3 Tunisia's Truth and Dignity Commission

Archives in the pursuit of truth

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On 14 January 2011, after weeks of civil unrest, Tunisian President Zine El-Abidine Ben Ali¹ bowed to protester pressure and fled the country. His departure marked the end of a dictatorial regime known for its control of the judicial system and the media, and its widespread abuse of public and individual freedoms.

Since the 2011 revolution, generally labelled non-violent, Tunisia has embarked on a process of democratisation and of coming to terms with its past. Transition processes gradually took shape between March and October 2011, spearheaded by the Higher Authority for Realisation of the Objectives of the Revolution, Political Reform and Democratic Transition. The National Constituent Assembly was elected in October 2011. This, in turn, elected Moncef Marzouki as the new President of the Republic.

Two years later, on 24 December 2013, the Assembly voted an organic law instituting transitional justice. In this law, provision is made for a series of judicial and non-judicial measures for discovering the truth about the human rights violations perpetrated in the country in the past, prosecuting the alleged perpetrators, compensating and rehabilitating the victims, while taking steps to “preserve and document collective memory” and ward against repetition of such events. The ultimate goals of all these arrangements is that of national reconciliation.²

The law also makes provision for the creation of an independent authority, the Truth and Dignity Commission, to be responsible for establishing the truth about the human rights violations that occurred under Ben Ali and his predecessor, Habib Bourguiba, in other words, since Tunisia first became independent.³

Four and a half years later, on 26 March 2019, the IVD published its final report.⁴ Archives were fundamental to the Commission and a major focus was at all stages of its work.

Truth and Dignity Commission's roles and powers

Articles 16–70 of the law on transitional justice relate specifically to the IVD. The law tasked the IVD with ascertaining the truth about the

violations perpetrated between 1 July 1955⁵ and 31 December 2013, when the law came into force. It was also required to set up a victim rehabilitation fund. Its mandate was to last four years, renewable for one further year.

The IVD had no legal empowerment. Its role was to record claims, register victims, conduct investigations and prepare the ground for legal proceedings. It was required to hand over its files on the most serious cases to the justice system: torture, rape, enforced disappearance, arbitrary execution, financial crime and embezzlement. The law made it clear that accountability lay with the judicial authorities, which were responsible for prosecuting the alleged offenders. Article 8 provided for the creation of special chambers within a number of Tunisian courts.

The legislator took account of experience in other countries which had lived through periods of repression and highlighted the importance of the documentary evidence of the violations. Article 1 of the law lays out one of its objectives as “preserving and archiving collective memory” and Article 5 states that

The preservation of national memory shall be a right guaranteed to all successive generations of . . . Tunisians, and an obligation on the state and all the institutions answerable or accountable to it, so that lessons may be learned and victims commemorated.

Article 39 describes the IVD’s role as being to “collect data, identify, list, classify, confirm and record violations with the aim of building a database and creating a single register of victims of violations.”

Article 40 gave the IVD considerable powers to enable it to fulfil its role:

- Access to public and private records, regardless of any existing legislation to the contrary.
- The freedom to oblige the administrative and judicial authorities, public bodies and all individuals or legal entities to communicate documents and information in their possession.
- The right to go on fact-finding missions in public or private locations, conduct official searches and seize documents etc. in relation to violations under investigation. The Commission therefore had the same rights and powers as the police.
- Access to cases pending before the courts and to verdicts pronounced and rulings issued.
- The power to request information from official bodies in other countries and foreign non-governmental organizations, and to collect all requisite information from victims, witnesses, government officials and other parties, in other countries
- The ability to make use of any measures or methods likely to be of assistance in uncovering the truth.

Article 55 gave the president of the IVD the authority

when s/he discovers documents which s/he fears may be destroyed or in the presence of serious evidence of committed violations falling within the Commission's remit, allow necessary precautionary measures to preserve these documents and evidence and to prevent the perpetrators of these violations from replacing, disposing of, transferring or destroying the funds and properties subject of the crime.

Consequently, the IVD had unlimited powers to access all types of public and private records, archives, information and data, both inside and outside the country.

Collection policy for records relevant to IVD's work

Collecting records relating to human rights violations in Tunisia was of course one of the IVD's key responsibilities. Rather than physically collecting the records, the Commission obtained copies of documents from public and private archives that could be used as proof of these violations.

There were a large number of public archives with the potential to be of interest to the IVD. They were mainly located within government agencies (the President's office, Ministries and the Parliament), local authorities and similar organizations. Records kept in private organizations were also of potential interest to the Commission. Examples include the archives of the Democratic Constitutional Rally (RCD), the ruling party disbanded after the fall of Ben Ali, the Tunisian General Labour Union (UGTT), opposition political parties from the pre-revolutionary era, civil society organizations such as associations, and private individuals, families, political figures, the press, etc. The IVD also looked at archives and information to be found in foreign public institutions and non-governmental organizations where these were directly connected with the history of the violations in Tunisia.

As the Commission obviously could not collect and analyse all the archives belonging to these organizations, it developed a specific procedure for identifying and locating those of relevance for its work, namely that of mapping.

The IVD used the very wide interpretation of the term "archives" established by the Tunisian law of 2 August 1988, which defines them as "all documents, regardless of date, format and medium (physical or virtual), produced or received by any individuals or entities, and by any public or private departments or organisations in the course of their business."⁶ The IVD took an interest in archives wherever they were located, in the country and elsewhere, using the authority granted to it by the law on transitional justice.

Tunisia has a long-standing archiving tradition together with the corresponding comprehensive legislation requiring administrations to manage documents from their creation until such time as they can be eliminated in

accordance with preset disposal schedules.⁷ The word “archives” is commonly used in its more limited sense to mean documents that have been archived and no longer have any current value. But in the case of transitional justice, all archives can still be used to legal, financial and jurisdictional effect. They can therefore be considered to have current value, even when previously classed as historical archives.

The Commission began by taking stock of and mapping existing archives, to locate those likely to contain details of violations, police archives in particular, because pre-revolutionary Tunisia was essentially a police state. It visited a number of ministries such as those of the Interior, Justice, Health and Finance to consult their archives, as well as the Directorate General for Archives, to obtain copies of records that had already been transferred to the Tunisian National Archives.

These procedures were required for two reasons. Firstly, because documents relating to an institution's activities can contain evidence of major human rights abuses perpetrated by agencies of the State, or by groups or individuals acting on behalf of the State or under its protection, even if they were neither entitled nor empowered to this effect. Secondly, because it is vital to keep a trace of violations.

It was therefore necessary to conserve not only the historical archives but also more recent records that might otherwise have been destroyed under the disposal schedules of the authorities concerned. This was even more vital in that, after the revolution, the National Archives had taken no special measures to protect records of potential use for transitional justice purposes. As no moratorium had been imposed on disposals, the authorities continued to destroy archives according to the pre-established schedules.

For the mapping process, the archivists recruited by the IVD were primed about the specificities of archives in transition situations, questionnaires and templates were developed and tested with two international non-governmental organizations and a detailed programme of visits was finalised. The IVD drew up an inventory of the archives of various public and private sector institutions across Tunisia. The archives of 213 public and private sector institutions were identified, in particular those of the Ministry of Defence, the Ministry of the Interior, the police, prisons, NGOs, trade unions, state television and the Tunisian Red Crescent. The institutions most relevant to the Commission's work were given priority status. In addition to archives in Tunisia, those held by international organizations and archives in France of potential interest to the IVD were also mapped.

The team tasked with mapping undertook numerous assignments all over Tunisia. After a trial period, it began the process of data input, while the collection of information was still in progress. Consequently, information was fed in stages into the research interface with the archives department making this interface available to the other IVD agencies. The IVD's various research teams were able to use the documents flagged up during mapping for their investigations. These covered a vast area and were of great

assistance to the IVD. They will also be useful for future transitional justice operations in Tunisia. It was important to ensure that the results of this work were made available to IVD Board members for use in the various committees and to avoid all risk of duplication.

The Commission had to deal with documents of all sorts and sizes that needed to be processed before they could be used to identify the perpetrators of violations and their victims: hard and soft copy archives, data, audiovisual archives, public and private records, objects and DNA tests. The IVD organised its work to guarantee the authenticity and reliability of the records and ensure data security. Venues were selected for receiving those who wanted to lodge claims, and a very elaborate system of online and paper registrations was created. More than 62,000 complaints were filed through this system. These were immediately sealed and sent for digitisation. They were then entered into a database, so that the IVD commissioners and analysts could work exclusively from digital files. The hard copies were transferred to a state-of-the-art archiving facility designed to industry security standards. The IVD provided suitable organisational arrangements, by creating a document and archive management department, and recruiting more than 40 record, archive and information managers who worked closely with the IT department.

Besides digitising all the documents produced and received by the Commission, the electronic archiving system also had to manage born-digital documents. Thought was given to how these documents would be archived long term, to ensure they would remain intelligible, as well as to guarantee their authenticity, integrity and accessibility. A specific application, ArchIVD, was developed, in compliance to international standards, to facilitate any future migration of these documents and their long-term conservation. These technical issues were addressed during the IVD's mandate, which ended on 31 May 2019. Solutions will now have to be found by the institution inheriting responsibility for this material.

Difficulties encountered

IVD investigators had to overcome a number of difficulties which complicated their work. The hearings they organised opened a Pandora's box of accounts of cruelty, torture, rape and violence of all kinds. These hearings were followed by a third of the Tunisian population and gave rise to heated debate, making a mockery of the long-accepted official versions of the facts and exposing major violations. The IVD President, a long-standing human rights activist, was personally lambasted and became the target of controversy. The Commission's wide-ranging powers were condemned. It was criticised by politicians and media commentators, who tried to sabotage its work, accusing it of being biased and having its own political agenda. It was reproached for focusing solely on the RCD, the party that had been in power since 1956, and ignoring Ennahda, the Islamist party victorious in

the 2011 elections. Some critics held that it had failed to search out those responsible for the terrorist attacks during the early post-uprising years. Others even went as far as to suggest that it might be preferable to drop the investigations and opt instead for closure.

The Commission accused some public sector agencies of hindering it in its work by failing to cooperate or even being obstructive. For example, it was unable to obtain access to the archives of the President's Office and the Ministry of the Interior, and its many requests for information about the identity of police officers involved in torture were stonewalled. The military courts also refused to provide the Commission with the legal documents about current cases. In addition, the President of the Republic had Parliament pass an "administrative reconciliation law" granting amnesty to civil servants involved in corruption cases.⁸ The IVD nevertheless succeeded in exposing a system of corruption and misappropriation of public funds involving civil servants from the Ben Ali era, courtesy of evidence from corrupt officials wishing to take advantage of the arbitration and reconciliation system provided for in the organic law on transitional justice.⁹ It was this lack of cooperation that prompted the Commission in February 2018 to ask for a year's extension on its mandate, as provided for in the law, but the Parliament refused its request. The Commission nonetheless continued its work, with the government's backing, but under challenging conditions.

Results of IVD's work

Despite these obstacles, the Commission was able to lay bare the extent of the crimes and human rights abuses committed in Tunisia and name those responsible. It published its final report on 26 March 2019, a seven-volume work of 2,344 pages. The report offers a detailed and well-documented analysis of the scale of the abuses perpetrated, in particular under Ben Ali, against Youssefists,¹⁰ the Beylical family,¹¹ left-wing movements, Arab nationalists, Islamists, trade unionists and student movements. It also addresses the issue of corruption and misappropriation of public goods in sectors such as property, banking, public procurement, finance, the environment and natural resources and names executives involved in shady dealings and security excesses. The report is based on the large body of information amassed by the IVD: records identified during the mapping process, the Commission's investigations, testimonies given behind closed doors by 49,654 victims (totalling over 60,000 hours of recorded evidence), etc.

Of the report's 2,344 pages, 783 deal with the workings of the repressive system. Bourguiba and Ben Ali's regimes leveraged their repressive powers via two channels, both of which supported them unquestioningly: the judiciary and the prison system. The report provides a detailed description of the control exerted by politicians over the legal system: under Bourguiba there was a parallel justice system, with four special courts responsible for controlling civil liberties and severely sanctioning political opponents.

The police and secret services were answerable to Ben Ali and the regime made systematic use of arbitrary detention, torture and other inhumane forms of treatment. Demonstrations were violently repressed, and protestors arrested and jailed. Although the state security service was swiftly disbanded on 7 March 2011, less than two months after the fall of Ben Ali, the Ministry of the Interior refused to release its archives to the Commission. The Commission nevertheless managed to piece together the organization's structures, which had been a state secret to avoid accountability. It discovered the existence of a parallel police force, which delivered extrajudicial punishments with impunity. Intelligence agents had a slush fund to pay for their operations and enjoyed numerous privileges. While the Ministry of the Interior employed 45,000 civil servants, it had more than 120,000 informers.

During research to find those responsible for the assassination of Salah Ben Youssef¹² in Frankfurt in 1961, the Commission cross-referenced several types of document: audio files, such as recordings of speeches by former President Bourguiba, where he talked about the national liberation movement, which it compared with printed materials, press articles and official documents. These confirmed its assumptions and enabled it to name those involved and prove the role played by state agencies in this assassination, classified by the IVD as a "state crime." In December 2018, the matter was referred to the criminal chamber specialising in transitional justice at the Tunis court of first instance. It resulted in the first transitional justice trial, 58 years after the elimination of Bourguiba's main opponent.

The Commission also pointed a finger at the systematic violations of prisoners' rights reported by 29,137 of the victims in their testimonies. Political prisoners were held in overcrowded prisons and at times had to share cells with the perpetrators of some of the most heinous crimes. During its on-site investigations across Tunisia, the team visited 20 of the 28 prisons selected during the mapping process. Unfortunately, all too frequently the prison buildings were run down and the prison records in dire condition. Most of the records that would have been relevant for the IVD's work had been burned or destroyed at the time of the revolution. In their search for key documents, the team also made carefully calculated visits to various courts and public authorities.

From the time Tunisia became independent in 1956, it was a one-party state. The Socialist Destourian Party (PSD), and the Democratic Constitutional Rally (RCD) that succeeded it in 1988 enjoyed unlimited powers. The many forms of collusion between the party and state institutions was one of the most important factors brought to light by the IVD's investigators and evidenced in a large number of documents. Party members were involved to differing degrees in human rights violations, in particular under Ben Ali.

One of the most significant discoveries unearthed during the mapping process was that of the archives of the departments in charge of monitoring the political activities of opponents to the regime and the movements

of activists in the governates,¹³ and of prosecuting them when applicable. These departments produced reports for the Ministry of the Interior, which were many in number, although their size varied from one governate to another. The team did not expect to come across such collections of documents in the governates, but victims and political activists had managed to save them from being destroyed by the police during the general chaos of the revolution. These documents contained information of vital importance for the IVD, such as police reports and data on the treatment reserved for political opponents. Among other things, they showed how the surveillance system worked and made it possible to establish responsibilities.

Recommendations

In its final report, the IVD made hundreds of recommendations extending over all areas of its work. They spanned everything from the general (institutional reform, development model reform and governance of natural resources) to the specific (how history was to be taught, commemorative monuments, memorial sites, etc.), including the mechanisms underlying the administrative, legal, financial, institutional and educational systems, etc. The IVD recalled the fundamental principles that should govern the reforms, namely unqualified respect for human rights in the internationally recognised, comprehensive, complementary and interdependent acceptance of the term: real equality between men and women, respect for the constitution and international conventions, respect for the principles of governance and of decentralisation and local government.

It published 29,949 individual and collective decisions with regard to reparations for the victims of violations.¹⁴ Following nationwide consultations, it drew up plans for reparations, including financial compensation, psychological and physical rehabilitation, assistance in finding employment, etc. The 625 pages of Volume 6 of the report dealt exclusively with compensation and reparation: individual, collective (women, children, the disabled, minorities, etc.) or geographical.

Under the law on transitional justice, a fund was to be created for the Dignity and Rehabilitation of Dictatorship Victims. This is to compensate the victims of violations in several different ways. As yet, the fund remains an empty shell and doubts have been expressed with regard to the government's intentions over implementing the programme laid down by the law to enforce these recommendations, which may well meet with substantial political resistance. In the part of its report dealing with guaranteeing non-repetition, the IVD urged the need to reform the laws and regulations that made malpractice and corruption possible. Its recommendations relate to institutional reform, the history curriculum, memory and the importance of conserving archives, including its own.

The report has yet to be uploaded to the Commission's website, even though under the terms of Article 67 of the law on transitional justice, it had

to be published in the Official Gazette. Article 70 of the law also required the Assembly to create a special parliamentary committee to implement the recommendations and proposals, but at the time of writing, no such committee had been set up (December 2019).

Future of the archives and their use as part of a policy of remembrance

At the end of its mandate, the IVD was in possession of an extensive and varied set of archives, including hard copy documents, databases, IT applications, software, websites, web pages, email addresses, books, thousands of photos, thousands of press kits, objects, audio and video recordings of the testimonies of 50,000 victims with a combined volume in excess of 80 terabytes. Given the personal nature of the data, this unique collection needs to be kept secure and physically intact, while also remaining accessible to researchers. It could form the basis for a centre for preserving national memory of human rights violations.

The law requires that, at the end of its work, the Commission should transfer all this material to the Tunisian National Archives or to a specific institution that may later be created to preserve national memory (Article 68). An institution of this type would have the advantage of keeping the memory of the abuses perpetrated alive. There are those who doubt the ability of the National Archives to accommodate all this material, on the grounds that they have neither the resources nor the skills required to manage audiovisual archives. In addition, all these archives and records must remain available to the magistrates presiding over the special criminal chambers replacing the IVD at the end of its mandate and tasked with handling investigations and prosecutions. The law on transitional justice may at times be in contradiction with the laws governing archives with regard to access to records containing so much sensitive personal data. Others also question whether the National Archives are sufficiently independent to manage these records, given their earlier unwillingness to cooperate with the IVD, taking the view that the National Archives need to be legally and administratively reformed and submitted to vetting processes.¹⁵

Public remembrance policies contribute to the recognition of all the victims and to stamping out the abuses of the past (exclusion, racism, corruption, impunity and violence) in order to create the conditions for a culture of democracy, justice and peace. When the IVD completed its work, its Committee for the Preservation of National Memory proposed a set of measures to ensure that the past should not be forgotten, cast off the shackles of dictatorship and protect future generations from any repetition of such violations. These included creating memorials, museums and memory tours in various parts of the country.

One proposal concerns the erection of a memorial to the 9 April Prison in Tunis. All the families of the opponents of the regime were held in this

prison, which was completely demolished under Ben Ali in 2009. The site today is used as a car park, and there is nothing there to recall all the violence, torture, rape and hardship that went on there in the past. The Commission also considered the creation of a memorial site at the top of Mount Egri, near Tataouine in the south of the country, where IVD teams found human bones lying on the surface of the mountain slopes.¹⁶

All these archives could also be used by schools to teach children about their country's history. The Ministry of Education is legally empowered to include the subject of human rights and human rights violations in the curriculum. Creation of a memorial site could also be added to the agenda of the Ministry of Culture, for example via its department for promoting sources of memory and national identity. Numerous entities are answerable to this Ministry, such as the Agency for the Development of National Heritage and Cultural Promotion, the National Cultural Committee and the regional culture delegations in the 24 governates. For some, an institution responsible for memory could be grafted on to one of these existing bodies, while others favour the creation of a national centre for the preservation of memory drawing on experience gained when setting up these earlier bodies. Combining existing institutions with IVD archives would offer real added value to efforts to preserve this heritage and make it available to the public.

Conclusion

From work on centralising and digitising the documents collected and the links established between the database and the recorded archives (public and private hearings), it has been possible to produce records containing comprehensive evidence in support of the victims of violations and to identify the perpetrators. As one of the many techniques to bring the truth to light, archives played an innovative role, and were instrumental in changing government attitudes that were initially hostile to transitional justice.

Given its short-lived mandate, the large number of documents submitted for its attention and the complexity of its tasks, the IVD was only able to examine part of the archives collected and the presidential archives. This did not prevent it from uncovering the truth about numerous instances of violation, and its work will be pursued by other agencies. It has referred 200 cases to the special criminal chambers, which will now have to judge more than 1,700 alleged perpetrators of human rights violations committed between July 1955 and December 2013. Criminal proceedings have, in fact, begun in more than 100 cases.

The public and private archives collected by the IVD, the database and the single register of victims of violations are part of Tunisia's heritage. They will be invaluable to magistrates, historians, journalists and researchers. And work on memory of the repression is only just beginning. The process must not end with the demise of the Commission. It is the Tunisian people's right to know their own history that is at stake.

Notes

- 1 Zine El-Abidine Ben Ali (1936–2019) was President of the Republic of Tunisia from 1987 to 2011.
- 2 Article 1 of Organic Law 53–2013 establishing and organising transitional justice.
- 3 Habib Bourguiba (1903–2000) was Tunisia’s first President after independence, holding office from 1957 until 1987.
- 4 The report is available in Arabic on the IVD website at [ivd.tn/rapport final](http://ivd.tn/rapport-final).
- 5 Tunisia’s internal autonomy was recognised by the Franco-Tunisian Conventions of 3 June 1955, which came into force on 31 August of the same year. On 1 July 1955, conflict began between supporters of Bourguiba, who were in favour of the agreements on internal autonomy, and supporters of Salah Ben Youssef, the Neo Destour Party’s Secretary General, who were hostile to the agreements, seeing them as a retrograde step.
- 6 Law No. 88–95 of 2 August 1988 on archives.
- 7 Law No. 88–95, Articles 7 and 8. The authorities shall set the rules determining the life cycle for each type of document or record, from creation through to final destination. Their schedules set the retention periods for types of documents for current usage, for documents treated as intermediate archives when they are no longer required for current use but for legal reasons cannot yet be disposed of, and for their ultimate fate: disposal or long-term conservation as historical archives.
- 8 Organic Law 2017–62 of 24 October 2017 on administrative reconciliation.
- 9 To view the public hearing of 17 May 2017 on corruption. Available at www.ivd.tn/timeline/.
- 10 Supporters of the nationalist leader Salah Ben Youssef, a former associate of Habib Bourguiba who later became his main opponent. See note 5.
- 11 In 1957, the Beylical regime was abolished and the Republic created.
- 12 See notes 5 and 10. He was assassinated in Germany in 1961, a crime the IVD successfully proved to have been committed by agencies of the state.
- 13 A governate or *wilaya* is a local authority in Tunisia, equivalent to a French *département*. Tunisia is divided into 24 governates.
- 14 Statistics from the single register of victims of human rights violations published in Arabic on the IVD website.
- 15 Editor’s note: In January 2020, despite all its reservations, the Commission was forced to transfer its records to the Tunisian National Archives, with the exception of the audiovisual archives which were deemed too sensitive and therefore consigned to the President’s Office. For more information about the disagreement between the National Archives and the IVD regarding the conservation of its archives, see Nessim Znaïen’s article, “Les historiens tunisiens face à la justice transitionnelle: autopsie d’un conflit” [Historians versus transitional justice: autopsy of a conflict], *L’Année du Maghreb*, 5 December 2019. Available at <http://journals.openedition.org/anneemaghreb/6078>; doi:10.4000/anneemaghreb.6078, accessed 29 January 2020.
- 16 The Battle of Djebel Egri-Chenini took place shortly before Tunisia gained independence. It was between Sahal Ben Youssef’s supporters and the French forces, with the complicity of Habib Bourguiba’s supporters, who inflicted heavy losses on the insurgents entrenched at Djebel Egri.

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