



Institute for Islamic Strategic Affairs

## TESTING TUNISIA'S TRANSITION: THE LAW ON ECONOMIC AND FINANCIAL RECONCILIATION



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### **ABSTRACT**

It has been nearly two years since Tunisia passed its progressive Transitional Justice Law, which solidified its commitment to national reconciliation, after more than twenty years of human rights abuses perpetuated by the corrupt dictatorial regime of Zine El Abidine Ben Ali. Now, the level of progress made in Tunisia's transition is being put to the test. This paper examines the fault-lines of debate surrounding the Reconciliation Law, and outlines possible implications on Tunisia's transitional process and shows that Tunisia's democratic project is not yet finished.

## **INTRODUCTION**

It has been nearly two years since Tunisia passed its progressive Transitional Justice Law, which solidified its commitment to national reconciliation, after more than twenty years of human rights abuses perpetuated by the corrupt dictatorial regime of Zine El Abidine Ben Ali. Now, the level of progress made in Tunisia's transition is being put to the test. A draft law on Economic and Financial Reconciliation, widely known as the “Reconciliation Law”, has been the subject of fervent debate and seeks to amend the Transitional Justice Law of 2013. Proponents of the Reconciliation Law say that it is the answer to Tunisia's fragile economy, which is riddled with a large unemployment rate of 15.3%, two percent higher than its pre-revolution levels.<sup>1</sup> Opponents on the other hand argue that the law would undermine the spirit of the revolution, which sought to fight against corruption and increase transparency in government. In particular, the implications of the Reconciliation Law on Tunisia's transitional justice body, the Truth and Dignity Commission (TDC), remain contested.

Yet, the test of Tunisia's transition, and the controversy surrounding the Reconciliation Law, does not end on the parliamentary floor. The Reconciliation Law has spurred a national debate on transitional justice. Numerous reports of security officials mishandling protesters who were demonstrating against the law on September 2<sup>nd</sup>, bring into question just how far Tunisia has come since the Arab Spring. There have also been rampant accusations against the governing coalition by civil society groups for restricting protests under the guise of a state of emergency. However, the governing coalition asserts that it is protecting the public from perpetrators of terror, citing the attacks on Sousse and Bardo earlier this year. This paper examines the fault-lines of debate surrounding the Reconciliation Law, and outlines possible implications on Tunisia's transitional process.

## **THE 2013 TRANSITIONAL JUSTICE LAW**

The proposed Reconciliation Law will amend the Organic Law on Establishing and Organizing Transitional Justice (No. 53/2013). Also known as the Transitional Justice Law, it was ratified by the National Constituent Assembly (NCA) in December 2013. First of its kind, the Transitional Justice law established the Truth and Dignity Commission (TDC)<sup>2</sup>, an institutional transitional justice body, which was launched on June 9<sup>th</sup> 2014. The commission is set to address abuses on human rights that took place from 1955 to 2013. By implementing a framework for Tunisians to reveal their truths, the

Commission is tasked with providing reparations to the victims and holding those responsible accountable in order to “guarantee the non-recurrence of such violations and transition from an authoritarian state to a democratic system which contributes to consolidating the system of human rights”.<sup>3</sup>

Tunisians themselves have echoed the necessity of such a mechanism. Attitudes toward the TDC were surveyed earlier this year<sup>4</sup> and 78.5% of Tunisians said that the transitional justice process is necessary for their country. Moreover, truth-telling was seen as a key component, with 76.9% of respondents saying that it was essential for establishing reconciliation.<sup>5</sup> Thus far, more than 16,000 cases have been filed with the TDC.<sup>6</sup>

Principles of accountability that were outlined in Article 3 of the Transitional Justice Law were also seen as crucial. Fifty-six percent of men and 43.3% of women said that they expect the transitional justice process to include a mechanism of accountability.<sup>iv</sup> In the law itself, accountability was defined as encompassing a specific mechanism “which prevents impunity and escaping responsibility”<sup>7</sup> and “falls within the remit of the judicial administrative commissions and authorities pursuant to the law in force”<sup>8</sup>. It created the formation of Specialized Judicial Chambers within the TDC that hold the responsibility in adjudicating cases of violations of human rights as well as cases of “election fraud, financial corruption<sup>9</sup>, [and] misuse of public funds”<sup>10</sup>.

## **THE RECONCILIATION LAW**

The draft law on Economic and Financial Reconciliation, also known as the Reconciliation Law, was approved by President Essebsi and his cabinet on July 14<sup>th</sup> 2015. The draft law is comprised of 12 articles and

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seeks to establish provisions for reconciliation in the economic and financial fields in order to “encourage the investment and promotion of the national economy... [by] build[ing] confidence in the institutions of the state and aims at the development of specific measures relating to atrocities on the financial embezzlement and crimes against the public purse”.<sup>11</sup> In order to gain “permanent closure of this issue and turn the page to the realization of national reconciliation”.<sup>xi</sup>

The Reconciliation Law amends the Transitional Justice Law and calls for “the abolishment of all provisions relating to financial corruption and embezzlement of public funds as set out in the *Basic Law No. 53 of 2013*, dated December 24, 2013, on establishing and regulating transitional justice”<sup>12</sup>. Furthermore, the draft law grants amnesty<sup>13</sup> to public officials and civil servants and has no definitive provision of accountability in place. Instead, the law would mandate that state employees who received funds through fraudulent means would have to pay the money back, and in return would gain immunity from prosecution. Furthermore, it may also release those who are currently imprisoned for corruption.<sup>14</sup> If passed, the law would also create a separate body, called the Arbitration and Reconciliation Commission, which will act under the auspices of the Presidency, and will be comprised of members of the Ministry of Justice, the Ministry of Finance, Tunisia's Central Bank, as well as representatives from the Truth and Dignity Commission.

## **QUESTIONS OF LEGALITY**

Concerns regarding the legality and constitutionality of the Reconciliation Law have been issued by numerous civil society organizations and opposition parties<sup>15</sup>. Mohamed Fadhel Mahfoudh, President of the National Order of Tunisian Lawyers, said that the bill as presented by President Essebsi is not acceptable and that the bill has “risks of abuses” that should be avoided. Of particular concern is in how far the newly formed body can remain transparent, being that it will have close ties with the parliament and the President himself.

Critics of the draft law point to Tunisia's Constitution, ratified in 2014, that incorporate provisions which protect the institutions of transitional justice and also point to mandates regarding government transparency and accountability. In terms of the transitional process, the Constitution declares that the state must “undertake to apply the transitional justice system in all its domains...In this context the invocation and the non-retroactivity of laws, the existence of previous amnesties, the force of res

judicata, and the prescription of a crime and punishment are considered inadmissible”<sup>16</sup>. Hence, if the Reconciliation Law were to abolish the mandate of the Truth and Dignity Commission and its Specialized Judicial Chambers in areas of financial corruption, the argument goes<sup>17</sup>, it would be unlawful under the Constitution. <sup>18</sup>

Others denounce the Reconciliation Law based on constitutional articles concerning the collection of taxes in Article 10, as well as the code concerning public service under Article 15, which mandates that civil servants operate “in conformity with the rules of transparency, integrity, efficiency and accountability”<sup>19</sup>. According to the Executive of Board of Tunisian Magistrates (AMT)<sup>20</sup>, the bill violates the preamble of the Constitution by breaching the principles of good governance. Additionally, they argue that by granting immunity from prosecution to those who have engaged in tax evasion, the bill violates Article 10, which asserts that “The state shall put into place the necessary mechanisms for the collection of taxes, and to combat tax evasion and fraud. The state shall ensure the proper use of public funds and take the necessary measures to ... prevent corruption”. <sup>21</sup>

President Beji Caid Essebsi dismissed any allegations of unconstitutionality during a televised interview on September 22<sup>nd</sup> 2015. “Those who say otherwise have not read the Constitution. It is the ARP (Assembly of the Representatives of the People) who will have the last word about a possible amendment or revision of the project”, he said. “Sadok Belaid, Iyadh Ben Achour and other Constitutional law experts, Ghazi Gherairi Amine Mahfoud and others were consulted during the preparation of the project. All confirmed that the project complies with the Constitution”, he asserted. <sup>22</sup>

## **THE TDC AND THE RECONCILIATION LAW**

Opponents to the Reconciliation Law say that it jeopardizes Tunisia's transition by removing the TDC's mandate and weakening the structure of its transitional justice institutions. TDC President Sihem Ben Sedrine, denounced the draft law saying that it will “not only infringe the democratic transition process but also the whole democratic project to which Tunisia aspires”<sup>23</sup>. Similarly, President of the Arbitration and Reconciliation Committee under TDC, Khaled Krichi, denounced the fact that draft law was developed without consultation of transitional authorities and noted that it establishes a “parallel law' that is likely to further complicate procedures and empty transitional justice of its meaning”.<sup>24</sup> In

response, Ridha Belhaj, a Nidaa Tounes cabinet member, said that the mission of the TDC is to apply laws and not move against them. He also added that the TDC does not have the right to express its opinion on draft laws.<sup>25</sup>

International NGOs have also vocalized criticism against the Reconciliation Law. In an op-ed in the *Huffington Post*, David Tolbert, President of the International Center for Transitional Justice (ICTJ)<sup>26</sup>, condemned the draft law. “When considering the bill, Tunisian parliamentarians must first ask themselves: Why did Tunisia have a revolution less than five years ago? ...the revolution was an expression of resistance to corruption. The dream of a country untainted by corruption has remained a powerful vision ever since. It is hard to imagine a more demoralizing step for Tunisians than suddenly telling them that they need to make their peace with a kleptocracy”.

Furthermore, Tolbert expressed worry regarding the impact of the Reconciliation Law on the TDC. He argues, “This bill would set up a slippery slope of impunity. After corrupt officials and businesspeople are let off the hook, who will be next? Will it be those who tortured political prisoners...? What, then, is the point of establishing a nationwide process for pursuing truth and dignity if the truth about corruption and dignity of all Tunisians harmed by corruption is ignored?” Speaking about the Arbitration process within the TDC, he writes, “There have been concerns about how this arbitration process would work. It clearly allows for the prosecution of those who either refuse arbitration or commit fraud. But now, arbitration that has not even been tried [under the TDC] is being scuttled in favor of a new instrument that is even more convenient for high-level corrupt officials and businesspeople”.<sup>27</sup>

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Transparency International, in cooperation with Tunisia's I-Watch, released similar statements of disapproval. “The [TDC] is working towards reconciliation with the past but it does not give impunity to the corrupt”<sup>28</sup>, a statement read. “The proposed new law would make a sham of the noble concept of truth and reconciliation. The biggest thieves who enriched themselves under Tunisian dictator Ben Ali would be able to escape justice in return for putting some of their ill-gotten gains back into the economy. That will only serve to boost the influence and power of the corrupt”, Transparency International Chair, Jose Ugaz said.

Speaking on September 2<sup>nd</sup>, Moez Sinaoui, spokesperson for the President, told TAP news agency that many have misunderstood the bill, noting that it “represents a cornerstone of transitional justice”. Regarding the draft laws' impact on the TDC, Sinaoui stated that the “bill will only affect a small part of the mission of the Truth and Dignity Commission” because it does not interfere with human rights, torture, or political cases. “The TDC will be represented in the reconciliation committee”, he added.<sup>29</sup>

### **THE ANSWER TO TUNISIA'S ECONOMIC WOES?**

Since its 2010 revolution, Tunisia's economy has remained fragile. Figures from the World Bank suggest that Tunisia's GDP growth remained modest in 2014 at 2.2%, compared to 2.6% in 2013. In 2012, Tunisia's GDP grew more significantly at 3.6%.<sup>30</sup> Proponents of the Reconciliation Law assert that it will strengthen Tunisia's economy and “build confidence in the institutions of the state”.<sup>31</sup> President Essebsi explains that the priority of the law is “to attract foreign investors”. Yet, President Essebsi argues, “there are obstacles that are blocking the improvement of the climate for investment. Among the problems, the administration no longer works because officials fear prosecution”.<sup>32</sup>

Furthermore, supporters of the Reconciliation claim that work of the TDC has stagnated, and proclaim that Tunisia's economy cannot wait for the TDC to catch up. Nidaa Tounes member, Mohsen Marzouk, has been particularly outspoken against TDC President Sihem Ben Sedrine saying that “she wants to put the country on stand-by, stop everything and then proceed to reconciliation”.<sup>33</sup> Similar criticisms have been issued by Ridha Belhadj, of Nidaa Tounes, who said that the goal of the Reconciliation bill “is to push the development and investment in Tunisia....economic and social reconciliation cannot wait

especially after the failure of transitional justice process to find solutions”.<sup>34</sup>

Tunisians have also been critical of the progress made in the TDC thus far, with 63.8% citing that the advancement of the process was slow and only 3.3% saying that it was working at a satisfactory pace.<sup>vi</sup> Nevertheless, Rached Ghannouchi, head of Ennahda, urged patience during a TV appearance, “Fifty years of grievances and fraud and thefts need a long time to be addressed within the transitional justice law”, he said.

Tunisia's labour unions, on the other hand, are divided on whether the Reconciliation Law is the answer to Tunisia's fiscal dilemma. The Tunisian Union of Industry, Commerce and Craft (UTICA) have commended the draft law, believing that it will help strengthen Tunisia's economy. “Trials that began in 2011 have been dragging on too long, at a time when the country needs growth to clear up unemployment and increase security. The reconciliation law will make it possible to put all files on the table and deal with them on a case by case basis,” Chokri Jarraya, a businessman and UTICA member said.<sup>35</sup> In contrast, the Tunisian General Labour Union (UGTT) dismissed such claims. In their view, the law “did not take into consideration the social problems facing the people of Tunisia, including unemployment, development and tax justice” and denounced it on the basis that it only benefits some.<sup>36</sup>

## **PROTESTS AND PUBLIC OPINION**

Tunisians have returned to Habib Bourguiba Avenue, the site of many protests during the revolution, to call for the withdrawal of the Reconciliation Law, which many believe is a resurgence of kleptocratic rule and corruption. The first round of protests occurred on September 2<sup>nd</sup> 2015, defying a ban on protests under the state of emergency order by the President, following the terrorist attacks earlier this year. Yet, despite a regime change and in spite of the new implementation of protest deterrence methods<sup>37</sup>, announced only a days earlier<sup>38</sup>, security officials beat and gassed protesters, leaving some with serious injuries. Wael Nouar, Secretary-General of Tunisia's General Student Union, one of the protest organizers, had to be taken to the hospital after he was beaten by police. “It was completely unprovoked. I was standing alone and three policemen came up and attacked me,” he says. “We will never let [the Reconciliation Law] go through because it will mark the end of the revolutionary

process”.<sup>39</sup>

In response, many civil society groups as well as opposition parties called for an investigation into the actions taken by security officials<sup>40</sup> and announced intentions to organize a new round of protests at Habib Bourguiba Avenue on September 12<sup>th</sup>. Human rights associations also highly criticized the violence, calling for the government to not only respect the right to protest, as outlined in the Constitution, but also to ban the use of force against protesters.<sup>41</sup>

Instead, the governing coalition responded by closing Habib Bourguiba Avenue and restated that protests are not welcome under the state of emergency. Responding to accusations of repression, Louguini Walid, of the Ministry of Interior, told TAP news agency that the ministry is “merely applying the law on demonstrations which requires obtaining prior authorization” claiming that no protest or movement have been banned.<sup>42</sup>

Yet the Interior Minister, Najem Gharsalli, spoke frankly maintaining that any demonstration or protest “is contrary to the state of emergency” and denied accusations that the closing Habib Bourguiba Avenue had anything to do with the protests. The decision “has no relation to the national march planned Saturday, September 12 to protest against the bill on economic reconciliation”. Instead, he argued that the closure aims “to protect against the terrorist threat in this difficult period” recalling the 9/11 attacks on the World Trade Center.<sup>43</sup>

Following heated debates in the ARP, and more criticism from civil society organizations, the protests on September 12<sup>th</sup> went forward,

The implementation of new protest deterrence methods that were in accordance with human rights was announced only days before security officials beat protesters.

despite the state of emergency. Protests against the bill took place all over the country, including Sousse, El Kef and Kairouan. Diaspora in France also demonstrated against the bill. “These protests also support similar protests in Tunisia. We hope that our government will give this project and then finally justice will prevail”, one protester said. “We do not know how much they stole from the taxpayers, it's within a 5% margin, soon they will be free and will be looting the country again”, another commented.<sup>44</sup>

Opinion poll data taken in the middle of September suggest that less than half of Tunisians are familiar with the Reconciliation Law. Among those who are familiar with the law, the majority respondents said that they were opposed to it.<sup>45</sup>

## **CONCLUSION**

Despite immense Western praise for its successful transition, Tunisia's democratic project is not yet finished. This is made clear by the fallout of the draft Reconciliation Law. Whether through the violent treatment of the protesters, or the debates on the Reconciliation Law itself, Tunisia's transition is being tested.

Furthermore, questions regarding the Reconciliation Law remain unanswered. If the purpose of the Reconciliation Law is to build confidence in Tunisia's institutions, then why is it undermining the transitional institutions that have already been put in place? While the TDC certainly has its weakness, with empty seats that have to be filled once more, the establishment of the Transitional Justice Law was monumental step in Tunisia's history. Rewriting the Transitional Justice Law, and undermining the Constitution, does not build confidence in the state, it does the opposite. Moreover, whether or not this law will actually boost investment remains tenuous.

Most importantly, however, is whether or not this is the kind of reconciliation that Tunisians had in mind when fighting the revolution, only four years ago. Will, as President Essebsi purports, this bill aid in reconciling the past? Or will it crumble the progress that has been made? It is up to Tunisians.

## **About Neo-Jihadism and Transitional challenges programme:**

Within in the last decade, the Islamic world has gone through monumental shifts that have had severe implications on its landscape. This programme aims at analysing the impact of these critical factors on the region. On the one hand, we aim to capture how the concept of Jihadism has – and continues to – evolve in order to identify its implications on the broader social, political, and religious spheres. And on the other, we aim to address how states deal with emerging transitional challenges. While these focuses were previously separated, combining these two research programmes offers a holistic, interconnected approach.

As the Jihadists' landscape changes, the study and understanding of Jihadism must also adapt to address the developing movement of 'Neo-Jihadism':

*“Neo-Jihadism is a diverse, syncretic form of global organisation and interaction that emerged from within Islamic Jihadism, is unique to early-twenty-first-centuries, is increasingly sectarian and through its advocacy of violent form of war and selectively literal interpretations of sacred texts, radically differentiates itself from the traditional Jihadist forces, the faith's mainstream and constitutes a new body of thought and actions”.*

Furthermore, it is necessary to also analyse the challenges that many transitional states face in order to understand the broader implications that these issues may have on regional stability.

### ***Programme's Deliverable:***

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3. In depth situation analyses on above issues, regional positioning and global powers interests etc.
4. Alternative policy analyses that may serve in policy making on regional and global governance levels
5. Strategic foresight for business and stakeholders that might be involved in the crisis affected regions

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to decide.