. 3 to proceed with a seemingly textual approach only to serve their respective narratives and hence to end up reinforcing the teleological rationale of the process.

According to the Kawakibi official representative, art. 10 para. 3 was intentionally left vague and open to interpretations to keep the process participatory after ratification of the law.

“I was on the committee that drafted the law, it was left open to interpretation intentionally, to victims to define what a region is and to define to define themselves as victims on ground of their belonging to a given zone. Why would it be restricted to a city for example? It can be a neighborhood, and it can be anything.”

Apparently, this does not translate a particular interest in the article during the preparation of the law, which endorses the likeliness of a teleological rather than a textual approach. The FTDES representative added that:

“the article was not subject to an extensive debate compared to other articles related to torture, prosecution, HR violations and the like, i.e. classic TJ elements. Paragraph 3 was part of a larger debate and the law was not debated paragraph per paragraph, but rather within a comprehensive approach. This paragraph did not get a special interest back then.”

It is no surprise that elite actors, whether international or local, state or non-state ones, would dedicate resources to such a project with preset objectives in mind. The question is whether these objectives revolve around the essence of the victim-region niche that is social justice or rather serve narrow interests. The leading role of FTDES in this regard is here of a particular interest as it is the first applicant to work on art. 10 para. 3 and the one that presented the most exhaustive file. The organization’s official

representative openly expressed that their participation had a political objective with no interest in legalist or linguistic approaches. For FTDES, the perspectives inherent to art. 10 para. 3 presented a perfect opportunity for the organization to shift from advocacy to practical alternative solutions in line with its mission:

“We had a clear objective as FTDES, based on the organization’s mandate, and the founders’ conviction that no political change will ever happen in Tunisia unless the motives of mobilization are social [...] The year 2011 was a defining moment for us because dynamics diverged from the real motives of the revolution. It is a revolution for social justice, but we found ourselves facing political deals and accords, in a public sphere debating political dynamics and forgetting all about economic and social problems. This is where we made sure to recenter the debate and make it clear that this revolution will remain fragile as long as it doesn’t provide answers or solutions to economic and social issues.”

The FTDES file submitted on behalf of the Kasserine governorate adopted a region-as-governorate rationale and evidence based on socio-economic indicators to prove marginalization and systemic exclusion. When compared to files that followed the lead of this first submission and the overall approach of the TDC, the FTDES has significantly influenced the understanding and usages of the victim-region niche. The official representative confirmed that, while the law does not mention ESRs, the organization purposefully put them at the center of the discourse and chose to instate divisibility of rights:

“It was intended that way because ESRs are always dissolved in the political. The current chaotic situation is due to the fact that they privileged an exclusively political process on the expenses of the social and the economic, almost systematically discarded at every stage. It is a huge problem that should take its own distinct space. It is a choice.”

The distinction between ESRs and political and civil rights could perpetuate the common tendency to consider ESRs as peripheral as it establishes a hierarchy of rights. This is also a key argument of the literature on structural violence that looks at collective non-bodily violations as deprivation from access to all rights without their hierarchization. However, the FTDES representative argued against such a statement and insisted on the organization's methodology as context-driven and not obeying to theoretical schools of thoughts. In brief, according to the interviewee, investing the niche by separating ESRs from political and civil rights is also a political choice and not a depoliticization of ESRs, but more importantly, within the frame of TJ, it protects ESRs from attempts of neglect or dissolution:

“For us, divisibility can only foster the cause in our context. there is still an absence of a political consciousness of the importance of the fight against marginalization. A recent example is the January 2021 mobilizations, the first of that scale and form since 2011. It affected the coastal cities, which is a considerable indicator. This proved that our approach is right because it made it clear that anywhere you overlook the social question, it will gain in space and enlarge its territory. For me, these 10 years were not those of democracy, but of democratization of marginalization.”

The Kawakibi Center had different motives to participate in the process. The organization is not local but rather regional and it has been working on TJ in the MENA region since 2007. Back then, Tunisia, still under authoritarian rule, was not part of their strategic planning. As soon as the 2011 uprising took place, the Center seized the opportunity to widen its operational scope and to establish an office in Tunisia. Its involvement in the Tunisian TJ process was also the occasion to push for a wider TJ scope that would include ESRs, and the dynamics of the Tunisian uprising offered the optimal context:

“We, at Kawakibi, and I insist on saying that this was our part, we argued that all TJ experiences talk about gross violations of human rights, but all only focus on violations of civil and political rights. Even if they address other rights, it is only corollary. We argued that if TJ is about “gross violations of human rights” then why don’t we include social, economic, and cultural rights? There is no obstacle to that. In Tunisia, violations are rather of this type. There is detentions and forcible disappearance etc., definitely! but, compared to other countries, the problem is rather socio-economic so we should address ESRs.”

It was then evident to extend the organization’s role beyond law drafting and advocacy. The Kawakibi Center did not participate as a primary applicant but chose to offer support to local GAs and individuals by provision of two studies that respond to the organization’s objectives of widening the scope of TJ and including ESRs. Both studies opted for a region-as-zone rationale and hence did not reproduce administrative division patterns nor the FTDES pilot file approach. However, the Kawakibi Center did work on proving marginalization and systemic exclusion based on socio-economic indicators:

“Art. 10 para 3. is one of the rarest venues that permits to give voice to the voiceless, that forces decision-makers to face unseen or overlooked inequalities. We are not entitled to apply on their behalf. We don’t replace actors, we support them.”

The FTDES also dedicated specific attention to its legitimacy as a primary applicant on behalf of the Kasserine governorate as narrated by its official representative:

“We worked with local actors, grassroots associations and habitants beforehand, and we even negotiated openly our very legitimacy as an NGO. We also have a local branch in Kasserine through which all was channeled, it was not done from the Tunis HQ. We kept public consultations open to all for two months in parallel to the preparation of the file. And after the submission, we also kept these talks going to keep. There was no legitimacy issue.”

To conclude, there is unanimity as per the inclusive and participatory approach of all parties, which suggests that the process was non elitist. While this is partly true, it is also important to note that involving non-elite actors was guided by predefined frameworks as set by elite actors or recaptured to implement agendas. ‘Agency’ granted to non-elite actors took place only within “the discursive parameters that power makes possible¹⁴⁷”. As mentioned previously, nothing in the TJ law refers directly to ESRs or defines how to prove marginalization and systemic exclusion. For the FTDES, resort to socio-economic indicators was necessary to channel the organization’s objectives and scope of work. For the Kawakibi Center, such a methodological choice helped putting the incorporation of ESRs in TJ into practice and gaining an experience on widening the scope of TJ. The next chapter is a cross-analysis of all what preceded. It concludes that much of the limits of the victim-region concept resulted from a divergence from a textual interpretation to serve teleological narratives, the lack of expertise, and unawareness of the risks at stake.

¹⁴⁷ Cf. Mullin & Patel.

CHAPTER 5

THE LIMITS OF THE VICTIM-REGION CONCEPT

5.1. Decontextualization

5.1.1. *The TJ law timeframe and colonial structural violence*

Guided by postcolonial literature, the first limit that this thesis's argument explores is the methodological basis for the examination of ESRs. However, the conceptual framework of this thesis rather adopts the argument on going beyond rights divisibility and on addressing social injustices and collective reparation under structural violence¹⁴⁸. This stance also calls for the consideration of both colonial and post-independence root causes of social injustice, which implies the definition of a TJ timeframe that looks at colonial policies and their perpetuation. In the case of Tunisia, the timeframe dictated by the TJ law does not include the colonial era. The mandate of the TDC covers the period extending from July 1st, 1955 to December 2013, i.e. from the day of the declaration of Tunisia's internal autonomy from French colonialism to the TJ law entry into force. While the end date of the TDC mandate is rather arbitrary and responding to logistical needs, as the TDC is not intended to work indefinitely, the start date reflects a clear choice of limiting the mandate to only look at violations under an 'independently' operating Tunisian state and to discard what happened under French colonization. The July 1st, 1955 has a symbolic meaning as well as it was the day of the return of former president Bourguiba from exile and his celebration as the nation's Zaim. While addressing gross human rights violations in their normative definition can be subject to a political choice that looks exclusively at authoritarian abuse, social

¹⁴⁸ Cf. Evans, Maddison and Shepherd.

injustice and the political geography of Tunisia obey to different dynamics. As explained in Chapter II, the socioeconomic engineering of the country started before its independence, a legacy unquestionably sustained under authoritarianism, from state building to neoliberal public policies. Sustainable social justice can only result from an approach that addresses current manifestations of ESRs violations within their historicity and in their interconnectedness with other rights. This is particularly relevant in the case of Tunisia as ESRs have been tied to spatial marginalization and exclusion by an NGO-ized interpretation of spatial victimhood. This put the land question at the center stage, yet consequent methodological choices overlooked the matter. This part of the argument has been confirmed by interviewees to different extents when asked to reflect on the outcomes of the victim-region concept and its shortcomings. Failure to conduct an in-depth examination of root causes is also linked to prospective failure to guarantee non-recurrence by perpetuation of the power system in place, its interests, and the stability of the economic and political elite:

“There should have been a deconstruction that looks at the root causes of today’s problems and that post-independence regimes accentuated or perpetuated. I would even say that one day there will be something called “post-authoritarian regimes” looking at how fresh democracies also perpetuate authoritarian dynamics and systems. So yes, it is very true that the root causes of geographic inequalities are deeper than the scope and timeframe defined by the TJ law. And I am saying this after all these years of experience [...] Working on deconstructing the system and wealth distribution patterns should have been done. This is particularly relevant to the land and property question in the South where the French colonizer forcibly dispossessed local habitants for agricultural, military, and strategic purposes. Those lands are still a burden today. So they were dispossessed of their lands under French colonialism. Today still, people have no legal access to land as a capital that is originally their own. To be honest, this is something I learned very recently¹⁴⁹.”

¹⁴⁹ From the interview with the Kawakibi Center official representative

“I do believe that deconstructing root causes is necessary to guarantee non-recurrence. But from 1955 to 2013, you are already covering more than 50 years which is more than enough to understand how the regime in place worked during all these years, including the fact that it never questioned its choices built on the colonial legacy, which is valid for the post-uprising continuity of the system as well. But you could consider a wider timeframe at the micro scale, such as the case of domanial lands that remains unresolved. This you can, and need, to go back to centuries ago.¹⁵⁰”

The need to set a timeframe is hence justified by practical considerations in terms of resources and the limits of the operational period of the TDC, but also the expertise of involved actors and their objectives. Moreover, and though the final report looked at some violations perpetuated by France, especially the 1962 events in Bizerte governorate, the hypothesis of diplomatic sensitivities should also be considered. The entire international system and expertise, heavily present in TJ processes, has always worked on discarding crimes under colonialism. The normative framework of “contemporary” TJ is no different as it is based on the same Western understanding of peace, security, democracy, and justice. Unfortunately, venues for the consideration of colonial violations, including those related to land, demography, and resources, are very limited and would rather have costly and uneven consequences. For the FTDES representative, the main objective is to simply pinpoint that social injustice is the result of political choices, regardless of the timeframe:

“If you do not set a clear timeframe for the process, a clear frame in general, you will not be able to discern the problem. You cannot avoid the methodological limits of this niche, but you still need to frame it properly. Now, whether you reach a result or not is a different question. In terms of public policies, we are still living within a continuity from 1956 to-date. I do not think we need to go beyond that. The post-independence regimes built on legacies, starting there informs you about what happened before. You just work on understanding that your problems today are the result of political choices.”

¹⁵⁰ From the interview with the FTDES official representative

The argument of the FTDES representative is not in contradiction with McAuliffe's approach. Working on the identification of social injustices as the result of political choices is a fair start in the Tunisian context, as "incoming democratic regimes may not organize their political programs on [the basis of socioeconomic reform], the outgoing regime may do so only to the extent that civil-political power is traded for the retention of economic power, power sharing among elites may be preferred to distributive justice for the communities, or peace may rest on a structurally unequal status quo" in McAuliffe's words. Yet the approach of McAuliffe that helped shaping key questions of this thesis answers all the above on a deeper level. None of the actors examined the spatial dimension of the victim-region niche as pinpointing the land question in Tunisia and not simply defining a statistically sound unit for socio-economic indicators that discard land and property rights. It is here yet another evidence on the teleological, technical, and project-management-like features¹⁵¹ of the TJ process in Tunisia. Briefly put, art. 10 para. 3 has been decontextualized both in time and in space, which is also due to lack of expertise of key elite actors at the time. This point introduces the next section for further analysis.

5.1.2. Geographies of marginalization and spatial fragmentation

Decontextualization did not result only from a shallow interpretation of the 10th article's legal void or the TDC mandate's timeframe set by the law. It also resulted from a poor understanding of the political geographies of marginalization in Tunisia and socio-economic dynamics in-between regions. By assimilating a region to a governorate, the victim-region concept ultimately overlooks other equally disturbing

¹⁵¹ Cf. McAuliffe.

spatial realities. In other words, a region-as-governorate interpretation does not acknowledge other scales nor the “in-between” center-periphery dynamics. The concept hence neglects 1- the urban periphery of seemingly richer regions, considered as non-eligible for such a ‘status’, as well as 2- the geopolitics of borderlands that go beyond mere political regionalism and obey to different territorial dynamics. Indeed, the globalized phenomenon of rural-urban migration triggered by globalized economic models led to what is known as the proliferation of the urban poor at the outskirts of main cities, inhabiting slums, and Tunisia is no exception. Its capital city, Tunis, counts dozens of informal neighborhoods, including parts of the old medina at the very center of the city and a few blocks from the government’s headquarters. These migration patterns are inherently linked to regional marginalization and its urban manifestations, mainly alongside flows of extraction and exploitation of rural resources towards urban sites of capital accumulation. It is a one-way flow that transferred the regional to the urban (scaling down), including sites of discontent and resistance, beyond administrative borders and more into a logic of capital, classes, and territoriality. The reality of capital accumulation in seemingly “rich” regions is also of significant importance as the very upscaling of coastal cities was largely built on gentrifying policies, and hence on accumulation-by-dispossession. On another scale, borderlands represent another form of center-periphery tensions that both challenges and serves the central power. Borderlands have their own economic model based on smuggling channels, and noteworthy transnational dimensions, all being a skeleton of survival both for the elite and the marginalized. Such a territorial dynamic also transcends the definition of what is regional as in ‘victim-region’ as discussed by the TDC. It is also important to note that borderlands have been subject to increasingly severe anti-

terrorism policies since the uprising, which heavily affected daily life and livelihoods¹⁵², a fact omitted in the TDC recommendations. This second methodological limit, i.e. the interpretation of region and resort to region-as-governorate rationale, has also been explained by operational constraints:

“Resort to administrative divisions is predominant only because the only available data to make your case is at these administrative scales, especially the governorate, and you would still struggle to find data at the scale of districts. It is hard to find data on the Krib district for example, but possible to find it at the scale of the Siliana governorate. So here I can somehow understand why they considered proximity to services and opportunities of a given neighborhood to the governorate’s center. No hospitals in Jbel Jloud zone, yes! but it’s only 5km from the Rabta (public hospital, central Tunis)¹⁵³.”

Yet reliance on socio-economic indicators is a choice shaped by participating elites, especially NGOs. A different approach to make the case for regional victimhood, more in line with structural violence and the very functioning of the state system could have avoided resort to the governorate scale for concerns over availability of data, long manipulated by the ruling regimes and subject to multi-level data politics. The previous chapter on power dynamics around the victim-region concept showed that the FTDES had a great influence on the methodology of the TDC. Six years after the submission of the pilot file, the organization’s official representative recognized that:

“We didn’t do justice to other scales with our methodology. We indirectly influenced the works of the TDC. And I remember that during a meeting with the president of the TDC, she expressed her struggles with victim-region files as not based on any methodology, except for our file. So yes, we

¹⁵² Herbert, Matt. 2018. *The Insurgency in Tunisia’s Western Borderlands*. Carnegie Endowment for International Peace.

Lamloum, Olfa. 2016. “Marginalisation, Insecurity and Uncertainty on the Tunisian – Libyan Border.” *International Alert*. December 2016

¹⁵³ From the interview with the Kawakibi Center official representative

undermined other files, and if I had to start all over again, I would work on a more inclusive methodological framework with clear guidelines on how to apply it to any scale. It was later the choice of the TDC experts to go for the easiest approach, the one that is ready, i.e. our methodological framework, and they applied it to all files. This is also one of the TDC shortcomings. In retrospective, we could have worked on setting grounds for better work. But after all, this is the TDC role and mission, they are commissioned to investigate further and to set criteria and take the responsibility for this.”

In January 2021, a large-scale wave of protests in Tunisia revealed a new geography of marginalization. This wave was considered as unprecedented in the past decade, i.e. since the 2010-2011 uprising, and showed new forms of mobilization alongside traditional ones. Demands were majorly socio-economic, and when faced with state violence and police oppression, they were nourished by further demands of political and civil character. Two months later, a coalition of NGOs, including FTDES, addressed a letter to the UN Special Procedures calling for action to stop state authorities from jeopardizing the TJ process any further¹⁵⁴. It is that, two years after the end of the TDC mandate, the government still did not issue its plans for the implementation of the Commission’s recommendations. One would however wonder if recommendations under the victim-region chapter are still valid or rather obsolete. The FTDES representative expressed the organization’s will to continue working on ESRs under TJ, while admitting that:

“The territoriality of marginalization itself has changed, i.e. the territorial dimension is still there but far beyond classic approaches of coast vs. inlands and center vs. periphery. To understand recent mobilizations, we commissioned an urbanist because we need to analyze how marginalization is shifting in space and to back our claims that it is evolving with solid evidence. Today, you cannot reflect on marginalization in the terms of the TDC, those of granting the victim status to X region and not to Y region! It does not make sense.”

¹⁵⁴ Joint communication to UN Special Procedures by a coalition of local and international NGOs, 26 march 2021. Tunis. [\[online\]](#)

The Kawakibi Center representative also gave a critical review on the organization's work and agenda, insisting that, ten years later, addressing ESRs and social injustice under TJ's institutional reform chapter rather than separately under a victimhood discourse could have led to better results:

“There were precedents on which we based our argument to consider ESRs, but without a full understanding of previous examples. In South Africa for example, black people and white people do have the same rights on paper, but in reality, black people are still living in ghettos and still suffering from marginalization. So yes, ten years ago we advocated for ESRs but the causes are deeper, it is not about ESRs, it's structural, it's the elite that will never accept structural change, the elite that monopolize resources and accumulate capital. Marginalization and exclusion dynamics do transcend geographical limits and administrative divisions. Today, I would not link them to victimhood but rather to institutional reform. Under victim-regions, in Kasserine for example, reparation would be something like linking the governorate to the national highway network at best. In another governorate it would be building two hospitals, and so on, then that's it. These are not deep solutions, but this is also a late judgement on a previous situation. Today is nothing like ten years ago.”

The next section discusses how these methodological limits have been translated in the TDC discourse on regional victimhood.

5.2. VSD-induced discourse and the status quo

The VSD mapping showed a strong reiteration and approval of Tunisia's geographies of marginalization as present in public discourse and the popular imaginary, opposing the rich coastal cities to inland poverty. The TDC, in its analysis and interpretation, did not offer additional insights nor did it work on creating a space for a new debate on social injustice. According to the interviewees, who both had no idea on the final mapping yet agreed on the limits of the TDC findings, this could also be justified by operational constraints. The difficulty to prove the systemic character of

violations and the element of intent was mentioned as a significant factor. The traditional approach to marginalization and exclusion, as discussed in the previous section, was yet another factor:

“It is very difficult to prove the element of intent on which the VSD is based. The TDC based it on a classic understanding of marginalization as “regions distant from the center”. It was just the easy way¹⁵⁵.”

“This [VSD] is somewhat a random arbitrage by the TDC, and not because it’s intended, but it’s that they don’t have precedents to refer to. They’re basically the first in the world to work on such an aspect, undefined by the law so naturally open to all sorts of interpretation [...] I can say that the TDC, with all its problem, didn’t drift away from the text’s essence. Yet these are judgements that I don’t consider the most adequate, but I also don’t have an idea on what is the most adequate way to decide VSD, it is objectionable, but I have no alternatives. VSD conditions are very difficult to define. For example, I do recall that the TDC referred to the quinquennial plan that clearly stated “the concentration of investment on the coast on the expenses of inland zones to serve Tunisia’s global competitiveness”. This is clear systemic exclusion. It’s literally marginalizing some 12 governorates from the state’s development plans. But they didn’t look any further probably¹⁵⁶.”

The reiteration of this narrative, opposing the coast to inlands and relying on the region as a victim entity, holds high risks in the Tunisian context as it is likely to fuel regionalism and social divides. When asked about these risks, especially if the TDC findings remain unaddressed, interviewees showed awareness of the underlying sensitivities and rather had optimistic stances:

“It could reinforce the regionalism discourse if we stop here. It is now the responsibility of researchers, politicians, thinkers, planners, to take all this and use it as a starting point to dig deeper. It is not the role of a random citizen in a region considered as victim to do so. These people to whom the status has been granted will certainly leverage it to fight for their rights.

¹⁵⁵ From the interview with the FTDES official representative

¹⁵⁶ From the interview with the Kawakibi Center official representative

Ideally, all this should be channeled to decision-making spheres to work on it and not to stay at the surface of the problem¹⁵⁷.”

“This is one of the shortcomings. But reaffirming this preconceived perception can be understood if you look at the operating period of the TDC and the timeframe it covers [...] We never worked with the intention to reinforce any discourse of any kind, be it stigma or regionalism. We worked on that with local habitants beforehand. We made it clear that obtaining the victim status for the region does not mean sharing monetary compensation on all habitants or re-distributing the state budget as to give big shares to Kasserine and nothing to Sousse for example. This is not the objective. We are aware of these sensitivities, and of such risks. We were really cautious about regionalism. The idea was not to look at regions separately, but to call for a comprehensive model. The TDC recommendations will not be taken in bulk, they will be reviewed. And we are aware of such shortcomings but also aware of the importance of further steps¹⁵⁸.”

In sum, the victim-region niche was invested by NGOs in a rather tentative manner, with little consideration of the impact of shortcomings and limited experience. The TDC, failed by the state and required to deliver within a limited period and with scarce resources, was overwhelmed by how its mandate scope got widened. The absence of expertise is yet another factor that is likely to leave the promises of TJ unmet. The following section looks at these conclusions with reference to the “problem-capacity nexus” as discussed by Salehi¹⁵⁹.

¹⁵⁷ From the interview with the Kawakibi Center official representative

¹⁵⁸ From the interview with the FTDES official representative

¹⁵⁹ Cf. Salehi.

5.3. The way to unmet promises: Overburdening TJ and the lack of expertise

The “problem-capacity nexus” as discussed by Salehi barely looks at how state actors’ resistance, as well as that of old and new elites, severely hindered the potential of the TJ process. This said, Salehi does explain how international actors and NGOs overloaded the TDC scope with “hyper-real” ambitions and little preparedness to remedy the limited infrastructure of TJ institutions. The problem however cannot be merely quantified. Optimizing resources to better answer the TDC mandate is also a matter of the quality of expertise recruited for the tasks at hand. In the case of ESRs, interviewees confirmed the absence of qualified expertise to work on the victim-region niche:

“When the TDC started operating, it did not have ESRs on its agenda. They were fine with anything related to ESRs that might pop up, but also fine with not dealing with any case. They did not even get prepared for it in terms of expertise¹⁶⁰.”

“They were not prepared. Not at all. Not for this chapter, not for other chapters. Just to give you an idea, the security sector reform chapter was given to a 33 years-old friend. They asked him to write the chapter, including recommendations, without granting him access to collected data. But I heard that only one chapter was well written, the one on women’s right, and only because the person they commissioned has a long experience¹⁶¹.”

The thesis started with an even more radical question, that is whether TJ is the proper venue to address social injustices or not, particularly because of its operational limits and context. This does not imply advocating for the relinquishment of socio-

¹⁶⁰ From the interview with the FTDES official representative

¹⁶¹ From the interview with the Kawakibi Center official representative

economic violations, on the contrary. This is rather to say that, in the Tunisian context, the significance and high relevance of the socio-economic dimension to post-authoritarian justice require the dedication of a well-designed and solid mechanism, be it under TJ or else, but clearly not a truth commission that has to deal with innumerable aspects. Does this mean advocating for the divisibility of rights? No. Not if ESRs are addressed under the comprehensive structural violence principle -or theory. For the interviewees, and despite shortcomings and risks of reaching a dead end, there is still room to overcome the frailty of the TDC and its final report:

“I do insist that [ESRs] should definitely be part of TJ even if it proved to be limited as an experience, but it has at least succeeded in documenting all this. If the TDC were stronger and the state was really an ally, it probably would have been possible to address root causes. It would have been an opportunity to shape a more informed space of debate, work on new definitions etc. Via the VR concept we dreamed big and the intentions were unquestionably good. Now, every actor will blame the other part for not living up to such an aspect of TJ. The TDC would say that they’ve done their work but faced resistance and weak responsiveness, the state would say the TDC recommendations are poor and there’s no budget for more work, etc. If the state joins those good intentions, it should now work on implementing the recommendations as such, and at best work on going a step further towards deeper reparations. But I’m probably being too ambitious¹⁶².”

“Yes, we did miss an opportunity. It could have been a much better process. We were not conscious enough of what could be done as part of TJ before the discussion of the law and its ratification. But monitoring could be a remedy, we can catch up. We launched a comprehensive post-TDC program¹⁶³, a coalition with two other partners (ASF and al-Bawsala) and we are working on following-up on all chapters, not just victim-regions. The program is also in collaboration with a group of 50 national and international CSOs. The fight is not over¹⁶⁴.”

¹⁶² From the interview with the Kawakibi Center official representative

¹⁶³ Initiative titled “Never Again”. <http://laroujou3.com/>

¹⁶⁴ From the interview with the FTDES official representative

CHAPTER 6

CONCLUSION

The thesis shed light on the unanswered dilemma opposing the necessity to address social injustices under TJ to the reality of the field and its limits. The Tunisian experience served as a case study to understand why ESRs are central to post-conflict justice, which is valid for other MENA countries as well. The Tunisian TJ process was chosen for the niche it offers in this regard. In its article 10 paragraph 3 (art. 10 para. 3), law 53-2013, or the TJ law, extended the definition of victimhood to encompass any spatial entity, or region, that has suffered from marginalization and systemic exclusion. Left vague, the paragraph was subject to interpretations that later shaped the victim-region concept. And while this concept was initially dictated by the specificities of the Tunisian context, it offers an interesting venue for dismantling the political instrumentalization of land planning for authoritarian and colonizing purposes worldwide. This said, the concept's potential has been tainted by the very power dynamics around TJ as a political project and a chiefly discursive field. By looking at the role of elite actors in the making of the victim-region niche, it has been possible to understand how a single paragraph in the Tunisian TJ law became a site of bargain where competing agendas forced a teleological interpretation resulting in the weakening of the text's essence. Equally, strong resistance led by old and new elites was exerted as the victim-region niche challenges their self-preservation mechanisms, especially in terms of wealth distribution, capture of resources, and accumulation of capital by dispossession.

The thesis proceeded with a thorough screening of the Truth and Dignity Commission's findings as narrated in its final report. It discerned main methodological and discursive limits to then widen the scope of the research and to try to answer a series of questions on how the TDC reached these results, who participated in these endeavors, and why. Choosing to focus on the elite level, the thesis mapped key actors that are the UNDP representing the international community, the TDC representing the solemn body responsible of the implementation of the TJ law as voted by the Constituent Assembly, and two leading NGOs representing the work of non-state actors on the victim-region niche. Main limits identified revealed 1- the disinterest of the international community in a context-based examination of ESRs-related injustices, 2- the TDC's reproduction of the state-led territorial division of the country but also its resort to a traditional understanding of the territorialities of marginalization in Tunisia as already crystallized in the public imaginary, and 3- the lack of expertise of both state and non-state actors and the tentative approach of NGOs in servitude of preset objectives. These actors, particularly NGOs, invested the legal void in art. 10 para. 3 by resorting to socio-economic indicators to prove a region's eligibility to the victim status. Such a methodological choice, along with spatial fragmentation of marginalization, pushed for a victim status determination (VSD) on a governorate-per-governorate basis, depoliticized the problem, and overlooked more complex socio-spatial dynamics happening at other scales. This is also translated in the development-based recommendations of the TDC that are in rupture with the reality of the political and economic situation of post-uprising Tunisia, the growing institutional frailty, and the fierce resistance of the political and economic elite.

Whether TJ is the proper venue to address social injustices or not is not a simple question. Rethinking TJ within the confinements of its liberal design is unlikely to create room for a genuine widening of the field. The United Nations' reports and guiding notes on TJ openly express that the incorporation of ESRs under TJ is agreeable as long as it is seized as an opportunity to channel further elements of the liberal agenda. It is why this thesis reflected on the socioeconomic dimensions of justice from a conceptual stance that rejects the divisibility of rights and adopted the notion of structural violence to guide a discussion based on postcolonial literature. Postcolonial approaches do provide pathways to avoid the shortcomings of the field. For justice to prevail, it is crucial to address the root causes of patterns of abuse beyond mere description of their manifestations. In the case of the territorialities of social injustices and their systemic perpetuation, genuine change is unachievable without consideration of colonial structural violence. In other words, TJ timeframes should not overlook the colonial era, the historicity of systemic injustices, and post-independence continuity of abusive laws and policies (colonizer-colonized mimicry). In the case of Tunisia, the TJ timeframe discarded the colonial period. As per the normative framework of TJ, there is a need to depart from Western standards and to prioritize indigenous forms of justice and work on how they can inform an institutionalized context-based TJ process. Finally, premature celebration of a TJ model as a success should be received with much cautiousness as this, too, is a form of Western political instrumentalization to endorse the templatization of TJ in its liberal rationale.

This is to say that, in practice, the incorporation of social injustices under TJ is highly contentious but, more importantly, failure to deliver on this specific dimension of post-conflict justice can severely discredit the entire process. In the Tunisian case, and

as social disparities have been tied to a territorial dimension, it would have been constructive 1- to bypass the limits of the timeframe and to look at pre-independence patterns of abuse for an in-depth understanding of root causes, 2- to avoid linking spatial and collective victimhood to the element of intent, 3- to avoid VSD altogether. The last two points are based on traditional elements of TJ and are more suitable for violations perpetuated on individuals but not for geographically manifested collective suffering. As stated by one of the interviewees, addressing geographies of social injustices should have been linked to institutional reform and not to victimhood. Finally, the structural violence lens has an interesting potential to contour such shortcomings. The argument calls for approaches that address conditions of collective deprivation from rights, all rights, far from the technicalities of global definitions of marginalization and exclusion.

As of April 2021, no scholarly work has been conducted on the victim-region findings after the release of the TDC's report. This thesis positions itself as a preface for further research on transitional justice in Tunisia. It bares hope that future work will set grounds for an understanding of Tunisia not only as a country of the MENA region - which is an artificial geopolitical space-, but also as a country tied to its primary context and connected to its mother land, that is the African continent.

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