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**Advocating for “Victim Regions” in Tunisia’s Transitional Justice Process: the  
Constraints upon Civil Society’s Discursive Interventions**

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## **ABBREVIATIONS**

ASF	Avocats Sans Frontières (Lawyers without Borders)
FTDES	Forum Tunisien pour les Droits Economiques et Sociaux (Tunisian Forum for Economic and Social Rights)
ICTJ	International Center for Transitional Justice
IVD	Instance de Verite et Dignite (Truth and Dignity Commission)
KADEM	Kawakibi Democracy Transition Center
KED	Khmir Environment and Development Association
(i)NGO	(International) Non-governmental organization
UNDP	United Nations Development Programme
TJRC	Truth, Justice and Reconciliation Commission (Kenya)

## INTRODUCTION

Of the tens of thousands of dossiers alleging human rights violations received by Tunisia's *l'Instance de Vérité et Dignité* (Truth and Dignity Commission, or IVD) during a contentious transitional justice process, 30 filed on behalf of “victim regions” pose a particular challenge. In laying out parameters for whom the process will and will not recognize as victims, article 10, paragraph 3 of the transitional justice law<sup>1</sup> states that victims shall include every region that suffered systematic marginalization or exclusion.<sup>2</sup> Although previous transitional justice processes, including ones promulgated by Morocco<sup>3</sup> and Kenya,<sup>4</sup> have attempted to address social, economic, and political inequalities disproportionately suffered by their nations' outlying regions, neither identified geographic areas as potential “victims,” as does Tunisia's transitional justice law. Furthermore, the law fails to define the “systematic marginalization or exclusion” that makes regions eligible for restitution.<sup>5</sup> In order to lay the groundwork for some type of governmental recourse for victim regions, Tunisian NGOs have worked to define these concepts as frames for their overall research and advocacy, contributing, in their own way, to the discourse governing transitional justice processes.

This study reviews a subset of NGOs that have filed or otherwise assisted the filing of dossiers to the IVD on behalf of victim regions. In interviewing engaged employees, and in reviewing relevant documentation both from and beyond the NGOs under review, it examines the extent to which NGOs defined “victim region” and its constitutive violation, “systematic

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<sup>1</sup> *Qanoun Asasi 'Adad 53 li-Sinat 2013 Mu`arach fi 24 December 2013 Yata'liq bi-Irsa` al-'Adala al-Intiqaliya wa Tandhimiha* . Retrieved from Constitution Net, a project of the International Institution for Democracy and Electoral Assistance, December 24, 2013, [http://www.constitutionnet.org/sites/default/files/justice\\_transit-ar.pdf](http://www.constitutionnet.org/sites/default/files/justice_transit-ar.pdf). Hereafter referred to as “the law”.

<sup>2</sup> The authors translated this from the Arabic, which reads: “*wa yashmal hatha al-ta`rif kul mintaqta ta`radat lil-tahimish aw al-iqsa` al-mammahij.*”

<sup>3</sup> Kingdom of Morocco Equity and Reconciliation Commission, “Final Report, Volume 3: Justice and Reparation for Victims,” submitted December 2005, [http://www.cndh.org.ma/sites/default/files/documents/IER\\_Volume\\_3-Eng.pdf](http://www.cndh.org.ma/sites/default/files/documents/IER_Volume_3-Eng.pdf), 48.

<sup>4</sup> Truth, Justice and Reconciliation Commission, Kenya, “Report of the Truth, Justice and Reconciliation Commission,” Volume IIB, May 2013

<sup>5</sup> *Qanoun Asasi Adad 53*, Article 1.

marginalization and exclusion,” in discursively innovative ways, and the extent to which a preexisting discourse and precedents of transitional justice and international human rights constrained their contributions. The study concludes that, though a larger international discourse influenced NGOs as they confronted the law’s ambiguity, the immediate constraints imposed by the advocacy process—the compiling and delivery of dossiers to the IVD—more immediately shaped NGOs’ definition-making.

The study identifies three significant process constraints which determined the organizations’ discursive output: the law’s ambiguity, the need to accrue data/evidence, and the imbalance of power between civil society and the IVD. When the discourse and practice of the fields of transitional justice and human rights manifested in the study, they did so by informing these constraints; of equal importance, however, were “local” factors, ranging from historical political struggles to an organization’s access to resources.

These findings upended the authors’ initial expectations. Having reviewed the NGO output surrounding victim region advocacy, the authors expected to engage in discussions explicitly oriented around the discourse animating transitional justice and the field of international human rights in which it sits. Looking to Mehran Kamrava’s straightforward definition, the authors understood “discourse” as “a general body of thought, based on a series of assumptions, about the nature of things as they are and as they ought to be”; “discourse” is not the stringent interpretation of events, but rather the “framework of ideas” informing the interpretations.<sup>6</sup> To this end, the authors reviewed the major debates animating the discursive tensions of international human rights, and, by extension, processes of transitional justice: individual versus collective, and civil and political versus social and economic, rights.

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<sup>6</sup> Mehran Kamrava, *Iran’s Intellectual Revolution* (Cambridge: Cambridge University Press, 2008), 3.

NGO interlocutors, however, met these tensions with relative indifference. All supported a holistic understanding of rights, and few had given thought to whether “victim regions” represent a new form of collective right, this study’s initial question; one interlocutor responded that such discussions were largely semantic.<sup>7</sup> Instead, these interlocutors formed their discursive interventions to maximize the IVD’s likelihood of adjudicating their favored cases. Locked into an ambiguous process, they prioritized efficiency.<sup>8</sup> Therefore, the study evolved with a greater understanding of their advocacy process, shifting from trying to answer whether or not they were advancing a “new collective right”—a question which time best can settle—to one more pertinent to their advocacy, and to future advocates for transitional justice: why, when presented with the opportunity to define concepts unique to transitional justice, did they make their particular discursive interventions?

## METHODOLOGY

The research for this study is based on interviews conducted with members of NGOs and independent researchers that supported the filing of dossiers to the IVD on behalf of victim regions in Tunisia. Between March 9 and March 18, 2017, the authors interviewed a total of nine individuals affiliated with five NGOs or research institutions.<sup>9</sup> These interviews were supplemented by discussions with two employees of the IVD.

The authors conducted the interviews qualitatively, working from a semi-structured questionnaire. This questionnaire was modified prior to the interview depending upon the relevant background or prior work of the interlocutors. The authors recruited initial, higher-profile participants via email outreach, and further participants were contacted through snowball recruitment facilitated by the initial interviewees.

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<sup>7</sup> Interview in Tunis on March 9, 2017.

<sup>8</sup> Interview in Tunis on March 17, 2017.

<sup>9</sup> See Appendix A for further details.

To contextualize and further flesh out the positions related by interlocutors, the authors have grounded their interview responses in the literature produced by the domestic and international NGOs involved in advocating for victim regions. Publicly available dossiers filed to the IVD were of chief comparative importance, and the authors repeatedly cite those submitted on behalf of the Governorate of Kasserine, the delegation of Ain Draham, and the delegation of Sidi Makhoulf due to their public availability and the depth of their respective analyses. Further NGO literature, including reports compiling qualitative and quantitative evidence of regional marginalization and systematic exclusion, have also been drawn into the analysis. Finally, the study repeatedly engages with Tunisia’s Law No. 53 on transitional justice, and particularly Article 10, which sets out the legal basis for victim regions.

## CONTEXT OF STUDY

### *Uneven development and economic inequality*

Geographically, Tunisia’s economy has developed unevenly. As the World Bank notes in a 2014 report, the coastal cities of Tunis, Sousse, and Sfax account for 85 percent of the country’s GDP.<sup>10</sup> Outside the northeast coast, rates of poverty, unemployment, and lack of access to basic services (such as sanitation networks, health care, and educational institutions) are high.<sup>11</sup> The poverty rate is representative. The Tunisian Ministry for Regional Development and Planning divides the country into seven larger areas—northwest, northeast, Greater Tunis, center-west, center-east, southwest, and southeast<sup>12</sup>—with each area containing one or more governorates. According to a 2012 report coauthored by the ministry, the percentages of those

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<sup>10</sup> “The Unfinished Revolution: Bringing Opportunity, Good Jobs and Greater Wealth to All Tunisians,” The World Bank, May 2014, <http://documents.worldbank.org/curated/en/658461468312323813/pdf/861790DPR0P12800Box385314B00PUBLIC0.pdf>, 282.

<sup>11</sup> Ibid., 283-285.

<sup>12</sup> “Measuring Poverty, Inequalities, and Polarization in Tunisia: 2000-2010,” Ministère du Développement Régional et de la Planification and the Institut National de la Statistique, November 2012, [https://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Measuring\\_Poverty\\_Inequalities\\_and\\_Polarization\\_in\\_Tunisia\\_2000-2010.PDF](https://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Measuring_Poverty_Inequalities_and_Polarization_in_Tunisia_2000-2010.PDF).

living under the poverty line in Greater Tunis, the northeast, and the center-east governorates were 9.1, 10.3, and 8.0, respectively.<sup>13</sup> Elsewhere, the poverty rate was significantly higher: 17.9, 21.5, 25.7, and 32.3 for the southeast, the southwest, the northwest, and the center-west, respectively.<sup>14</sup>

According to several NGO interlocutors, Tunisian officials frame these inequalities as natural outcomes of efficiently allocating scarce resources.<sup>15</sup> Historically, the government has directed investment to its entrepôts to maximize comparative advantage in international trade. This approach was fundamental to the nation's post-1970 *infitah*, or liberalization (which prioritized the export of agricultural goods and the attraction of foreign investment),<sup>16</sup> and accelerated under the structural adjustment reforms of the 1980s and '90s (the first measures of which "intended to make it easier for export-oriented businesses to obtain bank credit and attract private investors").<sup>17</sup> This coastal focus supposedly undergirds an inexorable economic logic: when managing scarce funds, a deep-water port in Tunis is more attractive than a hospital in the interior.<sup>18</sup>

Yet an emphasis on efficiency and comparative advantage obscures the politics of inequality; certain patterns emerge that belie claims of the Habib Bourguiba and Ben Ali governments' adherence to economic calculation, and Tunisians in underdeveloped regions often frame their marginalization as politically motivated. The cities and towns of the center-east were home to the wealthier backers of the Neo Destour party that established independent Tunisia under a one-party state.<sup>19</sup> Residents of the delegations of Ain Drahem in the northwest and Sidi

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<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Interviews in Tunis on March 13 and 15, 2017.

<sup>16</sup> Christopher Alexander, *Tunisia: Stability and reform in the modern Maghreb* (London: Routledge, 2010): 76.

<sup>17</sup> Ibid., 80.

<sup>18</sup> Interview in Tunis on March 15, 2017.

<sup>19</sup> Jamil Abun-Nasr, *A History of the Maghreb in the Islamic Period* (New York: Cambridge University Press, 1987): 362.

Makhlouf in the southeast cite their regions' prior support for Salah ben Youssef—the Neo Destour party secretary general who emerged as Bourguiba's primary challenger post-independence—as a root cause of their neglect (Bourguiba's support, historically, was strongest among elites in Tunis and the center-east).<sup>20</sup> Decades after these struggles, Ben Ali's economic reforms had their own political logic. Structural adjustment in the agricultural sector, for example, increased the precarity of day laborers and small landholders while enriching—and solidifying government ties with—landed estates and a class of urban professionals keen on investing in the countryside.<sup>21</sup> Ben Ali also ensured that his extended family benefited from deregulation; prior to the revolution, relatives of Ben Ali owned “at least” 180 major companies in Tunisia.<sup>22</sup>

#### *Transitional justice and the NGO response to regional marginalization*

The Tunisian government tasked the IVD with researching and proposing recourse for underdeveloped regions early in the transitional justice process. Article 10 of Basic Law No. 53,<sup>23</sup> promulgated in December 2013 to establish the IVD and govern the transitional justice process, defines “victim” in three paragraphs. While the first two clarify that a “victim” can be an individual, group, or legal entity, the third extends “victim” to include each region exposed to “systematic marginalization or exclusion.”<sup>24</sup> The law only mentions the terms “systematic marginalization and exclusion” once, without elaboration, and it does not otherwise define “region,” “marginalization,” “systematic,” or “exclusion.”

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<sup>20</sup> Andrieu, et. al., “The victim zone and collective reparation in Tunisia” Transitional Justice Barometer, May 2016, [http://www.impunitywatch.org/docs/Victim\\_zone\\_report\\_-\\_ENG\\_SR\\_2\\_Juin\\_2016.pdf](http://www.impunitywatch.org/docs/Victim_zone_report_-_ENG_SR_2_Juin_2016.pdf), 45; Gregory W. White, John P. Entelis, and Mark A. Tessler, “The Republic of Tunisia,” in *The Government and Politics of the Middle East and North Africa*, ed. David Long and Bernard Reich (Boulder: Westview, 2002): 464.

<sup>21</sup> Stephen J. King, *Liberalization Against Democracy: The Local Politics of Economic Reform in Tunisia* (Bloomington: Indiana University Press, 2003).

<sup>22</sup> Peter J. Schraeder and Hamadi Redissi, “Ben Ali's Fall,” *The Journal of Democracy*, 22 (2011): 9.

<sup>23</sup> *Qanoun Asasi 'Adad 53*.

<sup>24</sup> *Ibid.*

After a brief interval, Tunisian civil society, sometimes in partnership with international NGOs (iNGOs), began to interpret the law's ambiguity for the sake of victim region advocacy. In June 2015, the *Forum Tunisien pour les Droits Economiques et Sociaux* (Tunisian Forum for Economic and Social Rights, or FTDES), along with Brussels-based *Avocats Sans Frontières* (Lawyers without Borders, or ASF), submitted the first victim region dossier to the IVD, identifying the Kasserine governorate as a victim and outlining the factors of its systematic marginalization and exclusion.<sup>25</sup> In February 2017, *Al Jazeera* reported as many as 30 dossiers filed on behalf of regions,<sup>26</sup> a number confirmed by several civil society activists working in Tunis.<sup>27</sup> Per various Tunisian news outlets, these include the district of Souk Jedid in the Sidi Bouzid governorate;<sup>28</sup> the Governorate of Jendouba;<sup>29</sup> the district of Tameghza in the Governorate of Gafsa;<sup>30</sup> the Governorate of Gabes;<sup>31</sup> and the delegations of Ain Draham and Sidi Makhlouf,<sup>32</sup> among others.<sup>33</sup> A variety of Tunisian actors have mobilized to compile and submit these dossiers, ranging from larger organizations such as FTDES to loose affiliations of individuals, such as an attorney and a women's rights activist who drafted a dossier for the Governorate of Sfax.<sup>34</sup>

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<sup>25</sup> "Request to Declare the Region of Kasserine a 'Victim,'" Avocats Sans Frontières and the Forum Tunisien pour les Droits Economiques et Sociaux, submitted on June 16, 2015, [http://www.asf.be/wp-content/uploads/2015/11/ASF\\_TUN\\_R--gionVictime\\_201506\\_EN.pdf](http://www.asf.be/wp-content/uploads/2015/11/ASF_TUN_R--gionVictime_201506_EN.pdf).

<sup>26</sup> *Hay`at al-Haqiqa wa al-Karama...Malja' Tunis l-Tamdid Jerahiha*, *Al Jazeera*, February 9, 2017, <http://bit.ly/2o2XM6O>.

<sup>27</sup> Authors interviews with civil society actors in Tunis, March 2017 (FTDES, ASF)

<sup>28</sup> *Iyda' Talab li-Tasnif Mu'atamadiat al-Souk al-Jadid bi-Sidi Bouzid "Mintqa Dahiya"*, *Mosaique FM*, June 9, 2016, <http://bit.ly/2ouuY7L>.

<sup>29</sup> *Iyda' Milaf Jendouba Mintqa Dahiya lada Hay`at al-Haqiqa wa al-Karama, Jendouba fi al-Dam*, Facebook, June 14, 2016, <http://bit.ly/2nTOOTS>.

<sup>30</sup> *Iyda' Milafein lada Hay`at al-Haqiqa wa al-Karama 'an Mu'atamadiat Tamaghze bi-'Itibariha Mintqa Dahiya*, *Babnet Tunisie*, June 14, 2016, <http://www.babnet.net/cadredetail-126837.asp>.

<sup>31</sup> Maeaz al-Jamaei, *Muttalib bi-'Itibar Gabes al-Tunisia Dahiya li-Nidham Ben Ali*, *Al Jazeera*, May 3, 2016, <http://bit.ly/2nPNafw>.

<sup>32</sup> Kora Andrieu et. al., "The victim zone,."

<sup>33</sup> Reem Soudi, *Fi Nadwa lil-Mantada al-Tunisi lil-Huqouq wa al-Ijtima'iya ba'd al-Kasserine Binzerte wa Gabes "Mintqa Dahiya"*, *Assabah*, December 4, 2015, <http://bit.ly/2o30uZY>.

<sup>34</sup> *Iyda' Shakaya bi-Isim "Sfax Dahiya" bi-Hay`at al-Haqiqa wa al-Karama, Sfaxien*, June 14, 2016, [http://www.sfaxien.net/2016/06/blog-post\\_72.html](http://www.sfaxien.net/2016/06/blog-post_72.html).

The high number of dossiers submitted on behalf of various regions, the diversity of these regions, and the diversity of filing NGOs and civil society organizations, national and international, must be situated at the intersection of two trends: the post-revolutionary growth of Tunisian NGOs and the two-decade expansion of a global transitional justice field that has intervened in Tunisian society.

The 2010-11 popular uprising and subsequent departure of Ben Ali prompted significant NGO growth. According one estimate, Tunisia had close to 10,000 CSOs by the end of 2010, but only ten percent of these organizations could be considered independent.<sup>35</sup> By 2012, the number of CSOs increased to almost 15,000.<sup>36</sup> A swell of iNGOs constituted part of this proliferation,<sup>37</sup> and increases in foreign funding from governmental and nongovernmental sources buttressed their presence. In 2011, U.S. pro-democracy and human rights assistance increased one-hundred fold.<sup>38</sup> Various EU member states, the United Nations Development Programme (UNDP), the International Monetary Fund, and the World Bank also increased funding to organizations.<sup>39</sup>

That transitional justice became one focus of this renewed NGO activity dovetails with the emergence of transitional justice as an integral component of international human rights work. Amidst the global spate of regime changes in the 1980s and early 1990s, a discourse developed in which the dilemmas facing societies in flux could be best resolved by transitioning to liberal democracy and its attendant benefits of economic development and rights protections.<sup>40</sup> Though it draws on practices extending back to at least the Nuremburg trials, as a field transitional justice

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<sup>35</sup> Foundation for the Future, "Study on civil society organization in Tunisia," *Trust Africa*, 2013, [http://africanphilanthropy.issuelab.org/resource/study\\_on\\_civil\\_society\\_organizations\\_in\\_tunisia](http://africanphilanthropy.issuelab.org/resource/study_on_civil_society_organizations_in_tunisia).

<sup>36</sup> Ibid.7.

<sup>37</sup> Kausch, "Foreign funding," 12.

<sup>38</sup> From \$4 million in the mid-2000s to \$400 million in support of "democracy, human rights, and good governance, including \$45 million in direct grants to democracy-assistance NGOs." From Sarah Bush, *The Taming of Democracy Assistance: Why Democracy Promotion Does Not Confront Dictators* (Cambridge: Cambridge University Press, 2015):, 191; 194.

<sup>39</sup> Kausch, "Foreign funding," 12.

<sup>40</sup> Paige Arthur, "How 'Transitions' Reshaped Human Rights: A Conceptual History of Transitional Justice," *Human Rights Quarterly* 31 (1999): 324; 337; Simon Robins, "Transitional Justice as an Elite Discourse: Human Rights Practice Where the Global Meets the Local in Post-conflict Nepal," *Critical Asian Studies* 44 (2012): 4-5.

is recent and reconfiguring. Local and international human rights activists once relied upon the exposure of rights violations to shame repressive governments into reform, but then the domino-like fall of so many regimes opened the door to direct accountability;<sup>41</sup> transitional justice mechanisms were its lever. These mechanisms traditionally adhere to a legalist paradigm prioritizing the prosecution and imprisonment of human rights-violating old regime members via juridical arbitration.<sup>42</sup>

A network of iNGOs that advocate and support transitional institutions has developed in tandem with these mechanisms.<sup>43</sup> One iNGO, the International Center for Transitional Justice (ICTJ), is solely devoted to this advocacy, while other major human rights iNGOs, such as Human Rights Watch and Amnesty International, allocate significant resources to it.<sup>44</sup> As the field expanded, organizations shifted from advocacy to offering technical assistance, frequently balancing work between both.<sup>45</sup> The increasing influence of this iNGO network is one of multiple international developments<sup>46</sup> that have made institutionalized transitional justice processes a default response for nations emerging from periods of political unrest.<sup>47</sup> They contribute to shaping the mechanisms that transitioning nations adopt to adjudicate the past, as several decades' practice has led to the emergence of set transitional justice "models," supposedly generalizable to multiple settings.<sup>48</sup>

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<sup>41</sup> Arthur, "How 'Transitions' Reshaped Human Rights," 334-335.

<sup>42</sup> Simon Robins, "Transitional Justice as an Elite Discourse," 4.

<sup>43</sup> Jelena Subotić, "The Transformation of International Transitional Justice Advocacy," *The International Journal of Transitional Justice* 6 (2012): 107.

<sup>44</sup> *Ibid.*, 106-107.

<sup>45</sup> *Ibid.*, 113.

<sup>46</sup> As Subotić also notes, the prominence of transitional justice is facilitated by the United Nations' growing commitment to the international prosecution of human rights violations, via mechanisms like the International Criminal Court, and the post-Cold War spread of universal human rights norms and adherence liberal internationalism as basic components of governance, at least at the discursive level.

<sup>47</sup> *Ibid.*, 115.

<sup>48</sup> *Ibid.*, 119.

The intersection of these two trends in Tunisia is apparent. ICTJ has an office in Tunisia and provides technical support to both the IVD and civil society groups.<sup>49</sup> The work of FTDES and ASF is also representative. FTDES was established by activists immediately following the revolution;<sup>50</sup> ASF, with roughly 80 employees globally, opened an office in Tunis in 2012, and three of its in-country projects focus on the transitional justice process.<sup>51</sup> Another notable national-international partnership is the Transitional Justice Barometer, a joint project of the Tunis-based Al-Kawakibi Democracy Transition Center (KADEM), which registered as an NGO in Tunisia in July 2011,<sup>52</sup> the UK-based York Centre for Applied Human Rights, and the Netherlands-based Impunity Watch. Funded by the Netherlands Organisation for Scientific Research,<sup>53</sup> the two-year project produced four reports on transitional justice in Tunisia and offered technical assistance to smaller civil society actors across the country; the Barometer provided assistance to the NGOs Ashbal Khmir and Khmir Environment and Development Association (KED) in their victim region dossier for the delegation of Ain Draham, in addition to a group of civil society activists that filed a dossier on behalf of the delegation of Sidi Makhoulouf.<sup>54</sup>

### *L'Instance de Vérité et Dignité*

The politicized environment in which the IVD operates complicates the process's ability to address regional inequalities. Upon coming into power following the October 2011 elections, the Troika government, with the Islamist Ennahda party as senior partner, proceeded in formalizing and centralizing a transitional justice process that had proceeded in an *ad hoc*

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<sup>49</sup> "Tunisia." The International Center for Transitional Justice. <https://www.ictj.org/our-work/regions-and-countries/tunisia>.

<sup>50</sup> "Qui Sommes Nous?" Forum Tunisien pour les Droits Economiques et Sociaux, <http://ftdes.net/qui-sommes-nous/>; "Le Bureau," Forum Tunisien pour les Droits Economiques et Sociaux, <http://ftdes.net/qui-sommes-nous/le-bureau/>.

<sup>51</sup> "Our teams," Avocats Sans Frontières, <http://www.asf.be/about-asf/contact-2/>; Interview with ASF in Tunis, March 2017.

<sup>52</sup> "Presentation," Kawakibi Democracy Transition Center, <http://www.kawakibi.org/presentation>.

<sup>53</sup> "A Transitional Justice Barometer: Measuring the needs for and impact of transitional justice processes in Tunisia," Netherlands Organisation for Scientific Research, <http://www.nwo.nl/en/research-and-results/research-projects/i/07/12607.html>.

<sup>54</sup> Interview in Washington, DC on March 9, 2017; Andrieu, et. al., "The victim zone."

manner.<sup>55</sup> To avoid charges of politicizing the formation of the transitional justice process, the new Ministry of Human Rights and Transitional Justice, created by the Troika government, set up an independent technical commission to spearhead the national consultation and drafting process for a transitional justice law.<sup>56</sup> This process engaged with civil society organizations and citizens, conducting surveys and questionnaires among residents across six larger regions of the country (each “region” containing four governorates) and working with 20 NGOs to draft legislative language.<sup>57</sup> Legislation was submitted to the National Constituent Assembly in January 2013.<sup>58</sup> Extended political unrest and opposition fears over Ennahda’s potential politicization of the process postponed the legislation’s passage into law until December 2013.<sup>59</sup>

Divided into nine subcommissions that are charged with investigating rights violations and making legislative and prosecutorial recommendations to relevant government bodies,<sup>60</sup> the IVD navigates a host of external and internal challenges. Externally, it is weathering challenges to its mandate. Despite the varied backgrounds of the commissioners, their appointment by an Ennahda-led government ensured that the country’s Islamist-secularist divide would shape perceptions of the IVD’s work.<sup>61</sup> Parliamentarians and government agencies have further obstructed the commission’s efforts through a combination of “budget delays, difficulties with accessing archives, and political pressure.”<sup>62</sup> Additionally, “economic reconciliation” legislation introduced and re-introduced by Nidaa Tounes, if successfully passed, would effectively grant

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<sup>55</sup> Luca Urech, “Challenging History: The Power of Transitional Justice in Tunisia,” *Al Nakhlah: Online Journal on Southwest Asia and Islamic Civilization*, June 10, 2014, <https://alnakhlah.org/2014/06/10/challenging-history-the-power-of-transitional-justice-in-tunisia-by-luca-urech/>.

<sup>56</sup> Ibid; Christopher K. Lamont and Héla Boujnef, “Transitional Justice in Tunisia: Negotiating Justice during Transition,” *Politicka misao* 49 (2012): 44.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> *Qanoun Asasi ‘Adad 53*, Articles 39-43.

<sup>61</sup> Scott Williamson, “Transitional Justice Falts in Tunisia,” Carnegie Endowment for International Peace, September 22, 2015, <http://carnegieendowment.org/sada/61365>.

<sup>62</sup> Ibid.

amnesty and anonymity to Tunisians accused of corruption, a significant plank of the IVD's mandate.<sup>63</sup> Internally, the resignation of four members, and the dismissal of three others by an oversight body, have damaged the IVD's cohesion and reputation.<sup>64</sup>

The IVD, however, continues its work and is in the midst of processing roughly 65,000 files alleging human rights violations of one kind or another.<sup>65</sup> In November 2016, the commission held publicly broadcasted hearings on past rights violations<sup>66</sup> and renewed the hearings in January and March of 2017.<sup>67</sup> The commission's mandate lasts through 2017; with parliament's agreement, it can extend its work for a further year.<sup>68</sup>

## LITERATURE REVIEW

The literature studying the interaction between civil society organizations, domestic and international, and transitional justice processes is still developing. Crocker and Backer were among the first to categorize and classify different forms of civil society engagement with transitional justice mechanisms. Crocker identifies that, historically, domestic civil society organizations have contributed to transitional justice processes by shaping the formation of truth commissions, investigating and reporting on governmental violations, monitoring the truth commission's, and the overall government's, progress in instituting transitional justice reforms,

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<sup>63</sup> Ibid.; Marc Lynch, "Tunisia May Be Lost in Transition," Carnegie Middle East Center, September 8, 2016, <http://carnegie-mec.org/diwan/64510>.

<sup>64</sup> Williamson, "Transitional Justice Falts in Tunisia."; Olfa Belhassine, "Le Professeur Wahid Ferchichi: <<En Tunisie, nous perdons nos rêves de justice>>" *Justice Info*, November 8, 2016, <http://www.justiceinfo.net/fr/component/k2/30522-le-professeur-wahid-ferchichi-%C2%AB-en-tunisie.-nous-perdons-nos-r%C3%AAses-de-justice-de-l%E2%80%99ann%C3%A9e-2011-%C2%BB.html>.

<sup>65</sup> Lynch, "Tunisia May Be Lost in Transition."

<sup>66</sup> Azadeh Moaveni, "Grasping for Truth and Dignity in Tunisia," *The New Yorker*, December 29, 2016, <http://www.newyorker.com/news/news-desk/grasping-for-truth-and-dignity-in-tunisia>.

<sup>67</sup> "Watch: Tunisia Truth and Dignity Commission Testimony," The International Center for Transitional Justice, January 26, 2017, <https://www.ictj.org/news/watch-tunisia-TDC-hearings-Jan-26>; "LIVE: Tunisia Public Hearings Resume with Focus on Women," The International Center for Transitional Justice, March 10, 2017, <https://www.ictj.org/news/live-tunisia-public-hearings-resume-focus-women>.

<sup>68</sup> *Qanoun Asasi 'Adad 53*, Article 18.

and fostering “society-wide” debate on proceedings and outcomes.<sup>69</sup> Domestic organizations, however, are also limited in how effectively they can fill these roles. They may lack the “resources, outreach, and staying power” necessary to advocate for reforms and monitor their implementation.<sup>70</sup> Limited grassroots networks may prevent them from understanding the scope of the transitional process or learning effectively from other organizations.<sup>71</sup> Finally, they may be “bent on vengeance or amnesia, two morally defective goals for societies in transition.”<sup>72</sup>

Backer is dissatisfied with Crocker’s approach, and seeks to propose his theoretical framework concerning civil society intervention into transitional justice processes.<sup>73</sup> He grounds his understanding of civil society involvement in “equations” of demand and supply. On the demand side, some forms of transitional justice—amnesties and lustrations, for example—are implemented by governments uninterested in civil society input.<sup>74</sup> On the other hand, processes built around truth commissions and/or prosecutions require investigations and testimonies that civil society organizations are able to supply for the transitioning government.<sup>75</sup> On the “supply” side, the ability of NGOs to contribute effectively is shaped by its profile (i.e., whether it is a trusted organization with a strong track-record) and its resource base.<sup>76</sup> At its most beneficial, the government-civil society relationship develops into a “division of labor,” with civil society organizations utilizing their “comparative advantage” in local knowledge to assist the process.<sup>77</sup>

Backer then goes on to identify seven different roles filled by NGOs in transitional justice

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<sup>69</sup> David A. Crocker, “Truth Commissions, Transitional Justice, and Civil Society,” published as a draft from the then-forthcoming *Truth v. Justice: The Morality of Truth Commissions*, eds. Robert I. Rothberg and Dennis F. Thompson (Princeton: Princeton University Press, 2000). Retrieved from <http://desa1.cejamericas.org/bitstream/handle/2015/3669/TruthCommissionsTransitionalJusticeandCivilSociety.pdf?sequence=1&isAllowed=y>, 17-21.

<sup>70</sup> Ibid., 22.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid., 23.

<sup>73</sup> David Backer, “Civil society and transitional justice: possibilities, patterns, and prospects,” *Journal of Human Rights* 2 (2003): 297.

<sup>74</sup> Ibid., 301.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid., 301-302.

processes: data collection and monitoring; representation and advocacy; collaboration, facilitation, and consultation between society and government; service delivery and intervention; providing acknowledgement and compensation; serving as a substitute transitional justice authority; and providing research and education.<sup>78</sup> Finally, he introduces his six typologies of civil society-government relations within a transitional justice process, ranging from “strength and symbiosis” (flexible governments seeking the support of strong civil societies) to “hands off the wheel” (an “activist” civil society attempting to take the initiative from an inert government).<sup>79</sup>

These early attempts at developing a framework for understanding civil society-government relations in transitional justice processes, however, tend to undertheorize the role of iNGOs. Backer does not differentiate their functions, while Crocker merely outlines their potential positive contributions: providing domestic NGOs and governments “material resources, lessons learned by other new democracies, international legitimacy, and moral support.”<sup>80</sup> More recently and expansively, Subotić has written on the emergence of a network of “international transitional justice advocacy,” dominated by well-funded and well-staffed iNGOs that play a role in setting the larger agenda of transitional justice.<sup>81</sup> This network has emerged in a few short decades, and the “rapid proliferation of various TJ mechanisms around the world has meant that the field, in a relatively short period of time, has become ‘normal, institutionalized, and mainstreamed.’”<sup>82</sup> In terms of international partnerships with domestic groups governmental and nongovernmental, the influence of iNGOs most concretely manifests in most concretely in the imposition of best practices. “[G]atekeeper” organizations—those with the most money and

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<sup>78</sup> Ibid., 302-305.

<sup>79</sup> Ibid., 307.

<sup>80</sup> Crocker, “Truth Commissions, Transitional Justice, and Civil Society,” 24; 27-28.

<sup>81</sup> Subotić, “The Transformation of Transitional Justice Advocacy.”

<sup>82</sup> Ibid., 107.

highest profiles—“are able to set the tone of the TJ debate and create and recreate TJ templates or a menu of TJ options from which states may choose.”<sup>83</sup>

This “menu” is influenced by factors material and discursive. Materially, transitional justice advocacy has transformed from largely voluntary human rights work to an industry, with professional staffs housed in major cities that operate from sizable budgets.<sup>84</sup> Donor pressures have pushed organizations to adopt more regularized and measurable models of transitional justice programs,<sup>85</sup> a pattern noted by Bush in international pro-democracy and human rights advocacy as a whole.<sup>86</sup> Discursively, transitional justice advocacy has become increasingly “legalistic.” McEvoy defines “legalism” as the separation of legal analysis from politics, animated by the skepticism with which lawyers—prominent within the transitional justice field—view arguments for political expediency outside of legal procedures.<sup>87</sup> Viewing it from an advocacy perspective, Subotić marks the increasing “legalization” of transitional justice (and the larger human rights field in which it is set) as the increasing tendency to solve political disputes or facilitate transitions through “an institutional or a legal setting.”<sup>88</sup>

An understanding of transitional justice processes and advocacy as “legalistic” is important because it is one factor that shapes the ends to which NGOs, domestic and international, engage in the functions outlined by Crocker and Backer. This is especially important for NGOs seeking to represent “victim regions” suffering “systematic marginalization and exclusion,” a non-traditional violation that does not fit comfortably within preexisting typologies of human rights violations. The most salient precedent for the NGOs under review in

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<sup>83</sup> Ibid., 108.

<sup>84</sup> Ibid., 117-119.

<sup>85</sup> Ibid.

<sup>86</sup> Sarah Bush, *The Taming of Democracy Assistance: Why Democracy Promotion Does Not Confront Dictators* (Cambridge: Cambridge University Press (2015).

<sup>87</sup> McEvoy, “Beyond Legalism,” 414-415.

<sup>88</sup> Subotić, “International Transitional Justice Advocacy,” 108-109.

this study is that of the Kenyan Truth, Justice and Reconciliation Commission (TJRC), which dealt with regional “marginalization” (without ascribing victimhood status to regions) in its final 2013 report.<sup>89</sup> The Commission defines “marginalization” in spatial terms, as a process denying “opportunities and outcomes to those ‘living on the margin’” while privileging those “‘at the centre.’”<sup>90</sup> The Commission also puts forward a definition of “discrimination” that it uses interchangeably with “social exclusion,” referring to distinctions placed on various groups that deny their free exercise in public life.<sup>91</sup> The TJRC, in turn, leans on Guring and Kollmair’s discussion of “marginality”<sup>92</sup> to craft its definitions. Based on their own review of the literature surrounding “marginality,” Guring and Kollmair aver that there are two overlapping marginalities: spatial and societal.<sup>93</sup> Spatial marginality refers to remoteness and/or isolation from economic centers, while societal marginality refers to those disparities, resulting from underlying social conditions, which remove one from the “mainstream.”<sup>94</sup> Such removal reflects discrimination along lines of race, gender, religion, or other collectivities.<sup>95</sup>

As of now, transitional justice processes are not built to address the deep-seated social and political inequalities inherent to marginality, and there is an ongoing debate over the extent to which transitional justice should expand its mechanisms to address and ameliorate social, economic, and cultural rights violations and inequalities. The argument that transitional justice should work to flatten socioeconomic disparities stems from the notion that transitioning societies cannot reconcile from crises unless their underlying inequalities are addressed. Laplante

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<sup>89</sup> Truth, Justice and Reconciliation Commission, Kenya, “Report of the Truth, Justice and Reconciliation Commission,” Volume IIB, May 2013, 13.

<sup>90</sup> Truth, Justice and Reconciliation Commission, Kenya, “Report of the Truth, Justice and Reconciliation Commission,” Volume IIB, May 2013, 13.

<sup>91</sup> Ibid.

<sup>92</sup> Ghana S. Guring and Michael Kollmair, “Marginality: Concepts and their Limitations,” The Swiss National Centre of Competence in Research North-South, 2005, [http://www.nccr-pakistan.org/publications\\_pdf/General/Marginality.pdf](http://www.nccr-pakistan.org/publications_pdf/General/Marginality.pdf).

<sup>93</sup> Ibid., 14.

<sup>94</sup> Ibid., 12-13.

<sup>95</sup> Ibid., 12.

ascribes post-transition violence in Chile, South Africa, and Guatemala to a failure of those nations' truth and reconciliation commissions to properly address socioeconomic grievances.<sup>96</sup> To prevent the recurrence of violence, she argues that truth and reconciliation commissions must adopt legal frameworks which would compel states to address violations of socioeconomic rights.<sup>97</sup> Such an approach would counter existing transitional justice practice as identified by Laplante,<sup>98</sup> Szoke-Burke,<sup>99</sup> Waldorf,<sup>100</sup> and Andrieu,<sup>101</sup> who all note that transitional justice mechanisms typically adjudicate on civil and political violations, incorporating economic or social concerns as simple context, if at all.<sup>102</sup> Szoke-Burke recommends a handful of institutional frameworks to effectively incorporate economic and social (he omits cultural) rights within transitional justice mandates, including truth commissions, litigation, and reparations both individual and collective.<sup>103</sup>

Other theorists and practitioners within the transitional justice field, though not opposed to recognizing social, economic, and cultural rights in principle, argue against their incorporation into formal transitional justice processes. Waldorf opposes such incorporation on both practical and theoretical grounds. Transitional justice mechanisms in many states are already underfunded and stretched too thin, and they lack the resources to properly adjudicate or retribute specific crimes, let alone societal inequality.<sup>104</sup> Even if these mechanisms could handle such cases, he continues, to do so cuts against the purpose of transitional justice processes, which are (and

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<sup>96</sup> Lisa J. Laplante, "Transitional Justice and Peacebuilding: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework," *The International Journal of Transitional Justice* 2 (2008): 331.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid., 331-332.

<sup>99</sup> Sam Szoke-Burke, "Not Only 'Context': Why Transitional Justice Programs Can No Longer Ignore Violations of Economic and Social Rights," *Texas International Law Journal* (2015): 466-467.

<sup>100</sup> Lars Waldorf, "Anticipating the Past: Transitional Justice and Socio-Economic Wrongs," *Social and Legal Studies* 21 (2012): 173.

<sup>101</sup> Kora Andrieu, "Confronting the Dictatorial Past in Tunisia: Human Rights and the Politics of Victimhood in Transitional Justice Discourses Since 2011," *Human Rights Quarterly* 38 (2016): 262.

<sup>102</sup> Szoke-Burke, "Not Only 'Context,'" 466-467.

<sup>103</sup> Ibid., 477-492.

<sup>104</sup> Waldorf, "Anticipating the Past," 179.

should be) legalistic in orientation and are best bent toward civil and political rights. Remedying socioeconomic ills, on the other hand, exceeds the scope of any transition.<sup>105</sup>

As Waldorf notes, the debate within transitional justice over the inclusion of social, economic, and cultural inequalities on both theoretical and practical grounds mirrors the debate within larger professional human rights circles.<sup>106</sup> A 2004 debate between Roth and Rubenstein captures part of this debate. Roth acknowledges the increasing incorporation of socioeconomic rights into international human rights practice.<sup>107</sup> Such rights, however, invite methodological challenges that their negative counterparts avoid. For an NGO to effectively investigate allegations of abuse and bring public pressure to bear on governments, violations must be clear in nature, have identifiable perpetrators, and pose a practical remedy.<sup>108</sup> Frequently, socioeconomic claims lack one or more of these criteria.<sup>109</sup> Rubenstein counters Roth with practical considerations of his own.<sup>110</sup> Human rights organizations do more than investigate and publicize violations. They also build institutions that prevent the recurrence of rights violations, and such institution-building knowledge and capacity can be translated to socioeconomic rights.<sup>111</sup> Additionally, Rubenstein contests Roth's invocation of Berlin's dueling liberties, stating that their separation is "often artificial and overdrawn," and that the modern state's obligations to both refrain from discriminating and actively prohibit discrimination in society further blur the distinction between them.<sup>112</sup>

Related to Rubenstein's understanding, it is the state's role in both facilitating and rectifying discrimination which the NGOs under study are contesting. Marginalization, after all,

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<sup>105</sup> *Ibid.*, 179-180.

<sup>106</sup> Waldorf, "Anticipating the Past," 173.

<sup>107</sup> Kenneth Roth, "Defending Economic, Social and Cultural Rights," 65.

<sup>108</sup> *Ibid.*, 69.

<sup>109</sup> *Ibid.*, 68.

<sup>110</sup> Leonard S. Rubenstein, "How International Human Rights Organizations Can Advance Economic, Social, and Cultural Rights: A Response to Kenneth Roth," *Human Rights Quarterly* 26 (2004).

<sup>111</sup> *Ibid.*, 850-851.

<sup>112</sup> *Ibid.*, 851.

is not the mere existence of social and economic rights violations,<sup>113</sup> or even poverty.<sup>114</sup> The Tunisian NGOs argue that discrimination manifesting itself in regional inequality is an inherently political process, the cumulative outcome of actions taken by the central state.<sup>115</sup> Yet this politicized understanding of “marginalization” is in tension with the supposedly apolitical solutions offered by transitional justice in particular and the field of human rights in general.

As Crocker and Backer first set out, the NGOs are engaging in a productive, symbiotic relationship with the IVD that has them collecting data, conducting research, raising awareness, and facilitating connections between the IVD and society at large. On the issue of victim regions, however, they are doing so with a mostly unprecedented violation that they have the power to define. This violation, in turn, corresponds to the kinds of social, economic, and cultural inequalities that do not easily fit within the set transitional justice paradigm, as they are perceived to be extralegal and lacking identifiable perpetrators. These challenges manifest most immediately in the terms-defining process from which the rest of the NGO advocacy follows.

## RESULTS & ANALYSIS

Through four separate documents—three publicly available dossiers submitted to the IVD on behalf of different regions<sup>116</sup> and one published report on the concept of the “victim zone”—seven NGOs and two individuals define the concepts of “victim region” and “systematic marginalization and exclusion.”<sup>117</sup> In addition, conversations, some of which were held with authors of the documents under review, others with individuals unrelated to the authoring

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<sup>113</sup> “Request to Declare,” ASF and FTDES, 18; Bileidi et. al., 5.

<sup>114</sup> “Request to Declare,” ASF and FTDES, 14.

<sup>115</sup> TJRC IIB, 13; ASF and FTDES, 22.

<sup>116</sup> Hereafter referred to as “the Kasserine dossier,” “the Ain Draham dossier,” and “the Sidi Makhlouf dossier”.

<sup>117</sup> The immediate text of the law lays out the term as *al-tahmish aw al-iqsa’ al-munnahij*. This phrase can be understood as “systematic marginalization and exclusion” or “marginalization and systematic exclusion.” In conversations with both NGOs and the IVD, however, it became clear that “systematic” qualified both “marginalization” and “exclusion.” Furthermore, though the law states “marginalization *or* exclusion” [emphasis of the authors], the concepts were rarely differentiated in conversation and almost always treated in tandem. Therefore, this paper refers to “systematic marginalization *and* exclusion” to avoid confusion.

organizations but still actively advocating for victim regions, sought to understand how the interlocutors understood the terms and how they conducted their advocacy.

The ambiguity of Article 10, paragraph 3 presents NGOs with an opportunity. Coherently defining these terms could not only set the stage for positive engagement with the IVD and potential restitution from the government, but it could also push the discourse surrounding transitional justice and human rights in the direction of more readily acknowledging socioeconomic deprivation and collective victimization. In general, NGOs understood that their work was new or innovative; that they were challenging transitional justice norms which prioritized civil and political over socioeconomic rights; and that (with one exception), the process's adherence to a legalistic paradigm complicated their advocacy. Additionally, while they conceived of the "victim region" as a kind of collectivity or group, they did not see themselves as advancing a new kind of collective right.<sup>118</sup>

These larger discursive questions, however, simply did not affect organizations' discursive interventions as did the immediate constraints of an advocacy process focused on receiving acknowledgment of governmental neglect (and/or wrongdoing) and ensuring that the IVD advanced recommendations to the government preventing the recurrence of regional marginalization. As sections A and B demonstrate, three overarching process constraints—its legal ambiguity, the need to procure data and evidence, and the imbalance of power between NGOs and the IVD—decisively shaped the NGOs' definitions and, therefore, their discursive contributions to the transitional justice field. The discourse of transitional justice and international human rights did manifest in these overarching constraints, but as our study demonstrates, factors inherent to the political and historical context in which the organizations

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<sup>118</sup> Interviews in Washington, DC and Tunis, March 9-18, 2017.

work equally informed these constraints. The general schematic below guided the authors' general analysis:

<b>Process constraints</b>	<b>International influence</b>	<b>Local influence</b>
Legal ambiguity	Discursive influence of international human rights field; imposition of legalist transitional justice paradigm.	No clear definition of terms in Tunisian law; social and political histories contextualize understandings of terms.
Procurement of data and evidence	Expectation that violations claims can be undergirded with quantifiable evidence, particularly economic indicators.	Logistical and methodological challenges to capturing local, contextual understandings of regional marginalization.
Imbalance of power between civil society and the IVD	IVD ultimately empowered to accept or reject NGO research; role of international civil society, or iNGOs, as crucial advocacy partners.	Burden of proof placed on civil society; most marginalized lack access to NGOs or the TJ process.

A final section, C, briefly outlines what interlocutors hoped that their research and advocacy on behalf of victim regions would achieve in recognition and institutional reforms from the government.

### **A. Delineating “victim region”**

This section will first discuss the challenges in delineating “region” resulting from the law’s ambiguity. Second, it will elaborate on the two approaches used by civil society to define region: as governorate, and as defined by local residents. Third, it will examine the implications of the unequal power dynamics between civil society and IVD.

#### ***1) Legal Ambiguity***

Article 10 of the law uses the Arabic word "*mintaq*a” to describe a victim “area,” which does not correspond to "*jiha*” or “governorate.” The word "*mintaq*a" holds no constitutional or

legislative significance, and it is not defined anywhere in Tunisian law.<sup>119</sup> Presented with this dilemma, NGOs could either choose to equate "*mintaq*a" with "governorate," an entity clearly defined in the law, and one that holds administrative and financial autonomy; or they could leave the term open to the interpretation of local communities. Residents may equate it with a municipality, village, or even a small neighborhood. Ideally, NGOs wanted to pursue a "victim-centered" approach that allows victims to actively partake in defining and articulating their collective experiences of marginality and exclusion. However, faced with the pressure of presenting a victim region dossier that has a better likelihood of securing the IVD's recommendations for recognition, non-recurrence, and/or reparation,<sup>120</sup> NGOs opted to rely on existing definitions of regions that were administratively recognized by the government such as governorates and delegations. The following section will explore how these two approaches—region as governorate and region as defined by its residents—were theoretically conceptualized and practically implemented.

## ***2) Procurement of data and evidence***

### *Region as "governorate"*

The Kasserine dossier defines "region" as governorate based on legal and policy considerations. First, the dossier argues that governorates are legally defined as a "territorially-based administrative entities of the State."<sup>121</sup> The dossier further justifies its definition of region as governorate by citing a constitutional stipulation that every governorate will be managed by a "regional councils" headed by the governor.<sup>122</sup> This council in turn should receive an annual budget correspondent to its administrative responsibilities. Second, the dossier argues that

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<sup>119</sup> "Request to Declare," ASF and FTDES, 11.

<sup>120</sup> Refer to Section C below for a discussion of these distinctions.

<sup>121</sup> "Request to Declare," ASF and FTDES, 11.

<sup>122</sup> *Ibid.*, 10-11.

"governorates" have been used as the main administrative framework for data collection and policy making by different Tunisian government agencies, such as the Ministry of Regional Development and Planning.<sup>123</sup> Third, the dossier argues that IVD's internal regulations support the interpretation of regions as governorates: Article 55 of IVD's by-laws specifies that IVD would establish a "regional office" for every governorate.<sup>124</sup> With these justifications in mind, the report concludes that the most appropriate definition of "region" is governorate, and then proceeds to satisfy the conditions of "marginality" and "exclusion."

#### *Region as defined by its residents*

The Barometer report takes a fundamentally different approach and argues that defining a victim region should not be constrained by administrative divisions. Following its fieldwork, it found that "to genuinely confront the legacy of marginalization, it would rather be more appropriate to focus on smaller geographical entities, established on the basis of a community sharing the same experience of past exclusion."<sup>125</sup> Despite this assertion, the Barometer still chooses to define the regions of Ain Draham and Sidi Makhlouf by an administrative division, albeit one much smaller than a governorate: a delegation. The report uses the geographic boundaries, demographic data, and socioeconomic indicators of the "delegation of Ain Draham" and the "delegation of Sidi Makhlouf." To give some context, Tunisia's 24 governorates are divided into 264 total delegations (*mu'tamadiat*), which are in turn divided into multiple sectors (*imadat*). Each sector can correspond to a city, town, or village.<sup>126</sup> The report uses a justification similar to that of the Kasserine dossier when deciding upon this administrative division: delegations are clearly defined in Tunisian law, and government agencies collect periodical

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<sup>123</sup> Ibid.

<sup>124</sup> "Request to Declare," ASF and FTDES, 12.

<sup>125</sup> Andrieu et. al., "The victim zone," 13.

<sup>126</sup> "Tunisia Fact Sheet," OECD, October 2016, <http://www.oecd.org/regional/regional-policy/profile-Tunisia.pdf>.

statistics on each delegation. What the Barometer emphasizes, however, is that using delegation means that in addition to using socioeconomic indicators, it can also rely on conducting representative and participatory field work to examine a region's particular experience of marginalization. Compared to a governorate, the smaller geographic size of a delegation makes such direct community engagement a more manageable and realistic task.<sup>127</sup> As one Tunis-based civil society activist stated:

They [Tunisian lawmakers] left it to the victims to decide. We used the same approach...The challenge was: do they [victim regions] have sufficient data and statistics for this zone? They could have selected a neighborhood, but do they have the statistics to talk about a neighborhood? Probably they would have had an easier task to talk about Jendouba as a governorate. But they selected Ain Drahem. It's fine with us as long as it's fine with them...[We decided on] not pushing people into a normative approach.<sup>128</sup>

The Barometer's emphasis on the law's flexibility and its seemingly open definition were mirrored by an answer given by Hayet Ouertani, the IVD's reparations commissioner. When asked about the law's ambiguity on delineating "regions," she affirmed that that Tunisian lawmakers kept the term "region" ambiguous on purpose:

Tunisian legislators were smart when it came to this issue...a [victim] area can be a neighborhood, governorate, municipality. It's not specific. We even have [poor and marginalized] neighborhoods here in Tunis the capital that look nothing like the rich neighborhoods right next to it...Legislators did not restrict the concept of "area" to a governorate or anything specific...The door was left open for any area with a group of people in a specific residential area who have been systematically marginalized or excluded over the years to submit dossiers.<sup>129</sup>

The Ouertani's emphasis on the disparity between neighborhoods, even within supposedly affluent coastal governorates, was echoed by other interlocutors as well. When asked, a Tunis-based interlocutor explained that the choice to define "region" as governorate was done purely

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<sup>127</sup> Andrieu et. al., "The victim zone," 56.

<sup>128</sup> Interview in Tunis on March 15, 2017.

<sup>129</sup> Interview in Tunis on March 17, 2017.

on practical considerations: “when you have a prototype, we don’t have really a preference.”<sup>130</sup>

The interlocutor further explained:

In defining region or area, we argued that using governorates is better in the sense that the response can be clearer when the area corresponds to administrative entities which the government refers to when it makes decisions or allocates funds. It also uses the regional development offices. This is why the administrative decision makes more sense, but this doesn't deny the fact that exclusion or a victim region cannot be a smaller neighborhood or municipality. *Al-Tadamon* neighborhood [in Tunis] is divided between two governorates. Some parts are wealthy, but this neighborhood is very poor and marginalized.<sup>131</sup>

The fact that this marginalized neighborhood—*al-Tadamon*—is located in two different governorates illustrates the difficulty of choosing a small geographic area that does not neatly correspond to one administrative division. But the challenge of delineating victim regions is further exacerbated when an area is small and does not correspond to any administrative division. One Tunisian interlocutor informed us that they submitted a dossier on behalf of their hometown, a small village that was built around a train station in an interior governorate. He reported:

I submitted a dossier on behalf of my hometown, where I lived for over 40-50 years...the village still doesn't have a post office, or municipality, or college, there is [only] one school which the community built in 1934.<sup>132</sup>

For this interlocutor, proving that their village constituted a “region” was less significant compared to relaying how it was marginalized and lacked a basic level of services. The fact that the village did not have a municipality, or correspond to one, showcases its invisibility from a policy-making level, which leads to an important fact that further complicates delineating victim regions: until May 2016, the municipal map did not cover all of Tunisia’s territory. The administrative invisibility of over 3 million Tunisians who are not covered by any municipal district remains a key challenge for the current government led by Prime Minister Youssef

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<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Interview in Tunis on March 18, 2017.

Chahed.<sup>133</sup> The recently formed Ministry of Local Affairs released a report in May 2016 affirming the need to create new municipal districts to ensure that all Tunisian territory is covered by municipal services.<sup>134</sup> To this end, PM Chahed announced in May 2016 that over 86 new municipal districts would be created in anticipation of local municipal elections. Municipal councils have been vacant since 2011, and elections have been continuously delayed.<sup>135</sup> As of this writing, municipal elections are scheduled for December 2017.<sup>136</sup> Whether the elections will be held and whether these new municipal districts will be filled and become operational remains an open question.

### ***3) Imbalance of power between civil society and the IVD***

#### *Question of representation: reproducing marginalization?*

It can be argued that the very process aiming to address regional marginalization may be reproducing it due to the inability of the most marginalized to access transitional justice processes. As one iNGO interlocutor relates: “it’s very clear to me that the most marginalized zones, whatever geographical area they cover, were simply unable to make submissions. They don’t have the resources, ironically enough.”<sup>137</sup> This critical observation emerged throughout the field interviews, and seems to be confirmed in the NGO documentation. Theoretically, any Tunisian citizen can submit a victim region dossier, and there have been cases in which one individual submitted a dossier on behalf of a whole region.<sup>138</sup> However, submitting a “victim region” dossier would require, first, knowledge of such a possibility; second, having the material capacity to access the IVD; and third, having the non-material capacity to access the language of

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<sup>133</sup> “Wazir al-Shu’un al-Mahaliya: 3 Milayin Tunisi La Yatamta’un bil-Nidham al-Baladi,” *Mosaique FM*, 25 May 2016, <http://bit.ly/2phwk2y>.

<sup>134</sup> Tunisian Ministry of Local Affairs, “*Taqrir Howla Mashrou’a Ta’im al-Nidham al-Baladi*,” May 25, 2016, <http://www.ccl.tn/bundles/pdf/rapport-gen-2016.pdf>, 3.

<sup>135</sup> “Chahed: Ihdath 86 Baladiya Qabl al-Intikhabat,” *Kapitalis*, May 25, 2016, <http://bit.ly/2oeL031>.

<sup>136</sup> Ken Karuri, “Tunisia to hold first post-revolt local polls on Dec 17,” *Africa News*, 4 April 2017, <http://www.africanews.com/2017/04/04/tunisia-to-hold-first-post-revolt-local-polls-on-dec-17/>

<sup>137</sup> Interview in Washington, DC on March 9, 2017.

<sup>138</sup> Interview in Tunis on March 17, 2017.

human rights or transitional justice to navigate the process. A separate Barometer report from 2015 conducted field interviews to examine levels of victim participation in transitional justice processes. It found a general lack of awareness of the IVD's work, particularly in the interior regions.<sup>139</sup> The report cites one respondent's illustrative comment: "there are many victims, particularly in rural areas, who do not know the law and know nothing."<sup>140</sup> Another respondent, an iNGO member, states:

We managed to reach the elite, not ordinary citizens. Sometimes they call us or contact us here, believing we are the IVD. The citizen is not even aware of the existence of the IVD and the process.<sup>141</sup>

Even when citizens were aware that victims could contact the IVD, they did not necessarily know that regions could also be considered victims. When the Barometer asked residents in Ain Draham about this, one unemployed graduate affirmed his awareness of the possibility to get reparations for victims of political imprisonment; however, he was not aware that regions could also file claims.<sup>142</sup> In addition to knowledge of the possibility of filing a claim on behalf a region, and having the resources to do so, there are non-material constraints that can reproduce the exclusion of the most marginalized. As one iNGO respondent explains: "people who are most marginalized have the least access to the language of 'rights.' That's the problem with rights."<sup>143</sup>

Accessing the language of rights in addition to collating data and socio-economic indicators all seem necessary to submit successful "victim regions" dossiers to IVD. Yet, it is precisely the most marginalized victim regions that will likely lack such factors. The Barometer report on "victim zones" acknowledges this risk and sets recommendations for the IVD to take a

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<sup>139</sup> Kora Andrieu, Wahid Ferchichi, Simon Robins, Ahmed Aloui and Hager Ben Hamza, "Victim Participation in Tunisia's transitional justice process," *Transitional Justice Barometer*, October, 2015, <http://www.simonrobins.com/TJ%20Barometer%20-%20Victim%20Participation%20Tunisia.pdf>, 55.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

<sup>142</sup> Andrieu, et. al., "The victim zone," 48.

<sup>143</sup> Interview in Washington, DC on March 9, 2017.

more proactive approach to reach out to the regions less likely to have access to IVD.<sup>144</sup> Ultimately, implementing such a recommendation is difficult in the context of a limited organizational resource base. Even NGOs, who may be advocating for the inclusion of the most marginalized, may nonetheless be reproducing this dynamic of exclusion, as one Tunis-based interlocutor explained when they described the process of engaging with victim regions: “we did not want to go into a region that has no civil society.”<sup>145</sup>

### *The “Islamist-secular” divide*

In addition to the challenge of representing the most marginalized regions of Tunisia, interlocutors reported that the “Islamist-secular” divide constituted another obstacle to form an inclusive transitional justice process as one iNGO representative points out:

There have been a lot of struggles — political, especially, between different organizations, and because civil society is kind of separate in a secular way and in an Islamist, religious, Ennahda way. And we struggled — and we consider that we have to include all of them because they represent different victims. They represent different ways of seeing transitional justice and what they want from it.<sup>146</sup>

This Islamist-secular divide within civil society is a reflection of Tunisia’s larger political landscape, and it has intensified in the country’s current post-2011 trajectory. The IVD was established in 2014 at the backdrop of a political crisis that engulfed the country following the assassination of Chokri Belaid and Mohamed Brahimi in February and July 2013, respectively. Nidaa Tounes, the dominant party in Tunisia’s parliament that came to prominence after this crisis, is viewed by some civil society members as obstructing transitional justice processes.<sup>147</sup>

As one interlocutor stated:

No government representatives, no Nidaa Tounes representatives attended any of the public hearings to date, which is not just an expression of their lack of commitment to the process but an act, an articulation of their displeasure at the process. I think the success or

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<sup>144</sup> Andrieu, et. al., “The victim zone,” 56.

<sup>145</sup> Interview in Tunis on March 15, 2017.

<sup>146</sup> Interview in Tunis on March 17, 2017.

<sup>147</sup> See Context of Study for further detail.

failure of the process is going to be largely or as much driven by that as by any constraints of the law or the framing of the process itself. Clearly in the current environment any recommendations for reparations made by the IVD are highly likely to simply be trashed by the authorities, which makes all the discussion moot and frankly...So I think that's the real threat to the process, and I think that's hanging over all the work they're doing, it threatens the work they do.<sup>148</sup>

In addition to the external politics, IVD's internal politics has also affected IVD's effectiveness. One respondent for example, pointed to the fact that according to its mandate, the IVD should have twelve commissioners. However, the removal and resignation of three commissioners has left IVD with only nine, and the three vacant seats remain unfilled due to the intense politics around reinstating or appointing new members.<sup>149</sup> Civil society organizations have issued multiple calls to appoint new commissioners to fill the vacancies.<sup>150</sup> The Tunisian interlocutor pointed to this as one illustration of the many obstacles complicating the IVD's work with civil society.

#### *IVD and civil society dynamics*

As for the direct relationship between the IVD and the NGOs, three observations came to light during conversations with interlocutors. First, the IVD described the relationship as one of interdependence. Ouertani stressed the central role played by civil society in drafting the TJ law and further explained:

We depend on our partnership with civil society in all of our work, and we listen to their recommendations and the biggest example of this is that on March 26th [2017] we will have a public consultation on the Reparations Program to engage civil society, and we attempt to be inclusive of the biggest number of CSOs in this effort to see what their vision of a Reparations Program looks like. We will take these visions and recommendations and integrate them into our Comprehensive Reparations

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<sup>148</sup> Interview in Washington, DC on March 9, 2017.

<sup>149</sup> Interview in Tunis on March 9, 2017.

<sup>150</sup> "Appointment of members to the Truth and Dignity Commission in Tunisia: a call for transparency," *Avocats Sans Frontières (ASF)*, 8 February 2017, <http://www.asf.be/blog/2017/02/08/appointment-of-members-to-the-truth-and-dignity-commission-in-tunisia-a-call-for-transparency/>.

Program...when it comes to studies or reports by NGOs...we have taken these evaluations into consideration.<sup>151</sup>

Despite IVD's expressed willingness to engage with civil society, however, most NGO interlocutors expressed a deep frustration at the IVD's lack of communication and complex working environment. One iNGO interlocutor stated, "it's very opaque for us as an international NGO, so imagine for other NGOs."<sup>152</sup> This leads into the second observation on IVD-NGO dynamics, which is the lack of effective communication. One Tunis-based interlocutor stated that the IVD was in contact with his NGO on a number of issues, albeit slower than hoped, especially when it came to the "victim region" dossier they submitted that took the IVD one year and nine months to follow-up on:

We submitted it [victim region dossier] on June 2015. Today is March 13, 2017, and we have only received the first call from the IVD to discuss this dossier on March 7, 2017, last week. Almost two years.<sup>153</sup>

Third, despite civil society's frustration with the slow channels of communication with IVD, they emphasized that transitional justice is bigger than the IVD, and they exhibited a high level of ownership and willingness to be supportive when appropriate and critical when they saw the need for course correction. Tunisian civil society saw the IVD as the means to the end of achieving transitional justice. Whenever they perceived the IVD falling short on a certain initiative, NGOs sought to exert pressure, protest, provide recommendations or launch new projects that can complement and move the transitional justice agenda forward. When asked about the delay in dealing with victim region dossiers, several NGO interlocutors informed us of the launch of a new projects on victim regions. One NGO, for example is planning to conduct field work to create a database for a number of interior regions and conduct needs-assessments.

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<sup>151</sup>Interview in Tunis on March 17, 2017.

<sup>152</sup> Interview in Tunis on March 17, 2017.

<sup>153</sup> Interview in Tunis on March 13, 2017.

Another iNGO is working on a new study to further examining perceptions of marginalization and exclusion and the non-material lived experiences of the most excluded. In other words, civil society representatives expressed that they “cannot remain idle.”<sup>154</sup>

### *International and local civil society*

The connection between local and international NGOs was first established by the proactive efforts of Tunisian civil society, who consulted previous transitional justice models, such as Kenya and South Africa, to establish one that corresponds to the Tunisian context.<sup>155</sup> The global transitional justice infrastructure in turn has been actively supporting and funding local civil society initiatives. One could argue that Tunisia today has developed its own local “transitional justice industry,” with NGOs focusing solely on transitional justice advocacy or issues that directly affect it. Further, the influx of international experts into the country since 2011 has provided local civil society with immense knowledge and experience from which to gain, but it also presented them with a host of challenges. One report that examines the influx of experts into Tunisia found that these experts are often immersed in their area of expertise but lack a deeper understanding of Tunisia’s specific political and socioeconomic context.<sup>156</sup> The report also found that, despite a level of positive engagement between local civil society and iNGOs, disagreements between the two have often centered around questions of “responsibility, coordination, priorities and needs.”<sup>157</sup> The fieldwork conducted for this study further affirms these findings. When one Tunisian interlocutor was asked about the challenge of working with an iNGO, they reported that “coordination was a challenge, the big, big issue of coordination, but

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<sup>154</sup> Ibid.

<sup>155</sup> Interview in Tunis on March 15, 2017.

<sup>156</sup> Institute For Integrated Transitions (IFIT), “Inside the Transition Bubble: International Expert Assistance in Tunisia,” April 2013, <http://www.ifit-transitions.org/publications/inside-the-transition-bubble-international-expert-assistance-in-tunisia/inside-the-transition-bubble-en-full>.

<sup>157</sup> Ibid., 3.

we had, let's say, the very good will of very committed people, and it helps a lot.”<sup>158</sup> Coordination challenges were further exacerbated in this case due to the fact that the project was led by an iNGO member located in the United States. But despite this obstacle, the Tunisian NGO reported a positive learning experience from their partnership with an iNGO, especially as Tunisian employees of the NGO gained capacity from their direct work with the iNGO, which quickly “put our people on the same level with everyone involved in the project.”<sup>159</sup>

The Tunisian NGOs consulted in this study have shown that despite the often top-down external imposition when it comes to iNGO engagement with local civil society, this dynamic does not necessarily preclude a constructive engagement and a transfer of expertise to locals.

## **B. Defining “systematic marginalization and exclusion”**

Before analyzing the constraints that condition the NGOs’ articulations of “systematic marginalization and exclusion,” it is necessary to review their formal definitions of the concept as they appear in three publicly available victim region dossiers and one lengthy report (though in an abridged form). The Kasserine dossier defines “marginalization” (*al-tahmish*) as “[a] form of acute or persistent distinction, discrimination or disadvantage which compromises the group opportunities [*sic*] in life and derives from social, economic or political processes.”<sup>160</sup> Drafted in Arabic with assistance from the Barometer, the Ain Draham and Sidi Makhlouf dossiers furnish definitions nearly identical to each other and close to the Kasserine dossier.<sup>161</sup> The Barometer report writes that marginalization “appears as the result of discrimination,” which “requires the active involvement of a political actor” and includes not only a lack of access to resources but also a reduced ability to participate in the public sphere.<sup>162</sup>

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<sup>158</sup> Interview in Tunis on March 15, 2017.

<sup>159</sup> *Ibid.*

<sup>160</sup> “Request to Declare,” ASF and FTDES, 22.

<sup>161</sup> Bileidi et. al., 4; Mabrouk and Thaweeb, 5.

<sup>162</sup> Andrieu et. al., “The victim zone,” 18-19.

The Kasserine dossier defines “exclusion” (*al-iqsa*) as “a process which leads to the prevention of some people from having access to services or rights, namely access to employment or a decent income; education; participation in power and decision-making that has an impact on their daily life.”<sup>163</sup> The Ain Draham and Sidi Makhoulouf dossiers define it correspondingly.<sup>164</sup> Again, the Barometer report advances a slightly different definition, identifying “social exclusion” as the relevant concept and defining it as “the process by which individuals or groups are wholly or partially excluded from full participation in society in which [*sic*] they live”; this not only concerns material deprivation, but “citizenship and social belonging” as well.<sup>165</sup> The treatment of “systematic” (*al-mumnahij*) is similar still. Per the Kasserine, Ain Draham, and Sidi Makhoulouf dossiers, it modifies “marginalization and exclusion” as “severe and structured.”<sup>166</sup> Being a little more expansive, the Barometer writes, “[s]ystematicity...involves planning and a certain method.”<sup>167</sup>

The documents then limit the concept’s practical scope. First, the three dossiers clarify that “systematic marginalization and exclusion” can be established in the absence of any specific violations of social or economic rights.<sup>168</sup> Second, the three dossiers state that forms of “marginalization” and “exclusion” deriving from the global economic context or from a region’s particular climatic or geographic position are not “systematic,” and therefore do not fall within their advocacy.<sup>169</sup> (The Barometer is stronger on this point, stating that “marginalization and exclusion” cannot stem from “the indirect result of the action” of a government, but that “the

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<sup>163</sup> “Request to Declare,” ASF and FTDES, 22.

<sup>164</sup> Bileidi et. al., 4; Mabrouk and Thaweeb, 5.

<sup>165</sup> Andrieu et. al., “The victim zone,” 19.

<sup>166</sup> “Request to Declare,” ASF and FTDES, 17; Bileidi et. al., 4; Mabrouk and Thaweeb, 5.

<sup>167</sup> Andrieu et. al., “The victim zone,” 19.

<sup>168</sup> “Request to declare,” ASF and FTDES, 18; Bileidi et. al., 5; Mabrouk and Thaweeb, 6.

<sup>169</sup> “Request to declare,” ASF and FTDES, 22; Bileidi et. al., 5; Mabrouk and Thaweeb, 6.

state deliberately planned and organized these acts.”)<sup>170</sup> Third, all documents aver that quantitative indicators demonstrating socioeconomic deficits can establish systematic marginalization and exclusion.<sup>171</sup>

### ***1) Legal Ambiguity***

A combination of local and international factors shaped the manner in which NGOs responded to the law’s failure to define “systematic marginalization and exclusion.” The NGOs looked to international precedents to craft the definitions outlined above. Yet the promulgation of these definitions, which operate at an abstract level, created tensions when utilized to advocate for an end to concrete forms of marginalization particular to Tunisia’s political and historical context. Ultimately, the NGOs utilized the definitions to capture the interlocutors’ expansive understanding of social and economic rights and their conception of systematic marginalization and exclusion as a governmental failure to invest in certain regions; the definitions failed, however, to adequately address the political origins of marginalization or the extension of the concept to collectives unbounded by geography.

### *Discursive influence of transitional justice and international human rights*

The fields of international human rights and transitional justice influence the formal definitions most directly. This influence is due to the manner in which both NGOs and the IVD consciously place themselves within the lineage of other transitional justice processes,<sup>172</sup> meaning that they will not uniquely derive the concept from Tunisia’s context. The IVD studies previous transitional justice processes.<sup>173</sup> NGOs also adhere to transitional justice’s dominant legalist paradigm, and interlocutors bring up, unprompted, processes from which they draw

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<sup>170</sup> Andrieu et. al., “The victim zone,” 19.

<sup>171</sup> “Request to declare,” ASF and FTDES, 19-20; Bileidi et. al., 5; Mabrouk and Thaweeb, 6; Robins et. al., “The victim zone,” 20.

<sup>172</sup> Moaveni, “Grasping for Truth and Dignity in Tunisia”.

<sup>173</sup> Ibid.

guidance, including Portugal,<sup>174</sup> Guatemala,<sup>175</sup> and Morocco.<sup>176</sup> This adherence to the international discourse, when combined with the NGOs' desire to engage with the IVD in a manner that will maximize a positive response,<sup>177</sup> places a considerable importance on the precedents used to define "systematic marginalization and exclusion."

Discursively, a prior case of regional marginalization and the legal underpinnings of social and economic rights inform the NGOs' definitions. The component elements of "systematic marginalization and exclusion" have a lineage in a body of international legal documents. The last transitional justice mechanism to address uneven regional development, Kenya's TJRC, promulgated a definition of "marginalization" that FTDES, ASF, and the organizations comprising the Barometer utilize.<sup>178</sup> ASF and FTDES go so far as to state that the elements of the TJRC's definitions should be sufficient to furnish the IVD with a working understanding of the concept.<sup>179</sup> Apart from this immediate precedent, both the Kasserine dossier and the Barometer report (offering the most expansive definitions) pull from international human rights law, particularly documents concerning social and economic rights. Both embed their definitions of "marginalization" in the concept of discrimination advanced in the International Covenant on Economic, Social and Cultural Rights,<sup>180</sup> and both cite an International Labour Organization White Paper on "social exclusion" (in addition to an array of academic articles on marginality).<sup>181</sup> Anticipating the IVD, the NGOs erect their conceptual scaffolding upon a small corner of transitional justice's discursive field, despite their unique position.

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<sup>174</sup> Interview in Tunis on March 13, 2017.

<sup>175</sup> Interview in Tunis on March 15, 2017.

<sup>176</sup> Interview in Tunis on March 17, 2017.

<sup>177</sup> "Request to Declare," ASF and FTDES, 14.

<sup>178</sup> "Request to Declare," ASF and FTDES, 14; Andrieu et. al., "The victim zone," 18.

<sup>179</sup> "Request to Declare," ASF and FTDES, 14.

<sup>180</sup> *Ibid.*, 17; Andrieu et. al., "The victim zone," 18.

<sup>181</sup> Andrieu, et. al., "The victim region," 18-19; "Request to Declare," ASF and FTDES, 14-15.

Finally, although advocacy around “victim regions” was not selected from a preset “menu of TJ offerings,” per Subotić,<sup>182</sup> given the concept’s relative uniqueness, the influence wielded by international, as opposed to domestic, NGOs is undeniable regarding the formulation of “systematic marginalization and exclusion.” An ASF attorney in Brussels compiled the Kasserine dossier’s final draft, while a researcher based abroad finalized the Barometer’s “victim zone” report.<sup>183</sup> While domestic NGO interlocutors demonstrated an expansive knowledge of prior transitional justice precedents,<sup>184</sup> iNGOs played a significant role in defining concepts that may appear on a set “menu” of options for a future transitional justice process.

*Local influence: expansive rights and marginalization’s perceived political roots*

In discussing their advocacy on behalf of victim regions, NGO interlocutors did not reproduce, and only infrequently referred to, the abstract definition of “systematic marginalization and exclusion” outlined above. Instead, they advanced understandings of the concept grounded either in Tunisian history or their own prior human rights advocacy.

First, NGOs adopted a holistic understanding of “systematic marginalization and exclusion.” Not confining themselves to unemployment and poverty, various interlocutors considered issues from women’s oppression to environmental degradation as animating components of “systematic marginalization and exclusion” in Tunisia.<sup>185</sup> Also, though some interlocutors viewed their work on behalf of victim regions as pushing against an exclusive focus on civil and political rights violations in transitional justice,<sup>186</sup> they recognized that regional marginalization could touch upon civil and political rights violations as well. For example, the

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<sup>182</sup> Subotić, “The Transformation of International Transitional Justice Advocacy,” 119.

<sup>183</sup> Interviews in Washington, DC on March 9, 2017 and in Tunis on March 17, 2017.

<sup>184</sup> Interviews in Tunis on March 13 and 15, 2017

<sup>185</sup> Interviews in Washington, DC on March 9, 2017 and in Tunis, March 13 through 18, 2017; for further discussion, refer to Section C below.

<sup>186</sup> Interviews in Washington, DC and Tunis on March 9, 13, and 15, 2017

Ain Draham and Sidi Makhoulf dossiers consider violations of residents' civil and political rights before moving onto economic, social, and cultural violations.<sup>187</sup>

Second, the concept was most commonly understood as a manifestation of the state's failure to invest, and to encourage private sector investment, in certain regions. The lack of hospitals, schools, roads, and other forms of public infrastructure are ubiquitous themes in both conversations with NGO interlocutors and the select NGO documentation under review. In conversation, one NGO interlocutor listed disparities in the rates of public investment alongside disparities in the poverty rate to illustrate regional inequality.<sup>188</sup> A lack of investments not only marginalizes and excludes regions by neglecting their public infrastructure; it also prevents residents from properly exploiting their local resources. In interview responses included in the Barometer report, residents of Ain Draham lament that their region's forests could supply local industries producing cork and medicinal products, and a resident of Sidi Makhoulf questions why there is not more industry in his region, given his delegation's proximity to the Libyan border and its opportunities for cross-border trade.<sup>189</sup>

Third, some interlocutors and NGO documents linked "systematic marginalization and exclusion" to the nation's political history, particularly to the post-independence struggle between Bourguiba and Salah ben Youssef. Though the subject never dominated conversation, one interlocutor directly affirmed, and another more passingly referenced, that the Tunisian government under Bourguiba had actively punished regions where the "*youssefioun*" were strongest.<sup>190</sup> The Barometer report presents the Ben Youssef/Bourguiba split as a significant

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<sup>187</sup> Bileidi, et. al., 16-17; Susan Mabrouk and al-Hashimi Thaweeb, *Mutlab Muta'alaq bi-Iqrar Tasnif Mu'atamadiat Sidi Makhoulf Mintaqa Dahiya*, submitted May 31, 2016,

<https://drive.google.com/file/d/0B3ErV7DxOoJgRHE3dFM2T0gtUEk/view>, 14-15.

<sup>188</sup> Interview in Tunis on March 13, 2017; the interlocutor stated, "On public investment: in Tunis alone, in 2010, it's 26.4 percent, and in the whole western governorates—that means Sidi Bouzid, Kasseerine, Jendouba, etc.—it was 4 percent."

<sup>189</sup> Andrieu et. al., "The victim zone," 42.

<sup>190</sup> Interviews in Tunis on March 17 and 18, 2017.

historical cause of both Ain Draham and Sidi Makhoulf's marginalization, as residents in both delegations once supported the Youssefist camp.<sup>191</sup> Not all NGOs, however, reproduced this political origin story of regional marginalization. One Tunis-based interlocutor emphasized the economic imbalances related to scarce resource allocation that had led to the interior's exclusion, stating that certain areas "have been targeted, if I may say, just for geographic reasons."<sup>192</sup>

Attempts to bridge the abstract with the concrete—to satisfy the formal definitions promulgated for the sake of the process with the concrete manifestations of discrimination that all knew had taken place—complicated advocacy. On the one hand, the dossiers were useful tools for advocating that, if systematic marginalization and exclusion's negative impact had been holistic, its amelioration must be holistic as well. The Kasserine dossier treats "Strong Gender Inequality" as its own category and recommends that the IVD integrate a specific gender perspective when formulating its own recommendations for governmental reforms.<sup>193</sup> The Ain Draham dossier devotes significant space to both environmental rights, what it terms the rights of future generations, and recommendations for protecting both.<sup>194</sup> Moreover, all three dossiers make clear that a lack of investment, public and private, is culpable for regional inequalities and in need of redress;<sup>195</sup> in particular, the Ain Draham and Sidi Makhoulf dossiers note the injustice of fragile development and poverty existing alongside their regions' natural abundance. Systematic marginalization and exclusion represent a failure to rationally exploit both natural and human resources.<sup>196</sup>

The dossiers do not, however, address in detail either Youssefism or any other political causes of marginalization. The Kasserine dossier, which relies almost solely on indicators and

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<sup>191</sup> Andrieu et. al., "The victim zone," 45-46.

<sup>192</sup> Interview in Tunis on March 15, 2017.

<sup>193</sup> "Request to Declare," ASF and FTDES, 26; 42.

<sup>194</sup> Bileidi, et. al., 24-25; 31.

<sup>195</sup> "Request to Declare," ASF and FTDES, 33; Bileidi, et. al., 23; Mabrouk and Thaweeb, 18.

<sup>196</sup> Bileidi et. al., 4-5; Mabrouk and Thaweeb, 5-6.

governmental and academic reports, criticizes the cronyism and corruption of the Ben Ali era and briefly discusses the detrimental effects of “political loyalties” without explicating how they manifest in Tunisian society.<sup>197</sup> Even in the dossiers of Ain Draham and Sidi Makhlouf, whose residents informed the Barometer of their regions’ strong support for ben Youssef, local support for *al-youssefiya* merits only passing mentions.<sup>198</sup> Other mentions of explicit political affiliations, such as the presence of Movement of Socialist Democrats figures in Sidi Makhlouf in 1989, also receive only brief acknowledgement.<sup>199</sup> When these two dossiers link violations of political and civil rights to systematic marginalization and exclusion, they do not contextualize them within political events or social movements. This has the effect of depoliticizing the dossiers, even when Tunisians see as obvious the politics influencing systematic marginalization and exclusion.

The elision of the links between political opposition and regional marginalization in the dossiers may be explained several ways. First, most of the NGO interlocutors presented themselves as nonpartisan and, even when wrestling with the law’s ambiguity, may have declined to explore contentious political fault lines.<sup>200</sup> Second, most interlocutors identified the transitional justice process as legalistic and reliant upon judicial measures, although they disagreed over the extent to which this hindered advocacy.<sup>201</sup> This legalist framework may limit the extent to which a contentious political issues could be explored. According to one interlocutor, Tunisia’s process is “an incarnation of exactly the contemporary understanding of transitional justice” that “always hangs itself on the judicial, and ultimately on prosecution, and

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<sup>197</sup> “Request to declare,” ASF and FTDES, 32-35.

<sup>198</sup> Bileidi et. al., 8, 32; Mabrouk and Thaweeb, 6.

<sup>199</sup> Mabrouk and Thaweeb, 13.

<sup>200</sup> When asked, one interlocutor pushed back strongly against the notion that any one political party may be better suited to address regional marginalization than another, expressing his disappointment that, in the absence of the repression of the Ben Ali years, all parties had failed to come up with a workable economic program and communicate properly with youth. Interview in Tunis on March 13, 2017.

<sup>201</sup> Contesting the notion of the Tunisian process’s “legalism,” two iNGO interlocutors stated that the process was not rule-bound enough, which had led to significant confusion; interview in Tunis on March 17, 2017.

that's been impossible in Tunisia for political reasons.”<sup>202</sup> Another interlocutor described the process as attempting to put a square, legalist peg into a more rounded transitional justice hole, expressing the notion that juridical measures were not entirely compatible with Tunisia's specific context.<sup>203</sup>

A third possibility relates to a final point of legal ambiguity: whether the “systematic” aspect of “systematic marginalization and exclusion” requires organizations to prove that there was governmental intent behind the policies that marginalized and excluded regions. An interlocutor from an iNGO understood “systematic” to mean active intent by the government to marginalize and exclude a particular region, stating:

“What you need...the smoking gun is the document signed by the minister, you know, explaining that they don't want to give resources to this region for that reason...whether that exists, and whether intent can be proved even by some who can access the government's history, which, of course, the IVD won't have, remains to be seen.”<sup>204</sup>

The perceived requirement to “prove” intent led to expressions of frustration with the law's lack of clarity.<sup>205</sup> An interlocutor from a separate iNGO, when asked how their organization could prove that the government intended to marginalize, stated, “[i]f you knew how we struggle.”<sup>206</sup> They then related the story of a town adjacent to a quarry. Because the town was in “political opposition” to the government, locals were not hired to mine the quarry. After relating this story, the interlocutor stated, “[y]ou will never find a paper, a letter, sent from Tunis to [the town] to say, ‘please don't hire these people’...and that's the problem with intent.”<sup>207</sup> The inability to “prove” that the government intended to marginalize the opposition may explain its absence

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<sup>202</sup> Interview in Washington, DC on March 9, 2017.

<sup>203</sup> Interview in Tunis on March 15, 2017.

<sup>204</sup> Interview in Washington, DC on March 9, 2017.

<sup>205</sup> Ibid.

<sup>206</sup> Interview in Tunis on March 17, 2017.

<sup>207</sup> Interview in Tunis on March 17, 2017.

from the dossiers; in general, the issue of intent most directly challenged NGOs' abilities to secure evidence for their claims.

## **2) Procurement of data and evidence**

### *International influence: the quantification of rights work*

Attempts to procure data and evidence to support claims of “systematic marginalization and exclusion” raised methodological quandaries. As with the constraint imposed by legal ambiguity, the international discourse of human rights and transitional justice advocacy shapes the NGOs' need to procure data. In both fields, quantitative measures increasingly undergird projects data whose ultimate outcomes—restoring justice, advancing democracy—are arguably immeasurable.<sup>208</sup> In line with this trend, NGO documents assert that quantitative indicators demonstrating socioeconomic deficits can establish systematic marginalization and exclusion.<sup>209</sup> Examples of such indicators include rates of unemployment, poverty, and public and private investment; the availability of healthcare; the rate of school enrollment; and access to “electricity, telecommunication, drinking water, sanitation networks, [and] quantity and quality of roadways.”<sup>210</sup> The government also reinforces this drive to procure quantifiable evidence of marginalization: Article 39 of the law *is* unambiguous when it lists data gathering and verification as a primary responsibility of the IVD.<sup>211</sup>

The reliance upon indicators does not complicate all facets of advocating for systematic marginalization and exclusion's non-recurrence and/or reparation in Tunisia. Stark differences in rates of literacy, unemployment, and poverty point to a significant imbalance in public and

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<sup>208</sup> Subotić, “International Transitional Justice Advocacy,” 124; Bush, *The Taming of Democracy Assistance*, 31.

<sup>209</sup> “Request to declare,” ASF and FTDES, 19-20; Bileidi et. al., 5; Mabrouk and Thaweeb, 6; Robins et. al., “The victim zone,” 20.

<sup>210</sup> “Request to declare,” ASF and FTDES, 20.

<sup>211</sup> *Qanoun Asasi 'Adad*; the Tunisian government's dependence on data to determine transitional justice violations also tracks with a “march of quantification,” beginning in the 1980s and continuing through today, in which governments prioritized data procurement for “greater efficiency, transparency, and measurable outcomes in the public sector.” Bush, *The Taming of Democracy Assistance*, 25.

private economic investment. Indicators can also demonstrate environmental damage; the Ain Draham dossier contextualizes local water pollution in terms of area sites with access to a water purification system (the system only reaches 38 percent of the delegation).<sup>212</sup> Still, the extent to which the “intent” inherent in “systematic” marginalization and exclusion can be derived from these indicators is a matter for debate.

*Local influence: multiple methodologies for proving “intent”*

The desire to incorporate the specific social and political histories contextualizing regional marginalization in Tunisia complicates the ability of indicators to address the matter of “intent”. In the absence of the aforementioned “smoking gun,” such a connection is impossible to quantify. So, in an effort to respect the political or social grievances animating perceptions of marginalization, some interlocutors incorporate qualitative forms of evidence. The Barometer report heavily cites interviews with residents of Ain Draham and Sidi Makhoulouf, arguing that indicators alone cannot grasp the “full magnitude” of marginalization’s “human dimension”.<sup>213</sup> Additionally, one interlocutor stated that indicators were insufficient because they could not illustrate issues of corruption and nepotism that exacerbate regional inequalities while leaving no paper trail.<sup>214</sup> For future research into victim regions, that interlocutor’s organization plans to supplement indicators with interviews and focus groups. In their view, qualitative field work would allow them to find further evidence of systematic marginalization and corruption that they could then submit to the IVD.<sup>215</sup> Even this approach seemed unsatisfactory. Acknowledging that the case of a victim region would never be subjected to serious legal proceedings, this particular

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<sup>212</sup> Bileidi et. al., 26.

<sup>213</sup> Andrieu et. al., “The victim zone,” 21.

<sup>214</sup> Interview in Tunis on March 17, 2017.

<sup>215</sup> Ibid.

interlocutor and their colleague concluded that the best the process could accomplish would be the accumulation of stories.<sup>216</sup>

This lack of certainty was not shared by every NGO. One Tunis-based interlocutor privileged the collation of an illustrative set of socioeconomic indicators as key for proving their case to the IVD. Additionally, these socioeconomic indicators would be the basis for establishing mechanisms of non-recurrence—positive discrimination in favor of marginalized regions—which the interlocutor viewed as the primary goal of their organization’s advocacy.<sup>217</sup>

### ***3) Imbalance of power between civil society and the IVD***

#### *International influence: the preset role of the truth commission*

Finally, the significant imbalance of power between the NGOs and the IVD constrained the NGOs’ discursive interventions. As with the law’s ambiguity and the need to procure data, international precedent also influenced this imbalance. Process oversight by independent governmental commissions has been a mainstay of transitional justice since the early 1990s, when the governments of Chile, El Salvador, and South Africa organized truth and reconciliation commissions to lead their respective transitional justice processes.<sup>218</sup> More recently, the Kenyan government empowered the TJRC with a mandate similar to that of Tunisia’s IVD, i.e., the power to investigate violations, organize public truth-telling and reconciliation, and recommend prosecutions and reforms to relevant government agencies.<sup>219</sup>

With this, as with previous truth and reconciliation commissions, it is the IVD’s report, and its final recommendations, that matter, an imbalance of which interlocutors are acutely aware. In a certain sense, the interlocutors acknowledge that their efforts to clarify the law’s

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<sup>216</sup> Ibid.

<sup>217</sup> Interview in Tunis on March 13, 2017.

<sup>218</sup> Arthur, “How ‘Transitions’ Reshaped Human Rights,” fn. 25.

<sup>219</sup> Truth, Justice and Reconciliation Commission, Kenya, “Report of the Truth, Justice and Reconciliation Commission,” Volume I, May 2013, 52-56. For an enumeration of similar duties for Tunisia’s IVD, see *Qanoun Asasi ‘Adad 53*, Articles 39-43.

ambiguity and gather just the right forms of data and evidence could be for naught. As one iNGO interlocutor stated:

There's what the law says, which is ultimately all that really counts, and then there's how that's been interpreted by civil society, who've been trying to submit data to the process to address that. And the second kind of doesn't matter, because it's what the IVD thinks that matters, not what civil society thinks.<sup>220</sup>

An interlocutor from a different organization gave a similar argument, stating that, despite the intensive field work in which they are engaged, it is ultimately the IVD that has “access to the files that we don't have access to. So the goal from them is to put everything together.”<sup>221</sup>

Though the international precedent set by previous truth and reconciliation commissions would seemingly disempower the NGOs' discursive interventions, the pressures under which the IVD operates makes them relevant, if not outright necessary, to the process. In characterizing their organization's quantitative and qualitative measures of regional systematic marginalization and exclusion, one interlocutor stated:

What I can tell you is that the IVD is asking for this kind of research because they really need...I think you really need to meet them, and you will understand a lot, and a lot of problems in our life [laughter]. They have a million things to handle, and the mandate [covers] sixty years. It's all the history of modern Tunisia to deal with. They're a bit disorganized, they're a bit lost on certain subjects, and especially on this.<sup>222</sup>

IVD commissioner Ouertani acknowledged the importance of NGOs to the commission's ongoing work, stating, “[w]e depend on our partnership with civil society in all of our work, and we listen to their recommendations.”<sup>223</sup>

At least at the level of commissioner, Ouertani did not give the impression of an individual “lost” on the subject of “systematic marginalization and exclusion”; on the contrary, though her work focused on reparations, she displayed a familiarity with the challenges to the

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<sup>220</sup> Interview in Washington, DC on March 9, 2017.

<sup>221</sup> Interview in Tunis on March 17, 2017.

<sup>222</sup> Ibid.

<sup>223</sup> Interview with IVD commissioner Hayet Ouertani, Tunis, March 17, 2017.

concept's articulation. To her, marginalization and exclusion could not be understood simply as a socioeconomic matter, but that it also must be conceived holistically, encompassing environmental and cultural rights. She was open about her approach to evidence, noting that, while she preferred victim region dossiers that built their cases upon "empirical indicators," she recognized that a lack of this evidence does not "negate" a case; comparing it to an individual case of torture, she noted that a paper-trail is rarely present, but the victim still bears "scars." She was more circumspect on whether or not the IVD would have to prove "intent" on the government's part to realize claims of "systematic" marginalization and exclusion. She stated that the "systematic" qualifier allowed the IVD to focus on claims relevant to the transitional justice process; studying only "marginalization and exclusion" would enter the IVD into a critique of the state's development policies as a whole, which she did not see as part of the commission's mandate.<sup>224</sup>

Aware as she was of the various process constraints shaping the NGOs' approaches to articulating "systematic marginalization and exclusion," one could imagine the IVD maintaining a productive dialogue with NGOs on how best to navigate the law's ambiguity and provide proper evidence. As with attempts to delineate region, multiple organizations cited a lack of feedback from the IVD as complicating their ability to address these subjects. One interlocutor stated that they had received a preliminary response from the IVD to the effect that their methodology was sound; lack of further response, however, is pushing the organization to conduct more intensive field work in multiple areas of the country, further research which, in the absence of IVD feedback, would help them better differentiate between which forms of marginalization and exclusion were "systematic."<sup>225</sup> An interlocutor from a different

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<sup>224</sup> Ibid.

<sup>225</sup> Interview in Tunis on March 13, 2017.

organization repeatedly criticized the IVD's inconsistent communication, stating that NGOs should not have to struggle with basic definitional questions.<sup>226</sup>

In an ideal setting, greater definitional guidelines from the IVD could help NGOs navigate the law's ambiguity and evidential quandaries. Practically, however, the unequal relationship between the commission and civil society, a staple of previous transitional justice processes, when combined with a lack of communication between the sides, produces a contradictory environment in which the NGOs' discursive interventions around "systematic marginalization and exclusion" are both necessary and, ultimately, disposable.

### **C. Prospects for success**

Within the constraints identified above, the NGOs promulgated definitions of "region" and "systematic marginalization and exclusion" not only as framing devices for their reporting on social, economic, and political inequalities, but also as the first step of an advocacy process that may alleviate the conditions of their subject communities. Despite frustrations and ambiguities, NGOs engaged in this definition-making work in the hopes that the government would make amends for decades of regional marginalization. Through review of victim region dossiers and conversations with NGO interlocutors, three forms of address emerged as ultimate end goals of NGO advocacy: 1) recognition of marginalized regions as such; 2) non-recurrence; and 3) reparations. As a whole, NGO interlocutors favored recognition and viewed themselves as constructing a collective memory of regional marginalization. Points of divergence arose, however, concerning whether straightforward "non-recurrence" is preferable to "reparations." Further conversation revealed, however, that the two largely amounted to differing descriptors of the same processes: institutional reforms that would advance "positive discrimination" towards

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<sup>226</sup> Interview in Tunis on March 17, 2017.

regions and help devolve some power to the municipality, processes within Tunisia's overall transition that have seen only halting progress to date.

### *1) Recognition of marginalized and excluded regions*

The first goal NGOs seek from the transitional justice process is recognition of all marginalized and excluded areas as such, coupled with the demand that the Tunisian state acknowledge its responsibility for the marginalization of victim regions.<sup>227</sup> The dossiers themselves facilitated this recognition, as several NGOs identified their filings as contributing to the preservation of collective memory.<sup>228</sup> As for recognition from the government, the Barometer report states:

The state must formally recognize its role and responsibility in the history of the marginalization of these zones. This recognition should adopt a form and be on terms determined by the affected communities, through extensive consultations.<sup>229</sup>

One NGO interlocutor identified the IVD's successful truth-telling concerning regional marginalization as an important start, a way of getting the state's responsibility on record as a means of encouraging the government to pursue further ameliorative policies.<sup>230</sup>

That the government would have to commit to much more beyond recognition, however, was never contested by the NGOs. The same interlocutor stated, "you need a whole policy apparatus and a whole approach" to curtailing regional marginalization.<sup>231</sup> As the Barometer report states, "symbolic recognition, however, only actually make [*sic*] sense if it is accompanied by other concrete measures of reparation to have a genuinely positive impact on the lives of these people."<sup>232</sup>

### *2) Non-recurrence and its potential mechanisms*

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<sup>227</sup> "Request to Declare," ASF and FTDES, 5-6; interview in Tunis on March 15, 2017.

<sup>228</sup> Bileidi et. al., 4; Mabrouk and Thaweeb, 5; "Request to Declare," ASF and FTDES, 6.

<sup>229</sup> Andrieu et. al., "The victim zone," 14.

<sup>230</sup> Interview in Washington, DC on March 9, 2017.

<sup>231</sup> Ibid.

<sup>232</sup> Andrieu et. al., "The victim zone," 55.

For all NGOs, recognition would at least spur non-recurrence.<sup>233</sup> NGOs identified two mechanisms for this non-recurrence as being embedded in the overall transitional process, but subject to severe political limitations. For one NGO, this non-recurrence would be primarily enforced through “positive discrimination,” which can be defined as giving preference in the allocation of public and private to marginalized areas.<sup>234</sup> Positive discrimination (*al-tamyiz al-ijabi*) is mandated in Article 12 of Tunisia’s 2014 constitution as a means of establishing social justice sustainable development, and balance between regions.<sup>235</sup> NGOs, however, have yet to see the government concretely enforce this constitutional promise.<sup>236</sup>

A second possible mechanism of non-recurrence, according to multiple interlocutors, would be the enabling of local and participatory democracy.<sup>237</sup> Decentralization of power in Tunisia via municipal elections and governance is a major plank of the transitional process that has been delayed on several occasions.<sup>238</sup> Currently, municipal elections are slated for December 2017.<sup>239</sup> When asked, both NGO interlocutors and the IVD’s Hayet Ouertani favored some form of devolution but expressed acute awareness of its challenges. The NGOs simply did not trust government functions to devolve fairly. As one Tunis-based interlocutor stated:

I’m not sure that [decentralization] will happen, when we go to municipalities, 200 or 300 municipalities, who would be responsible for this?...Maybe they will talk about local fiscal responsibility, and this type of thing, but it will be top-down, not the very bottom-up approach [that we need]...I’m already pessimistic on the bigger picture, for the reform of the Ministry of Interior, for the reform of the laws, the judiciary, the role of media, education, all of this, let alone when it comes to very local levels.<sup>240</sup>

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<sup>233</sup> Bileidi et. al., 12; Mabrouk and Thaweeb, 12; “Request to Declare,” 38.

<sup>234</sup> Interview in Tunis on March 13, 2017.

<sup>235</sup> *Destour al-Jumhuriya al-Tunisia*, adopted January 26, 2014, *Al-Bawsala*, [http://majles.marsad.tn/uploads/documents/TnConstit\\_final\\_1.pdf](http://majles.marsad.tn/uploads/documents/TnConstit_final_1.pdf).

<sup>236</sup> Interview in Tunis on March 13, 2017.

<sup>237</sup> Ibid.

<sup>238</sup> See Section A for further details.

<sup>239</sup> “*Al-intikhabat al-baladiya bi-tunis 17 disember al-qadem*,” Al Jazeera, April 3, 2017, <http://bit.ly/2q9iMcE>.

<sup>240</sup> Ibid.

Another stated that municipal elections would only affect regional marginalization if the central government was willing to permit the municipalities some budgeting autonomy.<sup>241</sup> When asked about the potential to achieve decentralization in Tunisia, Ouertani stated, “Beginnings are always difficult,”<sup>242</sup> acknowledging the myriad obstacles in achieving decentralization and participatory governance but arguing that the will to achieve such institutional reform exists even if such reforms take a long time.

### *3) Reparations*

There was disagreement among the NGOs as to whether or not the performs they pursued counted as “reparation.” The Barometer report asserts that reparations are crucial to “restore moral order” and can help to create a process whereby citizens renegotiate their relationship with state institutions.<sup>243</sup> Reparations not only bring immediate economic benefit to victim regions, but they can act as the means for a longer-term goal, which is restoring citizen trust in state institutions.<sup>244</sup> This view, however was not universal. As an interlocutor from one Tunis-based organization stated, “when we present a victim region dossier, the goal is not reparations for all residents of [the region], or collective compensation,” but, they continued, non-recurrence.<sup>245</sup>

Ultimately, this distinction between “non-recurrence” and “reparations” proved largely semantic. Though one organization squarely viewed the constitution’s “positive discrimination” article as a mechanism of non-recurrence, others viewed its implementation as a form of reparation, as in the Ain Draham dossier.<sup>246</sup> Averting that institutional reforms were a form of reparation, an iNGO interlocutor stated that, beyond any immediate action by the IVD, the real goal is “to go to the ministries, to go through the decentralization process, to push institutional

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<sup>241</sup> Interview in Tunis on March 17, 2017.

<sup>242</sup> Interview in Tunis, March 2017.

<sup>243</sup> Andrieu et. al., “The victim zone,” 11-12.

<sup>244</sup> Ibid.

<sup>245</sup> Interview in Tunis on March 13, 2017.

<sup>246</sup> Bileidi et. al., 28.

reform, to do...affirmative action with the victim regions.”<sup>247</sup> As an example, this iNGO interlocutor pointed to Morocco’s transitional justice process from 2004, after which the central government made greater efforts in direct investments to the northern hinterlands, with, according to the interlocutor, positive results.<sup>248</sup>

Realistically optimistic expectations for victim region advocacy can be summed up in the contribution of one Tunis-based interlocutor: “What is realistic to get? Some form of reparation; very, very mild forms of accountability. And I’m still hopeful that we will get meaningful and genuine institutional reform.”<sup>249</sup> Such reforms are beyond the NGOs, or even a politically disadvantaged IVD with a sunseting mandate, but rely, precariously, on the “political will” of politicians who can ultimately accept or reject the transitional justice process’s outcomes.<sup>250</sup>

## CONCLUSIONS

Instead of allowing NGOs to proactively shape the discourse of regional marginalization in Tunisia, the transitional justice law’s ambiguity, the challenges of procuring illustrative data and evidence, and the unequal relationship between civil society and the IVD ultimately constrained the NGOs’ discursive interventions around “victim region” and “systematic marginalization and exclusion.” These constraints, in turn, were informed by international factors (such as the dominant discourse of international human rights and transitional justice) and local factors (such as the social and political contexts shaping perceptions of marginalization and the capacities of the NGOs under review).

Defining “regions” was constrained by not only by an international process that sought exact definitions best matched by administrative regions, but also by a host of local

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<sup>247</sup> Interview in Tunis on March 17, 2017.

<sup>248</sup> Ibid.

<sup>249</sup> Interview in Tunis on March 14, 2017.

<sup>250</sup> Ibid.

organizational and political obstacles. NGOs weighted expediency when deciding upon how to present regions to the IVD. In some ways, NGOs reproduced certain aspects of regional marginalization, as the need to procure data and evidence steered them from regions most marginalized, untracked by government agencies and lacking a local civil society with which to partner. Intra-regional politics steered them from others. And the IVD's politicization reduced its capacity to provide NGOs with prompt feedback.

Regarding “systematic marginalization and exclusion,” the law’s ambiguity led NGOs to draw from an extensive international literature, and relevant transitional justice precedent, to define the concept’s component elements; iNGOs played a particular role in finalizing these definitions. Yet there were discernible tensions over the extent to which these abstract definitions could capture the interlocutors’ practical understandings of how systematic marginalization and exclusion manifested in Tunisian societies. Organizational dossiers did seem to capture the interlocutors’ holistic understanding of systematic marginalization and exclusion’s negative impacts, in addition to facilitating the description of a primary manifestation of marginalization—the government’s longstanding failure to direct investment to particular regions. On the other hand, the dossiers seemed to elide the political histories of marginalization, which may have been due to the desire of NGOs to remain nonpartisan, the inappropriateness of exploring political fault lines in a largely judicial process, and the ability to “prove” politically targeted regional marginalization.

This matter of “intent” complicated the NGOs’ ability to support claims of regional marginalization. Specifically, the notion of “intent” challenged methodological considerations in gathering and presenting evidence of “systematic marginalization and exclusion.” Some NGOs affirmed that the expansive socioeconomic indicators they had gathered were sufficient to prove

the “systematic” nature of marginalization in their subject region; others were less sure and attempted to supplement data with “perceptions” of marginalization culled from interviews with residents of underdeveloped regions.

One reason that this and other methodological quandaries could not be resolved at the time of writing is the imbalance of power between the IVD and the NGOs. Ultimately, the NGOs’ discursive definitions represent their informed guess as to what the IVD will and will not allow concerning victim region advocacy. Although one IVD commissioner demonstrated an extensive knowledge of the NGOs’ definitional challenges and general constraints on their advocacy, a lack of communication between the IVD and the NGOs on their discursive interventions has left NGOs in the dark on how to move forward with their victim region advocacy in a way that will maximize its effectiveness and its ability to garner governmental reforms.

In certain respects, the authors draw a cautiously optimistic account of Tunisia’s transitional justice process, at least with regards to the organization and commitment of its civil society. However, the contingency of the process's success on a fragile and polarized political environment exposes it to volatility, uncertainty, and most importantly leads citizens to doubt its ability to achieve its stated goals. As NGOs see a contentious political landscape - especially since the political crisis of 2013 with the assassination of two prominent politicians and the introduction of the economic amnesty bill – they are not optimistic about achieving reparations, positive discrimination or institutional reform anytime soon. Yet they continued to stress the importance of the legal and policy framework currently established through the “victim region” track in IVD. Civil society has hope that this process will set a significant precedent in recognizing regional inequality and bring it to the forefront of Tunisia’s ongoing transition.

NGO advocacy around victim regions, however, fails to resolve the question over whether or not transitional justice processes, and the international advocacy network that undergirds it, are wise to modify a legalistic mold focused on civil and political rights violations by making it more inclusive of the multiple and interlocking social and economic iniquities, spatially mediated, that comprise “systematic marginalization and exclusion.” At the very least, the process is helping marginalized regions gain recognition and, via NGOs, relate their conditions to the government and the international community. It remains to be seen, however, whether the transitional justice process can bring anything beyond this recognition. Inasmuch as they are broader institutional reforms dealing with patterns of public and private investments and expanding local democracy, forms of non-recurrence and/or reparations sought by the NGOs for regional marginalization may only be implemented long after the transitional process sunsets. This seemingly buttresses the claims of those who state that socioeconomic inequalities, while problematic, are beyond transitional justice’s purview. Furthermore, as the struggle over “intent” proves, victim region advocates still fall into the trap Roth identified, i.e., the seeming impossibility of proving a perpetrator-less crime. These criticisms will remain salient until a transitional justice process can successfully silence them.

Finally, while a cookie-cutter approach is inefficient due to the complexities of each national and regional context, Tunisia’s discursive and operational innovation of “victim region” does provide transferable lessons for other countries suffering from regional inequality. This includes countries within the region such as Libya, Yemen, Iraq, or Syria, who continue to suffer from deep regional inequalities and have considered various institutional reforms such as federalism and decentralization of power as possible mechanisms to rebuild their states. Indeed, Tunisia’s innovative approach to transitional justice, which incorporates socioeconomic rights

and potential collective rights, provides important lessons for the region and the world as a whole.

## **APPENDIX A: INTERVIEWS**

March 9, 2017: single author interview with NGO interlocutor over Skype from Washington, DC (English).

March 13, 2017: joint author interview with two NGO interlocutors in Tunis (English and Arabic).

March 15, 2017: joint author interview with one NGO interlocutor in Tunis (English).

March 17, 2017: joint author interview with two NGO interlocutors in Tunis (English); joint author interview with Hayat al-Wartani of the IVD, in addition to informal conversation with second IVD employee (Arabic, English).

March 18, 2017: joint author interview with three NGO interlocutors in Tunis (Arabic).

## **APPENDIX B: SEMI-STRUCTURED INTERVIEW QUESTIONS**

The following reproduces a draft of general questions constructed by the authors prior to the March 2017 interviews. The questions were adjusted to be more specific depending upon knowledge of the organization under review. As interviews proceeded in a semi-structured format, not all questions were asked, or were worded quite this way, in the course of interviews. In general, however, the authors stuck to the three-section format throughout each interview, making sure to ask questions addressing these larger, thematic elements of the study.

### *Section 1: organizational questions*

1. How is [your organization] structured?
2. How did you begin your work on the victim region dossiers?
3. How have you cooperated with other NGOs on advocacy for victim regions?
4. Have you received any funding or other programmatic support explicitly for your work on victim regions?

### *Section 2: discursive questions*

1. Could you describe “systematic marginalization and exclusion” for us, briefly and in your own words?
2. Do you need to prove intent on the government’s part to make a claim regarding a region’s systematic marginalization and exclusion?
3. What was the reasoning behind your organization’s defining the boundaries of “victim regions”?
4. What is the relationship between “systematic marginalization and exclusion” and economic, social, and cultural rights? Is the concept tied to socioeconomic rights, or is it broader and include other factors?
5. Does a “victim region,” or a “region” in general, have the rights of a collective entity in the same way that ethnolinguistic and religious groups have collective rights? Or does it cover more of a collection of individuals, each of whom have had their rights individually violated by suffering marginalization within a region?
6. Do you think that other communities undergoing political transitions could use the concepts of “victim region” and “systematic marginalization and exclusion” put forward by Tunisian civil society? Or are these issues more particular and local to Tunisia?
7. Transitional justice processes have been criticized as too “judicialized” and legalistic. Do you agree with these criticisms? Do you see your work as pushing transitional justice processes in a different direction?

### *Section 3: political questions*

1. What has your relationship with the IVD been like?
2. What are you realistically expecting from the IVD in terms of addressing victim regions?
3. Do you think that, if and when local municipal elections are organized, that local governance can address some of the issues of regional marginalization?

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