

# Roles and responsibilities of non-state actors in transitional justice processes

<https://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/CallReportNSAs.aspx>

## **Introduction**

- A. This report investigates the roles and responsibilities of non-state actors in transitional justice processes in Tunisia. While ACHRS is located in Jordan, we have decided to not write this Call for Input concerning Jordan, where official processes of transitional justice have not taken place. Instead, input about the roles and responsibilities of non-state actors in processes of transitional justice is more valid regarding Tunisia, one of the countries in the MENA region with more recent and topical events relating to transitional justice. As a regional human rights center, we assure our input to be just as valuable writing about Tunisia as Jordan.
- B. In response to the questionnaire, non-state actors, such as militias or armed groups of other kinds, are not the ones in Tunisia who commit human rights violations. Most of the human rights violations are committed by the government: systematic corruption and dictatorships have left the country in need of transitional justice. Therefore, this report focuses on the help of other non-state actors, such as NGOs, in the processes of truth-seeking and accountability.
- C. The report responds to the Office's questionnaire in relation to the Human Rights Council resolution 45/10 on the roles and responsibilities of non-state actors in transitional justice processes of the 23rd of August 2021.

## **Methodology**

- A. This report is a) a review of current Tunisian strategies and practices in relation to transitional justice and b) an investigation of the practices of Tunisian non-state actors on the same matter, using secondary sources. As not all questions were applicable or in our power to adequately answer, we have committed to questions 1, 3, 4, and 5.

## **Background**

- A. After the dictatorship of Ben Ali, Tunisia started discussions with various actors in 2012, among which civil society organizations and political parties (ICTJ, 2013). These discussions also involved interlocutors. Hereafter, a technical committee was established, which helped draft a transitional justice law. This commission consisted of 10 civil society representatives and 2 representatives of the Ministry of Human Rights and Transitional Justice. The state established governmental and non-governmental institutions like the Ministry of Human Rights and Transitional Justice, the Truth and Dignity Commission, and the Transitional Justice Law. The existence of these institutions and the passage of the Transitional Justice Law in 2013 mean that since then, transitional justice has played a significant role in national law.

## **Answer to question 1**

- A. Tunisian civil society has largely been organised in different groups which have been importantly active throughout the country's history, starting from the French colonisation period to Bourghiba's rule, and has continued during the government of Ben Ali. With the advent of the protests against the regime which initiated the so-called "Arab Spring", via the anti-establishments uprisings and revolutions across the Arab world, Tunisian civil society groups acquired an authentically leading role in the transitional justice process, namely in the establishment of accountability for decades of human rights violations in the

country. Nevertheless, the Tunisian civil society is diverse and composed of different demographics, so their representations on these matters turned out to be quite divided depending on their political affiliation, religion, geographical location, their condition under Ben Ali's ruling, as well as their disposition to work with non-local entities and donors. For instance, secular groups were potentially more keen on engaging with international actors, whereas some Muslim groups considered that interaction to be a potential threat to their reputation, as working together with Western entities could damage their image with constituents. For this reason, it is fundamental to properly separate and consider the different interests and goals taking place in Tunisian transitional justice's process. Indeed, since the beginning of the protests against Ben Ali's regime, demands from the population turned out to be quite discordant; some were moved by rage towards the State's rampant corruption - therefore invoking the violation of their social and economic rights; others, on the other hand, were claiming justice for their political and civil rights, after suffering from brutality from the regime's apparatus (Wiebelhaus-Brahm, 2021). Therefore, it can be stated that the highly divisive nature of the Tunisian civil society constituted - and still does, one of the major challenges to the overall success of accountability processes in the country. Indeed, the segmentation of the population can be observed on the results of the last presidential elections, held in 2019, that have severely undermined the course of transitional justice in the country, also because of the current COVID-19 pandemic and the proclaimed state of emergency.

### **Answer to Question 3:**

- A. The International Center for Transitional Justice (2020) states that considerations are pending at the parliament regarding reparations. Not all ideas are non-state actor-driven, but the parliament has taken into account that these actors might be a useful asset. The reparations should take place in the future, for example through the creation of a reconciliation law that grants amnesty in return for surrendered assets.
- B. Another (non-state actor-driven) idea is to use civil litigation to recover ill-gotten earnings and to investigate transactions that violate the rights of the general public.
- C. Lastly, another mentioned proposal is to establish a larger task force within the government that can deploy greater skills and resources to assist in the resolution of these cases. While it is mentioned that this task force should be inside the government, outcomes may differ and shift to non-state actors. However, with the current state of emergency, the task force must wait until and whether the President confirms his interest in transitional justice.

### **Answer to Question 4:**

- A. The International Center for Transitional Justice (ICTJ) has worked in Tunisia since 2011. According to them, one of the main problems transitional justice is supposed to resolve is the corruption in the country. The representative of the President of Tunisia claims in the ICTJ 2020 report on "Truth, Accountability, and Asset Recovery" that fighting corruption is not restricted to state officials and necessitates the use of all available resources. To accomplish overcoming corruption, civil society and non-governmental organizations must play a part in this attempt. Only this way, a guarantee of non-reoccurrence may be realistic.
- B. In principle, the Law of Transitional Justice provides such a guarantee. The Truth and Dignity Commission created an integrated electronic system, enhancing transparency in technical work (Instance Vérité & Dignité, 2020). This includes an efficient way of working

but provides also protection against corruption as it uses a vast protocol in, for example, hiring processes. Transparency should provide information safety. The Commission tried to put in place a set of mechanisms to provide good governance.

- C. Further examples have not been encountered. However, ACHRS wants to emphasize that this does not mean that other non-state actors are not working on this.

**Answer to Question 5:**

- A. Having established who the involved non-state actors are, this answer focuses on examples in which interlocutors played an active role.
- B. In August 2020, the International Center for Transitional Justice (ICTJ) published a conference report: “Truth, Accountability, and Asset Recovery”. The ICTJ is one of the non-state actors that has been working for years now with Tunisia, advising those involved in the transitional justice process in the country. This NSA actively involves interlocutors in this process. The report acknowledges the support of the cooperation of the government of Tunisia, the Supreme Judicial Council, the National Anti-Corruption Commission, and the Tunisia State Litigation Agency, and the support and funding given by the Federal Republic of Germany and the Kingdom of the Netherlands to ICTJ’s Tunisia Program, and by the Open Society Foundation Armenia to ICTJ’s Armenia Program. Amongst these names, we can find several interlocutors, ranging from the state of Tunisia itself to funding from foreign states.
- C. In the report, the representative of the President of Tunisia states that “The president will implement the necessary recommendations from transitional justice institutions to unveil the truth, recover ill-gotten assets, and pursue accountability (p.9)”. Furthermore, the President of the Tunisia Supreme Judicial Council speaks of the need to uphold Article 148 of the Constitution that makes transitional justice a constitutional-level state policy. However, one year later, after president Saïed has announced the state of emergency to last ‘until further notice’ in August 2021, not much of the aforementioned interest in transitional justice seems to be left. For example, in September 2021, it is presented on national news that the president was thinking about changing the political structure to create a presidential system that suspends the Constitution. The former president of the Truth and Dignity Commission fears that this suspension could mean the disappearance of Article 148 (Justice Info, 2021<sup>1</sup>).
- D. The importance of this for question 5 is that it shows that an interlocutor as powerful as the State brings with it the risk of being overthrown. Especially in the contemporary state of Tunisia, the State’s President is in power of changing direction. Therefore, State officials are valuable in demonstrating the validity of the role of non-state actors in processes of transitional justice, but should not be considered an invaluable source. Especially in cases where organizations are internationally acknowledged and have proven to function without State support, such as ICTJ, it is advisable to not rely solely on exactly this state support.
- E. Another example of interlocutors involved in Tunisia is demonstrated through the launch of the Transitional Justice Academy in 2011, supporting the development to a future based on accountability. The academy is a collaborative initiative between (inter)national NGOs that aim to improve and enhance the capacity of valuable actors in Tunisia. In the academy, they provide a

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<sup>1</sup> Justice Info is an independent website covering justice initiatives in countries dealing with serious violence. It is a media outlet of Fondation Hironnelle. Their work covers transitional justice, which is why we deem this website as trustworthy.

conceptual space for key stakeholders and actors in Tunisia to build their knowledge and skills on transitional justice problems (No Peace Without Justice, 2011).

- F. ACHRS salutes this initiative, as raising awareness on transitional justice will contribute to strengthening skills of key actors and civil society to advocate successfully at the political level. Enhancing the knowledge of key stakeholders and actors on transitional justice will allow them to have an evolving role in developing transitional justice practices. Furthermore, by using social media, the general public will be made aware as well.

### **Sources**

[https://www.ictj.org/sites/default/files/ICTJ\\_Report\\_corruption\\_conference\\_Web.pdf](https://www.ictj.org/sites/default/files/ICTJ_Report_corruption_conference_Web.pdf)

<https://www.justiceinfo.net/en/82343-tunisia-transitional-justice-holds-its-breath.html>

<http://www.npwj.org/node/3602>

Eric Wiebelhaus-Brahm (2021) Competition for control of the state and the transitional justice agenda among Tunisian civil society organisations, *Peacebuilding*, 9:2, 149-163, DOI: 10.1080/21647259.2021.1895618

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