

Reconciliation in the Tunisian transitional justice process

(Initial paper)

On 24 December 2013, the National Constituent Assembly ratified Law 53 on the establishment and regulation of transitional justice- the same day on which all political parties agreed, under the patronage of the National Quartet sponsoring the National Dialogue (Tunisian General Labor Union, the Tunisian Bar Association, Tunisian Union of Trade, Industry and Handicrafts, and the Tunisian Human Rights League), on the personality of Mahdi Juma'a as prime minister after agreeing on a roadmap to get out of the severe political crisis experienced by Tunisia following the assassination of the Nasserite-oriented martyr Mohamed Brahim in the summer of 2013. Subsequently, Tunisia was about to enter into a fierce internal war. So we can say that the transitional justice, which was related to the outcomes of the national dialogue and its controversial relationship with the democratic transition, saved Tunisia from civil war and was a substitute for retaliatory justice and selective justice.

The aforementioned transitional justice law created the mechanisms of national reconciliation in Tunisia, which can be divided into two categories:

Individual arbitration

Through the Arbitration and Reconciliation Commission, Transitional Justice Law- Chapter 45 and beyond, states that "the Arbitration and Reconciliation Commission shall be created and assigned with deciding on the files of violations according to this law." Following its establishment, the commission started to decide on all individual arbitration and reconciliation requests submitted by either perpetrators of grave and / or systemic violations, including files of financial corruption and assault on public funds or victims of such violations.

In this context, secret hearings were held for all involved parties, including the official in charge of resolving public disputes representing the state in its dual capacity- victims or perpetrators of violations. The arbitration and reconciliation mechanism derives its particularity from the specialty of the transitional justice law while respecting the general principles stipulated in the arbitration and reconciliation magazine and the rest of the legislations on arbitration and reconciliation.

Reconciliation is the desired and supreme goal in the path of transitional justice involving a number of integrated mechanisms, including uncovering the truth on serious or systemic violations to achieving comprehensive national reconciliation through accountability for perpetrators of these violations; reparation for victims; preserving their individual and collective memory and applying the arbitration mechanism if the two parties agreed; reforming institutions by overhauling administration and review of the legislative system in order to achieve

comprehensive national reconciliation. Hence, such mechanisms are interdependent and cannot be bypassed or skipped.

The institution of arbitration is as old as mankind itself. It was recognized by various divine and man-made laws and statutes. The first ever appearance of arbitration is traced back to the agreement of Cain and Abel to resort to Heaven to resolve their dispute over marriage with the twin sister. The Arabs also used to resort to arbitration to resolve disputes over honor issues, **“But no, by your Lord, they can have no faith, until they make you judge in all disputes between them, and find in themselves no resistance against your decisions, and accept with full submission. (4:65)”**. Thus, arbitration is a resolution of dispute between the parties controlling non-judicial body or arbitration committee whose members are appointed based on an agreement to settle a dispute between them on terms stipulated in the agreement, with the arbitral tribunal issuing a verdict binding on all parties.

The Arbitration and Reconciliation Commission is an individual privilege for perpetrators to reconcile with their victims. Their files are not referred to competent judicial circuits and are based on the equation of amnesty for perpetrators in return for revealing the truth, apology and reparation.

After completing its work, the Arbitration and Reconciliation Commission of the Truth and Dignity Commission issued 19 individual arbitral awards between the perpetrators of gross violations of human rights and financial corruption and the victims, including the State being a victim of violations of financial corruption and assaults on public funds.

- Eight individual arbitral awards between the perpetrators of violation of financial corruption under the regime of former President Zine El Abidine Ben Ali and the Tunisian state as a victim of these violations. We have recovered the amount of 745 million Tunisian dinars for the treasury of the Tunisian state.

- Eleven individual arbitral decisions between victims of human rights violations and some public institutions and ministries and two members of the family of former President Ben Ali as the perpetrators of the violations. Through such decisions, we settled the situation of these victims via reconciliation. These are related to a set of violations, including prevention of mercenaries and work for political and unionist reasons and assault on property rights and violation of the right to expression, publication and media.

Some observations must be made as follows:

- The number of applicants for arbitration and reconciliation reaches more than 25, 000. These are all victims of human rights violations and financial corruption; we have managed to issue 11 individual arbitral decisions only because of the state refusal to conclude reconciliation with them.

- The State as a victim has only approved eight out of dozens of applications for reconciliation submitted by perpetrators of financial corruption violations, and has not yet completed reconciliation procedures in 685 cases of financial corruption that it filed in June 2016 as a victim of financial corruption violations and assault on public funds committed by former President Zine El Abidine Ben Ali and some of his ministers and supporters. The Tunisian state thus missed the opportunity to either achieve individual reconciliation with the perpetrators or gain financial, social and political benefits.

- These individual reconciliations pave the way for a comprehensive national reconciliation.

Collective Reconciliation

Collective reconciliation, which is stated in the Transitional Justice Law (Chapter 67), is a comprehensive political national reconciliation between the state as the perpetrator of gross and / or systematic violations and the political currents as victims of these violations or within the same political currents that committed violations against each other. The Truth and Dignity Commission has worked on these "reconciliations" through its powers and mechanisms and is obliged to include in its final report all measures to be taken to promote national reconciliation as well as recommendations, proposals and actions that enhance democratic building and contribute to establishing the rule of law.

These include a proposal for holding a wide-ranging national conference on national reconciliation either between the State and all political parties deemed victims of violations or within such parties during which confessions and collective apologies are made. This is a matter of delay in Tunisia, which has made important strides in achieving national reconciliation through the promulgation of a consensus constitution in January 2014, and holding free and fair democratic elections involving all parties, including the symbols of the pre- 14 January 2011 regime. The polls led to the emergence of a national coalition government and national opposition thanks to the civility and tolerance of the Tunisian people as manifested in resolving their ideological differences through dialogue and debate, and resorting to the constitutional institutions of the state, most important of which is the truth and dignity panel emanating from the course of transitional justice. The Tunisian people did not follow the path of retaliatory and selective justice.

Factors contributing to the success of transitional justice and national reconciliation in Tunisia

- The unity of Tunisian society, religiously, ethnically, culturally and culturally.

- Lack of any role for the military in political life.

- No major violations of human rights and mass massacres (three cases of political assassination only).
- The strength of Tunisian civil society (the quartet sponsor of the national dialogue).
- The existence of a strong and independent civil administration resulted in the normal functioning of public facilities in the darkest conditions experienced during the revolution.

It is therefore possible to say that national reconciliation was achieved before the truth and dignity commission began its work by issuing the general amnesty in February 2011 as well as the undertaking in 2012 of the process of overhauling and clearing the administration through state institution reform mechanism involving dozens of judges and high-ranking security officials in the Ministry of the Interior. And the presidential and legislative elections that took place in late 2014 saw the implementation of the outcomes of national dialogue, the return of symbols of the regimes of Ben Ali and Bourguiba to power by obtaining the majority of the People's Assembly seats and the three presidencies (the presidencies of the state, government and parliament). This situation still exists up till now.

- National reconciliation is achieved through the implementation of mechanisms of transitional justice (uncovering the truth of violations, reparation of victims, reforming institutions, job inspection and preserving national memory).

Recommendations

- Abolish the law issued in October 2007 concerning administrative reconciliation.
- Convene a national conference on national reconciliation in which the State will extend its apologies to victims of human rights violations and financial corruption.
- Implement the recommendations contained in the comprehensive final report of the Truth and Dignity Commission on revealing the truth and the reparation of victims based on material and moral compensation, social reintegration, state apology for the victims, institutional reform and the preservation of national memory.

Experience is the main test for the validity of a theory or the text of a law. Through our experience in Tunisia in national reconciliation and for any national reconciliation experience in any country to succeed in the future, the following is advisable:

- Taking into account the specificity of the democratic transition process in each country, as there are no ready templates for national reconciliation and transitional justice applied in all places and times.
- Linking the path of transitional justice to the trajectory of democratic transition, in the sense that they go hand in hand, and then meet in the end, but should not precede each other.

- The need to involve all political, social, economic and civil society actors in the promulgation of the Transitional Justice Law and to give a greater role to associations representing perpetrators of violations that is comparable to the role assigned to victims' associations so that transitional justice is not a selective and lame one that only reflects the interests of the victims.

- Carrying out broad awareness campaigns for the transitional justice process and its importance and success until the spirit of transitional justice is represented by all and is not treated as a ghost institution marked by uncertainty and mistrust.