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## The Truth About Corruption

Reviewing the Tunisia Truth and Dignity Commission’s Report on Corruption Under Dictatorship

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### Finding Root Causes and Reporting the Truth

At the outset, Tunisia made it clear that it would not follow the early, narrowly focused and ultimately incomplete examples of transitional justice (TJ) in post-dictatorship Argentina and post-apartheid South Africa. The early transitional justice processes in those two countries only dealt with human rights violations involving physical integrity, such as torture, unlawful killings, and enforced disappearances; they ignored corruption and other economic crimes as well as violations of social and economic rights.<sup>1</sup> In contrast, in Tunisia’s 2013 Transitional Justice Law (hereafter “TJ Law”), corruption is dealt with explicitly through various TJ institutions and mandates.<sup>2</sup> The Truth and Dignity Commission (hereafter “TDC” or “commission”) that was established in the 2013 law was tasked with investigating corruption during the dictatorship, in addition to investigating human rights violations, recommending reparations, and proposing institutional reforms. The law also called for an arbitration process in which self-confessed perpetrators of human rights violations or corruption could come forward at the TDC, acknowledge their responsibility for violations or crimes, and ask the commission, through its Arbitration and Reconciliation Committee (hereafter “arbitration committee” or “committee”), to decide whether a case could be subject to a settlement between the perpetrator and the victim, which in most corruption cases is technically the state but in reality is the public.<sup>3</sup>

1 For comparative examples of transitional justice processes in post-authoritarian countries that addressed or ignored corruption, economic crimes, and the accountability of financial institutions, see Ruben Carranza, “Transitional Justice, Corruption, and Mutually Reinforcing Accountability: What the Global South Can Learn from the Philippines,” in *Economic Actors and the Limits of Transitional Justice: Truth and Justice for Business Complicity in Human Rights Violations*, eds. Leigh A. Payne, Laura Bernal-Bermúdez, and Gabriel Pereira (Oxford, UK: Oxford University Press, 2022), 236–264. The text is also available at <https://bit.ly/3V2Ada6>. On asset recovery efforts as a part of transitional justice, see Ruben Carranza, ICTJ, “Truth, Accountability, and Asset Recovery: How Transitional Justice Can Fight Corruption” (August 2020), [www.ictj.org/publication/truth-accountability-and-asset-recovery-how-transitional-justice-can-fight-corruption](http://www.ictj.org/publication/truth-accountability-and-asset-recovery-how-transitional-justice-can-fight-corruption). In that ICTJ publication (page 6), Michael Marchant, researcher at Open Secrets South Africa states: “South Africa’s original transitional justice process did not deal with corruption. The Truth and Reconciliation Commission [TRC] was remarkable, but it did not examine the underpinnings of the regime, particularly the role of its intelligence services and of large corporations in maintaining apartheid, and how these groups empowered the regime and allowed the regime to criminally extract money. The TRC process did not dismantle these corrupt and criminal networks, but since then there have been new opportunities to do so.”

2 Organic Law No. 53 of Tunisia on Establishing and Organizing Transitional Justice, December 24, 2013 (English translation by the UN Office of the High Commissioner for Human Rights). This report refers to the law as the Transitional Justice Law.

3 David Tolbert, “Tunisia’s ‘Reconciliation Bill’ Threatens Gains of the Revolution,” ICTJ, August 17, 2015, [www.ictj.org/news/tunisia-reconciliation-bill-danger-gains-revolution](http://www.ictj.org/news/tunisia-reconciliation-bill-danger-gains-revolution).

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**About the Authors**

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The law also created specialized criminal chambers (or SCCs) within Tunisia's existing court system. The SCCs have jurisdiction over criminalized human rights violations and criminalized acts of corruption. To finance reparations, the TJ Law created a Dignity Fund, to be funded in part with assets that were recovered from those who were implicated in corruption during the dictatorship or assets that were surrendered as a result of the TDC's arbitration process.

In various parts of its final report, the commission described what it regarded as some of the causes of large-scale corruption during the dictatorship.<sup>5</sup> One major source of corruption was the capture and abuse of the state's regulatory powers by the extended family of Zine El-Abidine Ben Ali, giving them control over the most profitable sectors of the economy, including natural resource extraction, tourism, banking, and real estate. The report cites some examples of the systematic abuse of power, nepotism, embezzlement, and other forms of corruption. It also refers to (but in many cases does not name) dictatorship officials who were involved in corruption and their complicit family members and business associates.

However, the report itself does not address what the commission later said was a primary cause of corruption under Ben Ali. This discussion appeared in a post-report memorandum that was issued in July 2019, sent on behalf of the commission by its chairperson to the World Bank and the International Monetary Fund (IMF).<sup>6</sup> In this memorandum, the commission pointed out that the economic and social policies that had been prescribed for Tunisia by the two international financial institutions had caused the marginalization of the country's poorest regions, led to massive unemployment and inequality, enabled the systematic corruption that was committed by Ben Ali, and triggered human rights violations targeting those who were protesting and raising these grievances.<sup>7</sup> As further discussed below, the commission's memorandum to the World Bank and the IMF demanded that the two international financial institutions provide reparations to Tunisia through an "acknowledgment of the facts and an apology," and through the payment of compensation to individual victims, to "polluted and marginalized" regions, and to the Tunisian state. One form of compensation, the commission suggested, could be the cancellation of Tunisia's debt to the two international financial institutions and to other multilateral lending institutions, on the premise that these debts are illegitimate debts that were taken on by the Ben Ali dictatorship. The commission also sent a separate memorandum to the government of France that sought reparations for the poverty and inequality among Tunisians caused by French colonization and the post-colonial control of some of Tunisia's natural resources.

By 2017, many civil society activists, such as the Manich Msamah ("I Will Not Forgive") movement, had distanced themselves from official transitional justice processes, but they continued to demand accountability for corruption, including holding international financial institutions responsible. In a 2017 statement, Manich Msamah "[warned] authorities [against] tarnishing the image of social protests in a pathetic attempt to disguise its failure to manage the crisis brought about by its pursuit of a highly unpopular economic model

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4 More information about ICTJ's work is available at [www.ictj.org/](http://www.ictj.org/).

5 Unless specifically stated otherwise, "final report" or "report" in this briefing paper refers to the TDC's final report that was submitted to the president of Tunisia on December 31, 2018.

6 Truth and Dignity Commission, "Memorandum on Reparation for the Victims of Gross Human Rights Violations and Violations of Economic and Social Rights for which the World Bank and the International Monetary Fund Are Partially Responsible" (July 22, 2019), [www.ivd.tn/wp-content/uploads/2019/07/Memo\\_BM\\_FMI-1.pdf](http://www.ivd.tn/wp-content/uploads/2019/07/Memo_BM_FMI-1.pdf)

7 Olfa Belhassine, "L'IVD réclame réparation à la France, au FMI et à la Banque Mondiale," JusticeInfo.net, September 3, 2019.

dictated by the International Monetary Fund.”<sup>8</sup> The commission’s 2019 memorandum was simply a way of catching up with this civil society view—a view that should have been expressed in the commission’s report, if not brought up even earlier through public hearings.

As Leila Riahi, a convenor of the Manich Msamah movement, put it: “Accountability for the ex-dictator’s corruption isn’t enough. Ben Ali is gone. The rest of the oligarchy and their economic policies remain. The system that enabled corruption in Tunisia cannot be dismantled without addressing the social and economic injustices that led to poverty and marginalization.”<sup>9</sup>

### The Inadequacy of the Final Report’s Corruption Findings

In its report, the commission acknowledged that it had received an overwhelming number of complaints involving corruption from both the public and state agencies but stated that it had very limited time to investigate them.<sup>10</sup> While the commission was able to carry out some of its corruption-related mandates under the TJ Law, such as conducting arbitration processes and holding a public hearing on corruption, it failed to complete others that are just as important, particularly the investigation of corruption cases for prosecution in the SCCs.

Not only did the commission know that truth-seeking about corruption was a fundamental part of its mandate, but it was given the power and the resources at the outset to carry this duty out. Being overwhelmed by the task neither explains nor excuses how the commission fell short in performing it. There were certainly internal problems throughout the commission’s existence, from infighting among the commissioners to accusations of high-handedness and undemocratic leadership. Outside the commission, remnants of the dictatorship, led by the late president Beji Caid Essebsi, made persistent efforts to undermine transitional justice. One of the most blatant efforts was Essebsi’s proposed “economic reconciliation” bill, which would have granted amnesty to key Ben Ali business cronies. When activists from Manich Msamah took to the streets to oppose the bill, Essebsi retreated.<sup>11</sup> All of these internal and external challenges unquestionably made the commission’s work difficult. But they do not explain some of the commission’s choices in the course of conducting its corruption-related truth-seeking activities; for example, it held only one public hearing on corruption (and none on marginalization). Nor do the challenges account for the perceived lack of transparency in how the commission dealt with self-admitted perpetrators of corruption in its arbitration and reconciliation process. Further, they do not explain why the commission did not incorporate the information that was in its later memorandum to the World Bank and the IMF in its final report.

Some of the same shortcomings characterize the commission’s final report. These flaws prompted the State Litigation Agency (SLA) and the Tunisian parliament’s Anti-Corruption and Good Governance Committee to accuse the commission of falsifying the final report’s

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8 Manich Msamah, “Declaration,” May 11, 2017. A hard copy is in ICTJ’s files.

9 Christopher Boland, “Rooting Out Corruption in Tunisia: A Youth Leader’s Perspective,” ICTJ, February 21, 2020, [www.ictj.org/news/rooting-out-corruption-tunisia-youth-leader%E2%80%99s-perspective](http://www.ictj.org/news/rooting-out-corruption-tunisia-youth-leader%E2%80%99s-perspective).

10 The commission received 5,696 complaints pertaining to corruption: 3,226 complaints filed by individuals, 299 transferred by the National Anti-Corruption Commission (INLUCC), 1,486 inherited from the 2011 ad hoc commission on Ben Ali-era corruption, and 685 from state institutions represented by the State Litigation Agency (SLA). ICTJ obtained these numbers from TDC, INLUCC, and SLA sources.

11 Simon Speakman Cordall, “Amnesty of the Corrupt’: Tunisia’s Move to Heal Old Wounds Branded a Sham,” *The Guardian*, October 27, 2017.

corruption chapter, Chapter 3.<sup>12</sup> A former commissioner also filed four administrative cases against two members of the commission, one of whom was its chairperson, for delivering a different version of the report to the then president Essebsi than the final one that was published later in the official gazette. The commission originally intended to devote a chapter in its final report to how it examined corruption and what it found. But Chapter 3 of the final report neither completely covers the topic nor fully describes how the commission conducted its truth-seeking work on corruption. Instead, as we shall discuss below, the final report has references to corruption in its other chapters that are not discussed or cited in Chapter 3, and the chapter fails to provide the kind of detail it should have, especially about the commission's Arbitration and Reconciliation Committee decisions.

In the absence of those details, in order to analyze the chapter, we could not simply use the chapter itself. Among other sources, we relied on all other relevant work and documents that were posted online by the commission and on reports that were issued by judicial and oversight institutions, such as a 2019 monitoring report on the commission issued by the Court of Auditors, the 2011 report of the post-dictatorship Fact-Finding Committee on Bribery and Corruption, and the annual reports of the National Anti-Corruption Commission (INLUCC in French). We also studied existing commentary and analyses of corruption in Tunisia by civil society, as well as the commission's own memorandums to the government of France, the World Bank, and the IMF about their roles in enabling corruption and marginalization under Ben Ali—one of the commission's most direct efforts at naming names and imputing responsibility (but also an example of its incoherent approach as this memorandum came *after* its final report).

### Database-Building and Linking Corruption to Human Rights Violations

To carry out its truth-seeking mandate, the TJ Law gave the commission vast authority, including the authority to conduct both public and closed-door hearings about grievances, violations, and abuses. Article 40 of the TJ Law vested specific investigative and related powers on the commission, including the ability to access government archives; accept complaints; issue subpoenas; carry out inspections; conduct searches and seizures; require assistance from law enforcement agencies for the protection of witnesses and experts; and direct courts, administrative agencies, or any individual or entity to provide records or information in their possession.<sup>13</sup>

The TJ Law also gave the commission the resources to gather data and to verify and document the grievances, violations, and abuses it found for the purpose of establishing a database. Using that database, the commission could then determine the responsibilities of state institutions, government officials, organizations, and individuals who were implicated in the violations; clarify the causes of the grievances that were raised; and recommend ways to prevent their recurrence.<sup>14</sup> To gather data for its investigations, the commission relied by default on a closed-door statement-taking process, in which complainants provided information in support of their complaints. Initially, the commission compiled all the statements into a 90-page document stored as hard copies; eventually, it shifted to a digital database. This database was meant to enable the commission to analyze its data based on the numbers and types of victims, the country's regions, different periods of the past, and the perpetrators and institutions that were involved. However, this digital

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<sup>12</sup> Agency Tunis Afrique Press, "BFT Case: Hearing Session of Acting Minister of State Property in Camera at ARP," April 19, 2021, [www.tap.info.tn/en/Portal-Economy/13911093-bft-case-hearing](http://www.tap.info.tn/en/Portal-Economy/13911093-bft-case-hearing)

<sup>13</sup> Organic Law No. 53, Art. 40.

<sup>14</sup> *Ibid.*, Art. 39.

database broke and became inaccessible several times between 2015 and 2016, leading the TDC commissioners to use nondigital tools for gathering and analyzing data.<sup>15</sup>

The commission delegated investigative work to a Fact-Finding and Investigation Unit (FFIU). According to the FFIU's manual of procedure, an investigator must exhaust all means to arrive at the truth. When this has been accomplished, the investigator will create a draft resolution and present it to the commissioner heading the FFIU. The FFIU then submits the draft resolution to the entire commission, which may decide to refer the matter to the public prosecution office.<sup>16</sup>

Citing the TJ Law, the commission determined that it was required to investigate 32 types of violations, crimes, and abuses. To categorize human rights violations, the commission used four criteria: the nature of the right that was violated, the scale of the violation, the manner in which the violation was perpetrated, and the violation's impact on society. To categorize crimes, the commission considered whether a crime was part of a systematic and organized pattern and whether it was criminalized under international and domestic law.<sup>17</sup>

Using these typologies, the commission made a map and a timeline of human rights violations involving physical integrity. It identified and named 18 distinct periods between 1955 and 2013 in which massive and systematic human rights violations took place. These periods included the 1955–63 conflict between the progressive (and later assassinated) independence leader Salah Ben Youssef and the first president of Tunisia, Habib Bourguiba; the 1984 Bread Riots; and the 2008 Mining Basin protests. But while the commission outlined this information about human rights violations affecting physical integrity, it did not make a similar effort for all the other violations covered by its mandate, including corruption, election fraud, and marginalization. Instead, the commission merely *counted* 4,075 instances of corruption, 919 cases of election fraud, and 891 instances of marginalization.<sup>18</sup> It did not draw a timeline for any of these subjects. It also continually referred to different types of corruption as “financial corruption,” even when these could have been more specifically characterized as, for example, embezzlement, use of undue influence, bribery, or even the outright takeover of a business enterprise or state company. More importantly, from the perspective of determining how corruption and human rights violations intersected or overlapped, the commission did not attempt to link these instances of corruption to the map of physical human rights violations it made. The commission started out well in its fact-finding work and in building its database, but it could have done better. It could have more consistently named names, estimated ill-gotten assets at stake, and analyzed the overlap among corruption, marginalization, and the social and economic policies that drove Tunisians to revolt — but it did not.

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15 Court of Auditors, “Auditing Report of the Truth and Dignity Commission” (April 2019), 9–10.

16 Decree No. 2, “Governing the Manual of Procedures of the Investigation and Fact-Finding Committee of the Truth and Dignity Commission,” Jan. 29, 2016, Art. 40–42.

17 Truth and Dignity Commission, “The Final Comprehensive Report, Part 1: The Commission's Mandate” (December 2018), 75–77.

18 *Ibid.*, 52–62.

## Why “Risk-Based Auditing” Is Not the Most Relevant Tool

The commission said that it used a “risk-based auditing” approach in investigating corruption and in then referring corruption cases for prosecution.<sup>19</sup> This “risk-based” approach, it explained, consisted of assessing the “potential violation”; looking at “inculpatory evidence”; conducting a “cost-benefit” analysis for the affected state institution; and reconstructing the legal, financial, and administrative factors that might establish responsibility for the corruption.<sup>20</sup> However, the commission did not clarify why this approach would be relevant to corruption that had already been committed during the dictatorship. It seems that the commission relied on this approach because it was used by the Organization for Economic Cooperation and Development (OECD) in its recommendations involving corruption cases in Tunisia.<sup>21</sup> Many examples of this OECD-utilized approach, however, have been made in the context of preventing corruption, and not for assigning accountability for *past* corruption.<sup>22</sup> In other words, this risk-based auditing approach is not so much a method for truth-seeking about corruption that has already happened as it is a means of determining how corruption can be prevented. As such, the flaw of using this approach for dictatorship-era corruption is obvious: The dictatorship never intended to avoid corruption; instead, it sought to commit it systematically.

In any event, this approach does not appear to have been applied consistently by the commission. The “Carthage Cement” case involving Ben Ali’s brother-in-law Belhassen Trabelsi and businessman L’azhar Stta was the only attempt the commission made to deconstruct the violations that were committed in a corruption case. In all other cases, the commission came up with a standardized matrix that purports to show the risks of cor-

ruption, with numbers apparently representing the scale of those risks.<sup>23</sup> Some of the numbers represent the “likelihood” of corruption. Other numbers represent the “potential” for violations or these violations’ prospective “financial impact.” There is no explanation for why the scale is set up the way it is.

To its credit, the commission included an analysis of the economic and social impact of the instances of large-scale corruption it counted.<sup>24</sup> It described in detail the network of corruption during the dictatorship, indicating which perpetrators were involved and where they overlapped.<sup>25</sup>

These findings make the commission’s corruption database useful. In theory, at least, this information would have made it possible for the commission to use the findings in its arbitration process and in deciding which cases to prioritize for pros-

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19 Ibid., 110–113.

20 Truth and Dignity Commission, “The Final Comprehensive Report, Part 3: Financial Corruption and Embezzlement of Public Funds” (December 2018), 9.

21 OECD Public Governance Reviews, “Internal Control and Risk Management for Public Integrity in the Middle East and North Africa” (2017). See also OECD Integrity Review of Mexico, “Taking a Stronger Stance Against Corruption” (2017).

22 “In other OECD member and non-member countries, governments have introduced dedicated fraud and corruption risk-management frameworks in order to focus their efforts and develop tailored activities to effectively mitigate the different potential fraud and corruption schemes. Legislation, guidance, and new internal control standards increasingly emphasize the need for public managers and staff to take a risk-based approach to managing integrity threats, including fraud and corruption risks. Governments in the MENA [Middle East/ North Africa] region can similarly adopt a more strategic, risk-based approach to managing fraud and corruption risks and developing effective controls.” OECD Public Governance Reviews, “Internal Control.” Internal Control and Risk Management for Public Integrity in the Middle East and North Africa” (2017), 98.

23 Truth and Dignity Commission, “Final Comprehensive Report, Part 3,” 9–10.

24 Ibid., 10.

25 Ibid., 10.

ecution based on clusters of perpetrators.<sup>26</sup> As discussed below, it did not use the findings for either purpose.

### Public Hearings and the State's Participation as a Victim

The commission could have learned from the way the ad hoc 2011 National Fact-Finding Commission Investigating Bribery and Corruption during the Ben Ali era carried out its mandate and worked with the current INLUCC. That 2011 commission summoned ex-dictatorship officials who were implicated in corruption and used the threat of its authority to ensure their appearance.<sup>27</sup> While the Truth and Dignity Commission focused its corruption investigation on certain individuals, it did not compel them to appear before it. Instead, it referred their cases to the SCCs, which then struggled—and continues to struggle—with moving cases forward.

More importantly, the commission could have learned from the success of its own public truth-seeking hearings in Tunis and, to a lesser extent, from the consultations on reparations it held with victims.<sup>28</sup> Both activities involved and engaged more Tunisians than any other transitional justice activity, including SCC hearings or even the issuance of the final report.

The commission stated that it held 11,331 closed-door corruption-related hearings, which were really statement-taking events. However, the commission has not disclosed more information about those closed-door hearings. It is unclear, for example, if the SLA, which represents the state in legal matters involving the state's proprietary interests, was heard in these hearings or which state-owned corporations, institutions, witnesses, and alleged perpetrators took part in them.<sup>29</sup>

Undertaking investigations is not the only function of a truth commission. Truth-telling is an equally important role. The commission could have performed both roles better by holding more corruption-focused hearings, conducted in a more accessible way. Instead, out of 14 public hearings, the commission held only one public hearing on corruption.<sup>30</sup> This was the public hearing in which Ben Ali's nephew Imed Trabelsi testified about the extent of corruption in customs administration and public procurement during the dictatorship. To its credit, the commission linked the testimonies in this hearing to the criminal investigation it conducted on the Ben Ali and Trabelsi families' involvement in the untaxed importation of goods. But the report discusses these abuses in a generic way, simply reiterating what Trabelsi said and repeating facts that the public had already heard. The report does not identify the companies that were involved nor name the businesspeople and dictatorship-linked family members who were complicit in this example of corruption.<sup>31</sup>

### Naming, Shaming, and Reconciling with Perpetrators

The report's corruption chapter names names in some places but not others. This inconsistency can lead to questions about fairness, and how the commission decided which

<sup>26</sup> Ibid., 11–12.

<sup>27</sup> National Fact-Finding Commission Investigating Bribery and Corruption, "Report of the National Fact-Finding Commission Investigating Bribery and Corruption (2011)," 6–8

<sup>28</sup> Truth and Dignity Commission, "The Final Comprehensive Report, Executive Summary" (May 2019).

<sup>29</sup> Truth and Dignity Commission, "Final Comprehensive Report, Part 3," 7.

<sup>30</sup> Watania Replay, "Emad Trabelsi Gives His Testimony at the Public Hearing of the Truth and Dignity Commission," YouTube, May 19, 2017, <https://bit.ly/3Yre6Nf>

<sup>31</sup> Truth and Dignity Commission, "Final Comprehensive Report, Part 3," 191–198.

perpetrators to bring into arbitration and which perpetrators to name and prosecute. One particularly problematic example of this variation is the commission's treatment of Slim Chiboub, a son-in-law of Ben Ali. In its report, the commission examined a case involving Canadian-incorporated Voyageur Oil & Gas, a company that had failed to find any oil or gas from its license to explore in Tunisia's poor southern region.<sup>32</sup> Instead of having its license revoked, the commission pointed out that Chiboub acquired shares in the company and used his relationship with the dictator to get the license renewed.<sup>33</sup> Even as Chiboub was already being separately investigated by a quasi-judicial agency regulating state economic and financial transactions, the commission allowed him to take part in the arbitration process anyway, characterizing his case as merely involving "suspected corruption."<sup>34</sup>

The commission was also vague in describing corruption in the banking sector in its report. When it filed corruption cases at the specialized criminal chambers involving 13 different banks and cited violations of banking laws during the dictatorship, it simply referred to "unknown individuals" or at best to their positions, such as the "legal counsel of the bank," without ever mentioning their names.

This is exemplified in a case involving the Franco-Tunisian Bank (BFT in French), one of the 13 banks that was used to perpetrate economic crimes under the dictatorship. Since the bank itself is merely an entity, the commission could have named the individual BFT bankers who carried out the corrupt conduct, but it did not. Instead, it inexplicably described BFT's former executive director Abdel Majid Bouden as a "victim" of corruption.<sup>35</sup> This characterization has led to significant potential financial liability for Tunisia as a guarantor of BFT's debts.<sup>36</sup> It has also undermined the commission's credibility.

### How Corrupt Were Ben Ali and His Family?

When dictators rule for decades, the corruption they commit—from incurring onerous sovereign debt that they then steal to embezzling public funds that they hide abroad—can have an impact that lasts for generations. For this reason, it is important for a truth commission that is looking into corruption to offer an estimate of how much was stolen by a dictator. That estimate can guide the country's asset-recovery work, its anti-corruption bodies, and even its economic planning agencies. For example, in the Philippines, a commission that was created to recover the ill-gotten wealth of dictator Ferdinand Marcos estimated at the outset that his family stole up to \$10 billion during his 21-year dictatorship.<sup>37</sup> That estimate helped the commission determine which asset recovery cases to prioritize as "banner" cases.<sup>38</sup> It led to legislation characterizing and increasing the penalty for corruption involving more than \$1 million as "plunder."<sup>39</sup> Both activists and Philippines policymakers are aware of the links among the scale of Marcos corruption, the Philippines' crippling foreign debt and the country's periods of economic crises.<sup>40</sup>

32 For background on the Voyageur Oil & Gas and Slim Chiboub connection, see "Essebsi/Chiboub: Retour sur une affaire aux arcanes troublantes" ["Essebsi/Chiboub: A Look Back at a Troubling Arcane Affair"], *Nawaat.org*, November 19, 2014, <https://nawaat.org/2014/11/19/essebsichiboub-retour-sur-une-affaire-aux-arcanes-troublantes/>

33 Truth and Dignity Commission, "Final Comprehensive Report, Part 3," 100.

34 TDC Case No. 1/19592, Case No. 1/27102, Case No. 1/27057, Case No. 1/31775, Case No. 1/38767, and Case No. 1/38775. See the TDC's Arbitration Agreement No. 0101-019835.

35 Fondation Hironnelle, "Tunisia: The Disputed Assessment of the Truth Commission" (May 2019).

36 See *ABCI v. Tunisia*, Case No. ARB/04/12, *ABCI Investments Limited v. Republic of Tunisia*, International Centre for Settlement of Investment Disputes, <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/04/12>

37 James Rupert, "Manila Hopeful on Regaining Wealth," *The Washington Post*, April 3, 1986, Politics section.

38 "PCGG Sees Award of \$5B Marcos Assets," *Philippine Star*, August 2, 2002, <http://bit.ly/3lQyEi>

39 Bueza, M, "Plunder in the Philippines," *Rappler*, June 21, 2014, <https://bit.ly/3WBxvZG>

40 Diola, C., "Debt, Deprivation and the Spoils of Dictatorship," *Philippines Star*, September 2017, <https://bit.ly/3qYlj8u>

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Through its public hearings, a truth commission can also provide a “big picture” of how a former dictator and his family could have amassed so much wealth. For example, based on a series of public hearings and corresponding investigations, the Liberia truth commission devoted an entire 54-page volume of its final report to describe, by economic sector or business activity, the ways that Liberia’s former rulers and warlords profited from corruption and pillage.<sup>41</sup>

The Tunisia TDC made a general reference in its report to its numerous attempts to gather information and what it described as the uncooperative attitude of the institutions that were involved in the recovery of stolen assets, even accusing some of these institutions of jeopardizing the commission’s work. The commission used but did not properly cite the World Bank’s 2014 report on corruption under Ben Ali.<sup>42</sup> The TDC’s final report does not provide an estimate calculated by the commission itself of how much was lost to corruption under Ben Ali.

In 2011, the post–Ben Ali transitional government created a Confiscation Commission that could freeze and confiscate suspected ill-gotten assets of Ben Ali and his cronies.<sup>43</sup> The Confiscation Commission was empowered by this

decree to freeze and, after an investigation, confiscate the suspected ill-gotten assets of 112 people, including Ben Ali, his relatives, and several cronies, named in an annex to the decree. The Confiscation Commission reported that the assets that were seized included “over 400 enterprises (some of them abroad), 550 properties, 48 boats and yachts, 40 stock portfolios, and 367 bank accounts.”<sup>44</sup> Assessing what was confiscated, the World Bank estimated that “the total value of these assets combined is approximately US\$13 billion, or more than one quarter of Tunisian GDP in 2011 (which would correspond to a one-off transfer per person of approximately US\$1,230 per person in Tunisia, about one-quarter of [the] average income).”<sup>45</sup>

The timing of these measures is important, as they were taken right after a revolution that overthrew a powerful 23-year dictatorship. As Richard Falk, former UN Special Rapporteur on the Human Rights of Palestinians, warned just days after Ben Ali was ousted: “We cannot know how determined and effective will be [Ben Ali’s] internal and external counter-revolutionary tactics. We do know from other situations that elites rarely voluntarily relinquish class privileges of wealth, status, and influence, and that Tunisian elites have allies in the region and beyond.”<sup>46</sup>

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When dictators rule for decades, the corruption they commit—from incurring onerous sovereign debt that they then steal to embezzling public funds that they hide abroad—can have an impact that lasts for generations.

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41 Republic of Liberia, Truth and Reconciliation Commission, “Volume 3: Economic Crimes and the Conflict, Exploitation and Abuse” (2009).

42 Bob Rijkers, Antonio Nucifora, and Caroline Freund, World Bank, “All in the Family, State Capture in Tunisia: Question and Answers” (April 3, 2014).

43 Decree No. 2011-13 of March 14, 2011, pertaining to the Confiscation of Assets and Real Estate Property (referring to the 122 individuals who were subjected to the freeze and confiscation action). The text is available at <https://bit.ly/3PsWmoo>

44 World Bank, “The Unfinished Revolution” (May 2014), 111.

45 Ibid.

46 Richard Falk, “Ben Ali Was Model US Client,” *Al Jazeera*, January 14, 2011.

The TDC could have built upon the Confiscation Commission's estimates and used these figures in its report. But it did not. The TDC judged the confiscation process to be "cruel," dismissed the reliance of the Confiscation Commission on prima facie evidence of corruption as weak, and cited an administrative court ruling that came much later in concluding that these confiscations by the state violated property rights without due process. In reaching that conclusion, the TDC ignored the fact that Ben Ali's cronies, including his own son-in-law, were able to challenge the confiscations in court.<sup>47</sup> Yet, the TDC's own arbitration negotiations with Ben Ali cronies were arguably just as arbitrary and non-transparent, if not more so. The commission claimed that its arbitration decisions were based on Financial Action Task Force and European Union "standards."<sup>48</sup> But in returning assets to Ben Ali cronies and concluding that these returned assets were not ill-gotten, the commission did not explain how it applied these standards, nor has it published its arbitration decisions.

### **How Many Corruption Cases Were Investigated, and What Happened to Them?**

On March 26, 2019, the TDC made available online what would become the first version of its final report. This version did not mention the corruption cases the commission investigated and later referred to the specialized criminal chambers. Later, the commission uploaded an updated version of the report on its website, with a table of all the cases that had been referred to the SCCs. In total, 64 corruption cases were referred by the commission to the SCCs, three of which were cases that the commission had finished investigating and could file its own charges on in court.<sup>49</sup> The other 61 cases were referred to the SCCs for further investigation; in 12 of these cases, the commission identified the state as the victim, and in 49 cases, individuals had come forward as victims of corruption.<sup>50</sup>

The number of cases eventually filed by the commission with the SCCs becomes a significant basis for assessing the commission's effectiveness when the number is compared with the 4,075 corruption complaints registered with the commission's FFIU. On top of the 4,075 complaints the commission received from the public and state agencies, it also received 685 cases transferred by the SLA and 299 cases transferred by the INLUCC.<sup>51</sup> In addition, the commission inherited 1,486 dictatorship-related corruption cases from the 2011 National Fact-Finding Commission Investigating Bribery and Corruption.<sup>52</sup> Besides corruption, the FFIU also registered nonphysical integrity violations and economic crimes that were within the TDC's mandate to investigate. These crimes included 47,772 violations involving economic and social rights, 891 violations involving the systematic marginalization of regions and communities, 3,100 violations of the right to property, and 919 election fraud violations.<sup>53</sup>

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47 Case No. 134914, Administrative Tribunal, On the Repeal of the Confiscation Ordinance Challenged by Claimant Slim Zarrouk (July 5, 2017).

48 The commission mentions that its arbitral awards were based on the principles and recommendations that were adopted by the Financial Action Task Force and the European Union. These principles require the confiscation process to go through an investigation stage in order to determine, monitor, and assess the properties and enforce the freeze order provisionally to protect the properties, even if they were illicitly acquired. Moreover, the right to defense and confrontation is upheld within the framework of a fair trial (the European Union Guidelines 42/2014 on the freeze and confiscation of the tools and proceeds of crimes). Truth and Dignity Commission, arbitration files in reply to the statements made by the general commissioner in charge of state litigation, April 9, 2019, 9–10.

49 Indictment within the framework of the Tunis Air file (1996–2011) involving 15 individuals; indictment against 20 individuals including Ben Ali, members of his family, and individuals close to him; indictment involving corruption in the banking sector against 31 individuals.

50 Truth and Dignity Commission, "Final Comprehensive Report, Part 1," 110–113.

51 Ibid., 30.

52 Truth and Dignity Commission, "Final Comprehensive Report, Part 3," 7.

53 Truth and Dignity Commission, "Final Comprehensive Report, Part 1," 58–60.

The number of criminal cases referred to the SCCs is one useful factor in determining the commission's impact. But, it should not be the only test of whether the commission fulfilled its mandate to investigate corruption. The commission's mandate includes both identifying those who were responsible for large-scale corruption during the dictatorship *and* helping to dismantle the network that they established. The commission's final report does describe how the Ben Ali family amassed ill-gotten wealth and how the leadership of Ben Ali's political party benefited from their proximity to him.<sup>54</sup> Still, even the commission itself recognized that its failure to investigate and file more corruption criminal cases was a major failure. According to a 2019 Court of Auditors report, the existing technical and logistical incapacity made the commission's investigative mission impossible.<sup>55</sup> The commission also failed to demonstrate the criteria and standards on which it based its investigative work and referral of corruption cases.<sup>56</sup>

But the larger blame for the commission's failure to complete the investigation of more cases should be laid on the government of the late president Essebsi. After the Ben Ali-linked Essebsi was elected president in 2015, he sought to enact a law granting amnesty to Ben Ali family members, cronies, and political allies who were implicated in corruption and marketed the law as "reconciliation." Anti-corruption activists, human rights advocates, and civil society groups more generally challenged Essebsi's so-called reconciliation bill, forcing him to narrow its scope only to former civil servants under Ben Ali.<sup>57</sup> The commission expressed opposition to the reconciliation bill, yet it effectively granted amnesty to Slim Chiboub, one of the most powerful and wealthy Ben Ali relatives through a settlement using its arbitration powers, as discussed below.<sup>58</sup>

Under Essebsi, Tunisia's political and judicial authorities delayed the establishment of the SCCs. Nevertheless, the commission could have helped overcome these delays had it finished more corruption investigations for prosecution. Doing so would also have been a practical way of sidestepping the gap in the 2013 Transitional Justice Law in which the function of completing the investigation of corruption cases that were transferred by the commission to the SCCs was not explicitly assigned.

By promising to provide amnesty for corrupt Ben Ali cronies and officials and in pushing for his economic reconciliation bill for two years, Essebsi created a political and administrative environment that was hostile to accountability. This atmosphere weakened the commission's ability to access information and obtain cooperation in investigations and filing cases. Renewed proposals for another "reconciliation" law from the government will continue to undermine efforts to investigate and prosecute Ben Ali-era corruption.

### **The Problems and Flawed Outcomes of the Arbitration Process**

Even before it was implemented, the TJ Law provision calling for an arbitration process alongside the truth-seeking and investigative work of the commission already had its critics as well as its supporters. One view was that the commission "should be spared any other purpose that would distract it from [investigating human rights violations], such as the proposed idea to attach it to an 'arbitration committee' charged with resolving

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54 Truth and Dignity Commission, "The Final Comprehensive Report, Part 2: Dismantlement of the Systems of Dictatorship" (December 2018), 31–35.

55 Court of Auditors, "Auditing Report of the Truth and Dignity Commission" (April 2019), 3.

56 Truth and Dignity Commission, "Final Comprehensive Report, Part 1," 110–113.

57 ICTJ, "Tunisian Activists Oppose Law That Would Grant Amnesty to Corruption" (July 22, 2016).

58 Frédéric Bobinet Mohamed Haddad, "Sihem Ben Sedrine: Il faut réécrire l'histoire de la Tunisie," *Le Monde Afrique*, June 21, 2017.

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Despite being a matter of public interest and consistent with the idea of being part of a truth commission's work, the committee's arbitration decisions on corruption were kept confidential and never published.

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corruption cases out of court.”<sup>59</sup> Another view, advanced by the TDC commissioner who oversaw the arbitration process, was more positive: “The Commission recovered 745 million Tunisian dinars [220 million euros] for State coffers thanks to the arbitration and conciliation mechanism. We could have done better if the State had not obstructed the work of this mechanism.”<sup>60</sup>

It is clear from its final report that the commission understood arbitration in the TJ Law as a process that was meant to bring disputing parties closer, similar to arbitration in commercial and other disputes, rather than as an effort that was designed to avoid litigation without sacrificing accountability for corruption. This misunderstanding of the process and the nontransparent manner in which the TDC's arbitration committee carried out its work not only contradicted the rest of the commission's truth-seeking role but undermined the purpose of making arbitration a tool for accountability. One TDC commissioner pointed this out in public: TDC Commissioner Ibtihel, who was vice chairperson of the arbitration committee, resigned from that position over what she said was “corruption and conflict-of-interest” within the arbitration committee.<sup>61</sup>

The design of the arbitration process was originally flawed in terms of oversight. The TJ Law made the arbitration committee's decisions final and non-appealable and called for the committee to specify in detail the facts, corrupt conduct, and laws that were applicable in its decisions. If self-admitted perpetrators of corruption sought arbitration, they were obligated to submit a detailed statement of facts and the amounts of ill-gotten wealth they obtained and accompany it with an apology.<sup>62</sup> These stipulations were largely ignored by the committee. The law also required the consent of the SLA to conclude an arbitration agreement. The TDC and the SLA ended up disagreeing in this regard because the SLA indicated that in major arbitration decisions, the committee ignored its own rules and the TJ Law.

### **Lack of Transparency in the Arbitration Process and Its Consequences**

By 2016, the arbitration committee had received 5,579 arbitration requests, including 1,897 requests involving corruption and 685 corruption-related arbitration cases filed by the SLA. In the end, the committee was able to examine just 12 percent of the arbitration requests (involving both human rights violations and corruption). Out of the cases that were examined, only eight arbitration cases were decided, including two corruption-related cases, representing a mere 0.3 percent of all the cases that were examined.

Despite being a matter of public interest and consistent with the idea of being part of a truth commission's work, the committee's arbitration decisions on corruption were kept confidential and never published. It was only through the compulsory power of the government's Court of Auditors that some details of the committee's decisions became

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59 ICTJ, “As Tunisia Finalizes Transitional Justice Law, ICTJ Advocates for Victims' Rights and Participation” (July 8, 2013), [www.ictj.org/news/tunisia-finalizes-transitional-justice-law](http://www.ictj.org/news/tunisia-finalizes-transitional-justice-law)

60 Olfa Belhassine, “Tunisia: Government Accused of Missing Truth Commission Opportunities,” Justiceinfo.net, January 18, 2019.

61 Sam Kimball, “Rough Justice,” *Al-Monitor*, December 11, 2019.

62 No. 3 of the Resolution of the Council of the Truth and Dignity Commission Pertaining to the Adoption of the Manual of the Procedures of Arbitration and Reconciliation Within the Arbitration and Reconciliation Committee, July 13, 2015, Art. 17.

public.<sup>63</sup> The 2019 Court of Auditors report revealed many shortcomings and disturbing ethical issues in the arbitration committee's work. The report notes that there was a lack of supporting documentation in many corruption-related arbitration requests that were acted upon by the committee. The committee did not have approved rules about how it would conduct its arbitration investigations and what it would consider criminally corrupt conduct until just months before it decided the only two corruption arbitration decisions it completed.<sup>64</sup> The most disturbing audit finding was the conflict of interest of TDC commissioner Khaled Krichi, who chaired the arbitration committee while his law firm represented Lazhar Sta, a Tunisian businessman and managing director of Carthage Cement.<sup>65</sup> This conflict was never resolved by the TDC.<sup>66</sup>

In the end, the two corruption arbitration decisions the committee did reach were challenged in court by the SLA for various breaches of the TJ Law and for denying the state the right to due process. The 2018 Imed Trabelsi arbitration decision was set aside by a court in Tunis.<sup>67</sup> The second arbitration decision, for the benefit of Slim Chiboub, is still pending but has been challenged by the SLA because Chiboub failed to disclose the extent of his economic crimes and ill-gotten wealth.<sup>68</sup> These outcomes thus call into question the commission's claim of having recovered over 745 million Tunisian dinars.<sup>69</sup>

### Linking Corruption and Marginalization

In the report's corruption chapter, the commission dedicated two pages to how corruption contributed to widening regional disparities and to the marginalization of Tunisia's poorest regions. This exploration is insufficiently elaborated upon and solely relies on general statements about corruption being an impediment to sound economic development, without identifying links among corruption, social exclusion, and systematic marginalization. To be fair, this section does offer a comparison of different regions using poverty and social welfare indices. However, it simply compares the greater Tunis area with the central-western region of the country, overlooking the entire northwestern, central, and southern regions that have clearly been marginalized the most.

The commission could have vastly improved this discussion about how corruption contributed to marginalization and the overall coherence of the report had it linked this chapter on corruption to the fourth part of the commission's final report. That fourth

63 The Court of Auditors is Tunisia's supreme institution of control of public finances. It oversees the proper management of public funds in accordance with the principles of legality, efficiency, and transparency. It evaluates the accounting methods and sanctions errors relating thereto. It helps the legislative and executive powers to control the execution of finance laws and the closure of the budget. For more, see the court's website: [http://www.courdescomptes.nat.tn/Ar/%D8%A7%D9%84%D8%A5%D8%B3%D8%AA%D9%82%D8%A8%D8%A7%D9%84\\_46\\_6](http://www.courdescomptes.nat.tn/Ar/%D8%A7%D9%84%D8%A5%D8%B3%D8%AA%D9%82%D8%A8%D8%A7%D9%84_46_6)

64 Decree No. 1 of the year 2014, dated on 22 November 2014, governing the bylaws of the Truth and Dignity Commission as amended by Resolution Number 9, dated on September 6, 2016.

65 Nissim Gasteli and Monia Ben Hamadi, "Pandora Papers: Belhassen Trabelsi's Former Associate, Lazhar Sta—From Tax Havens to Prison," *Inkyfada*, October 28, 2021, <https://inkyfada.com/en/2021/10/28/pandora-papers-lazhar-sta-tax-havens-tunisia/>

66 Court of Auditors, "Auditing Report," 4.

67 Case No. 94474, First Instance Tribunal of Tunis, civil judgment (March 15, 2021).

68 Article 45.3 of the TJ Law states: "Litigation or punishment shall be resumed if it was proven that the perpetrator of a violation has deliberately hidden the truth, or deliberately did not report all what he/she has taken unlawfully."

69 The commission broke down the amount it claimed to have recovered as follows: 1,812,000,000d redress for the state from Moncef Mzabi (File 025132-0101), 307,000,000,000d from Slim Chiboub (File 019835-0101), 33,794,254,216d from Slim Zarrouk (File 025132-0101), 50,070,978,088d from Mohamed Touil (File 026733-0101), 1,763,889,915d from Lobna Ammous (File 026755-0101), 235,408,592,414d from Imed Trabelsi (File 004845-0101), 106,447,980d from Sassi Bou Thouri (File 032063-0101), and 115,094,682,000d from Lazhar Satta (File 0226614-0101).

part examines the development paradigm that was pursued after independence by both the Bourguiba and Ben Ali governments and explains who pushed for adopting that paradigm and how it led to marginalization, unemployment, and inequality within and among different regions.

The commission missed the opportunity to use the field of political economy in examining the links among corruption, the development paradigm followed by Bourguiba and Ben Ali, and the marginalization of the country's poorest regions. One study of the Arab Spring revolutions from the perspective of political economy observes that "in the process of incrementally changing the developmental project in the Arab world towards a neoliberal one, Arab governments and Western funders advocated austerity measures, decreasing tariffs and opening markets. However, they were not as fervent about advancing good governance, the rule of law and a real democratization process. [This led to] neoliberal reform accompanied by corruption and cronyism, high unemployment levels and rising social inequalities, [and] increasing incidences of social protests."<sup>70</sup>

In fairness, the commission's chairperson did try to compensate by issuing the two 2019 post-final report memorandums, one to the World Bank and the IMF and one to the French state.<sup>71</sup> These memorandums are the commission's attempt to tie together its findings about corruption and marginalization with the preexisting analysis it relied on. This analysis could have been explicated within the report or even earlier, during public hearings at which the commission could have invited country representatives of the World Bank and the IMF as well as those who could speak to French government interests. But the commission did not. It lost a singular opportunity to connect the various threads of its mandate—from investigating corruption to identifying the root causes of marginalization—and missed the chance to affect the development paradigms that were pushed by the World Bank, the IMF, and, under colonialism, France.

The last section of the corruption chapter is titled "Dismantling the Corrupt System" and begins with a recapitulation of the impact of corruption on the Tunisian state and society, from depriving the state of resources to undermining its economic sovereignty. This introduction is useful; it establishes the context for the recommendations that are meant to be the basis for reforming institutions that enable corruption. The commission organized its 67 institutional reform recommendations under nine subject categories, which were adopted from the 2011 report of the Fact-Finding Commission whose work and recommendations the TDC inherited. That adoption was a practical and efficient decision, since—as ICTJ saw during its work in Tunisia providing assistance to the commission on this matter—the TDC's development of its own institutional reform taxonomy would not have added much value and would have taken more time.

The nine areas for reform involve either the economy or governance: the customs sector, land, banking, natural resources, privatization, public administration, taxation policy, state assets, and government auditing institutions. In both form and substance, the commission could have made its recommendations clearer, more coherent, and more consis-

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70 Nadine Sika, "The Political Economy of Arab Uprisings" (March 2012), [www.files.ethz.ch/isn/165555/10.%20PapersEuromesco10\\_Sika.pdf](http://www.files.ethz.ch/isn/165555/10.%20PapersEuromesco10_Sika.pdf)

71 Truth and Dignity Commission, "Memorandum on Reparation and Violations of Economic and Social Rights for Which the World Bank and the International Monetary Fund Were Partially Responsible." See footnote 6; and Truth and Dignity Commission, "Memorandum on Reparation of the Victims of Gross Human Rights Violations and Violations of Economic and Social Rights for Which France Was Partially Responsible" (July 22, 2019), [http://www.ivd.tn/wp-content/uploads/2019/07/M%C3%A9mo\\_France.pdf](http://www.ivd.tn/wp-content/uploads/2019/07/M%C3%A9mo_France.pdf)

tent with its own findings and analysis. It seems that some of these recommendations were drafted before the findings and analysis were reached, hence the inconsistencies in many parts. The Transitional Justice Law calls for the commission to recommend institutional reform measures that might help prevent the recurrence of large-scale corruption, end the marginalization of impoverished regions, and contribute to more equitable economic and social policies. The law specifies that the commission identify legislation to review, state institutions to reform or even abolish, what school curricula to update, and what rehabilitation and retraining measures can be implemented in those state agencies that were found by the commission to have been complicit in large-scale corruption during the dictatorship.<sup>72</sup> The law also states that the commission's report must connect its institutional reform recommendations to "the reasons that led to [corruption] violations."<sup>73</sup>

Many of the commission's corruption- and marginalization-related recommendations fall far short of these goals. In some cases, the recommendations have no connection to the findings and analysis in the corruption chapter, and it is difficult to see how the commission arrived at them. For example, in its recommendations related to natural resource governance, the commission proposed the inclusion of "independent experts" as members of the parliament's committee on energy. Not only is there no explanation for this recommendation, but it is also inherently problematic given that only parliamentarians can be members of parliamentary committees. Other recommendations create confusion about what exactly is being recommended. For example, the commission recommended as an institutional reform measure that all oversight agencies be merged into one that then publishes reports. In a separate "guarantee of non-recurrence" section, though, the commission recommends that oversight agencies (that presumably are not merged) release their separate reports on a joint public platform.

To its credit, the commission tried to make recommendations in many areas of governance and in some of the most strategic sectors of Tunisia's economy. For example, the commission made recommendations involving natural resources, focusing on petroleum, oil, and gas extraction. But there are gaps as well: For instance, the commission's resource-extraction recommendations overlooked corruption cases in the phosphate-extraction industry. This is a significant oversight, as phosphate extraction is of strategic importance to Tunisia's economy. More importantly, grievances over corruption and unemployment in Tunisia's phosphate-mining basin, including protests in 2008, directly led to the Arab Spring revolution, the end of the Ben Ali dictatorship, and the transitional justice process symbolized by the commission itself.<sup>74</sup>

The commission does recognize that its institutional reform recommendations related to corruption should also have an economic impact and be responsive to grievances over marginalization, development, and unemployment. By those measures, though, the con-

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**The commission does recognize that its institutional reform recommendations related to corruption should also have an economic impact and be responsive to grievances over marginalization, development, and unemployment.**

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72 Organic Law No. 53, Art. 14, para. 2.

73 Ibid., Art. 67.

74 Carlotta Gall, "Tunisian Discontent Reflected in Protests That Have Idled Mines," *New York Times*, May 13, 2014, World section, Africa section.

tent of the institutional reform section and its recommendations are disappointing. They are largely a compilation of general recommendations calling for transparency in natural resource extraction and for building the capacity of regulatory agencies. The closest the section comes to being specifically responsive to the link between resource extraction and corruption is in the recommendation that all extracted natural resources be sold to a public institution guided by global market prices. There appear to be no other recommendations that connect findings about corruption in crucial economic sectors with reform measures that then address unemployment as one of the root causes of the revolution.

Elsewhere in the report, the commission acknowledges marginalized regions as victims, which, under the TJ Law, entitles them to reparation.<sup>75</sup> But in recommending how corruption in the use and distribution of public funds can be prevented, the commission did not draw meaningful connections to its findings on marginalization. This lack of interconnectedness between recommendations on corruption and recommendations on reparations for victims of corruption, particularly victimized marginalized regions, reflects the incoherence that characterizes the introduction and articulation of the recommendations in the report. This dissonance could have been avoided had the commission considered its recommendations together, instead of by each chapter, so that those institutional reforms that involve preventing corruption, for example, are explicitly linked to those that seek to repair the impact of that corruption.

Moreover, the commission could have made its institutional reform recommendations easier to sequence and build on by categorizing them according to whether they require administrative, legislative, or economic and social policy reforms. This arrangement would give state institutions and policymakers the signal to act while also giving civil society, victims' groups, and even donor governments and international policymakers the space to contribute where they are most competent or where, as in the case of the World Bank and the IMF, they can acknowledge their complicity in enabling corruption *and* their responsibility for reparations. Better organization would also have given institutional reform measures a timing-and-sequencing framework similar to what other truth commissions elsewhere have proposed.<sup>76</sup>

## Conclusions and Reflections

The Transitional Justice Law framework gave the commission the necessary tools to fulfill its mandate. The commission received a total funding of 56 million Tunisian dinars (approximately \$19 million) and hired 567 employees.<sup>77</sup> It had the power to systematically seek and tell the truth about dictatorship-era corruption. It had the resources to draw a road map for dismantling Ben Ali's corruption network, including laying the foundations for prosecuting the most corrupt Ben Ali family members, cronies, and officials. It had a clear mandate to identify the root causes of marginalization in Tunisia. There were significant political obstacles to fulfilling its mandate, but more importantly, the commission simply failed to maximize and properly use its tools, resources, and powers.

Nevertheless, the TDC's final report tells a larger set of truths about the repression that occurred, the social inequality that existed, and the economic crimes that were committed under Bourguiba and Ben Ali. The Tunisian experience also reaffirms that in many post-

75 Truth and Dignity Commission, "Final Report, Executive Summary," 377–385.

76 Christopher Gitari Ndungú, ICTJ, "Lessons to Be Learned: An Analysis of the Final Report of Kenya's Truth, Justice and Reconciliation Commission" (May 19, 2014).

77 Fondation Hirondele, "Tunisia: The Disputed Assessment of the Truth Commission" (May 2019).

dictatorship and post-conflict contexts, corruption and economic crimes, in the language of the UN, “have been as prominent—and in the public’s mind as egregious—as civil and political rights violations by a prior regime.”<sup>78</sup> There are more Tunisians who see themselves as victims of corruption and marginalization than there are Tunisians who experienced actual physical integrity violations or civil and political rights violations.

There are two essential lessons here for UN agencies, national policymakers, donors, and activists. First, with adequate resources and a clear mandate, a truth commission can identify families and business entities as well as international policymakers or even states who should be held accountable for their roles in large-scale corruption and economic crimes that are committed during periods of authoritarian rule, conflict, or occupation. Second, foreign governments and international financial institutions, such as the World Bank and the IMF, are not exempt from being named and held accountable for enabling corruption, marginalization, and human rights violations. The TDC’s work has made these lessons very clear; these institutions and governments cannot now pretend that they have no responsibility for the extreme poverty, economic inequality, continuing marginalization, and resulting political instability in post-dictatorship Tunisia.

But the TDC missed an opportunity: Revealing the truth about impunity for corruption and clarifying its mutually reinforcing relationship with impunity for human rights violations could have mobilized stronger and broader public support for accountability and an accountable government. A more systematic, meticulous, and strategic approach to investigating and conducting public hearings on corruption would have helped mobilize greater public support for the commission and its recommendations and would have better protected the commission from the political backlash and skepticism that accompanied it throughout its existence. A more cohesive approach would also have helped to insulate the commission from the deliberate efforts to undermine transitional justice that were exerted by elites across the country’s political spectrum—efforts that as of the writing of this paper have culminated in the restoration of a new authoritarian order in a post-truth commission Tunisia that has all but forgotten why there was a revolution in the first place.

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78 Office of the United Nations High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States: Truth Commissions*, United Nations, New York and Geneva (2006), 24.

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