



Transitional Justice counter-revolutions' at gunpoint: Aborted tracks and others that have not yet been completed!



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(Bread, Freedom, Human dignity)... (Bread, Freedom, Social justice) ... (People want to bring down the regime)... This how some of the Arab peoples in the region received the winter of 2010, in what was later known as the Arab Spring, in Tunisia, Egypt, Libya, Bahrain, Yemen, and Syria.

Different tracks after that was taken where some have failed as the forgotten and betrayed Bahrain's revolution, other tracks went off course towards violence and civil armed war that was backed by and international interventions of various parties to the conflict like Libya, Yemen and Syria, or in other cases was buried deep down after the success of the counter-revolution as in Egypt, which entered a dark tunnel of human rights violations under military rule and as a result of the Gulf's support and an international complicity.

And this occurred at the same time where there is a populist's rise that has a radical nationalist tendency as they are achieving successes in elections and rising to rule in the most important countries of the world, ending in a foreign policy that ignores principles and values upon which the international relations was established. The rise of such currents came after when their people become fed up with the previous political administrations' unstu-

died wrong interventions that led to the failed managing of The Arab spring issue as happened in Libya, Yemen, Syria, and certainly Egypt.

Despite the changes and political instability Tunisia remained the only blooming flower that is steadfast in the heart of the spring adhering to some of the Jasmine Revolution's most important principles, civil rights and freedoms but despite this fact, they did not achieve clear successes in the economic, social and cultural rights front, and they also didn't carry out reform policies reform and restructuring of the most important state sectors that clearly needed that such as security and justice.

And because it is the only remaining blooming flower, therefore it is the only country in the Arab Spring that approved and constitutionalized a clear path of transitional justice that –was and will be- a leading experience in the Arab world that everyone would have been guided by had it not been for the mistakes made by the Truth and Dignity Commission and some politicians and their political parties who allowed the disruption of this track through a set of laws that their constitutionality or non-constitutionality have not been resolved due to the absence of the Constitutional Court and the Administrative Court's inability to address the by the Truth and Dignity Commission's, politicians' and their political parties' overwhelming wishes and desires.

The transitional justice's path began with strong political will, and it was supported by the Higher Authority for Realization of the Objectives of the Revolution, Political Reform, and Democratic Transition as in 18 February 2011 Decrees No. 7 and 8 were issued were related to creating two committees, the first is the National Commission on Investigation into Corruption and Embezzlement which work period extends from November 7, 1987, to 14 January 2011¹ and the second one is the National Commission on Investigation into the abuses recorded during the period from 17 December 2010 until the achievement of its subject²

On the second day, the first interim government led by Mohamed Ghannouchi issued Decree-law n° 2011-1 dated 19 February

1 - See Decree no.7 of February 2011 <http://tunisiepolitique.blogspot.com/2011/05/7-2011-18-2011.html>

2- See Decree no.8 of February 2011 <http://mongi-tunisiepolitique.blogspot.com/2011/05/8-2011-18-2011-17-2010.html>



2011, relating to the amnesty³ through which political prisoners were released, it is worth to be noted that it was inspired by Ben Ali's law of 1988 for Releasing political prisoners which released many of them especially Islamists who were imprisoned during Bourguiba's era, in reality, most of those who benefit from such decrees are members of Islamic movements. ⁴

In late 2011, trials related to killings committed during the revolution began before military courts; these courts normally have the power to consider crimes committed by military and security forces, later three primary military courts started their investigation, and have compiled issues geographically. And later Mass trials and El Kef's Court trials started too where one of the defendants was The Former President Ben Ali, former head of the presidential guard, former interior minister, and five government's general directors and several security leaders of top and middle rankings. El Kef's Court of First Instance issued its rulings on 13 June 2012 and the Court of Tunisia did so on 19 July 2012.

In 11 April / May 2014, the Military Court of Appeal upheld the judgment issued by courts of the first instance in El Kef and Tunis in which Ben Ali was sentenced life prison judgment in absentia

3- See Decree no. 1-19 February 2011 <http://mongi-tunisiepolitique.blogspot.com/2011/05/1-2011-19-2011.html>

4- See Maaïke Voorhoeve's article «Transitional Justice in Tunisia», Middle East Institute, February 27, 2014 <https://www.mei.edu/publications/transitional-justice-tunisia>

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on charges of participating in murder, but it commuted the sentences issued against other high-ranking officials after re-characterizing the legal act from intentional murder to Severe violence that caused death, which made their sentences do not exceed 3 years of imprisonment according to the Criminal Code, these sentences resulted in the immediate release of the defendants as they had already spent the sentence. From the period during the trials proceedings the day the revolution started till the day the judgment was issued.

These developments had led “the Association of Defending the Revolution’s Martyrs and Wounded” and “the National Coordination for Transitional Justice,” which was considered the democratic body during the national dialogue on the transitional justice law to try to mobilize to demand retrials for the released defendants through specified circuits to decide on the revolution’s martyrs and wounded issues— and this unlike what some international experts and observers of the Tunisian Transitional justice path claim that if the transitional justice path fails, the failure should be borne by Democracy support groups— is a point a view that way far from the Tunisian’s path reality. And that here is despite the fact that the democratic wings senses that victims of the Islamic movement are more favored upon their victims and despite their state of distress and frustration that was caused by the way of adopting and ratifying the Transitional Justice

law and some of its amendments that are related to accountability and Truth and Dignity Commission structure procedures which was all a good critics that were proved to be correct later. As on 16 December 2011 the Organic law no. 6 of 2011 relating to the temporary organization of public authorities was issued which served as a temporary constitution for Tunisia and stated in Chapter 24 that the Assembly is committed to a legislate an Organic law for transitional justice, and later the Ministry of Human Rights and Transitional Justice was created⁵, the same Ministry which decided on 14 April 2012 to launch a national consultative process on transitional justice in order to reach a common vision, and a the Law's first bill was drafted and submitted to the Minister of Human Rights and Transitional Justice in late October 2012⁶, Which was amended by the government and handed over to the Constituent Assembly for discussion on 22 January 2013, and remained trapped in the Assembly's hands and because of the political problems in the country until it was included in the General Legislation Commission's discussion in which they listened to the technical committee that supervised the national dialogue, representatives of civil society, and international experts, and they completed its report on 23 August 2013. And then it was trapped again in the Constituent Assembly President's office in order to determine a date for the discussion's session due to the severe political crisis that was taking place in the country back then, and the entry of politicians into a national dialogue to solve it, and the Tunisian National Dialogue Quartet was criticized for not prioritizing discussing the transitional justice law and putting it on the dialogue's schedule despite being a fundamental law that the Constituent Assembly was bound to legislate according to the law regulating public authorities

After the Black Book was issued⁷ and after mobilizations made

5- Chapter 24 of the Organic law no. 6 of 2011 relating to the temporary organization of public authorities stated that «the National Constituent Assembly shall legislate a law governing transitional justice and shall set its foundations and its field of competence» see http://www.anc.tn/site/main/AR/docs/organisation_provisoire_des_pouvoirs_publics_tunisie.jsp

6- The International Center for Transitional Justice Program Report - Tunisia 6 June 2014 <https://www.ictj.org/ar/news/ictj-program-report-tunisia>

7- A copy of the book was issued on the Internet by the Tunisian Presidency, Information and Communication Office, and it was entitled «Black Book and the system of Ben Ali's era,» the book stated journalists names, television channels, news agencies and opinion-makers, university professors, and academics, who it claim that they cooperated with the former regime to improve its image and the image of



- **16**
December
2011

Constitutive Law No. 6 of 2011 related to the provisional organization of the public authorities, which was the temporary constitution for Tunisia, which stipulated in Chapter 24 the Council's commitment to enacting a basic law for transitional justice

- **22**
January
2013

The Ministry of Human Rights and Transitional Justice hands over to the Foundation the revised draft of the Basic Law on Transitional Justice after a national consultative process aimed at arriving at a common vision that led to the drafting of the first draft of the law.

- **23**
August
2013

Constitutive Law No. 6 of 2011 related to the provisional organization of the public authorities, which was the temporary constitution for Tunisia, which stipulated in Chapter 24 the Council's commitment to enacting a basic law for transitional justice

- **15**
December
2013

The General Legislation Committee of the Founding Council ends its report on the Basic Law for Transitional Justice pending the determination of a plenary session for discussion

- **24**
December
2013

The Basic Law on Transitional Justice was published in the official flagship after its ratification in the early hours of Sunday, December 15, 2013, in a controversial session.

- **17**
June
2014

The meeting of the Truth and Dignity Commission with its entire membership, which was created under a transitional justice law, where Siham Bensedrine was elected as its president, despite the objection of the National Coordination for Transitional Justice.

- **26**
March
2019

The Truth and Dignity Commission publishes its final report, which witnessed many amendments after its publication and delivery, during the liquidation period of the commission's work

by civil society organizations affiliated to Islamists (the Tunisian Network for Transitional Justice) Mustapha Ben Jaafar passed the law to be discussed in a plenary session within 3 days and on 24 December 2013 it was published in the Official Gazette (Arra'id Arrasmi) by the title of the Organic Law on establishing and organizing transitional justice, which was adopted and approved by the Constituent Assembly in the early hours of Sunday's morning of 15 December 2013 in the presence of only 126 members, including 76 who belonged to Ennahda Movement and 15 members belonged to the Troika's alliance (Democratic Forum for Labour and Liberties and the Congress for the Republic) and the presence of only six members of the Democratic wing, who all voted yes, with only one reservation made by one member of Ennahda movement⁹

This law is considered a result of the technical committee's work which was established by the Ministry of Human Rights and Transitional Justice and most of its members' representatives were related to civil society organizations. The approved law was amended twice: once

former President Zine El Abidine Ben Ali, at the national and international level. All claims in the book are based solely on the president's archive that was in Palace of Carthage https://docs.google.com/file/d/0B_3_87XBoDudMW9uYXBWZ2p5T3c/edit

8- See the Tunisian electronic newspaper dialogue with Dr. Mohamed Kamal Al-Gharbi President of the Tunisian Network for Transitional Justice on 1 March 2014 http://www.attounissia.com.tn/details_article.php?t=37&a=114991

9- You can review the vote on the Organic Law's draft number 2013/12 concerning the organization of transitional justice, foundations and field of competence <https://majles.marsad.tn/vote/52b1f6f312bdaa7f9b90ec24>

the final report of
the Truth and Dignity
Commission



Under this law, the Commission was established which consists of 15 members who serve for a term of four years, with the possibility of extension for one year. The Commission is entrusted with the task of determining the responsibilities of the State's organs or any other party in violations that occurred between 1 July 1955 and 24 December 2014, the date of its inclusion in the Official Gazette

by the Troika's government and the second was by the Constituent Assembly by a majority of the Troika and under Ennahda's leadership.

Under this law, the Truth and Dignity Commission was established which consists of 15 members who serve for a term of four years, with the possibility of extension for one year. The Commission is entrusted with the task of determining the responsibilities of the State's organs or any other party in violations that occurred between 1 July 1955 and 24 December 2014, the date of its inclusion in the Official Gazette.

The Commission enjoyed various authorities and powers, and the Coordination Center for Transitional Justice which is considered a civil society organization objected on that, so did the Justice Association which demanded rehabilitation for some of the Commission's members who are part of the Islamic movement too, there was also an objection on the inadmissibility of appeal against the results announced by the screening committee, which they tried to face through litigation using their right to legal recourse at the Administrative Court where they submitted a petition to delay and stop the implementation of the administrative decision issued on May 2014 on referring the chosen candidates for the Truth and Dignity Commis-



sion membership to the Constituent Assembly plenary meeting.

The Court rejected both of the two demands and illustrated that the legislator's will was clear and explicit toward immunizing the Special Committee's decision's which are related to screening the files of Truth and Dignity Commission membership candidates from any objections done through appeal in courts in any possible way even by filing an "abuse of power" claim.¹⁰

In 17 June 2014, all of the 15 members of the Commission met and Sihem Bensedrine was as Head of the Committee, which had been intercepted by the National Coordination for Transitional Justice, and on the same day a member of the Committee Khamis Chamari who was a candidate for the same position resigned¹¹, after facing an objection to his candidacy by Justice and Rehabilitation Association.

Various different contradictory reactions came from different parties as a result for Bensedrine's heading for the Commission, Islamists saw it as a victory, while it was considered by a large

10- LeMaghreb Newspaper " A demand to postpone and stop implementing the procedures relating to the Truth and Dignity Commission: The Administrative Court rejects and Gives its reasoning" on August 29, 2014

11- Headed by Bensedrine .. The Truth and Dignity Commission, Assabah news on June 2014 17 <http://bit.ly/35x9clx>

part of associations affiliates to the democratic civil current as a blow to the transitional justice path in Tunisia and they decided to boycott the committee considering that Bensedrine supported the protecting Revolution committees affiliated to Ennahda Movement earlier, and found that the final form composition of the committee as a result of relying on relative representation in selecting members of the screening candidates committee for the Truth and Dignity Commission membership which was stated in Chapter 23 of the law, and that allowed members of the Truth and Dignity Commission to be elected on basis of quotas and being pro-government, not on the basis of competence, independence, impartiality, and integrity and that the final composition of the Commission was an evidence of the track's weakness.

The Truth and Dignity Commission handed over its final report to the Prime Minister and published its final report on its website, which was amended many times after its publication and submission, during the end period of the Commission's work, in fact, the Truth and Dignity Commission was the weakest link in the transitional justice course in Tunisia because of its Chairperson conflicts and her collision with various parties, including the members of the Commission itself which has led many of them to resign and that put the Commission in trouble and risked meeting the possibility of lack of quorum most of the time. The resignations came after unfortunate events within the Commission, and it escalated quickly into a clash with state agencies ranging from the presidential palace to the National Archives and even happened with local and international civil society, and anyone who criticizes the Commission in any of its working phases receives a barrage of trumped-up charges as a counter-revolution agent from the President of the Truth Commission and dignity and she even went further and accused them of contributing to passing of the administrative reconciliation law ignoring the positions of these associations, their contribution, strong rejection to that law and participation in all coalitions and movements that were for the purpose of stopping the voting on this law in the Legislative Council.

and thus, there were clashes with the victims of violations, which was the foundation for the whole track from the beginning to regain their rights, dignity and compensate them for what happened to them during those long years, but unfortunately, they



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are at risk of being victims again. This confirms the view of the secular democratic current, that the Commission's final composition was the best proof of the track's weakness.

The rest of the Arab Spring countries remained trying to resolve its revolutions which have not yet achieve the required results, and some of them entered in a new era of unprecedented tyranny like Egypt while the rest of them are fighting among themselves with external support like Libya and Syria, or direct military and security intervention as Kingdom of Saudi Arabia did in Bahrain and Yemen.

In the end, the Arab Spring people's slogans and shouts will not come true without formulating and consolidating strong paths of transitional justice that emphasize the brining down and reforming regimes and restoring eras of tyranny victims' rights and dignity that ensure a comprehensive national reconciliation that would guarantee the non-repetition of such violations.