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Narratives of “Terror” and Transitional Justice:
The Politics of Exclusion

DISSERTATION

submitted in partial satisfaction of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

in Political Science

by

Elham Kazemi

Dissertation Committee:
Professor Cecelia Lynch, Chair
Associate Professor Daniel Brunstetter
Associate Professor Catherine Sameh

2021

DEDICATION

To

the people in Tunisia and Mali
who opened their houses to me
and shared their stories with me

&

To Mostafa

ای عشق همه بهانه از توست

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ABBREVIATIONS

ADC – Democratic Alliance for Change
 AFISMA – African-led International Support Mission to Mali
 ANC – National Constituent Assembly
 AQIM – Al-Qaeda in the Islamic Maghreb
 ASF – Lawyers without Borders
 ATFD – Tunisian Association of Democratic Women
 ATNM – Alliance of Niger-Mali Tuareg
 CCS – Specialized Criminal Chambers
 CMA – Coordination of Azawad Movements
 CNDR – National Dialogue and Reconciliation Commission
 CPR – Congress for the Republic
 CVJR – Truth, Justice and Reconciliation Commission in Mali
 CVR – Truth and Reconciliation Commission in Peru
 EUTM – European Union Training Mission in Mali
 FMA – Multi-Stakeholder Forum on Governance
 GSPC – Algerian Salafist Group for Preaching and Combat
 HCUA – High Council for Unity of Azawad
 HRW – Human Rights Watch
 ICC – International Criminal Court
 ICTJ – International Center for Transitional justice
 ICTR – International Criminal Tribunal for Rwanda
 ICTY – International Criminal Tribunal for the former Yugoslavia
 IMF – International Monetary Fund
 IR – International Relations
 IRB – Institutional Review Board
 IVD – Truth and Dignity Commission in Tunisia
 MAA – Arab Movement of Azawad
 MENA – Middle East and North Africa
 MINUSMA – United Nations Multidimensional Integrated Stabilization Mission in Mali

MNA – National Movement of Azawad
 MNLA – National Movement for the Liberation of Azawad
 MPLA – Popular Movement for the Liberation of Azawad
 MTI – Movement of Islamic Tendency
 MUJAO – Movement for Oneness and Jihad in West Africa
 NATO – North Atlantic Treaty Organization
 NGO – Non-Governmental Organization
 OCRS – Common Organization of the Saharan Region
 OHCHR – Office of the High Commissioner for Human Rights
 PB – Peacebuilding
 PSD – Socialist Destourian Party
 PSI – Pan-Sahel Initiative
 RCD – Democratic Constitutional Rally
 RDA – African Democratic Rally
 TJ – Transitional Justice
 TRC – Truth and Reconciliation Commission in South Africa
 TRCC – Truth, Reconciliation and Reparations Commission in The Gambia
 TSCTP – Trans-Saharan Counterterrorism Partnership
 UCI – University of California, Irvine
 UGTT – Tunisian General Labour Union
 UN – United Nations
 UNDP – United Nations Development Program
 UNHRC – United Nations Human Rights Council
 UNICEF – United Nations International Children's Emergency Fund
 US – United States
 US-RDA – Sudanese Union – African Democratic Rally
 WB – World Bank
 WoT – War on Terror
 WWI – World War I
 WWII – World War II

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ABSTRACT OF THE DISSERTATION

Narratives of “Terror” and Transitional Justice: The Politics of Exclusion

By Elham Kazemi

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Professor Lynch, Chair

How has the hegemonic narrative of the war on terror impacted the narratives of justice in transitional justice contexts? What stories are told by transitional justice actors, and how do justice narratives interact with or resist national and transnational discourses on the war on terror? To answer these questions, this dissertation develops a narrative approach to transitional justice and then draws on this approach to investigate the impact of the hegemonic narrative of the war on terror on justice narratives, focusing on the transitional justice processes in Tunisia and Mali. Based on fieldwork research as well as an analysis of primary and secondary sources, it argues that the dominant narrative of the war on terror leads to a securitized approach in how transitional justice deals with conflict and political violence. Political actors in power with the help of institutional and public narratives exploit this securitized approach to avoid accountability, solidify their power and status, and limit the reach of transitional justice efforts. This results in contestation and a hierarchy in the notions of “violence,” “victimhood,” and “perpetratorship.” The end result is a conservative approach that focuses on the communities and people rather than the state and dominant structures of power as the source of “problem.” In Tunisia, although the transitional justice mandate was innovative and broad, a history of vilification and dehumanization of

“Islamists,” who constituted the majority of victims, continued throughout the process, leading to contestations of the notion of “victimhood.” In Mali, although the conflict continues and the situation is very complicated in the northern and central regions, a simple narrative has emerged about the conflict and violence. The Malian truth commission is yet to publish its report, but so far, a securitized approach has dominated the transitional justice process as a result of the hegemonic narrative of war on terror. This has resulted in the construction of a hierarchy of “perpetrators,” with “jihadist” groups at the apex of this hierarchy.

CHAPTER 1: TRANSITIONAL JUSTICE IN THE “WAR ON TERROR” ERA

I. Introduction

Transitional justice (TJ) – the attempt to address human rights violations in countries emerging from periods of conflict and repression – has faced several challenges since its emergence in its modern form in the post-World War II (WWII) era. One recent challenge is that it now should work under the shadow of an obscure and all-pervasive discourse on the so-called global “war on terror” (WoT). Although several TJ scholars and practitioners¹ call for the adoption of TJ measures in “terror” contexts, the impact of the WoT discourse on narratives of justice has not received enough attention in the literature and practice of TJ, especially in the context of what is known as “Islamic extremism”² (See among others Frank 2017; Quesada Alcala and Zakerian 2010; Renner and Spencer 2015; Sciandra 2017). This dissertation aims to fill this gap by building a bridge between critical TJ scholarship and critical terrorism studies, using a narrative approach. In order to do so, it examines a set of inter-related questions: How has the hegemonic narrative of the WoT impacted the narratives of justice in TJ contexts? Particularly, how has it shaped the boundaries of TJ, and the construction of the categories of “locals,” “perpetrators,” and “victims”? What stories are

¹ See for example the “US Accountability Project” launched by the International Center for Transitional Justice (ICTJ): <https://www.ictj.org/our-work/regions-and-countries/usa-accountability>

² “Islamic extremism” refers to a rigid interpretation of Quran and *Sunnah* (traditions and practices of the Prophet) to revive an original “Islamic way of living.” It is a very diverse movement and the objectives associated with the movement vary widely, from opposition to the presence of foreign occupying forces on Muslim lands to the establishment of an Islamic Caliphate. Multiple other labels, including “Islamic terrorism” and “jihadist violence,” are also used to refer to the use of violence by Islamic groups in furtherance of their objectives. These labels, however, have been critiqued for their underlying assumptions, mainly for implicitly associating the religion of Islam with violence. For more on the critiques, see Jackson (2007).

told by TJ actors,³ and how do justice narratives interact with or resist national and transnational discourses on WoT?

To answer these questions, I first develop a narrative approach to TJ and then draw on this approach to investigate the impact of the hegemonic narrative of the WoT on justice narratives, focusing on the TJ processes in Tunisia and Mali – two Muslim-majority countries that have recently adopted comprehensive TJ initiatives and have been long on the WoT radar. Although the circumstances that led to the adoption of TJ measures in these two countries differ, they share various commonalities, and the recent turn of events in both countries are tied to the politics and events in the broader region of North Africa and Sahel. Both Tunisia and Mali are Muslim-majority countries, with the majority of their populations adhering to the Maliki school of Sunni Islam. Both were also under French control until their independence in the 1950s and 1960s. Further, they have been impacted by the rise of Islamic movements in the region and have been the sites of foreign intervention to counter the “jihadist” threat in different forms.⁴ Although the historical background in these countries matters significantly for the issues they are grappling with today, this dissertation briefly discusses the recent historical background and focuses on TJ initiatives adopted in a more recent period – post-revolutionary (2011) Tunisia and post-rebellion (2012) Mali.

³ I define TJ actors as state and non-state actors involved in the TJ process, including but not limited to non-governmental organizations (NGOs), victim organizations, and professional associations such as lawyers and educators. It is worth mentioning that there is some overlap between these groups, especially in post-authoritarian contexts, because of the nature of the violations committed. In these contexts, many victims are also political activists and members of political parties, and some become actively involved in the TJ process as TJ actors after transition from authoritarianism. Further, some of them might be appointed to or run for political office and become public officials.

⁴ For example, both Tunisia and Mali are part of the Trans-Saharan Counterterrorism Partnership (TSCTP).

In Tunisia, the 2011 revolution led to the end of Zine El Abidine Ben Ali's rule. Ben Ali became the President of Tunisia in 1987 after a bloodless coup d'état against the then President, Habib Bourguiba. The revolution, mainly driven by socio-economic demands and grievances, opened a new page in Tunisian politics. From the start, various TJ measures were implemented culminating in the adoption of a comprehensive TJ law in 2013. However, as a result of the previous governments' assertive secularization policies accompanied by repression and vilification of "Islamists"⁵ as "terrorists," a trend that intensified following the 9/11 attacks and the official launch of the global WoT, a debate emerged after the revolution about the nature of the "victimhood" of "Islamists." Although they constituted the majority of victims and could rapidly mobilize due to their extensive bases in different regions in the country, there was a general reluctance to accept Islamists' claims to "true victimhood." This discourse was further reinforced and strengthened following a number of terrorist attacks in the country and after the 2014 parliamentary and presidential elections. As will be explained later, the work of TJ mechanisms was consequently influenced by this discourse.

In Mali, the fourth post-independence Tuareg rebellion came to an end after the collapse of the *de facto* collaboration between Tuareg nationalists and Islamic groups, followed by the French military intervention in 2013. A reconciliation commission was established the same year, although it was later disbanded. The situation was also referred to the International Criminal Court (ICC) by the interim government of Mali in July 2012. The Agreement for Peace and Reconciliation in Mali Resulting from the Algiers Process (*Accord pour la Paix et*

⁵ I am cognizant of the problematic nature of the "Islamists" category. See footnote no. 75 in chapter 4.

la Réconciliation au Mali Issu du Processus d'Alger; known as the Algiers Accord), formally signed in 2015 by the government of Mali and several rebel groups, emphasized “genuine national reconciliation” based on the “creation of transitional justice mechanisms in particular by operationalizing Truth, Justice and Reconciliation Council (Commission Vérité, Justice et Réconciliation, CVJR)” (Art. 46). Like Tunisia, the relationship between religion and politics has also been complicated and at times contested in Mali, going back at least to the colonial era. The Malian Constitution (1992, Art. 25) defines the country as “an independent, sovereign, indivisible, democratic, secular and social Republic.”⁶ Although state policies have fluctuated over time, the rise of Islamic rebel groups in the region coupled with the historical marginalization of the Tuareg and Arabs in northern Mali⁷ provided the context for the 2012 uprising in the north. The French intervention and the conclusion of the Algiers Accord brought an end to the independence aspirations of Azawad,⁸ but armed clashes continue up to this day with other groups, mostly Islamic rebel groups. The rise in intercommunal violence in central Mali has also further complicated the peace and security situation on the ground. The continuation of violence and even its exacerbation is despite the fact that multiple international forces have been present in Mali, at times leading to demonstrations against the foreign presence in the country. Despite these complexities, however, a simplified narrative about the conflict dominates the narratives of violence, focusing on the crimes of “jihadist” groups, although reports show the prevalence of violations committed by

⁶ “Le Mali est une République indépendante, souveraine, indivisible, démocratique, laïque et sociale.”

⁷ As will be explained in chapter 5, the events in Libya and the toppling of Muammar Gaddafi also played a role in the start of the rebellion in Mali.

⁸ The rebels in northern Mali declared the independence of the state of Azawad in April 2012. The claim of independence, however, was later revoked in February 2013. See the map of Azawad on page 177.

government forces often with foreign military support.⁹ My research shows that the WoT waged on the Malian territory has led to the dominance of a securitized approach in justice narratives which in turn has resulted in a hierarchy of “perpetratorship,” with “terrorists” at the apex. This has impacted how TJ has dealt with violations in the country so far.

Based on fieldwork research conducted in Tunisia and Mali as well as an analysis of primary and secondary sources, this dissertation investigates the impact of the hegemonic narrative of the WoT on justice narratives in these countries, and how TJ actors resist, challenge, or reinforce these narratives. The objective is to investigate the exclusions and erasures in the TJ process as a result of the discourse on the WoT. It also briefly traces the genealogy of this discourse in both countries to the colonial era and examines how it has shaped the construction of political identities with long-lasting effects on politics in these countries. Further, it examines how this discourse impacts not only the debates on the legitimacy of TJ efforts but also the politics of “violence,” “victimhood” and “perpetratorship” by excluding and erasing certain narratives and violations and creating different hierarchical categories of “locals,” “victims,” and “perpetrators.”

This chapter serves as the introductory chapter to the dissertation. The first section provides a brief overview of the literature on TJ and WoT and summarizes the main argument advanced in the dissertation. The second section explains the research design adopted to collect and analyze data, mainly during two rounds of fieldwork in Tunisia and Mali between 2018 and 2020. Impacted by the coronavirus pandemic, I conducted further interviews and had continuing informal conversations with TJ actors in both countries online

⁹ See ACLED data (Raleigh et al. 2010); Dufka (2020); Nsaibia (2020).

to keep abreast of the developments on the ground. This section also includes a brief discussion of my positionality as an Iranian resident of the United States (US) while in the field and the impact it had on the research and the subjects that were discussed with the research participants. The third section briefly reviews the case studies and the importance of both the Tunisian and Malian cases for the TJ literature. The concluding section then brings together the introduction by laying out an outline of the dissertation chapters.

II. Transitional Justice and the “War on Terror”: An Overview of the Argument

Transitional Justice as a Counterterrorism Tool

TJ is a relatively new field that has been significantly expanding in the past two decades. The United Nations (UN) identifies four pillars of TJ as the normative foundation of the UN's rule of law work: the right to justice, right to truth, right to reparations, and guarantees of non-recurrence of violations. Accordingly, it identifies five components of TJ: prosecution, truth, reparations, institutional reforms, as well as national consultations on TJ processes (UN 2010). In addition to several international treaties and covenants, such as the Genocide Convention, the UN Convention against Torture, and the International Covenant on Civil and Political Rights, the UN General Assembly's resolution (2006) on “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” recognizes and elaborates on these pillars. The Office of the UN High Commissioner for Human Rights (OHCHR) and the UN Development Program (UNDP) play an important role in supporting and facilitating TJ in countries emerging from conflict and repressive rule (Rishmawi 2012).

TJ in its modern form emerged in the aftermath of the WWII with the Nuremberg and Tokyo Tribunals opening a new page for international norms on accountability for perpetrators of international human rights and humanitarian law violations (Teitel 2003). The growth of TJ further accelerated in the 1990s, with scholars recognizing that TJ has now become “globalized” (Kerr and Mobekk 2007; Sikkink 2011; Teitel 2002; 2003; 2008). This has meant that in practice, after a country’s transition from conflict and/or authoritarianism, we have witnessed emerging discourses on TJ and a movement of TJ practitioners from previous TJ sites to new ones. However, TJ has not been limited to post-conflict and post-authoritarian contexts. It has also been adopted during armed conflicts (See Loyle 2017), in the absence of a complete transition from authoritarian rule (for example in Morocco and Bahrain), and in liberal democracies in the “Global North,” including New Zealand, Australia, and Canada.¹⁰

TJ efforts and prospects for conflict transformation in a way that increases justice and gives affected people a voice in decision-making are closely linked to enduring peace and human security (Boraine and Valentine 2006; de Greiff and Duthie 2009; Putnam 2002). More recently, there is a recognition that support for TJ can be the first step in adopting a more comprehensive counterterrorism strategy. Thus, a framework for the engagement of TJ with terrorism and counterterrorism measures has been recently developed and proposed (Frank 2017; Quesada Alcala and Zakerian 2010; Renner and Spencer 2015; Sciandra 2017). This along with the elaboration of an alternative TJ framework that is “local-centered” and addresses the “root causes” of conflict and political violence necessitates an examination of

¹⁰ For more on the Waitangi Tribunal in New Zealand, see Park (2020). On the Australian National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, see Maddison and Shepherd (2014). On the Indian Residential Schools Truth and Reconciliation Commission in Canada, see Flisfeder (2010) and Nagy (2013) among others.

the potential pitfalls of the use of TJ in the main sites of the WoT and the development of measures to address such limitations in practice. The globalization of the WoT has had an impact not only on where TJ mechanisms are adopted but also on how they are used and whom/what they include and exclude. Quesada Alcala and Zakerian (2010) point out the possible contributions of TJ in occupied territories impacted by terrorism, such as Palestine, while other scholars engage more broadly with peacebuilding (PB) and sub-state terrorism, noting that inclusive peace processes can provide an important channel for non-violent communication with “terrorists” and marginalize militancy and extremism (Mühlhausen 2016; Tellidis 2020).

Previous research, however, shows that the so-called WoT has used TJ mechanisms when they fitted its strategic goals and independently of the local priorities of the populations affected by violence (Hazan 2010). Moreover, Renner and Spencer (2015) cast doubt on whether TJ and more specifically truth-telling can serve as a promising path to peace after violence in “terrorist conflicts.” Further research, however, is needed to explore how the WoT discourse has shaped the politics of TJ in cases where TJ initiatives are implemented.

In addition to the critical literature on TJ, the critical terrorism studies literature elaborates on the limitations of existing security approaches to countering the use of violence against civilians. This literature problematizes the social construction of “terrorism” and “terrorists” as analytical categories. In particular, by deconstructing the discourse on “Islamic extremism,” it sheds light on the power relations embedded in the use of these categories (See for example Jackson 2005; 2007; Spencer 2010; 2012; Renner and Spencer 2013; 2015). As these scholars point out, the now ubiquitous discourse on “Islamic terrorism” is

embedded in longer histories of colonialism as well as discursive construction and representation of Muslims in Western societies, particularly by the media (Alzubairi 2019; Breen-Smyth 2007; Hafez 2000; Jackson 2007; Poole and Richardson 2006; Richardson 2004; Said 1978; 1981; 1993; Shakman Hurd 2003; Sheehan 2004; Spencer 2010).

The linguistic construction of “terrorism” and “terrorists” vilifies certain acts and actors as evil, inhuman, and contrary to what the “West” represents, namely civilization, rationality, and peace. It, therefore, legitimizes extraordinary acts of violence and domination against these actors (Anderson 2004; Blain 2007; Crenshaw 1995; Hazan 2010; Krebs and Lobasz 2007). This narrative then dehumanizes, marginalizes, and eradicates other more nuanced narratives and discourses about the reasons for use of violence by these actors and their identities. Following the 9/11 attacks and the launch of the global WoT, we have witnessed a transformation of the security paradigm and national interest priorities in many Western countries and their allies and a redefinition of their human rights commitments. The use of “terror” by these governments in service of their security and national interests is thus defined as “legitimate” while the same acts against the existing structures of political and socio-economic power are labeled as “terrorism” and declared unacceptable (Asad 2010; Blain 2007). As will be discussed in the next subsection, my research shows that this discourse has also had an impact on how TJ operates in the main sites of the WoT.

An Overview of the Argument

In order to explore the impact of the dominant narrative of the WoT on narratives of justice in Tunisia and Mali, this dissertation first draws on the expansive literature on narratives in international relations (IR) to set forth a consolidated narrative approach to TJ. Then, it uses

this approach to develop an argument based on my research on the Tunisian and Malian TJ experiences.

A Narrative Approach to Transitional Justice

There has been increasing attention to narratives among IR scholars (See for example Krebs 2015; Miskimmon et al. 2017; Roberts 2006; Ross 2013). More specifically, scholars of PB and conflict resolution have drawn on a narrative approach for examining interventions in situations of protracted and escalating conflict as well as peace and mediation efforts in different contexts (See among others Autesserre 2012; 2014; Bar-on and Kassem 2004; Cobb 1993; 2013; Cobb and Yusuf 2012; Federman 2016; Mac Ginty and Firchow 2016; Pappe 2003; Winslade and Monk 2000). The TJ literature has also turned to narrative analysis for exploring the stories produced through TJ initiatives and their impact on the political dynamics in transitional contexts (See for example Andrews 2003; Buckley-Zistel 2014; Castel 2017; Porter 2016; Sokolić 2016). However, the impact of dominant narratives on TJ initiatives and their work has received less attention. As several critical TJ scholars point out, the field of TJ has been dominated by a liberal legalistic metanarrative that empowers and reinforces certain dominant narratives in transitional contexts (See among others Brooks 2003; Gready and Robins 2014; Lundy and McGovern 2008; Macdonald 2013; Madlingozi 2010; McEvoy 2007; Nagy 2008; Sharp 2013; 2015; Sriram 2017). This liberal legalistic focus limits the types of violations that can be addressed by TJ initiatives and also limits the range of actors who get a voice in TJ mechanisms. The local counter-metanarrative that has recently been put forward to counter these limitations is also

critiqued for the same blindspots (See for example Branch 2014; Kochanski 2018; Iliff 2012; Shaw et al. 2010; Ubink and Rea 2017).

The narrative approach I propose investigates how political actors use dominant narratives to “encapsulate”¹¹ narratives of justice in service of their political interests. It also theorizes how institutional and public narratives constrict the space available for contesting the existing narratives of justice. First, it outlines how dominant narratives impact and shape justice narratives. These narratives then multiply and disperse, becoming part of a “common sense” that cannot be questioned. Political actors, including political elites and leaders, use these narratives for their political purposes, to avoid accountability and solidify their power in unstable transitional contexts. Second, institutional and public narratives, more specifically narratives of the rule of law, further constrict the discursive space to contest the dominant justice narratives, leading to the sidelining of narratives of structural injustice in TJ discourses. Third, this results in further marginalization of certain actors who do not get a voice in justice narratives as TJ cannot accommodate their demands, questioning the very basis of the conception of the modern nation-state and political and socio-economic structure in power that TJ aims to solidify and perpetuate.

Islam, War on Terror, and Transitional Justice

Drawing on the experience of Tunisian and Malian TJ processes, this dissertation focuses on what is known as “Islamist extremism” and the impact of the “terror” narrative on the

¹¹ This draws on the notion of “narrative encapsulation” by Susan Harding, defined as when one story or multiple stories are “subordinated to and reframed by the terms of another” (Harding 2000, 65; See also Clarke 2019).

construction of political identities in Muslim-majority countries. This has in turn shaped and limited the notions of “victimhood” and “perpetratorship,” sidelining and marginalizing narratives that go against the dominant narrative of the WoT. As a result, TJ mechanisms have become useful tools to discipline the discourses on justice and revolutionary change. As these mechanisms rely on the states to provide resources for their activities and implement their recommendations, these institutions’ deviations from the dominant narrative propagated by the state will be limited or come at the expense of losing legitimacy and resources.

Drawing on primary and secondary sources as well as fieldwork conducted in Tunisia and Mali, this dissertation demonstrates that first, the construction of certain groups of Muslims as “Islamists,” “extremists,” and “terrorists” is rooted in colonial practices of surveillance, repression, and control of actors deemed to be challenging the colonial power. These practices and their embedded racism and xenophobia with the help of media have led to portraying certain groups of Muslims as “threat,” “evil,” “monster,” or “disease” that should be eradicated and eliminated. The linguistic constructions that are embedded in this discourse have further led to othering, marginalization, and exclusion, which have in turn perpetuated the cycle of violence by these groups or the abandonment of their revolutionary demands and acquiescence to the status quo in order to “get a place at the table.” The launch of the so-called global WoT under the US leadership following the 9/11 attacks further cemented and reinforced this discourse leading to the adoption of further repressive laws in the main sites of the WoT which accompanied human rights violations that were often overlooked by the Western allies of these countries in the name of fighting “terrorism.”

Second, with the increasing rise of TJ initiatives in Muslim-majority countries, a question inevitably arises about the interaction between TJ and WoT. I argue that a securitized approach dominates TJ initiatives in these countries. The dominant narrative of the WoT shapes what measures are adopted and how; who gets a voice in TJ processes; and what issues are discussed and centered in these processes. Political actors in unstable transitional contexts use this discourse to “encapsulate” narratives of justice to avoid accountability and further solidify and strengthen their political power and position. This impacts the construction of the categories of “victims” and “perpetrators,” creating contestations and hierarchies. This does not mean that these dominant narratives are not challenged and contested. Although my research shows that several TJ actors are complicit in reinforcing these narratives, others contest them and oppose their dominance. These actors, however, often do not have much power in changing the existing policies.

In Tunisia, although the TJ mandate was innovative and broad, a history of vilification and dehumanization of “Islamists,” who constituted the majority of victims, continued throughout the TJ process. Due to the political situation in the region and in order to guarantee its political survival, the prominent Islamic party - Ennahda - finally acquiesced to this discourse to a large extent. The main TJ initiative in the country was also questioned and delegitimized for its supposed relationship with the Islamists. In Mali, although the conflict continues and the situation is very complicated in the northern and central regions, a simple narrative has emerged about the conflict and violence. The Malian truth commission is yet to publish its report, but my research shows that so far, a securitized approach has dominated the TJ process as a result of the hegemonic narrative of the WoT. This has resulted

in the construction of a hierarchy of “perpetrators,” with “jihadist” groups at the apex of this hierarchy.

III. Research Design and Methodology

Fieldwork as the Primary Method for Data Collection

The overall approach guiding this dissertation will be interpretive and qualitative. In order to identify different justice narratives at play and the impact of the dominant narrative of the WoT on these narratives, I mainly rely on interviews to prioritize the meaning-making of my research participants. This method is an appropriate tool for probing the nature of agency and requires an appreciation of people as subjects rather than objects of research (Klotz and Lynch 2007; Schwartz-Shea and Yanow 2012; 2014). More specifically, in my interviews, I used a narrative interviewing approach. Narrative interviews are unstructured data collection tools that generate stories through the interview. In narrative interviewing, instead of emphasizing a question-answer format, the objective is to provide an opportunity for the research participants to narrate their experience for the researcher and reconstruct social events from their point of view. Thus, the main task of the interviewer is listening to stories and the influence of the interviewer in the narrative should be minimal. The researcher, however, is not just a passive listener, but part of the context and therefore, influencing the interview as a meaning-making experience (Kartch 2017; Jovchelovitch and Bauer 2000). As Kartch (2017, 1075) aptly points out,

“For this reason, the relationship between the researcher and participant becomes important because the interview is a collaboration and includes the

active involvement of the researcher as both listener and facilitator. The researcher and participant jointly negotiate a co-constructed meaning through the narrative. While the researcher should not try to lead the narrative outside of facilitating its telling, by facilitating the telling and being a listener, the researcher is part of the meaning the participant constructs through the narrative and thus cannot be divorced from the meaning.”

This type of interview corresponds well with what Fujii (2018) calls “relational interview” and encourages and stimulates the participants to share their perspectives and viewpoints with the interviewer. Accordingly, I adopted a relational and conversational style of interviewing to encourage my interviewees to discuss and reflect broadly on different subjects and situations (Ibid.; Soss 2014). Fujii (2018, 1) defines relational interviewing as “a method for generating data through interactions between researcher and interviewee. Its ethos is humanist. Its main ingredient is reflexivity. Its guiding principle is the ethical treatment of all participants. All three elements orient the researcher to interviewing as a learning process and to interviewees as people deserving of dignity and respect.”

The interpretive research design also encourages mapping for “exposure” (Schwartz-Shea and Yanow 2012, 84–89). The purpose is not to find a representative sample, but to ensure that the data is not particular to the characteristics of certain organizations or a geographical location. By speaking to people in different positions, I could understand whether and how certain narratives are more dominant or influential and what it means for the TJ process. During fieldwork research in Tunisia and Mali, I conducted Interviews with more than 50 TJ actors from international governmental and non-governmental organizations, national and

local non-governmental organizations as well as public officials, journalists, practitioners, educators, and independent analysts. Having access to such a diverse group of perspectives shed light on all the narratives at work in the TJ process. Impacted by the coronavirus pandemic, I conducted further interviews online and had ongoing discussions about the TJ process with my participants in Tunisia and Mali to keep abreast of the developments on the ground. Interviews were semi-structured and ranged from 30 minutes to 4 hours. In order to protect the respondents' anonymity and safety and in compliance with the instructions of the University of California, Irvine (UCI) Institutional Review Board (IRB), I do not use the participants' names. Interviews are cited in footnotes, using respondents' positions along with the year of the interview. If a respondent asked me not to use their position in publications, I use general terms in the text to describe their position. In particular, some of my research participants working for a number of international organizations asked me not to mention their affiliation because of internal politics at these organizations.

Further, to supplement, contextualize, and even challenge the data collected through fieldwork, I also draw upon other primary and secondary sources, including official, historical, and contemporary accounts and analyses as well as news sources and existing data on conflict and political violence. An analysis of official government documents, statements, newspaper articles, civil society reports, and YouTube videos of major events helped me further explore the narratives at play in the TJ processes in Tunisia and Mali and the impact of the hegemonic discourse of the WoT on these narratives. In addition to these, I also attended several TJ workshops and conferences in Tunisia, Mali, and the US where a wide range of TJ actors were present. These settings provided me with an opportunity to speak informally with various stakeholders, such as practitioners, participants, and public

authorities. I also monitored websites and social media pages covering and promoting TJ in these countries.

In March 2020 when I was doing fieldwork in Mali, the Malian government adopted a measure to close the borders to prevent the spread of the coronavirus. I was advised by the US Embassy and UCI to depart Mali immediately before the measures went into force. During the following several months and impacted by the coronavirus pandemic as a global crisis, I could not travel again to my fieldsites, but I continued to have ongoing conversations and conduct interviews online with research participants in both Tunisia and Mali. While this ensured that I had continuing access to TJ actors and their perspectives about the TJ process, it also entailed several limitations for the research. First, it limited the range of actors I had access to. This meant that I could only reach out to actors who had access to online means of communication and were willing to discuss matters over a call or chat. Second, I found that participants were more cautious when doing online interviews. Especially in Mali and after the coup d'état in August 2020, my participants were more on alert. Several of them asked me not to record our conversations.

The list below includes the names of the organizations whose members I interviewed during my research. The list is not comprehensive and does not include public officials, truth commissions' employees and commissioners, lawyers, judicial staff, and independent actors, such as TJ activists, researchers, educators, and journalists with whom I had a chance to speak.

Tunisia: Al-Kawakibi Democracy Transition Center, Karama Association,¹² Association for the Defense of Human Rights (*Association de Défense des Droits de l'Homme*), Human Rights Watch (HRW), Civil Pole for Development and Human Rights (*Pole Civile pour le Développement et les Droits de l'Homme*), Democratic Transition and Human Rights Support Center,¹³ ICTJ, Impunity Watch, Regional Development Support Initiative (*Initiative Régionale d'Appui au Développement*), Lawyers without Borders (*Avocats Sans Frontières*, ASF), OHCHR, Tunisian Alliance for Integrity and Transparency (*Alliance Tunisienne pour l'Intégrité et la Transparence*), Tunisian Human Rights League (*Ligue Tunisienne des Droits de l'Homme*), Tunisian Forum for Economic and Social Rights (*Forum Tunisien pour les Droits Economiques et Sociaux*), Tunisian Order of Lawyers (*Ordre National des Avocats de Tunisie*), UNDP, World Organisation Against Torture (*Organisation Mondiale Contre la Torture*)

Mali: German Corporation for International Cooperation GmbH (*Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH*), ASF Canada, Malian Association for Human Rights (*Association Malienne des Droits de l'Homme*), National Coordination of Victims Associations (*Coordination Nationale des Associations de Victimes*), National Commission of Human Rights (*Commission Nationale des Droits de l'Homme*), National Youth Council of Mali (*Conseil National de la Jeunesse du Mali*), United Nations International Children's

Emergency Fund (UNICEF), United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), Youth Movement for Development (*Mouvement des Jeunes pour le Développement*)

A Note on My Positionality

There is a growing consensus among IR scholars that positionality matters. Interpretivist scholars, for instance, point out the importance of reflexivity as a constant probing of the researcher's positionality, particularly when conducting fieldwork and interviews (Ackerly and True 2008; Amoureux and Steele 2016; Fierke 2002; Fujii 2018; Guzzini 2005; Hamati-Ataya 2013; Lynch 2008; Shehata 2006; Soedirgo and Glas 2020). As Lynch (2014) elaborates, for interpretivists, knowledge production results from intersubjective and meaning-focused processes that interact and potentially shape the studied world, thus blurring the fact-value distinction. It, thus, makes reflexivity of utmost importance for interrogating the conditions of knowledge production (See also Kurowska 2020). Reflexivity is seen as necessary to ensure the "trustworthiness" of research (Berger 2015, 221; Schaffer 2016; Yanow 2014). An examination of how positionality impacts our interactions and the "data" we produce about the world is, therefore, paramount (Gunaratnam 2003; Sherif 2001; Yanow and Schwartz-Shea 2014). Fujii (2018, 1-2) calls for humility in reflexivity:

"The pathway to learning and ethical awareness is reflexivity. By reflexivity, I mean a critical, ongoing examination of the way the researcher engages with others—be they participants, research assistants, interpreters, or other interlocutors. Reflexivity involves careful consideration of how issues of positionality—such as the researcher's personal characteristics or theoretical

vantage points—shape the research process. Such issues bear on the kinds of knowledge claims the researcher can advance. Reflexivity can also—and indeed should—involve developing an ethical sensibility that can attune the researcher to how her research design, practices, or strategies affect others. A reflexive disposition that includes a strong ethical sensibility will help to minimize harm to participants.”

In addition to the limitations I faced as an Iranian passport holder in terms of access to fieldsites,¹⁴ my positionality as an Iranian female resident of the US entailed interesting observations for me during my research, although with different effects in Tunisia and Mali. In Tunisia, this meant that my interviewees tied our discussion to politics in the broader Middle East and North Africa (MENA) region. One topic that was raised multiple times was the impact of the Iranian revolution on the politics in Tunisia. For instance, one of my interviewees pointed out that “Tunisia was obsessed with the Iranian revolution. Bourguiba adopted the headscarf ban only two years after the Islamic revolution.”¹⁵ Another person mentioned that even in the 2011 revolution, some people “wanted a similar experience to the Islamic revolution in Iran.”¹⁶ When discussing circular 108 – banning *hijab* in schools and public offices – and its victims under TJ, our discussions also included the somewhat contradictory but also similar experience of women in Iran – where *hijab* is mandatory – and

¹⁴ When I applied for a Tunisian visa to conduct a second round of fieldwork in Tunisia in 2020, my visa application was not approved.

¹⁵ Interview with journalist, independent activist and analyst, online, 2018.

¹⁶ Interview with public official, Tunis, Tunisia, 2018.

how authoritarian governments control women's bodies and images as part of their broader repressive policies.

In Mali, my positionality was more complicated. Given the complex racial identity categories in Mali where a line is drawn between *les noirs* or black people and *les blancs* – referring to white Caucasians, and also people with lighter skin mainly living in the north –, my identity was a cause of confusion for some of my research participants. On numerous occasions, I was referred to as “*une femme blanche*” – a white woman – and my reaction was to explain my identity as I thought my research participants were also entitled to know “who I was.”¹⁷ Reactions differed from references to the politics of the broader MENA region to one member of military forces telling me “so you're one of us.” My identity as a person with a Muslim background also led to interesting discussions with some of my research participants about the linguistic construction of “jihadists” by international actors as well as different forms of jihad – lesser (outward) jihad and greater (inner) jihad. For example, in one interview, when I used the term “jihadist” to refer to Islamic groups in northern Mali, my interviewee cautioned me about using the term which led to a discussion of similarities and differences between Shiism¹⁸ and Maliki schools of Islam in conceptualizing and defining jihad.¹⁹ My Muslim identity, however, also came with a downside. Similar to the experiences of Berger (2015) and Gawlewicz (2016),²⁰ when discussing the role of religion or religious actors, some of my interlocutors assumed that I already knew what they meant instead of

¹⁷ I started all my interviews with asking my research participants who they were and what role they played in the TJ process in Tunisia and/or Mali.

¹⁸ I am from a twelver Shia background and studied Shia jurisprudence when getting a law degree in Iran.

¹⁹ Interview with civil society actor, Bamako, Mali, 2020.

²⁰ On this point more broadly, see Fujii (2018, 17-18).

putting their answers into words. For instance, when asked about the role of cadis – Islamic judges – one of my interviewees said “as you are from Iran originally, you know the cadis, they are used in a lot of [Middle Eastern] countries.”²¹ All these interactions confirmed the importance of my positionality in the course of my research, leading to moments of reflection on how my identity was impacting my findings.

Limitations

As with any research, this project has particular limitations some of which I highlight here.²² First, my fieldwork research was mainly concentrated in the capital of each country. In Mali, due to the security situation outside Bamako, I was highly advised not to leave the capital. In Tunisia, I was mainly based in Tunis and although I traveled to a number of cities in the coastal region, due to several factors, including the security situation, resource constraints, and the weather condition at the time I was in Tunisia, I was not able to travel to the central and southern regions. Participation in TJ conferences and workshops held in Bamako, Tunis, and Sousse provided me with an opportunity to speak with TJ actors working in other regions.

Second, admittedly I had to research in three different languages, none of which is my native language. This entailed limitations and sometimes misunderstandings, but it also led to moments when new insights and surprises occurred for me. For instance, in Mali, the use of the word *bourreau* – executioner –, an unfamiliar word for me, by one of my interviewees led to a very interesting discussion about violence perpetrated by Islamic rebel groups in the

²¹ Interview with former MINUSMA officer, online, 2020.

²² I also discuss some of the limitations of my research in the concluding chapter.

north and its perception by TJ actors in Bamako. Further, in Tunisia, when one of my participants used “*elle*” – she or it referring to feminine words – and it was unclear to me whether he was referring to the truth commission or the head of the commission, the response I got was “[t]hey’re the same thing,”²³ again entailing an interesting observation about how the Tunisian truth commission is perceived by some civil society actors.

Third, the purpose of this project is not to generalize but rather to provide a rich, contextualized understanding of the power relations embedded in the dominant narrative of the WoT and its impact on justice narratives in the conflict and repression-affected settings of Tunisia and Mali. It is inspired by Marx Weber’s concept of *Verstehen* based on the idea of understanding while emphasizing the situated and contextualized nature of knowledge construction. It aims to create discursive spaces that make policy change possible (Lynch 2014). Given that in TJ, there exists a tendency to draw on other countries’ TJ experience, and considering that TJ has been in a “global” stage in the past two decades (Kerr and Mobekk 2007; Sikkink 2011; Teitel 2002; 2003;2008), expanding to more countries around the world including the Muslim world, scholars must shed light on TJ experiences in their particular contexts and develop “lessons learned” that can be then used in other contexts. This, however, does not mean that these lessons can be directly incorporated into TJ initiatives in other countries, but they can provide guidelines for TJ practitioners.

²³ Interview with civil society actor 1, Tunis, Tunisia, 2018.

IV. Case Studies – Why Tunisia and Mali?

TJ has just recently expanded to the Muslim world. The implementation of the *diyat* program in Aceh, Indonesia goes back to 2002, and is one of the earliest attempts in a Muslim region which also draws on Islamic principles in the context of TJ (Aspinall and Zain 2013; Clarke et al. 2008; Suh 2015; Kent 2019; Schiller 2011). Morocco's Equity and Reconciliation Commission (*Instance Équité et Réconciliation*)²⁴ was the first official truth commission to be established in a Muslim-majority country. It, however, was set up in the absence of a complete and genuine transition. In Algeria, the Ad Hoc Inquiry Commission in Charge of the Question of Disappearances (*Commission d'Enquête Ad Hoc Chargée de la Question des Disparus*) was established in 2003 following a presidential decree to investigate the forced disappearance of over 7,000 people and the killing of 150,000 people during the seven years of civil conflict. The Ad-Hoc Commission submitted a confidential report to the then President Abdelaziz Bouteflika, but the report was never made public.²⁵ More recently, the Bahrain Independent Commission of Inquiry²⁶ was created in 2011 following a Royal Order to investigate the civil unrest in Bahrain from February to March 2011 and its consequences. It published its report in November 2011.²⁷ The Commission was mainly used by the Kingdom to deflect international criticism and appease domestic opposition actors. According to Helal (2019), despite some positive institutional and administrative reforms, the government failed to fully implement the Commission's recommendations, particularly

²⁴ هيئة الإنصاف والمصالحة

²⁵ For more information, see United States Institute of Peace, "Commission of Inquiry: Algeria," <https://www.usip.org/publications/2003/09/commission-inquiry-algeria>

²⁶ اللجنة البحرينية المستقلة لتقصي الحقائق

²⁷ The report can be found on the website of the Bahrain Independent Commission of Inquiry: <http://www.bici.org.bh/>

in holding the perpetrators of human rights violations accountable. In The Gambia, the Truth, Reconciliation and Reparations Commission (TRCC) was established in 2018 to “conduct research and investigations into human rights violations committed under the presidency of Yahya Jammeh.”²⁸ The Commission has not finished its work yet and its impact on the politics in The Gambia remains to be seen.

In addition to these initiatives, national or international prosecutions,²⁹ official amnesty programs, and political exclusion laws have also been adopted in several Muslim-majority countries, and in most cases, in the absence of a genuine political transition, while in other Muslim-majority countries, the approach has generally been to ignore and sidestep the question of TJ. With the Arab-majority uprisings, TJ became a central issue on the political agenda of these countries. All countries in the region grappled with the question of TJ to some extent,³⁰ but it was only Tunisia that adopted a comprehensive approach to TJ with the adoption of a law on TJ and the initiation of different TJ efforts, including a truth commission and domestic trials, to address human rights violations under the previous two governments. Around the same time, the debate on TJ in Mali started following the end of the rebellion in the north. A preliminary truth commission was established by the government and later disbanded. The interim government also referred the situation in Mali to the ICC under the pretext that “the Malian courts are unable to prosecute or try the

²⁸ TRCC website, <http://www.trrc.gm/>

²⁹ The most prominent example is the Special Tribunal for Lebanon whose mandate includes acts of “terrorism.”

³⁰ For more on TJ in the MENA region, see among others Fisher and Stewart (2014) and Sriram (2017).

perpetrators.”³¹ TJ was also one item on the agenda during the negotiations between the rebel groups and the government and was included in the Algiers Accord. Another truth commission was established in 2014 which continues its work up until this day. Tunisia and Mali are two Muslim-majority countries that are among the main sites of the WoT and have recently adopted comprehensive TJ initiatives. Their experience can provide important lessons for the increasing interest in TJ in the Muslim world.

V. Preview of Chapters

Chapter 2 develops the theoretical and methodological approach that guides the dissertation research. It draws on the expansive literature on narratives to lay out a consolidated narrative approach to TJ. It particularly draws on Jelena Subotic’s work on the strategic use of narratives. It argues that 1. In unstable TJ contexts, political actors use dominant narratives to “encapsulate” narratives of justice in order to avoid accountability and solidify their status and position in the political system; 2. The dominant institutional and public narrative of TJ, as a framework rooted in a liberal legalistic meta-narrative, constricts the space available to dislodge the dominant narratives of conflict and political violence in countries implementing TJ initiatives. This leads to the implementation of a TJ project that not only fails to disrupt the existing structures of political and socio-economic power but is also used to solidify the status quo and the current form of political power as the only possibility in the political imagination of “transitional” societies.

³¹ The referral letter can be found here: <https://www.icc-cpi.int/NR/rdonlyres/A245A47F-BFD1-45B6-891C-3BCB5B173F57/0/ReferralLetterMali130712.pdf>

Chapter 3 draws on the narrative approach developed in the previous chapter and answers the central questions in the dissertation project. Noting arguments for the further expansion of TJ to “terror” contexts, it reviews the critical terrorism studies literature that calls attention to the power relations embedded in the use of the linguistic categories of “terror,” “terrorism,” and “terrorist.” Focusing more specifically on one form of sub-state terrorism known as “Islamic extremism” as the central element of the WoT discourse, it delves into the historical roots of this discourse in the context of Muslim-majority countries and the inherent otherness and vilification embedded in the WoT narrative. The chapter then builds on the critical TJ literature and argues that 1. The dominant narrative of the WoT in TJ contexts leads to a securitized approach in how TJ deals with conflict and political violence in transitional contexts. Political actors in power with the help of institutional and public narratives exploit this securitized approach to avoid accountability, solidify their power and status, and limit the reach of TJ. 2. This results in contestation and a hierarchy in the notions of “violence,” “victimhood,” “perpetratorship,” and “local.” The end result is a conservative TJ that focuses on the communities and people rather than the state and dominant structures of power as the source of “problem.”

Chapter 4 then delves into the case of Tunisia. It starts with a brief historical background of the country in the colonial era. It traces the Islamist-secularist binary in the politics of Tunisia and the repression of Islamic movements under both Habib Bourguiba and Zine El Abidine Ben Ali who at the same time capitalized on and used a religious discourse to legitimize their own power. It then gives an overview of various TJ initiatives put in place in post-revolutionary Tunisia and drawing on the notion of “contested victimhood,” it discusses

the contested nature of Islamists' victimhood in post-transition Tunisia and the impact it had on the TJ politics in the country.

Chapter 5 discusses the ongoing TJ process in Mali. It first provides a brief overview of the complicated relationship between religion and politics in Mali going back to the colonial period in the mid-twentieth century. It then discusses the multiple rebellions in the country, focusing more specifically on the 2012 rebellion. This is accompanied by a discussion of the emergence and rise of Islamic rebel groups in northern Mali. The rest of the chapter focuses on TJ initiatives in Mali and argues that a dominant security approach to TJ has led to the securitization of certain communities and the construction of a hierarchy of perpetrators. This has led to the exclusion and marginalization of these communities' stories and the reasons why they turn to violence. It also sidesteps issues of intercommunal violence that currently impact central Mali and broader narratives of structural and socio-economic injustice.

Chapter 6 is the concluding chapter of the dissertation. It provides an overview of the research findings and discusses the implications for the praxis of TJ. There is an overlap between the categories of TJ scholars and practitioners. Many TJ scholars also serve as consultants or advisers to international and national organizations involved in the design and implementation of TJ efforts. This provides an important avenue for disseminating research findings among practitioners to impact the practice of TJ. As TJ is currently expanding to more countries in the Muslim world, the chapter concludes with suggestions for further research on TJ in the WoT context, and in Muslim-majority countries more broadly.

CHAPTER 2: A NARRATIVE APPROACH TO TRANSITIONAL JUSTICE

“Dominant narratives are not called stories. They are called reality.” (MacKinnon 1996, 235)

I. Introduction

We make sense of the world and the realities around us through the stories we tell ourselves and others. Stories help us construct our individual and group identities and establish our place in the world (Andrews et al. 2013; Shenhav 2015; Somers 1994). These stories are always narrated within pre-existing frameworks of meaning which shape how we think and act. Actors’ actions then support or oppose these dominant frames, replicating the identities and practices through a relationship of mutual constitution (Klotz and Lynch 2007; Subotic 2019).

Stories shape political action and are used to reinforce or challenge power relations (Klotz and Lynch 2007). Both factors make stories of utmost importance for social and particularly political scientists. It should be noted, however, that narratives are social constructs; they are interpretations constructed and deconstructed by social agents rather than correct stories based on objective facts and as such, their coherence and completeness are always challenged by different actors (Ibid.; Shenhav 2006; 2015; Subotic 2013). This might make some political scientists uncomfortable because of the drive for scientific rigor, but it makes narratives extremely important as political debates over shared narratives in different contexts demonstrate. Narratives are also an important tool for post-structuralists’ challenge of universals because of their reference to knowledge that is contextualized, specific, and popular (Patterson and Monroe 1998).

Consequently, there has been increasing attention to narratives in social sciences in recent years, and narratives have also gained traction among IR scholars (See for example Krebs 2015; Miskimmon et al. 2017; Roberts 2006; Ross 2013). Several constructivists, in particular, have turned to narrative analysis in their work as part of the “linguistic turn” that brought about a broader attention to language and discourse as constitutive of political action (Fierke 2002; Milliken 1999). In a lecture given at the 30th annual conference of the British International Studies Association in 2005, Geoffrey Roberts declared a “narrative turn” across human sciences and more specifically in IR. He attributed this turn to multiple factors including “the crisis of confidence in positivist social science; the post-structuralist rediscovery of the power of agency; the growth of individualism and the appeal of emancipatory storytelling to identity-based movements; and, perhaps most important, the postmodernist exposure of the meta-narratives underpinning much theory construction” (Roberts 2006, 703).

Although the terms narratives and stories are often used interchangeably, social scientists identify certain elements for stories to be considered narratives. A minimalist approach defines narratives as stories with a plot and main characters, a beginning, and arguably an end or a “closure”³² (Klotz and Lynch 2007; Shenhav 2015). While the minimalist definition highlights the idea of sequence or succession of events, other scholars identify additional criteria, such as causality and coherence, for stories to be considered narratives. Somers (1992; 1994) identifies four dimensions for narrativity in social sciences: 1. relationality of parts – indicating that an event becomes meaningful in relation to other events; 2. causal

³² See discussion in Bazzanella 2010; Gubrium and Holstein 2009; Maynard-Moody and Musheno 2006; Shenhav 2005; van Hulst 2013.

emplotment – the placement of different elements of the narrative in a plot so that there is a causal relationship among them; 3. selective appropriation – choosing to incorporate certain elements while omitting others; and 4. temporality, sequence, and place – indicating how events are related to each other within a narrative.

However, as Shenhav (2015)³³ points out, these criteria may be counterproductive for identifying social narratives as they might exclude materials and issues that are of interest to social science scholars. He instead defines social narratives as stories that are shared by a group of people. For him, multiplicity, defined as the retelling of stories or variations on stories, is central to the dispersion and reproduction of narratives, or elements thereof, in the societal arena (Ibid.). Political narratives are in turn stories that emerge either from a formal political forum or contain themes that are considered “political,” such as power relations and collective decision-making or compromise (Shenhav 2006).

Not all narratives have the same discursive power. Patterson and Monroe (1998) distinguish between four types of narratives: ontological, public, conceptual, and meta-narratives (also called master narratives). Ontological narratives are stories of how we understand ourselves as social actors while public narratives are institutional narratives within which we find ourselves embedded. Conceptual narratives are constructed by social researchers, and meta-narratives are grand narratives in which other narratives are entrenched. In other words, they are narratives about narratives and “are often uncritically adopted as the central organizing concepts of our theories” (Ibid., 326). These different forms of narratives intersect and constitute each other and cannot be analyzed in isolation

³³ See pages 13–15.

from one another. Meta-narratives, in particular, have been critiqued by post-positivist scholars who attempt to expose the broader ideologies that privilege certain narratives over others (Klotz and Lynch 2007; Lynch 1999). These privileged narratives might attain the status of hegemonic narratives, defined as stories that encounter little societal opposition and “establish themselves as dominant, constituting for many an unquestioned ‘common sense’ and marginalizing alternative understandings” (Krebs and Lobasz 2007, 411–412). Dominant narratives can be embedded in or drive meta-narratives, and they dominate over and shape the existing narratives in society. My interest lies in the impact of these hegemonic narratives and their construction, propagation, and reproduction on TJ policies in transitional countries.

A narrative approach has been shown to be useful for designing interventions in situations of protracted and escalating conflict (Bar-on and Kassem 2004; Cobb 2013). Narratives play an important role for outside and local actors working in authoritarian, conflict-ridden, and transitional contexts. As Séverine Autesserre (2012, 202) puts it, “narratives are necessary for policymakers, journalists, advocacy groups, and practitioners on the ground.” They help make sense of extremely complex issues and suggest possible solutions, especially in transitional contexts in which different actors rely on narratives to find solutions. The literature on PB and conflict resolution has drawn on a narrative approach to shed light on the complexities of peace and mediation efforts in different contexts (See for example Autesserre 2012; 2014; Cobb 2013; Cobb and Yusuf 2012; Federman 2016; Mac Ginty and Firchow 2016). More specifically, several scholars of conflict resolution propose a narrative approach as a praxis to put an end to and resolve conflicts (Cobb 1993; 2013; Federman 2016; Pappe 2003; Winslade and Monk 2000). For example, Cobb and Yusuf (2012) propose

a model for reconciliation in Somalia that expands the existing reconciliation model to include socioemotional reconciliation. By moving away from instrumental and institutional approaches to socioemotional and grassroots approaches, they propose several stages of a narrative approach to reconciliation, including national and local dialogues and collaborative projects, that “would support the development of the story of the violence and its consequences” (Ibid., 339).

The TJ literature has also begun to pay attention to the importance of narratives for TJ efforts and initiatives. Most of the literature, however, focuses on the role of truth commissions, informal truth-seeking initiatives, and other TJ mechanisms in the construction of knowledge about the past (See for example Andrews 2003; Buckley-Zistel 2014; Castel 2016; Porter 2016; Sokolić 2015). This focus is understandable as the construction of a shared truth about past events is one of the principal goals of TJ.³⁴ Different TJ mechanisms and especially truth-seeking and memorialization efforts, aim to establish a narrative of the events that took place during a period of conflict and repression. But narratives also play an important role in shaping TJ policies and practices. The impact of narratives on these policies and practices, however, has received less attention. As part of the recent “critical turn” in TJ (along with other turns such as the “transformative turn,” “local turn,” and “victim turn”),³⁵ some critical TJ scholars have critiqued the liberal legalistic

³⁴ One can dispute, however, whether one “truth” about past events exists. Although TJ initiatives attempt to create a common and shared narrative about what happened in the past, through for instance truth commission reports, in practice, multiple narratives about past events are revealed.

³⁵ There have been indeed several “turns” in the TJ literature and practice over the past few years, including the “critical turn,” “transformative turn,” “local turn,” and “victim turn.” They overlap, but each emphasizes different critiques of mainstream TJ approaches and as a result, proposes varying sorts of rethinking TJ policies. They all, however, are critical of top-down approaches and advocate a bottom-up and participatory approach to TJ that goes beyond the usual focus on physical and bodily

meta-narrative³⁶ that dominates the TJ field and privileges hegemonic narratives that exclude or de-center certain forms of violence and actors from the purview of TJ. These hegemonic narratives are critical for understanding how TJ actors locate different acts and actors within the story of conflict and political violence and how this shapes who gets a voice in justice narratives and who does not.

The narrative approach I propose focuses on the use of dominant narratives by political actors to achieve their objectives while taking into account the discursive power of institutional and public narratives that enable and facilitate the reproduction and endurance of hegemonic narratives. TJ discourses provide an opportunity for political actors to use and manipulate justice narratives for their own political goals, but justice narratives are also embedded in broader discourses and face discursive hurdles and limitations as they take place in a context where a set of social and institutional discourses marginalize, co-opt, and otherwise delegitimize the narratives that oppose dominant narratives. Thus, a narrative approach to TJ takes into account how political actors use dominant narratives to “encapsulate” narratives of justice in transitional countries in service of their political interests, but it also theorizes the different ways in which institutional and public narratives constrict the space available for contesting the existing narratives of justice.

It should be noted that not all narratives are equally distributed and accepted among the concerned populations, and not all narratives are equally in line with human rights discourses. While this dissertation focuses on how the securitized WoT discourse erases

violations and harms. See for example Drulilolle and Brett 2018; Evans 2018; Gready and Robins 2014; 2019; Sharp 2013; 2015; 2019.

³⁶ Dube (2011) calls the dominant approach to TJ the “Teitelian model.”

other narratives, it is undeniable that existing counter-narratives can also be violent and exclusionary. The purpose here, however, is not to make normative claims about whose voice matters or argue for a hierarchy of acceptable narratives, but to shed light on hegemonic narratives that limit the TJ potential to address the root causes of violence and conflict.

This chapter lays out a narrative approach to TJ. The dissertation then draws on this theoretical-methodological framework to discuss the impact of the dominant narrative of the WoT on narratives of justice in Tunisia and Mali. Both countries have been among the main sites of the WoT for years. The 2011 Tunisian revolution and the end of the rebellion in northern Mali in 2013 led to the adoption of comprehensive TJ initiatives that had to work under the shadow of the battle against “terrorism” which had an impact on these processes. I show how the discourse on TJ and its conceptualization has allowed the power relations embedded in the hegemonic narrative of the WoT to permeate TJ processes and perpetuate notions of victimhood and perpetratorship. Narratives of justice in both countries were to some extent encapsulated by the hegemonic narrative of the WoT. As will be explained in detail in the next three chapters, international and domestic political actors used this narrative for their own political interests. Institutional narratives further reproduced and reinforced the discursive power of the WoT narrative. This led to the marginalization of issues of structural injustice and root causes of terrorism and political violence as well as a hierarchical categorization of “violence,” “victims” and “perpetrators.”

The chapter begins with a genealogy of TJ starting from the aftermath of World War I (WWI) to the present day. The second section presents an overview of the liberal legalistic

meta-narrative that dominates the field of TJ. It discusses the critiques of this meta-narrative in light of the recent critical turn in TJ while also paying attention to the critiques of alternative frameworks proposed to counter the hegemony of the liberal legalistic meta-narrative. The following section then draws on two main approaches to narratives in the literature and lays out a narrative approach to TJ. The chapter concludes with a discussion of how a synthesis of these approaches can be fruitful for TJ scholars and practitioners.

II. The Rise and Transformation of Transitional Justice

Michel Foucault (1969; 2001) argues that the production of knowledge and truth is contingent upon its political circumstances. TJ is no exception in this regard. It is the product of a specific period and space in history and is shaped by the political and social circumstances in which it was devised. Drawing on Foucault's work, Buckley-Zistel (2014) argues that the "regimes of truth" determine the knowledge about the past and how it is narrated, establishing what is true or false, who are valid narrators, and who are not and should therefore remain silent. According to her, justice, transition, truth, and reconciliation are not neutral and unbiased concepts and notions but are the result of complex spatiotemporal agencies and structures both inside and outside institutions (Ibid.), and mirror "conditions under which such narratives arise – the political agency that such narrations refract, replicate, and authorize – and yet also account for the wide-ranging circuits that filter and consume the biographical artifact" (Feldman 2004, 163). It is, therefore, important to discuss the dominant approach to TJ as one example of the regimes of truth enabling the perpetuation of the WoT discourse in justice narratives as well as its contestation and counternarratives that challenge its hegemony. This section delves into the

origins of TJ and the meta-narrative that currently dominates the TJ literature and practice and its contestation. I show how regimes of truth are constructed and differentiated by TJ concepts and then elucidate in the following chapters how these frameworks connect to the discussion on the WoT.

The Birth and Definition of Transitional Justice as a Concept

Ruti Teitel (1991; 2008) coined the term “transitional justice” in 1991 at the time of the late 1980s Latin American transitions to democracy and the collapse of the Soviet Union. She defines TJ “as the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes” (Teitel 2003, 69). The current dominant definition has gone beyond a focus solely on “legal responses,” with the UN defining it as “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (UN 2004, para. 8; 2010, 3). These measures may include both judicial and non-judicial mechanisms, including criminal prosecutions, truth commissions, reparations, institutional reform, lustration, and vetting, or a combination thereof (UN 2004, para. 8; 2010, 3; 2011, para. 17).

While Jon Elster (2004) dates TJ back to ancient Greece, Ruti Teitel (2003) traces the origins of modern TJ to WWI.³⁷ Teitel (2003; 2014) identifies four phases of TJ since WWI: the first phase starts with the Allied-run Nuremberg trials, the second with the “third wave” democratic transitions in the post-Cold War era, the third with the acceleration of

³⁷ Bass (2000, 5) also argues that there is a long history of war crime tribunals at least since the 1800s but asserts that Nuremberg was the most “successful example.”

globalization at the end of the twentieth century and normalization of TJ, and the more recent phase with the move from internationalism to a stage of local justice. While WWI is seen as contributing to the launching of the first global effort to address international crimes, the most critical period in the development of modern TJ occurred after WWII with the establishment of the Nuremberg and Tokyo Tribunals. This was followed by the emergence of an international human rights regime, including the Convention on the Prevention and Punishment of the Crime of Genocide and the Universal Declaration of Human Rights. The 1990s (declared as the Decade of International Law by the UN) is another period of significance for the TJ movement because of the establishment of two ad hoc criminal tribunals – the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)³⁸ – a trend that eventually led to the adoption of the Rome Statute in 1998. Criminal trials and truth commissions at the national level were also widely adopted to deal with histories of political violence and conflict during this period.

The Transformation of the Transitional Justice Framework

Today, TJ scholars and practitioners seem to agree that mainly as a result of normative shifts, the TJ discourse has diffused and become globalized (Kerr and Mobekk 2007; Sikkink 2011; Teitel 2003). In other words, we are now in a “global phase” of TJ which entails a move to a “steady-state” justice (Teitel 2002; 2008). Several scholars, for example, point out the new trend in world politics toward accountability for past human rights violations which Kathryn Sikkink (Lutz and Sikkink 2001; Sikkink 2011) calls “the justice cascade” and

³⁸ ICTY and ICTR were established respectively in 1993 and 1994.

Chandra Sriram (2005) “a revolution in accountability.” This has resulted in a growing entrenchment and institutionalization of the norms and mechanisms of TJ across different cases, including truth commissions, reparations, lustration or vetting, and various memorialization efforts (Barahona de Brito et al. 2001; Jelin et al. 2003; Roht-Arriaza and Mariezcurrena 2006; Sikkink and Kim 2013; Teitel 2003). As will be discussed later, the norm cascade literature has been critiqued for neglecting the power relations embedded in norm emergence and dispersion. This neglect has enabled and reinforced hegemonic discourses such as the WoT in broader frameworks of peace and justice.

Scholars also recognize that TJ now operates in very different contexts from those for which it was first designed. There has been an important transformation of the framework within which human rights violations are dealt with in periods of political transition. This transformation is evident in three areas:

First, a greater emphasis on the individual accountability model has emerged; besides impunity, the dominant accountability model was a state accountability model in which the state as a whole was held accountable for human rights violations and therefore, was required to take action to remedy the violations. State officials were mostly immune from prosecutions although exceptions existed. With the post-WWII trials followed by prosecutions in Greece and Portugal in the mid-1970s, the individual accountability model began to become prominent (Sikkink and Kim 2013), eventually culminating in the establishment of the ICC.

Second, during the past three decades, many transitions have posed an important question and dilemma: how should TJ resolve the tension between the international legal imperative

of criminal accountability for perpetrators of human rights violations and the pragmatic demand of amnesty imposed by transitional contexts to ensure peace and stability? Consequently, a debate emerged between the proponents and critics of accountability and amnesty, known as the “peace versus justice” debate. The South African Truth and Reconciliation Commission (TRC), which is often considered as a model and lesson for TJ, epitomized another approach to dealing with past atrocities driven from the theory of restorative justice. This theory is based on the notion that justice must involve an effort to restore a balance, and prosecution is not the only option to achieve this objective. Restoration emphasizes healing and reconciliation for offenders, victims, and their communities (Menkel-Meadow 2007). Restorative processes allow the sharing of stories and narratives about the harm and wrongdoing caused by particular events and focus on interpersonal relationships and collaborative problem-solving (Zehr 2008). They aim to provide a platform for storytelling as a form of empowerment (Gaarder and Pressor 2008; Pranis 2007; Sullivan and Tifft 2008; Zehr 2005). However, it should be recognized that the parties are seldom equal before these mechanisms and that impacts the storytelling process in restorative processes (Gaarder and Pressor 2008). State-led restorative initiatives are also vulnerable to being constricted by the national discourse about past events and overlooking structural injustice and violence that is often interwoven with conflict and authoritarianism.

Third, a new trend in TJ literature and practice emerged that put victims and the “local” population at the center of the TJ debate. Several TJ scholars advocate a paradigm shift in response to the “crisis of the liberal peace” toward a more “local-centered” approach to PB

and TJ³⁹ (Bräuchler and Naucke 2017; Cooper 2007; Nyseth Brehm and Golden 2017; Lundy and McGovern 2008). International organizations have also adopted the “discourse of the local” and emphasize the importance of ownership and participation by populations in transitional societies as crucial to sustaining peace and reconciliation (Ubink and Rea 2017). What is puzzling is that despite this common rhetoric claiming that TJ is and should be “local-centered,” its principal mechanisms, namely trials and truth commissions, have had rather limited success in addressing the target population’s needs and expectations (Robins 2017). A recent wave of literature has critiqued the implementation of the local turn, exposing how power relations impact “local TJ” while other scholars are accusing “this newfound critical enthusiasm” of producing an unwarranted sense of pessimism and failure (Sharp 2019, 570). Hegemonic narratives such as the WoT further complicate local discourses on TJ. While the emphasis is on the inclusion of local narratives in TJ initiatives, the literature sidesteps how narratives that contradict or do not fit in hegemonic discourses are sidelined in the process.

III. Transitional Justice as a Liberal Legalistic Meta-Narrative

The last decade of the 1990s witnessed a rise in peace operations. In *An Agenda for Peace*, Boutros Boutros-Ghali (1992, para. 21), the then UN Secretary-General, introduced the concept of “post-conflict peacebuilding,” defined as “action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict.” In the *Supplement to an Agenda for Peace*, the UN extended the scope of post-conflict PB to include humanitarian, economic, and political matters as well as demobilization of combatants and transition to participatory elections (Boutros-Ghali 1995). PB was aimed to

³⁹ The fields of TJ, PB, and international development have all witnessed a “local turn” in recent years. Different scholars, including Lambourne (2009) and Sriram (2007), synthesize PB and TJ critiques.

be designed as a holistic approach to transforming the political, economic, and social structures in post-conflict countries to prevent a relapse into conflict and build a sustainable and peaceful society (Fisher 2001). The assumption was that the responsibility of PB would first lie on external actors, such as the UN and other international governmental and non-governmental organizations (NGOs), and once the post-conflict situation stabilized, the responsibility then would be transferred to national and local institutions (Bercovitch and Jackson 2009). Scholars, however, have questioned the effectiveness of peace operations as implemented by international actors (See among others Autesserre 2012; 2014; Lund 2003; Mac Ginty 2006; Richmond 2011). Some blame this on the ideological meta-narrative that dominates peace operations (See for example Campbell et al. 2011; Heathershaw 2009; Mac Ginty 2006; Paris 2004; Richmond 2005; Tadjbakhsh 2011). As discussed below, TJ as part and parcel of the PB agenda has been subject to the same critique.

Liberal Peace as the Master Narrative

Research demonstrates the prevalence of a “liberal peace” agenda in the policies of numerous countries as well as the strategies of institutions such as the UN, World Bank (WB), and various NGOs, as the main external actors in peace operations. Contemporary mainstream PB is considered as liberal PB with “liberal peace” as its theoretical foundation (Barnett 2006; Chandler 2004; Mac Ginty 2008; Newman et al. 2009; Paris 2002; 2004; Richmond 2005). The liberal peace theory is founded upon the Western Enlightenment philosophical framework (Richmond 2011). It posits that democracy and economic interdependence based on free trade lead not only to stability and peace in domestic politics of countries but also prevent interstate conflict by promoting peaceful dispute resolutions

among states (Richmond 2014). The liberal peace agenda promotes a Western conception of political and economic liberalization. The dominant PB model employed by the international community emphasizes four main elements: 1. the reform of the security sector, including disarmament, demobilization, and reintegration programs; 2. the creation of a market economy; 3. political reform in terms of the organization of free and fair elections and constitutionally guaranteed civil liberties; 4. the advancement of the rule of law and human rights, and in some instances, social reconciliation efforts in the form of truth commissions, lustration, amnesties or other TJ mechanisms (Autessere 2014; Jackson 2018).

Several scholars, however, highlight the flaws in the dominant PB model (See among others Cooper 2007; Mac Ginty 2011; Paris 1997; Richmond 2013). Richmond (2009, 557) goes as far as arguing that “[t]he liberal peace project is in disarray, if not in crisis.” The empirical record of liberal PB also demonstrates the persistence of conflict and violence, especially structural violence, as well as the failure of democratic consolidation in most PB missions (Autessere 2014; Jackson 2018). Mac Ginty (2008, 146) notes that “orthodox ... approaches to peace-making and peace-building emphasize state-building and state-reform as their main methodology. This is essentially a ‘problem-solving’ approach which accepts the parameters or structures within which the conflict occurs and is content to ‘fix’ the immediate problem without challenging the meta-structures that support the conflict.”

The same critiques apply to the TJ agenda. As an integral part of the PB structure, TJ is also dominated by a liberal peace meta-narrative. The TJ discourse is founded upon the notion of “breaking with the past” (Moon 2008; Nagy 2008). Drawing on the Enlightenment values of “reason, progress, improvement, and redemption” (Colvin 2008, 416), it is built on an

underlying narrative of “transition” or “progress” from violence to peace and from an illiberal to a liberal regime (Kent 2011). This is based on the presumption that by “settling accounts” through prosecutions and instituting truth-revealing initiatives, individuals, as well as societies, will “come to terms” with the past and states will make the transition to peaceful, stable, and liberal democracies (Ibid.; Sriram 2007). As Ruti Teitel (2014, 105) puts it, “[t]he main contribution of transitional justice is to advance the construction of a collective liberalizing narrative. Its uses are to advance the transformative purpose of moving the international community, as well as individual states, toward liberalizing political change.” The move toward a more liberal regime implies an imagined consensus over a universal norm. Teitel, however, is cognizant of the dangers of the narrative of transition as liberalization and acknowledges that “despite its appeal, its entrenchment as a story of unity could undermine its potential for a more revolutionary project” (Ibid., 257).

Rothberg (2012) critiques Teitel’s version of transitional narratives. He points out how Teitel’s genre shift from tragedy – catastrophic suffering of individuals – to comic or romantic mode – the redemption coming as the result of the revelation of knowledge – signifies a shift toward certainty: “liberalizing transitional narratives become metanarratives or masterplots founded on a forgetful will to reconciliation. As masterplots, transitional narratives shed their contingent connection to ‘preexisting political legacies’ and become much more conventional stories that take for granted the direction of progress: in this case, toward the closure of liberal democracy” (Ibid., 6). The generic conventions of the narrative of transition from tragedy to knowledge ignore the tragic complexities involved in attempts to create a single “objective” truth about mass violence or trauma (Dube 2011) and install “powerful ideological parameters that limit the field of possibility for new stories of

transformation” (Rothberg 2012, 7). The TJ practice has also been bound by the meta-narrative of transition to liberal democracy as an end-point to bring about internal and external peace in transitional societies. This view, however, often does not correspond with the realities on the ground. In recent years, transitions have not been as straightforward and clear as it is often assumed. TJ initiatives are being deployed in contexts where transnational networks of militants and the global WoT to counter their threat complicate the notion of “transition” and the assumption that the establishment of a liberal democratic state is a panacea in complex situations where the very notion of the modern nation-state is put into question.

Transitional Justice as a Legalistic Master Narrative

In the TJ meta-narrative, the legal process has become a central and leading element in the transition from an illiberal to a liberal regime. Law is considered central in attempts at “breaking cycles of violence” (Minow 1998), and at providing TJ during the transition to democracy (Kritz 1995; Teitel 2000). In this view, the promotion of liberal values, the rule of law, and peace and stability in transitional countries go hand in hand (Kent 2011). In her seminal work on the concept of legalism, Judith Shklar (1968, 3) defines it as a discrete ideology separating legal analysis from politics and other social science disciplines and “fencing legal thinking off from contact with the rest of historical thought and experience.” As is evident in the centrality of “the rule of law” in the broader architecture of transition from authoritarianism and conflict, a trend that Brooks calls an “explosion in promotion of the rule of law” in post-crisis and transitional societies (Brooks 2003, 2276), TJ has been dominated by a narrow legalistic lens (McEvoy 2007).

The legalistic approach is evident in the institutions that are promoted by TJ scholars and practitioners. What we have witnessed is the “judicialization of international relations” (Hazan 2010, 51; Oomen 2005, 893) that has led to the establishment of various international criminal tribunals, including the ad hoc and hybrid courts as well as the ICC. This legalistic meta-narrative leads to the assumption that a simple solution to complex political and historical problems exists, resulting in “technical” projects that are short-term, embody universal values, and are, therefore, presumably transferrable to different contexts. This is exemplified in the inclusion of TJ as part of the UN’s rule of law “toolkit” for conflict and post-conflict PB and recovery (UN 2004).⁴⁰ This one-size-fits-all neoliberal approach is based on the promotion of the rule of law and institutions that support it in transitional contexts. The “surge in American and international efforts to promote the rule of law around the globe, especially in post-crisis and transitional societies” has been a dominant feature of TJ in the past couple of decades (Brooks 2003, 2276). The rule of law is accepted and promoted by key international decision-makers without a critical evaluation of its underlying assumptions (Brooks 2003; Vieille 2012). This creates challenges for the implementation of the rule of law on both ethical and practical levels, regarding its ideological assumptions as well as the applicability of this model to different contexts (Vieille 2012).

The privileging of legal responses are often abstracted from and incongruous with lived realities of communities living in transitional countries (Nagy 2008) and it also fosters the perception that TJ mechanisms can be imposed from “above” the political sphere and ignores

⁴⁰ See also <https://www.ohchr.org/EN/Issues/RuleOfLaw/Pages/TransitionalJustice.aspx>

that often these mechanisms are the product of compromise among conflicting policy agendas (Balakrishnan 2008; Bhuta 2005; Kent 2011; McEvoy 2007). The rule of law is presented as “neutral, universal, and apolitical” (Oomen 2005, 893) and easily abstracted from its exclusively Western and ethnocentric social context. Therefore, in practice, it “performs the same function of the imperialism it nominally scorns, relegating the non-European other to a less advanced stage of development” (Mansfield 2000, 127). The legalist paradigm underlying TJ goes beyond the promotion of international criminal law and courts and also prioritizes “the standardization and transplantation of legal institutions and practices” across different TJ initiatives (Vieille 2012, 64). As will be shown in the next chapter, the WoT, however, has often operated outside the boundaries of law. This poses a dilemma for TJ initiatives in the WoT contexts in the sense that on the one hand, they are bound by the discourse on the rule of law, and on the other hand, they can neglect that discourse when it comes to dealing with acts defined as “terrorism.” A critical examination of power relations that enable this approach uncovers the hegemonic power of the WoT narrative and its impact on TJ.

Critiques of the Liberal Legalistic Transitional Justice⁴¹

The literature on the critiques of the liberal legalistic approach to TJ abounds, but here it is important to mention a few of these critiques. First, critical TJ scholars argue that the liberal legalistic and state-centric meta-narrative of TJ not only limits the range of harms that can be addressed as injustices through TJ initiatives but also restricts the tools and modes of action that can be used to realize justice. Civil and political rights, as a result, have been the

⁴¹ This and the next sub-section draw on the author’s published article (Kazemi 2019).

cornerstone of TJ initiatives at the expense of excluding economic and social justice issues. This is despite the fact that economic and social rights are often among the main root causes of conflicts and grievances (Branch 2014; Gready and Robins 2014; Macdonald 2013).

Another criticism pointed toward the liberal legalistic paradigm of TJ is its potential for instrumentalization. Post-transition justice can be used by political elites to further political agendas or reimpose pre-transition power structures that may not be consistent with human rights standards. Political leaders may endorse and promote TJ to consolidate a regime transition and weaken or eliminate political rivals (Branch 2014; Sharp 2014). TJ processes may also simply aim to placate domestic and international critics rather than to be responsive to the needs and demands of people. Such initiatives tend to be largely donor-driven, and also focus on local responsibility and disregard the role of external actors in perpetuating human rights violations. This leads to disseminating historical narratives that promote tendentious readings of abuses as an entirely local affair (Leebaw 2008; Lundy and McGovern 2008).

Third and more importantly, this framework overlooks the local specificities of host countries and works as a basis for strategies that are ill-adapted to local conditions. The liberal meta-narrative of TJ has been, therefore, subject to criticism for being unsuited to local realities and norms because of its detachment and lack of connection to local communities and social and democratic forces in those communities. Cultural objections point out the disconnect between TJ processes and local practices as one of the obstacles in the way of promoting human rights and peace and stability in transitional contexts. Further, TJ processes are often perceived as distant and inaccessible to the local population.

Privileging the formal legalistic discourse alienates the local population and produces a sense of lack of agency. The result has been an emphasis on an institutionally demanding TJ process that is not consistent with the quality and capacity of state institutions and is also culturally incongruent with the realities of many post-transition societies (Gready and Robins 2014; Lundy and McGovern 2008; Madlingozi 2010; Sriram 2017; Ubink and Rea 2017). The WoT discourse further perpetuates these problems by marginalizing narratives that challenge its hegemony.

Local Transitional Justice as a Counter Master Narrative

Aiming to address the critiques of the liberal legalistic meta-narrative of TJ, some scholars suggest alternative TJ frameworks. Building on Teitel's genealogy, Dustin Sharp (2013, 157) argues that we are in the "fourth generation" of TJ which concerns "the underlying politics of transitional justice work, the need to balance local and international agency, and the need for greater economic justice." Other scholars advocate for a reconceptualization of TJ as transformative justice (Evans 2018; Gready and Robins 2014; 2019). Gready and Robins (2014, 340), for example, define transformative justice as a framework "that emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes and the challenging of unequal and intersecting power relationships and structures of exclusion at both the local and the global level." In turn, critical legal scholars point out the importance of recognizing legal pluralism, defined as the existence of multiple legal systems in the same social field (Merry 1988), and emphasize local and customary forms of justice as better suited for dealing with human rights violations (Clarke 2009; Ubink and Rea 2017; Swenson 2018). It is in this context that some scholars draw attention to the central role that

religion can play in reconciliation at times of transition. They argue that religion can reach places where secular actors generally cannot. Moreover, apart from retributive elements, horizontal reconciliation within the community and vertical engagement between God and humanity in religion have the potential to facilitate reconciliation (Kfir 2015; Philpott 2007). In addition to this prolific literature, the practice of TJ has also embraced the “discourse of the local.” For instance, the UN Secretary General’s report on “The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies” acknowledges the importance of eschewing “one-size-fits-all formulas and the importation of foreign models” as well as the need to “respect and support local ownership, local leadership and a local constituency for reform” (UN 2004, 1 & 7).

The local turn aims to highlight and give power to local narratives in TJ processes. With a few exceptions, most scholars and practitioners take a positive view of the local TJ counter-narrative and point out its various benefits. Critics, however, argue that we should not romanticize the “local” and should pay attention to the complex ways in which power is exercised at the national and subnational levels (Kochanski 2018). Hegemonic narratives such as WoT can dominate over and shape the national and local narratives at play. Consequently, the local TJ counter-narrative has fallen prey to similar critiques as the liberal peace agenda. One of the most important critiques of this counter-narrative is that it is often assumed that national and local human rights NGOs represent “the local voice” and interactions with other local actors are limited to “outreach” or “sensitization” processes (Shaw and Waldorf 2010, 4). While acknowledging the role of local civil society, critics call for a truly participatory approach that empowers the survivors and victims themselves as active agents in the design and implementation of local TJ processes without sidelining their

stories and narratives (Nyseth Brehm and Golden 2017; Robins 2011; Sharp 2014). Drawing on various case studies in African countries, Brankovic (2018) shows the shortcomings of mainstream approaches to the role of civil society actors in local TJ and points out their limitations in empowering the local populations because of the disconnect between them and their constituencies as well as the interpenetration of state and civil society in these countries.

Further, Shaw and Waldorf (2010, 5) call attention to the incongruity that exists between the expectation that models of TJ should be adopted to specific contexts and the fact that these models must at the same time reflect international norms and values that cannot be modified. The use of the global-local binary is also criticized as “it implies that there are only two levels at which social processes emerge or unfold, and insofar as it implicitly invokes a normative hierarchy and teleology. Thus, both categories tend to essentialize and depoliticize sets of actors that are neither ideologically monolithic nor politically homogenous” (Sharp 2014, 106).

Other scholars point out that the local narrative of TJ has also the potential to be coopted and deployed instrumentally, especially by governments to avoid accountability and to consolidate their power (Branch 2014). Iliff (2012), for instance, shows how the discourse on tradition in Rwanda and Gacaca courts helped legitimize the government while excluding it from being held accountable. Moreover, according to critics, local TJ can marginalize and/or privilege certain groups of people in society and reinforce forms of inequality and domination through empowering gender and age-based structures. Focusing on “traditional justice” promotion efforts in the Acholi region of Northern Uganda, Adam

Branch (2014) coined the term “ethnojustice” to describe the state and donor-driven initiatives that seek to restore a traditional and male-dominated version of TJ. According to him, such an approach not only resembles indirect-rule colonialism but in most cases, is also based on a false Western imagination of local norms and traditions.

Moreover, some scholars question the assumption of the existence of universal consent on a singular conception of local tradition while highlighting the existence of plural, contrasting, and contested traditions of justice. There are multiple unwritten versions of customary norms and practices, and the elite representation of these norms should not be considered as necessarily reflecting the views of the entire local population (Allen and Macdonald 2013; Branch 2014; Ubink and Rea 2017). Feminist scholars also critique the neglect of gender analysis in the local narrative of TJ. Catherine O’Rourke (2008, 285) for example, calls for a “meaningful consideration of the gender implications of the re-privileging of community in transitional societies” as local TJ initiatives may in fact privilege exclusionary and patriarchal politics, posing important gender implications. Having explained the genealogy and the master narrative dominating the field of TJ as well as the counter-narrative in response to the shortcomings of the liberal legalistic meta-narrative, now I turn to lay out a narrative theory of TJ. The next chapter then draws on this approach to investigate the impact of the hegemonic discourse of the WoT on TJ processes, with a focus on Tunisia and Mali.

IV. A Narrative Theory of Transitional Justice

Narratives play an important role in different TJ initiatives, but they are embedded in and constricted by the liberal legalistic meta-narrative of TJ as the dominant regime of truth disciplining the production of knowledge in TJ processes. The impact of hegemonic

narratives, including the WoT discourse, can be shown through the work of truth commissions and trials as primary sites of TJ. Trials offer an important space for storytelling in the aftermath of violence, “where questions of collective memory and even national identity are engaged” (Osiel 1997, 3). By providing a civil arena in which actors can share their stories, legal proceedings produce “discursive solidarity” (Ibid., 51), but as will be discussed later in this section, this discursive space is limited by broader institutional narratives of the rule of law in transitional contexts (Savelsberg and King 2007).

In addition to courts, truth commissions⁴² also provide a space for victims, witnesses, and perpetrators to share their stories (Porter 2016). Truth revelation is the main objective of truth commissions and the process of story-telling aims to have a restorative power, as Minow (1998, 67) notes, “when the work of knowing and telling the story has come to an end, the trauma then belongs to the past; the survivor can face the work of building a future.” Other scholars, however, argue that such processes risk re-traumatizing victims by forcing them to speak and relive a violent past (Buckley-Zistel 2006; Dwyer 2009; Eastmond and Selimovic 2012; Lawther 2013). Besides being contested sites for discovering the truth, truth commissions are also important sites for memory construction (Hayner 2011), but their efforts to produce a report unifying historical accounts from individuals may, in fact, lead to marginalizing the diversity of experiences and constructing a static and unchanging narrative about the past (Hamber et al. 2010). Memorialization efforts face the same

⁴² Hayner (2011, 11-12) defines a truth commission as an institution that “(1) is focused on past, rather than ongoing, events; (2) investigates a pattern of events that took place over a period of time; (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; and (5) is officially authorized or empowered by the state under review.”

dilemma. Constructing a national archive and sites of memorialization risk overshadowing the ongoing struggle and contestation over different narratives in transitional countries by trying to produce a unified collective memory. According to Jelin (2007, 140), “after periods of high political conflict and repression or state terrorism, there is an active political struggle around meaning; the meaning of what went on and the meaning of memory itself. In this arena, the struggle is not one of memory against oblivion or silence, but rather between opposing memories, each of them with its own silences and voids.”

Furthermore, trials, truth commissions, and memorialization initiatives are always embedded in social and political structures that determine their existence, mandate, and impact, and they often respond to certain interests (Buckley-Zistel 2014; Subotic 2013). For example, the South African TRC, which popularized the idea of restorative justice, is critiqued as a neoliberal project for individualizing the victims of apartheid and “de-collectivizing” the social in line with the demands of post-apartheid neoliberalism (Bowsher 2020; Mamdani 2002). A narrative approach to TJ takes into account how institutional and dominant narratives of justice undermine and overshadow the diversity of experiences and stories as well as their dynamic and unstable nature. It also pays attention to how the use of dominant narratives by political actors impacts the TJ process and accountability measures. It is particularly well-suited to draw attention to the power relations and institutional narratives that reproduce and reinforce dominant narratives and make other narratives “illegible” (Castel 2016). The IR literature has drawn on a narrative approach to investigate various issues of importance to global politics. This section draws on two different approaches to narratives in the literature and concludes that a narrative approach to TJ that draws on both

approaches can be fruitful for shedding light on the limitations and effectiveness of TJ in transitional contexts.

The Strategic Use of Justice Narratives

In her contribution to the volume on *Tactical Constructivism, Method, and International Relations*, Jelena Subotic (2019) encourages the use of narrative analysis as a “tactical bridge” between different camps of constructivism. This section draws on her work and others to lay out the first component of a narrative approach to TJ. It argues that powerful political actors, including international and domestic political leaders and elites with the help of media and some civil society actors, strategically use dominant narratives to “encapsulate” narratives of justice to avoid accountability and strengthen their power and status in unstable transitional contexts.

Narratives consist of one central or multiple frames. These frames shape our view of what counts as a problem and how we should address it (Autessere 2012). Constructivists studying norms have paid attention to the role of frames in norm construction, diffusion, and localization. The “norm life cycle” proposed by Finnemore and Sikkink (1998) presents the development of international norms as a process that consists of three stages: norm emergence, norm cascade, and internalization. Thomas Risse et al. (1999) propose a “spiral model” of diffusion, involving domestic mobilization, international pressure, treaty ratification, and socialization. Based on both models, the process of diffusion does not happen simply through compelling governments to sign treaties and adopt them into their domestic laws, but civil society actors and transnational advocacy networks use frames to persuade and spread human rights norms at the domestic level and establish them as part of

a society's culture. For "strategic social constructivists," framing activities are central to the successful emergence and diffusion of a norm (Payne 2001; Subotic 2016). For example, as Finnemore and Sikkink (1998, 897) point out:

"Norm entrepreneurs are critical for norm emergence because they call attention to issues or even 'create' issues by using language that names, interprets, and dramatizes them. Social movement theorists refer to this reinterpretation or renaming process as 'framing.' The construction of cognitive frames is an essential component of norm entrepreneurs' political strategies, since, when they are successful, the new frames resonate with broader public understandings and are adopted as new ways of talking about and understanding issues. In constructing their frames, norm entrepreneurs face firmly embedded alternative norms and frames that create alternative perceptions of both appropriateness and interest."

Norm entrepreneurs attempt to construct suitable frames that are persuasive for both the targeted states and their domestic populations. According to this account, persuasion is key to successful normative claims and to convert ideas into intersubjective norms (Finnemore and Sikkink 1998; Klotz 1995; Lynch 1999). New ideas that have some sort of ideational affinity and resonate with existing normative frameworks are more likely to be perceived as persuasive. Norm entrepreneurs, therefore, try to connect new normative claims to existing ones and to frame them in such a way that they resonate with the targeted audiences to be persuasive (Finnemore and Sikkink 1998; Keck and Sikkink 1998). Framing by norm entrepreneurs is, thus, central in the first stage of the norm life cycle and strategic social

constructivists emphasize the role of framing in providing causal mechanisms for the influence of normative claims on policy and politics (Barnett 1999).

Furthermore, the impact of the domestic context on the outcomes of norm diffusion has been widely studied since the 1990s. Most of these studies point to the role of “local filters” in receiving and adopting international norms. Political systems, local opportunity structures, and domestic cultures are among the important local filters (Zimmermann 2016). New norms that are convergent or normatively “fit” with existing normative frameworks and domestic norms are more influential and more likely to be adopted and internalized while other norms that do not resonate with local norms might be resisted and rejected (Finnemore and Sikkink 1998; Checkel 1999). The IR scholarship on norms also addresses the “local” dynamics of norm diffusion. According to this literature, international norms once diffused go through a contentious process of norm diffusion whereby norms are contested and reinterpreted. As a result, human rights norms are cross-culturally negotiated and translated (Boesenecker and Vinjamuri 2011; Zwingel 2012).

Norm localization occurs through a complex process that Acharya calls “the active construction (through discourse, framing, grafting, and cultural selection of foreign ideas) by local actors, which results in the former developing significant congruence with local beliefs and practices” (Acharya 2004, 245). Local norm entrepreneurs also “frame” international norms in a domestically familiar discourse by “presenting and packaging ideas” to fashion meanings for a given audience (Ayoub 2016, 34). They might also “graft” these norms by linking them to existing local norms (Acharya 2004, 244). Similarly, Levitt and Merry (2009, 446) argue that norm localization can occur through “vernacularization” defined as the

process of taking “the ideas and practices of one group and present[ing] them in terms that another group will accept.” Therefore, frames as central parts of narratives are critical in the dispersion and acceptance of norms in different contexts, but they also draw on local frames and narratives.

The norm cascade literature, however, has been critiqued for sidestepping critical questions regarding the place of power in the production of meaning. I also argue that it enables and reinforces the hegemony of the WoT discourse in PB and TJ contexts. As Payne (2001) points out, norm entrepreneurs also employ means-ends calculations and engage in “strategic social construction.” This strategic distortion and manipulation of frames to achieve certain ends – to secure instrumental interests or to maintain power and status – do not necessarily “persuade” the targeted audiences to change their preferences. This manipulative practice, or as Barnett (1999, 15) calls it “strategic framing,” works differently than the communicative rationality in persuasion. As will be discussed in the next chapter, this point is critical for understanding how the WoT discourse is used as a hegemonic narrative in different contexts with an impact on how TJ processes function.

Drawing on this literature, Subotic (2019) proposes an approach that theorizes narratives and their use as being essentially strategic. Her approach demonstrates how political actors construct, entrench, and use dominant narratives for political purposes and to pursue consequentialist political behavior. This is, however, always based on broad acceptance of shared narrative frames which then leads to creating new narrative frames in the process as a result of political actions. Miskimmon et al. (2017) distinguish between three kinds of strategic narratives: narratives about the international order, narratives employed to

influence policies, and narratives of identity. These narratives interact with and mutually constitute each other. Political actors, including political leaders and elites, use strategic narratives to create a shared understanding of the world, other actors, and policy options to tackle political issues. Their objective is to create and use strong narratives that sideline and marginalize counternarratives, thereby strengthening their legitimacy and power (Ibid.). Snyder (2015) demonstrates how political actors attempt to persuade other actors through the use of strategic narratives and by “conceptual integration of facts and values (of ‘is’ and ‘ought’) in strategic persuasion and the political integration of diverse perspectives among partners in a strategic coalition” (Ibid., 171). Narratives promoted by political actors also shape responses to threats and crises (Lang 2006; Miskimmon 2012). Michelle Bentley (2013; 2014) argues that political actors use narratives to influence the understanding of threats to align with political objectives.

According to Subotic (2013; 2016), similar to transnational norms, dominant narratives are constructed by narrative “entrepreneurs,” who can be political, social, or cultural agents, including, for example, political elites and media, and over time and with infinite iteration by these agents, these constructed narratives reach a “tipping point threshold” and are accepted by a critical mass of social actors. They, therefore, become hegemonic and dominant both because of their imposition by elites and because of their perceived resonance and familiarity among the public (Shenhav 2015). They latch onto deeply held ideological values and existing stories (Polletta et al. 2011). For instance, narratives involving bodily harm to vulnerable individuals with a short and clear causal chain about who bears responsibility that is congruent with pre-existing narratives are more likely to resonate and be effective in influencing action (Autesserre 2014; Keck and Sikkink 1999). The WoT discourse does that

by identifying a group of people, often labeled as “monsters,” “disease,” or “evil,” for being responsible for inflicting suffering and harm on individuals; therefore, sidestepping issues of structural injustice and the reasons for the use of “terror” as irrelevant and unimportant.

The dominant narratives then through “discursive or rhetoric coercion” fix the meaning of the past and limit the opportunity for political contestation. They overshadow, marginalize, or exclude other stories that are inconsistent with them (Krebs and Lobasz 2007). In doing so, they become “common sense,” making alternative narratives nonsensical. The political discourse is then dominated by a particular narrative that excludes policy options that are incongruous with its narrow representation of reality (Fraser and Gordon 1994; Halton and McCann 2004; Polletta et al. 2011; Esacove 2010). The dominant narratives are always normative, integrating description, explanation, and evaluation. They always indicate a desire for a particular set of social practices and policies, including how injustices of the past can be rectified (Patterson and Monroe 1998; Polletta et al. 2011; Subotic 2013; 2019). They also delineate the space available for political action and constrict the political space for debate, rejecting narratives that go against the dominant narratives and advancing those that further them (Krebs and Lobasz 2007; Mattern 2001; Shenhav 2015; Subotic 2013; 2016).

The explanatory power of narratives lies in their power to make possible, or constrain activities of political actors rather than in providing linear causality of political action. They create opportunities for action while making certain other actions unimaginable (Subotic 2016). Dominant stories bestow great power on their narrators, whether they are internal or external actors, and are used by their promoters to sustain and perpetuate their status in

society and to enjoy narratological and social advantages. Such narratives determine the boundaries of conventional and mainstream discourse while rendering other stories wrong, different, or deviant (Shenhav 2015). It does not, however, mean that they are not contested. Dominant stories are sufficiently vague and exist alongside other narratives that can be strategically used without hurting the coherence of the dominant discourse (Berenskoetter 2014; Subotic 2016). Different social narratives are constantly vying for hegemony in the social domain, an idea that is occasionally framed in terms of counter-narratives (Andrews et al. 2003; Shenhav 2015). Counter-narratives often come from marginalized segments of the society (Autesserre 2012) and as will be discussed in the next section, the discursive and institutional power of dominant narratives counteract the effects of contestation leading to further dispersion and reproduction of dominant narratives.

Narratives of past events matter for TJ because they include a clear designation of responsibility as well as victimhood. TJ functions through a set of factions that shape its moral imaginaries: the figures of the perpetrator, the victim/survivor, and the international community. Thus, in justice narratives, we witness frequent invocations of the categories of “victim to be saved” and “perpetrator to be stopped.” In these narratives, such invocations are deployed as proxies through which the hegemony of the victim-perpetrator binary and an emphasis on individualized guilt over structural injustice are reinforced (Clarke 2019). As Brenner (2013) found in her study of rape narratives, there is a tangible political benefit in formulating the narratives of justice in such dichotomous terms. Often, the primary actors in a conflict construct a narrative of victimhood to “explain, justify, and legitimize their political behavior” (Pilecki and Hammack 2014, 813). Narratives of victimhood have the potential to increase the power of a specific group by creating a “moral debt” and by eliciting

sympathy (Ibid., 823). As will be discussed in the next chapter, the power relations that come with these categories lead to hierarchies of “victimhood” and the idea of “contested victimhood” as well as hierarchies of “offending” and “perpetratorship.”

Thus, political actors in transitional contexts, including political leaders and elites with the help of media and some civil society actors, initiate and propagate dominant narratives about the past, including on “victimhood” and “perpetratorship,” to reinforce their material and discursive power and avoid accountability in TJ contexts. They manipulate justice narratives to constrain and limit the range of possible corrective tools that can be used to address human rights violations. These dominant narratives are used to define what counts as a violation and what does not, and which events will be identified and included in the TJ framework and which will not, as well as how they will be interpreted. They, therefore, identify and enumerate violations, attribute blame and causality, and “authorize, enable, and justify specific practices and policies” (Autesserre 2012, 255). These policies and practices then reinforce the meanings embodied in the dominant narratives, further strengthening and solidifying their power. As will be discussed in the next chapter, the WoT discourse has turned into a hegemonic narrative in many Muslim majority countries, thereby securitizing and disciplining the knowledge production about and processes of PB and TJ.

Institutional Limitations of Justice Narratives

It is important to note that narrative politics take place in a context where a set of institutional practices, struggle to marginalize, co-opt, and otherwise delegitimize the narratives that oppose the dominant narratives. Narratives are constitutive of social and political relations that are embedded within discursive and non-discursive practices such as

institutions and policies (Moon 2006). Linguistic action that creates master narratives of social suffering is mediated by the institutional narratives that contribute to it (Alexander 2004). The potential for agentic narratives is, therefore, highly dependent on institutional practices and narratives. Powerful and dominant narratives are also reproduced through institutional routines and practices, and institutional norms, in general, govern how and when stories should be told (Polletta et al. 2011).

As pointed out by Buckley-Zistel (2014), power relations determine the hegemonic distribution of a particular regime of truth. It is imperative, therefore, to analyze the institutional and public narratives within which TJ narratives are embedded and which reproduce dominant narratives of justice. As discussed in the previous section, the liberal legalistic meta-narrative of TJ, articulated within anti-impunity social movement circles, is highly dependent on the notions of “victimhood” and “perpetratorship” as the moral basis for justice narratives. This is based on a construction of a victim-perpetrator dichotomy in TJ as part of the process of constructing dominant transitional narratives on “violence,” “victimhood,” and “perpetratorship,” and therefore, is an inherently political construction (Mazinani 2014; McEvoy and McConnachie 2012; Shaw and Waldorf 2010). The central issue here is how conceptions such as “victimhood” and “perpetratorship” are defined, negotiated, and contested, socially and politically, as well as how they are politically deployed.

Trials constitute one of the important places for the production of justice narratives in transitional contexts. Criminal accountability mechanisms, however, follow institutional rules of law and work through the particular logic of the legal field. Legal proceedings are bound by constricting evidentiary rules that impact the production of narratives in the

courtrooms. They are also limited by legal classification schemes. Further, they only target individuals rather than groups, social processes, or structures. Their focus on only a few elite actors contributes to overshadowing and marginalizing the larger social mechanisms that involve the role of external actors and larger segments of society in the establishment and execution of violence and dictatorship. They also solely focus on the defendants, using victims only as a tool in the pursuit of justice. Further, in the narrative produced in the courts of law, the defendant is either guilty or not guilty, oversimplifying, and neglecting the complexities inherent in the concept of “perpetratorship” (Savelsberg and King 2007). While my research does not focus on court cases, my interview materials provide insight into the character and utility of trials as perceived by TJ actors and as evidence of the dispersion of the notions of victims and perpetrators in the WoT context.

Moreover, the hegemonic production of legal temporality as “an organizing mechanism through which the culpability of the body is inscribed temporally and spatially and made relevant within particular biopolitical orders” further limits the reach of narratives produced within legal mechanisms in transitional contexts (Clarke 2019, 17). Domestic, international, and hybrid courts use a strictly defined temporal period to assess which acts of violence fall under their jurisdiction and are, therefore, eligible for prosecution. This is despite the fact that other actors contest this limited temporality and situate instances of violence and conflict within the context of historically inscribed inequalities that have a much longer temporality, going back to the colonial era and the neo-colonial forms of exploitation and corruption that indicate collective complicity rather than individual guilt (Ibid.).

Other TJ institutions such as truth commissions have the potential to circumvent the limitations of prosecutions and trials. They are, however, also bound by the laws that stipulate and set their mandates, and rely heavily on the adoption of laws and policies for the implementation of their recommendations. Furthermore, as Cobb (2013) notes, conflict is not symmetrical at the level of language practice, there is also one side that controls the violence of the Other, breaking their relation to language and reducing or denying them their humanity. Similar to Subotic's argument, the critical narrative theory she proposes examines how certain narratives are privileged and "shut down alternatives to themselves ... they tell a narrative of wrongdoing and provide an account of violation, but this narrative perpetuates and deepens the kind of discourse that contributes to destroy rather than open public debate and deliberation" (Ibid., 37). In their pursuit of constructing a shared narrative of the past, TJ mechanisms encapsulate the multiplicity of accounts into one storyline, reducing complexity and privileging some stories over others (Maier 2000).

Dominant narratives of conflict and political violence, such as the WoT discourse, have thin storylines and tend to delegitimize the Other, usually conceptualized in binary terms, and therefore lack complexity. These narratives destabilize and work against reconciliation and peace by undermining initiatives that produce contrasting or more complicated stories (Hardy 2008; Cobb and Yusuf 2012; Cobb 2013). These simplified narratives are based on a denial of the humanity of the Other and confer totalizing and essentialized legitimacy on Self and totalizing and essentialized illegitimacy or evil on the Other (Cobb 2013). Micro-level discursive actions contribute to the circulation – and even the contestation – of macro-level dominant narratives. In such cases, hegemonic narratives "compress" alternative narratives and voices of those most marginalized (Cobb and Yusuf 2012). This makes restorative TJ

mechanisms tools of “narrative violence” (Cobb 2013). The justice narratives they produce exclude structural forms of victimhood caused by deep and persistent conditions of economic or political disenfranchisement. This has resulted in “a new international order in which the desire to manage violence and the need to mobilize extrastate support for the defense of particular survivors have become part of a critical narrative triangulation – victims, justice, law” (Clarke 2019, 54).

The mandate and impact of TJ mechanisms are decided by the “authorities of delimitation” in TJ discourses that endow certain subjects of a discourse with the authority to speak and silence other subjects (Moon 2006). These mechanisms, therefore, determine how the violent past is narrated, who counts as a victim and who as a perpetrator, and which and whose crimes deserve a harsher response. That is why Scott (1990) suggests focusing on what he calls “hidden transcripts” to expose the power relations embedded in dominant narratives that marginalize other narratives. Banished narratives and “hidden transcripts” are the foundation for resistance if not violence (Cobb 2013). Consequently, an analysis of institutional narratives within which dominant narratives of TJ are embedded, and which define and reproduce the prevailing hegemonic narratives that are used by political actors to entrench their power, status, and interests is a vital element of a narrative theory of TJ. As will be shown in the next chapter, the institutional narratives of the rule of law not only limit the range of violations that can be investigated in the context of TJ initiatives, they also put the constructed category of “terrorists” outside the boundaries of law, thereby, depriving them of the protections that law can offer.

V. Conclusion

Violence disrupts and ruptures narratives in daily life and to rectify violence, it is crucial to attend to the socially constructed meanings in the aftermath of violent events (Bruner 1990). Narratives are highly selective and purposefully constructed. They are fundamentally normative and establish the foundation for what ought to be. Storytelling is increasingly used in peace and reconciliation initiatives. The idea of narrative has found a way into different disciplines, including peace studies and conflict resolution, that are “concerned not just with story as story but with storeyed forms of knowledge” (Kreiwirth 2005, 380), but this focus has not traveled deeply into the TJ discourse (Porter 2016). While the critical TJ literature is attuned to the importance of drawing on local knowledge for sustainable peace, it does not sufficiently interrogate how narratives of justice themselves can become a tool of power politics, reinforcing if not exacerbating civil, political, and socioeconomic injustices that underlie conflict and authoritarianism. The TJ has been dominated by a liberal legalistic framework with an overemphasis on rule of law and state-building processes. The “transition” is defined as a move toward a central and powerful liberal democratic state, neglecting the potential for abuse of power and violence by central institutions against more marginalized segments of society. The emphasis on “transition” further obscures continuities of violence and marginalization in TJ contexts and the legalistic meta-narrative is based on the flawed notion that law is necessarily safe and neutral.

The narrative theory of TJ sheds light on the power relations underlying narratives of justice that make certain discourses central and others peripheral. Such an approach embeds stories historically and relationally in the context in which they emerge, indicating it is only

within this specific spatiotemporal context that they can be understood and interpreted. Thus, narratives of justice, what/whom they include and exclude, are dependent on the prevailing discursive environment in which they occur. Institutional framings, social, political, and cultural conditions of the country are of utmost importance in this regard (Buckley-Zistel 2014). While highlighting the agency of actors, a narrative approach “presumes that action can only be intelligible if we recognize the various ontological and public narratives in which actors are emplotted” (Somers 1994, 625). To lay this foundation, this chapter outlines a narrative approach to TJ, one which confirms the importance of power relations in constructing dominant narratives and constricting the space for alternative narratives that take into account other forms of violence that often fall outside the boundaries of the liberal legalistic meta-narrative of TJ. The objective is to encourage “the development of an ethics of practice equipped to favor the development of stories that redress marginalization and anchor people’s capacity for moral agency” (Cobb 2013, 12).

To sum up, the narrative approach I propose, first, outlines how dominant narratives of TJ emerge, multiply, and disperse, becoming part of a “common sense” that cannot be questioned. Political actors use these dominant narratives to avoid accountability and solidify their status and position in unstable transitional contexts. Second, institutional and public narratives further constrict the space available to contest these narratives, making structural and other forms of injustice outside the “feasible” boundaries of TJ. Third, this leads to silences, gaps, and omissions in the transitional narrative which further marginalizes certain groups. It also drives issues of structural justice out of the perimeters of the TJ discourse, effectively depriving it of revolutionary potential and reinforcing the status quo. Having explained the narrative approach to TJ, the next chapter draws on this

approach to investigate the construction of the WoT discourse and its impact on TJ processes, with a focus on Tunisia and Mali. The following two chapters then delve into the TJ initiatives in these two countries.

CHAPTER 3: ISLAM, “WAR ON TERROR,” AND NARRATIVES OF JUSTICE

“[W]e all make terrorism what (we say) it is.” (Onuf 2009, 54)

I. Introduction

In the context of the rise of neoliberal globalization in the 1990s, the practice and literature of TJ also proliferated, playing a central role in the post-Westphalian organization of the world and in limiting state power. But what changed on September 11, 2001? The attacks on the World Trade Center and Pentagon by al-Qaeda affiliates operating inside the US, followed by other attacks against Western civilians and interests across Europe, Middle East, and Africa, challenged the prevalent notion of security in the West. The war⁴³ launched to retaliate against and arguably prevent future attacks changed the scene of international politics for years to come. The three permanent members of the UN Security Council – US, United Kingdom, and France – were quick in initiating and joining the tide of this new war. Only a few days after the attacks on September 11, President Jacques Chirac met with President Bush and promised that his country would support the US in the fight against terrorism.⁴⁴ Chirac, however, did not agree with US President George W. Bush’s description of the campaign as war: “I don’t know if we should use the word ‘war.’ Now we are faced with a conflict of a completely new nature, a conflict that is attempting to destroy human rights,

⁴³ Bush (2001) famously called it a war “unlike any other we have seen.”

⁴⁴ “We are completely determined to fight by your side this new type of evil, of absolute evil, which is terrorism. France is prepared and available to discuss all means to fight and eradicate this evil” (CNN, September 18, 2001).

freedom, the dignity of man, and I believe that everything must be done to safeguard these values of civilization” (CNN, September 19, 2001).

Whether called a war or not, it is indisputable that the discourse on the WoT facilitated further foreign intervention with devastating human costs on civilian populations living in a wide range of countries, most notably in Muslim-majority societies. The immediate impact of the WoT was the invasion of Afghanistan and Iraq, but over the years, Western powers have also intervened in different forms in numerous other countries under the pretext of fighting against terrorism. Not only have we witnessed an expansion of foreign military presence and bases on the territories of the countries considered to be the main sites of “terror,” alliance with authoritarian and repressive regimes has also become a strategic necessity in this narrative, relegating questions of human rights to secondary importance (Hazan 2010). This has happened with a parallel expansion of peace, rule of law, and TJ operations in countries transitioning from authoritarianism and conflict. It is not surprising, therefore, that it has impacted how these initiatives are designed and implemented in practice, further reinforcing the dominant narrative of the WoT and the power relations embedded in its discourse.

Terrorism is not a new phenomenon. Violence against civilians has been traditionally used by different groups to achieve political objectives. In recent years, however, it has emerged as a global and transnational issue with an impact across borders (Blain 2007; Heath and Waymer 2014). The definition and application of the term “terrorism” have been subject to dispute for decades, but in the post-9/11 world, the term seems to be all-pervasive, not only in Western countries but also in the countries in the “Global South” where governments are

using it to repress any opposition to their policies and practices (Malkki and Sallamaa 2018; Pisoiu and Scheuing 2014). Several scholars have pointed out that terrorism is not a neutral descriptor term, but rather it is used as a political tool and label that entails moral judgment and political condemnation (See for example Blain 2007; Guelke 1998; Malkki and Sallamaa 2018; Oliverio 1998). In fact, as Hazan (2010, 53) argues, the WoT discourse created a new category of enemies based on a Manichean representation of history in categories of “Good versus Evil.” It also came as a result of and further reinforced Islamophobia and racism, leading to the securitization⁴⁵ of Muslim minorities and immigrants from Muslim-majority countries living in the West as potential or existing threats to national security with devastating impact on the lives of millions of Muslims and those with a Muslim background (Beydoun 2020; Ralph 2006; Marusek 2018; Poynting 2013).⁴⁶

For a long time, the dominant approach to countering terrorism was based on the principle of “never negotiate with terrorists” (Hughes 1990) for reasons that I will briefly explain later in this chapter. According to Renner and Spencer (2015, 66) “the discursive constitution of terrorism following 9/11 has made particular counterterrorism measures appear as appropriate responses to terrorism while other policies, such as engagement and reconciliation remain outside of the options considered appropriate” (See also Jackson 2005; 2007; Renner and Spencer 2013; Spencer 2012). The critical terrorism studies, however,

⁴⁵ The securitisation theory posits that security is an outcome of a special social process or “speech act.” Some political issues are constructed as security issues that should be dealt with urgently when they are labelled as such. For more on the securitization theory, see among others Buzan and Wæver (2003); Buzan et al. (1998); Wæver (1995; 2011).

⁴⁶ The most recent manifestation of which is the executive orders adopted by the Trump administration to limit the entry of individuals from certain countries – mostly Muslim-majority countries – into the US under the pretext of “Protecting the Nation from Foreign Terrorist Entry into the United States.”

opened the discursive space to considering the possibility of engagement and negotiation with “terrorists” by focusing on the social and linguistic construction of the categories of “terrorism” and “terrorists” (Jackson 2005; Renner and Spencer 2015; Spencer 2010). In this context, suggestions for the engagement of TJ with terrorism and counter-terrorism measures have also been put forward (Frank 2017; Quesada Alcala and Zakerian 2010; Renner and Spencer 2015; Sciandra 2017). According to this literature, different TJ mechanisms have the potential to deal with and address the issue of sub-state terrorism in transitional countries, but previous research shows that the so-called WoT has used TJ mechanisms when they fitted strategic goals and independently of the local priorities of the populations affected by the violence (Hazan 2010). Renner and Spencer (2015) also cast doubt on whether TJ and more specifically truth-telling can serve as a promising path to peace after violence in “terrorist conflicts,” but further research is needed to explore how the discourse on the WoT shapes the politics of TJ in cases where TJ mechanisms are deployed and used.

It should be noted that the WoT narrative has evolved over time and more importantly, it has been implemented with variations by different countries and under different governments. However, the focus here is on the securitization of justice narratives by the attempt to impose a monolithic master discourse in the WoT contexts, and to problematize the parameters of what legitimate and illegitimate “violence” means and its hierarchies, and how these parameters are set.⁴⁷

⁴⁷ For more on this point, see Asad (2015).

In this dissertation, I investigate the impact of the hegemonic narrative of the WoT on TJ in the context of two Muslim-majority countries that have recently adopted comprehensive TJ initiatives – Tunisia and Mali. As will be explained in the next two chapters, both countries have been on the WoT radar for a long time. Following the “dignity revolution” in Tunisia in 2011, a comprehensive TJ framework was put into place to deal with human rights violations committed under the authoritarian governments of Bourguiba and Ben Ali. In Mali, the end of the rebellion in the north also led to the adoption of several TJ measures. The discourse on TJ in both countries was, however, impacted by the WoT narrative. Drawing on the narrative approach developed in the previous chapter, I survey how the WoT discourse has affected TJ in these two countries. Particularly, I interrogate the impact of the WoT discourse on hegemonic narratives about “violence,” “perpetratorship” and “victimhood,” and discuss how these narratives are used and exploited by political actors while institutional discourses perpetuate and ensure their endurance. I find and argue that encapsulation of narratives of justice by the hegemonic discourse of the WoT has led to the redirection of narratives of violence and conflict. These narratives often portray one group of actors (“terrorists”) as principal perpetrators, therefore erasing the complications of their experiences. They also divert responsibility from state actors and marginalize narratives of root causes of violence and structural injustice. This leads to narrative violence in the form of exclusions and erasures in the TJ process and the construction of groups of “locals,” who are either “evil perpetrators,” or supporters of “terrorism” and even if victimized, not “worthy” victims. The muteness of “terrorists” in the public discourse and the total absence of their narratives erase their experiences from the narratives of justice. Although the hegemonic narrative of

the WoT is challenged and complicated by different actors, it is difficult to change because of its discursive power and its embeddedness in institutional discourses.

In this chapter, the first section briefly outlines the WoT narrative and its impact on the security paradigm world over, more specifically in transitional contexts. The second section discusses how TJ can address sub-state terrorism in transitional countries and interrogates what it has meant for TJ in practice to deal with issues of “terrorist” acts committed by non-state actors. The third section then discusses the discursive and institutional challenges facing TJ in dealing with sub-state terrorism. It argues that the WoT narrative is used by different political actors, including political leaders and TJ actors, to overshadow and marginalize issues of structural injustice as well as the role of government and external actors in perpetrating human rights violations. It then discusses how institutional and public narratives in transitional contexts enable and reinforce the exploitation of justice narratives in order to serve goals associated with the discourse on the WoT. The chapter concludes with a discussion of the potential implications for future TJ efforts in WoT contexts.

II. The Hegemonic Narrative of the War on Terror

Definition and Genealogy

The definition of terrorism remains highly contested. Although there is no agreement on a universal legal definition of the term, the UN Security Council Resolution 1566 (2004, para. 3) defines it through its intended harm: “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or

particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act.” Most international documents and domestic laws on terrorism have adopted this definition or variations thereof.

Terrorism is not a new phenomenon. The first use of the term “terror” and its derivatives in the political sense was in the context of the French Revolution and particularly regarding the Jacobins and their agents during the “Reign of Terror.” The term is, therefore, bound with the notion of an illegitimate revolution (Blain 2007). Jonathan White (2005) identifies three phases of terrorism in the post-WWII era: the first phase was associated with anti-colonial movements in the colonial world, the second phase was driven by political ideals on the opposite sides of the political spectrum, and the third phase of terrorism, often called “new” or “modern” terrorism, is perpetrated by religiously motivated actors challenging the status quo. The discourse on “Islamic terrorism,” which has now become ubiquitous in the public sphere, has a long history and is deeply embedded in how the Muslim world has been discursively constructed in Western societies. As scholars of critical terrorism studies point out, the post-9/11 discourse on terrorism is rooted in former discourses on terrorism and intersects with other discourses, such as the discourse on Islamism (Breen Smyth 2007; Jackson 2007; Spencer 2010). It also draws on a long tradition of media representations of Islam and Muslims in the West.⁴⁸

The core assumptions and narratives of this discourse are mainly rooted in the Orientalist scholarship on the Middle East and Arab culture and religion (Halliday 2002; Jackson 2007;

⁴⁸ There is a vast literature on the representation of Muslims in media. See for example Hafez 2000; Poole and Richardson 2006; Richardson 2004; Sheehan 2004.

Said 1978; 1981; Sadowsky 1997). In *Culture and Imperialism*, Said (1993) traces the genealogy of an “Orientalist discourse” in his study of Western imperial power relations with the Orient. In this context, he also sheds light on the links between Western imperialism and the discourse of Islamic terrorism amplified by the media. According to him, the representation of Muslims, in particular, has served the purpose of showing the necessity for containing the Orient. In the eyes of imperial powers, their “civilization, religion, and manners were so low, barbaric, and antithetical as to merit reconquest” (Said 1978, 172).⁴⁹

In a more recent work, Alzubairi (2019) traces the relationship between colonial and neo-colonial Western influence and counter-terrorism laws in the “Arab world.” She demonstrates that current counter-terrorism laws and measures in post-colonial countries are rooted in a highly politicized and militarized colonial doctrine of counterinsurgency. According to this account, colonial powers secured their economic and political interests through the imposition of particular exceptional policies and measures to discipline anti-colonial opponents and nationalists, often labeled as insurgents. This practice continued under post-colonial governments, because of their “authoritarian ambitions” as well as neo-colonial workings of power through international institutions. As Hardt and Negri (2000, 37) point out, the enemies of the Empire “are most often called terrorist, a crude conceptual and terminological reduction that is rooted in a police mentality.” Just as the image of the barbaric and uncivilized savages was used by colonial powers to justify land appropriations and other illegitimate actions against colonized people, the same dehumanizing discourse is

⁴⁹ See also Shakman Hurd 2003. She discusses how the images of the “Muslim other” established important cultural frames for the construction of “Islamic terrorists.”

now used to justify military intervention while claiming that the established laws of war do not apply in the context of the WoT.⁵⁰

More recently, critical terrorism studies scholars have opened the discursive space for discussing the ethical and political implications of the term “terror” and its associate labels. They draw attention to the social construction of “terrorism” and “terrorists” as linguistic categories and problematize the mainstream conceptions of these categories. They also point out that terrorism can be considered as a communicative action by marginalized social groups struggling for political recognition with a desire to enter and participate in the public space and even dominate it (Heath and Waymer 2014; Zacharias 2008). As Pecastaing (2011) argues, terrorist violence functions as a replacement for a non-existent discourse on political issues.⁵¹ Further, several scholars argue that terrorism is not a neutral descriptive term, but a political tool that entails moral judgment and political condemnation (Guelke 1998; Malkki and Sallamaa 2018; Oliverio 1998). Jackson (2007, 247), for instance, states that “[t]errorism is fundamentally a social fact rather than a brute fact; while extreme physical violence is experienced as a brute fact, its wider cultural-political meaning is decided by social agreement and intersubjective practices.”

For critical terrorism studies scholars, therefore, the primary source of terrorism research should be the discourse constructing certain acts as “terrorism” and certain actors as “terrorists” (Spencer 2010). Labeling the enemy as “terrorist” portrays the opponent as evil, irrational, and inhuman (Crenshaw 1995), and is a powerful rhetorical means to vilify the

⁵⁰ For a comprehensive discussion of this point in the context of the US, see Saito 2010.

⁵¹ See also Schmid 2014.

enemy and legitimize acts of violence and domination (Blain 2007). The discourse on WoT was very blunt in this regard from the start. As George W. Bush (2002) put it, “[The WoT is] as simple as that. It’s good versus evil, and freedom is under attack.” It, thus, led to the creation of a new category of enemies, based on a Manichaeian representation of history in categories of “Good versus Evil” (Hazan 2010, 53; See also Anderson 2004; Krebs and Lobasz 2007).

The labels and terms used in the WoT narrative are organized into a series of oppositional binaries, such as the West versus the Islamic world, barbarian versus civilized, extremists versus moderates, and so on. Jackson (2007, 401) points out that “[s]uch powerful categories function to construct ‘Islamic terrorists’ and ‘extremists’ as particular kinds of subjects within the overall discourse and enforce highly constricting subject positions upon them vis-à-vis other subjects, such as ‘decent people’, ‘democratic states’ or ‘moderate Muslims’, for example. Importantly, they also render unreasonable more nuanced narratives about the often-contradictory identities of the narratives’ central actors.”

According to Said (1993, 309), while the categories and images of “terrorism” and “fundamentalism” lack a coherent definition, “they signify moral power and approval for whoever uses them, moral defensiveness and criminalization for whomever they designate. These two gigantic reductions mobilized armies as well as dispersed communities.” Terrorism, therefore, becomes synonymous with extremism, evil, and the antonym to the West, which represents civilization, modernity, secularism, and rationality (Blain 2007). These vilifications function to dehumanize, marginalize, and eradicate contrary narratives that question the structural foundations of inequality and injustice. As for the power of the

WoT to drown out competing narratives, Ian Lustick (2006, 17) observes that it “is assumed without debate or public questioning that terrorism is a problem of the sort that must be addressed by a ‘war’. The War on Terror has thus achieved the status of a background narrative,” and therefore, it has turned into an organizing discourse (Krebs and Lobasz 2007).

The social construction of the terrorist threat is closely linked with the discourses of security, identity, and foreign policy, and both draws from and further develops these discourses (Holland 2013; 2014; Malkki and Sallamaa 2018). The discursive construction of terrorism that followed the 9/11 attacks led to a rapid transformation in the security paradigm and national interest priorities in many Western countries and their allies, creating a new category of “terrorists” that were put outside the boundaries of law and in some cases, even “humanity.” In this narrative, violence appears as essential in the protection of civilization. It also led to the redefinition of Western countries’ national interests with a parallel reconsideration of the application of humanitarian and human rights law. Hazan (2010) calls the selectivity in the struggle against impunity in the context of the WoT “strategic legalism.” Peter Maguire (2010, 8) defines strategic legalism as “the use of laws or legal arguments to further larger policy objectives, irrespective of facts or moral considerations.” This refers to the Western countries’ self-exemption as well as the exemption of their allies from applicable international laws in the name of national security in the context of the WoT. In other words, the hegemonic narrative of the WoT entails a redefinition of human rights commitments depending on countries’ alliance with Western powers at the forefront of the so-called WoT. Therefore, one of the main impacts of the WoT was that it put into question the equal application of the law, and the rule of law was

overshadowed by a new conception of security and national interest without losing its discursive power. As argued in the previous chapter, on the one hand, the liberal legalistic meta-narrative of TJ bounds it with the discourse on the rule of law, but on the other hand, the WoT discourse has created a “state of exception ... as the dominant paradigm of government in contemporary politics” (Agamben 2005, 2), culminating in “producing a legally unnamable and unclassifiable being,” who is no longer protected by law (Ibid., 30).

The discourse on terror also distinguishes illegitimate and legitimate forms of political violence. State violence, thus, is defined as legitimate violence and differentiated from “criminal” or “terrorist” violence. As a result, while the use of “terror” by governments is defined as a legitimate use of violence, acts of violence against governments or colonial and imperial structures are categorized as “terrorist” and hence vilified (Asad 2010; Blain 2007). The “terrorism” label, therefore, serves to discipline the political community. It is used to identify dangers to the community and how one should address and counter those threats and dangers (Malkki and Sallamaa 2018). The social construction of terrorism as an exceptional evil and antithetical to Western values and interests has enabled the current hegemonic discourse on terror that is used to justify particular counterterrorism measures, such as different forms of military intervention in a wide range of countries, while excluding other more reconciliatory approaches (Ibid.; Holland 2013; Jackson 2005; Renner and Spencer 2015).

How to Counter “Terrorism”

Stacie Pettyjohn (2011) identifies six possible policies towards violent groups: soft-line strategies, including reassurance, appeasement, and engagement, and hard-line strategies,

including deterrence, containment, and coercion. As Jackson (2005, 9) points out, language and practice “are inextricably linked; they mutually reinforce each other; together they co-constitute social and political reality.” As such, “the practice of counter-terrorism is predicated on and determined by the language of counter-terrorism” (Ibid., 8). The WoT discourse following 9/11 made certain counter-terrorism measures as appropriate responses while rendering “soft-measures” such as engagement and reconciliation as inappropriate and counter-productive (See for example Jackson 2005; 2007; Spencer 2012; Baker 2010; Solomon 2009; Renner and Spencer 2013; 2015).

The idea of engagement with “terrorists” has been highly unpopular for various reasons. Several scholars and policymakers argue that soft measures regarding those accused of terrorism would pose a political risk and might be considered as a reward for committing acts of terrorism by rebel groups (Clutterbuck 1992; Heymann 2001/2002; Neumann 2007; Reinares 1998). Others point out the lack of credible commitments as well as negotiable political motives as reasons why engagement with “terrorists” would be impractical (Bapat 2006; Byman 2006; Reinares 1998). Particularly, it is considered to be impossible to negotiate with “new terrorists” or “Islamic” groups (Burnett and Whyte 2005; Renner and Spencer 2012; 2015; Sederberg 1995). According to this narrative, it is not possible to negotiate with such “evil” and it should be countered with violence (Krebs and Lobasz 2007). This poses a dilemma for governments dealing with the issue of terrorism; on the one hand, the use of military force is considered to be the only viable option to counter terrorism, on the other hand, the use of military force exacerbates and complicates the situation (Shenhav 2015).

Categorizing certain actors as “evil,” “disease,” “monster,” “threat,” and “danger” implies a force that cannot be fully grasped, a force that operates independently of human agents. In this narrative, one can and should only endeavor to eradicate it. It cannot be negotiated or reconciled with, but it must be met with violence (Bostdorff 2003; Hutcheson et al. 2004; Jackson 2005; Krebs and Lobasz 2007; Silberstein 2002). This forecloses any possibility for engagement and compromise and makes any analysis of conditions that may have contributed to the violence irrelevant (Malkki and Sallamaa 2018). The result is an assertive and militarized foreign policy adopted by Western nations in the name of protecting their national security. However, it also detaches acts categorized as “terrorism” from their contexts and makes any wider political and societal analysis irrelevant. This way, “terrorist acts” are depoliticized and the political challenge posed by the perpetrators is dismissed (Ibid.).

However, from the perspective of critical terrorism studies scholars, negotiation and reconciliation can channel violent communication to constructive and peaceful means. By shedding light on the socially constructed nature of terrorism and counterterrorism, scholars opened the discursive space to discussing and considering engagement and dialogue with “terrorists” (Collins and Glover 2002; Jackson 2005; Jarvis 2009; Renner and Spencer 2015; Spencer 2010). Using discourse analytical tools, they revealed how the social construction of terrorism has made certain counterterrorism measures appear as appropriate while excluding and marginalizing soft measures, such as engagement and reconciliation (Renner and Spencer 2015).⁵² In particular, the linguistic construction of

⁵² See also Jackson 2005, 2007; Bartolucci 2010; Hülse and Spencer 2008; Spencer 2012; Baker 2010; Hodges 2011; Solomon 2009; Renner and Spencer 2013.

“terrorism” is critiqued and challenged by these scholars who call for reconciliatory measures in “terrorist” contexts (Abdel-Nour 2004; Rediehs 2002; Renner and Spencer 2015; Solomon 2009). Jackson et al. (2011, 240-241) aptly summarize this position:

“critical scholars argue that much greater effort needs to be put into dealing holistically and peacefully with terrorism, instead of automatically responding in kind with even greater state counter-violence. They suggest that just as negotiations, mediation, conciliation, reform, reconciliation and other forms of conflict resolution have been effective in ending civil wars, insurgencies, coups, state repression and the like, there are good reasons for believing that such approaches can also be successful in helping to end campaigns of terrorism.”

Having traced the emergence and dispersion of the discourse on “terror” as related to “Islamism” and “Islamic extremism,” the next section turns to a discussion of TJ and terrorism. Several TJ scholars point out the benefits of using TJ mechanisms in countries struggling with “terror.” Nevertheless, my research shows that the hegemonic narrative of the WoT impacts the formation of the hierarchies of “violence,” “victimhood” and “perpetratorship” in justice narratives and shapes who gets a voice in these narratives and who does not. Political actors, including political leaders and elites, use the dominant narrative of the WoT to “encapsulate” narratives of justice in transitional countries in service of their political interests, mainly to avoid accountability and to marginalize the structural causes of injustice and violence. Institutional discourses further reinforce and perpetuate the dominance of the WoT hegemonic narrative in TJ contexts.

III. Transitional Justice and Terrorism

How can Transitional Justice Address Sub-State “Terrorism”?

TJ has traditionally engaged with questions related to state terrorism, defined as the use of violence by state actors against civilians. In fact, the pervasiveness of TJ was borne out of the paradigm of transitions developed in the 1980s (O’Donnell et al. 1986) in the context of Latin American and Eastern European countries’ transition to democracy and the widespread use of violence and terror by authoritarian governments against their own civilian populations. The end of the Cold War and the increase in the number of internal armed conflicts led to an expansion of peace operations and TJ initiatives as part of the broader peace industry. International and hybrid courts were established to hold perpetrators of mass atrocities and war crimes accountable. There was also a surge in the number of truth commissions established to “reveal the truth” and construct a common narrative about the violence of the past with the hope that countries can transition to a state of peace and coexistence following a period of conflict and political violence. Other TJ initiatives, such as reparations, memorialization, vetting or lustration, and institutional reforms were also increasingly used to complement truth and criminal accountability initiatives.

Although a number of TJ initiatives address the issue of sub-state terrorism as discussed below, TJ has not paid sufficient attention to terrorism in the context of what is often called “Islamic extremism.” This dearth of attention has had repercussions for conflict and political violence dynamics in several countries. For example, in Iraq’s de-Baathification program, the lack of attention to the rising threat of terrorism in the country had an adverse impact on the post-conflict environment in Iraq. The efforts to purge former Baath officials in Saddam

Hussein's government ended in a failure, leading to rising in-fighting among different groups, often solely on identity bases, and arguably contributed to the rise of the Islamic State (Seloom 2019; Sissons and Al-Saiedi 2013).

With the rise of "terrorist conflicts" in various regions in the world, a debate has started to use TJ to address and counter terrorism. However, if these efforts are to be fruitful, attention should be paid to the power relations impacting the implementation of TJ in regions where the WoT discourse has dominated public discussions about conflict and political violence. The discourse on the WoT has also shaped the priorities of the international community in dealing with conflict and political violence in certain countries. For instance, Elham Manea (2014) argues that the discourse on the conflict in Yemen has been dominated by the fear of Yemen's collapse and the international WoT, two factors that go hand in hand. This has led to an emphasis on peace, with justice taking a backseat. Apart from a siege on the country, the WoT has led to security measures, including drone attacks, which have often led to fatalities and casualties among the civilian population. The close cooperation between the *de jure* Yemeni government,⁵³ the US, and the Saudi-led coalition in the battle against terror has made any discussion of TJ undesirable for these actors, as it could risk the alliance among the parties that are waging a war on a country of nearly 30 million people, causing the worst humanitarian crisis in the world (UN 2019).

Although the TJ literature's engagement with the subject has been limited, several scholars have pointed out the necessity of the inclusion of sub-state terrorism in the TJ discourse.

⁵³ The internationally recognized government of Abdrabbuh Mansur Hadi, currently in exile in Saudi Arabia.

They argue that various TJ mechanisms can be used to deal with and address “terrorist” acts committed by non-state actors. Although extremist groups might pose unique challenges for TJ, non-state actors with comparable challenges and characteristics have been the subject of TJ initiatives in a diverse range of countries, from Peru to Sierra Leone. Sciandra (2017), for example, discusses contemporary forms of terrorism as new areas of challenge for TJ and examines how TJ has so far dealt with this challenge and how it can possibly apply to sub-state terrorism in the future. Quesada Alcala and Zakerian (2010), on the other hand, focus on the applicability of TJ mechanisms in occupied territories impacted by terrorism while taking into account the potential problems and dilemmas that these mechanisms might face. Other scholars engage with the broader question of PB and sub-state terrorism. Mühlhausen (2016), for instance, notes that reconciliation, negotiations as well as disengagement or de-radicalization processes are important for non-violent communication between extremists and the society they should re-integrate in. In his article, Tellidis (2020, 529-530) draws on approaches that “re-centre ‘ordinary’, ‘everyday’ experiences” of terrorism and the war on terrorism” to develop “a framework that makes possible the marginalization of militancy and extremism in cases where the state accepts to negotiate the legitimacy of the demands of non- and/or antiviolenent nationalists.” Adopting a more critical lens, Renner and Spencer (2015) examine the possibilities of engagement with sub-state terrorism and the role TJ can play in this regard. They are, however, skeptical of reconciliation through truth-revelation in “terrorist conflicts.” Drawing on the critical literature on reconciliation and truth commissions, they point out the truth commissions’ “tendency to silence other voices which call for a more fundamental political change and to strengthen the dominant position of the liberal state as the only viable form of political organization” (Ibid., 65).

According to this set of literature, legal accountability mechanisms are just one way to address violent acts committed by groups often called “terrorists,” and they can prove to be useful if they focus on high-level members, including foreign and external actors, and be in compliance with standards of due process. According to Frank (2017, 5), “such processes have the potential to humanize ‘terrorists,’ rather than portraying them as shadowy figures that are the subject of secretive security operations.” Prosecution can also be combined with well-crafted conditional amnesties for low-level perpetrators. Furthermore, truth commissions provide a space for both victims and perpetrators to share their experiences and start a national dialogue about how they were impacted by violence and why they turned to “terrorism.” If devised properly, truth-seeking initiatives offer a public space for a deep analysis of the structural and institutional causes of violence and its impact. Local mechanisms can complement national truth commissions in transitional contexts. Individual or communal/regional reparations can also be crucial for societies confronting extremist groups; funding for regional economic and social development can be used to build educational institutions, improve health care, provide job opportunities for the local population, and undertake other measures to address the harms sustained by local communities. Disarmament, demobilization, and reintegration processes are another important procedure and are particularly necessary for low-level members if combined with alternatives to prosecution and detention. All that said, lacking institutional reforms, these mechanisms would be insufficient. Institutional reforms should be directed at identifying and addressing the complicity of existing institutions, including security and judicial institutions. Such reforms should also include governance structures and devolve political power to marginalized regions and redress inequities in the distribution of land and

economic sources (Mühlhausen 2016; Quesada Alcala and Zakerian 2010; Sciandra 2017; Slye and Freeman 2018). TJ in practice has engaged with the question of sub-state terrorism, although in a limited manner. The next section reviews this engagement in practice and its critiques and blind spots. Building on lessons learned from other contexts such as Afghanistan, Algeria, Iraq, and Somalia can inspire more effective TJ policies against groups often called “terrorist” or “jihadist.”

Engagement of Transitional Justice with Sub-State “Terrorism” in Practice

In most countries’ jurisdictions, terrorism is identified as a crime, but the threat it poses to the stability and well-being of states and the international community has been used as a justification for military approaches to terrorism (Hughes 2011; LaFree and Hendrickson 2007). While most states have adopted domestic laws and provisions criminalizing acts of terrorism and giving jurisdiction to national courts to deal with acts of terror, the mandate of the ICC and other international courts does not include terrorism offenses. Only acts of terror that fall under one of the international core crimes – genocide, war crimes, crimes against humanity, and aggression – are under the ICC’s subject matter jurisdiction. One exemption, however, is the Special Tribunal for Lebanon (STL) which was established by the UN Security Council in 2007 to investigate the bombing in 2005 that led to the killing of the then Prime Minister of Lebanon, Rafic Hariri, along with twenty-one others.

STL has explicit and distinct jurisdiction over acts of terrorism (STL Statute 2006, Art. 1). The jurisdiction of STL is very limited; it does not deal with any acts categorized as an international crime, but only with a single assassination termed a “heinous terrorist act.” Although it was instigated by a local call for justice, it was pursued and imposed by the

international community (Hanafi et al. 2016). It has, however, been widely criticized for its political mandate. In addition to procedural issues,⁵⁴ STL is considered to be applying selective justice and to be dominated by foreign powers' political agenda to target Syria, Iran, and Hezbollah (Wierda et al. 2007). Impunity in Lebanon before and after Hariri's assassination exposes the UN Security Council's double standards and the political motivations lying behind the establishment of the Tribunal (Nashabe 2012). The decision of the SLT Appeals Chamber to identify the existence of a customary international crime of transnational terrorism has also been critiqued as being poorly substantiated (Saul 2011).

Other ad hoc tribunals, including ICTR (ICTR Statute 2010, Art. 4), the Special Court for Sierra Leone (SCSL Statute 2002, Art. 3) and the Extraordinary African Chambers (EAC Statute, Art. 7.2 (d)) include acts of terrorism as a violation of common Article 3 of the Geneva Conventions. Further, ICTY - basing its jurisdiction on customary international law - and SCSL have both prosecuted defendants for terrorizing and spreading terror amongst the civilian population (Sciandra 2017).

While the use of political violence by state and non-state actors is one of the main elements included in the mandate of truth commissions, the Truth and Reconciliation Commission in Peru (*Comisión de la Verdad y Reconciliación del Perú*, CVR) is perhaps the only truth commission whose mandate explicitly included acts of terrorism perpetrated by the state and the rebel groups - Shining Path (*Partido Comunista del Perú – Sendero Luminoso*) and the Túpac Amaru Revolutionary Movement. The CVR was established in 2001 to investigate the violence happening in the context of the internal armed conflict between the 1980s and

⁵⁴ Procedural "exceptions" include trials in absentia, the use of a pre-trial judge, and not giving clear details of the charges against defendants to their lawyers (Abboud and Muller 2013).

1990s. It collected over 17,000 testimonies of massacres committed by the state and armed groups across Peru, but the Shining Path was identified as the principal perpetrator (Milton 2015; Quesada Alcala and Zakerian 2010; Sciandra 2017).

In the context of “Islamic extremism,” in Algeria and Egypt, amnesty programs were important measures leading to militants renouncing violence or their armed struggle (Mühlhausen 2016; Pecastaing 2011; Volpi 2003), but they failed to resolve underlying issues such as economic and structural injustice. As Humphrey (2012) claims, the Algerian amnesty programs instead were used by the government of Bouteflika to strengthen its power while claiming to re-establish national unity. While the government has acknowledged that massive violence was committed during the civil war in the 1990s, it has denied official responsibility. The amnesty processes have not been sufficiently transparent and have not involved victims’ groups. Apart from amnesties, the fate of many victims who were forcibly disappeared during the war remains unclear and there has been no accountability for perpetrators. The government continues to deny its responsibility and claims that most of the disappeared have joined Islamic groups in the region (Amnesty International 2009; HRW 2005). Wiebelhaus-Brahm (2016) also argues that the continued repression and impunity have led to the further radicalization of “Islamist” forces while other scholars posit underlying social, economic, political, and demographic conditions as “root causes” of terrorism.⁵⁵ This in turn has put an end to international criticisms of Algeria’s TJ policy.

⁵⁵ See Newman (2006) for a review of the root causes - such as poverty, demographic factors, social inequality and exclusion, dispossession, and political grievances - and precipitant factors - such as leadership, funding, state sponsorship, political upheaval - of terrorism.

In Somalia, an amnesty excluded Al-Shabab defectors from the military justice system, but it was not accompanied by reintegration programs or efforts to address the reasons leading to joining militant groups. As Felbab-Brown (2018) contends, these factors also negatively affect women and children as they are often assumed to be associated with these organizations, through clan, tribal, or familial ties. Further, amnesties in Somalia also lack clear and transparent criteria and provide little accountability, and have, therefore, been controversial (Ibid.).

In Afghanistan, despite hopes for a better outcome for peace negotiations, the end result was the inclusion of warlords favored by the US instead of trusted representatives of the Afghan people in the Bonn Accord in pursuance of US national interests. This not only undermined the legitimacy of *Loya Jirga* (grand assembly) but also led to the empowerment of warlords and provided them with a platform to participate in nation-building (Atashi 2013; Hazan 2010; Miazad 2002). This is while the local population still awaits justice twenty years after the US invasion and amid continuing conflict and insecurity.⁵⁶ Furthermore, dissatisfaction with the government and the resentment of foreign forces have been used by armed groups to build popular support and many have joined these groups to demonstrate their frustration and opposition, particularly in the eastern and southern regions. Economic marginalization and lack of employment opportunities are among other reasons why many youths choose to join insurgent groups (Atashi 2013; Donini 2004).

⁵⁶ At the time of revising this manuscript and following the US decision to withdraw its forces from Afghanistan, the government of Ashraf Ghani collapsed and Taliban took over most of the territory in Afghanistan.

In the case of Iraq, the government used the Anti-Terror Law of 2005 and the de-Ba'athification program to securitize the Sunni community and target them as a scapegoat for violations committed under Saddam Hussein's regime. Many have accused the post-invasion government of only serving the Shia ruling parties in Iraq. With the misapplication of counterterrorism laws and their securitization, hundreds of disenfranchised Sunnis who felt victimized by the government joined groups such as al-Qaeda and Islamic State (Seloomee 2019; Stover et al. 2005). Further, despite the adoption of an amnesty law, the backlash on the law that was perceived to be too lenient led to amendments rendering all Islamic State members ineligible for amnesty (Slye and Freeman 2018).

In discussing TJ in post-9/11 US, Hafetz (2015) shows that even in "mature democracies," terrorism poses concerns for adherence to human rights. According to him, "a state's failure to pursue accountability ... propagates a competing security-based narrative that legitimises exceptions to the categorical moral judgments on which a robust and effective human rights regime depends" (Ibid., 429). ICTJ launched the US Accountability Project in 2008, with the aim of bringing attention to and addressing human rights abuses by the US government in the context of the WoT.⁵⁷ The final report of the Project shows the US government's use of politics of fear and secrecy on national security grounds to hide the violations committed and to prevent opposition against its counter-terrorism policies. The ICTJ recommendations include criminal accountability and the establishment of a commission of inquiry as well as reparations for victims. The US government, however, has not heeded any of these recommendations so far.

⁵⁷ For more information, see <https://www.ictj.org/our-work/regions-and-countries/usa-accountability>

Having briefly explained the engagement of TJ with sub-state terrorism and particularly what is known as “Islamic extremism,” now I turn to discuss how the dominant narrative of the WoT has shaped and limited TJ efforts in Muslim majority countries, with a focus on Tunisia and Mali.

IV. The War on Terror and Narratives of Justice

The dominant narrative of the WoT is used by political actors, including political leaders and elites, to redirect narratives of violence and conflict mainly through constructing groups, that are either “evil perpetrators” that should be eliminated or severely punished, or support “terrorism” and even if victimized, should not be considered as “worthy” victims. This narrative which is reinforced and propagated by institutional narratives of law and reconciliation marginalizes structural forms of victimhood caused by historical and persistent economic or political disenfranchisement. It also obscures the complex political histories that produced “terrorism” alongside a state apparatus disposed to mass violence.

This section discusses the strategic use of the dominant narrative of the WoT by political actors supported by the institutional discourses of law and reconciliation politics, leading to the construction of hierarchies of “violence,” “victimhood” and “perpetratorship” and the marginalization of a discussion of the structural and historical injustice in TJ initiatives.

The War on Terror as a Strategic Narrative

As discussed in the previous chapter and above, in justice narratives, political actors fix meanings, creating and structuring the foundations and terms of the debate on justice. They identify the actors in the narrative as “villains” or “victims,” their characteristics as “good” or

“evil,” and their motivation as hatred or righteousness (Krebs and Lobasz 2007). The reconciliation project as the arguably central element of TJ serves as a means for political actors to strengthen and legitimize their position and power and to “tame the rebellious” while leaving the structures of social and economic power often challenged by “terrorists” unchanged (Renner and Spencer 2015, 76). In fact, PB and TJ as a top-down liberal legalistic framework favor institutional and national interests and a statist conception of security, particularly in “terrorist” contexts (Richmond and Tellidis 2012; Tellidis 2020). The end result, however, is often the reinforcement of the state’s securitization resulting in greater resistance by “terrorist” actors and their supporters which undermines institutional and national interests (Tellidis 2020).

There is a general tendency to detach “terrorism” from its context and political and socio-economic circumstances that led to its utilization by different actors. As Krebs and Lobasz (2007) argue, the dominant narrative of the WoT has the impact of narrowing down the space for public debate. In other words, “[t]he ascendancy of ‘terrorism’ as an all-purpose designation for those who challenge entrenched inequalities and ideologies, violently or not, poses new challenges for those seeking justice” (McAllister 2020, 21). As explained earlier in the chapter, the “Islamic terrorism” narratives, in particular, imply that “terrorists” are religiously motivated and irrational and therefore, impossible to be negotiated or reconciled with. Instead, military counterterrorism and aggressive punishment and accountability measures are the only reasonable responses in this narrative.⁵⁸

⁵⁸ For instance, Benjamin Barber (2002, 242) claims that “[t]heir deeds are unspeakable, and their purposes can be neither rationalized nor negotiated ... The terrorists offer no terms and can be given none in exchange. When Jihad turns nihilistic, bringing it to justice can only take the form of extirpation—root, trunk, and branch.”

My focus will be on TJ processes in Tunisia and Mali. I argue that in these two countries, political elites used the dominant narrative of the WoT to encapsulate narratives of justice in order to assert and reinforce their power, status, and legitimacy, and avoid accountability. Therefore, what we witness is the reduction of complex narratives of conflict and political violence to narratives of “terror” by “evil perpetrators” with “evil intentions” propagated by international and domestic political actors with the help of media. Those identified as “terrorists” do not get an opportunity to share their narratives in TJ mechanisms unless their narratives correspond with the grand narrative laid out in the WoT discourse. This leads to the absence of counternarratives in the public discourse, what Cobb (2013) calls “narrative violence.” It also reinforces the power and legitimacy of the state, marginalizing broader discussions of historical accountability and economic and social reform. This hegemonic narrative is challenged by national and local actors but is difficult to change because of its discursive power.

Institutional Narratives of Justice and the War on Terror

The legalistic liberal TJ framework in the post-Cold War liberal order privileged symbolic and restorative justice, downplaying the “structural socioeconomic and ideological conflicts that created the conditions for political violence” (Grandin and Klubock 2007, 6). As the critical literature on TJ demonstrates, the dominance of the language of reconciliation at the heart of TJ serves not only to legitimate the post-conflict state but also by excluding and marginalizing political claims and demands, it aims to produce a shared hegemonic narrative about the past that is line with the interests of the post-violence state. Truth commissions, in particular, serve to strengthen the dominant position of the liberal state as the only viable

form of political organization and silence other voices that call for a more fundamental change (Renner and Spencer 2015). As Humphrey (2005, 211) puts it, “[t]he national reconciliation project has been exported as an international discourse of intervention alongside ideologies of human rights and democratisation to promote ‘global liberal governance’. We have the ‘therapeutic state’ focused on victims and their inclusion as a resource in the recovery of state sovereignty and legitimacy and the ‘treatment state’ which divides a war affected population into those who want peace (and have needs) and its enemies.”

Central to the WoT narrative is the creation of a juridical category called “terrorist” which at the same time is created by law and excluded from its protections and is the object of a “state of exception.”⁵⁹ In other words, the creation of a juridical category of “terrorist” is authorized in and by the WoT narrative that excludes it from the law (Hazan 2010). According to Cobb (2013, 28):

“The muteness of the ‘terrorists’ in the public discourse, the total absence of their narrative, such as an account of their pain, fits their status as objects of the state of exception. They are victims of narrative violence. But reciprocally, although not symmetrically, those who create the state of exception, the Imposers are already ensnared, in turn, in a narrative that denies the humanity of their Other, a narrative that confers totalizing and essentialized legitimacy on Self and totalizing and essentialized, delegitimacy, or evil, on the Other.”

⁵⁹ For more on the “state of exception,” see Agamben (2005).

Other institutional discourses of law, including rules governing temporal and subject matter jurisdiction of courts, as well as the *de jure* and *de facto* immunity of state actors, foreign and domestic, although with exceptions, constrict the space available to hold governments equally accountable while considering the histories of state's marginalization of certain groups and regions as well as broader structures of inequality and injustice often rooted in colonial and neo-colonial structures of power.

Reconciliation is a political project that mainly serves to legitimize state power instead of providing a platform for the inclusion of marginalized voices that are not willing to reconcile (Renner and Spencer 2013; 2015). It, thus, tends to marginalize and de-legitimize the demands that do not accept the imposed terms of reconciliation and put forward "radical" demands, such as accountability for past crimes or political separation and independence (Moon 2006; Renner and Spencer 2015; Schaap 2006). According to Meister (2011), reconciliation, as practiced in liberal legalistic TJ processes, is unlikely to resolve and put an end to "terrorist" conflicts; it could rather potentially further marginalize those unwilling to accept the pre-defined of reconciliation by labeling them as "terrorists."

The War on Terror and Hierarchies of Victimhood and Perpetratorship

The central narratives in TJ include views about who the victims and perpetrators of human rights violations are and what they deserve to receive to rectify the past. The TJ rule of law discourse, popularly articulated within anti-impunity social movement circles, constitutes the "victim to be saved" and the "perpetrator to be stopped" as the moral basis upon which action for justice can occur. Consequently, in the TJ discourse, we witness the frequent invocations of "victim" and "perpetrator" narratives (Clarke 2019). Several scholars

critique the construction of a victim-perpetrator dichotomy and its centralization in the TJ discourse (Mazinani 2014; McEvoy and McConnachie 2012; Shaw and Waldorf 2010). The construction of these categories is an inherently political construction and part of the process of constructing post-conflict narratives and dominant discourses on violence and victimhood.

Several scholars point out that within the victim/perpetrator binary, the TJ discourse is also marked by “hierarchies of victimhood” (See for example Carrabine et al. 2004; Ferguson et al. 2010; McEvoy and McConnachie 2012) and an ever-present demarcation of “good” versus “bad” victims based on conflict-related identities, and that “‘true’ victim status demands innocence” (McEvoy and McConnachie 2012, 531-532). As McAlinden (2014, 13) asserts, TJ narratives are also based on a “hierarchy of offending” and “[t]he ‘ideal’ or archetypal offender who is placed at the top of the offending hierarchy is grounded in the parallel notions of evil, guilt and their deserving of contempt.”

There is now an expanding set of literature that critiques the “victim-perpetrator paradigm” and its implications for TJ. Jankowitz (2018), for example, argues that in most TJ contexts, victims and perpetrators are not always easily identifiable as distinct categories and we witness “grey” zones of victimhood and responsibility. Other scholars expand this critique by highlighting the power relations embedded in the victim/perpetrator binary and suggest other categories that are inclusive of the role of other actors outside this binary. Robert Meister (2011) and Bruce Robbins (2017), for instance, propose the category of “beneficiaries” of injustice while Michael Rothberg (2019) coins the term “implicated subjects” to address the collective responsibility of Western societies as beneficiaries of

histories of violence and contemporary political and economic systems that perpetuate inequality. These categories emphasize the indirect responsibility of subjects situated at a temporal or geographic distance from the sites of social suffering who produce and benefit from the conditions of possibility of violence as well as its lingering impact. Admitting “the impossibility of complete redress,” Rothberg (Ibid. 84) argues that such an approach to expanded accountability “makes justice even more urgent.”

The encapsulation of narratives of justice by the hegemonic discourse of the WoT has put “terrorists” at the apex of the category of perpetrators while those supporting or considered to be sympathetic to grievances of “terrorist” actors, if victimized, are deemed as “guilty” or “unworthy” victims that do not deserve to be included in TJ initiatives. This excludes these actors’ narratives from the public space and sidelines the violations of state actors and the persistence of unequal political and economic structures. TJ initiatives, however, should not absolve the state of its human rights violations. Peace processes and their discourses must be as inclusionary as possible without marginalizing certain acts and actors as “terrorists” and masking grievances that result from unequal socio-economic structures (Tellidis 2020). An inclusive narrative of the past “should allow the construction of a well-founded and agreed narrative that sheds new light on the past ... This narrative provides a basis for the eventual evolvment of a new collective memory that is compatible with reconciliation” (Bar-Tal and Bennink 2004, 31).

An Overview of Cases Studies – Tunisia and Mali

My research shows that in both Mali and Tunisia, TJ was undertaken within a security-driven discourse that impacted its processes mainly through shaping the narratives around

“perpetratorship” and “victimhood.” In Tunisia, the schism within the independence movement put the “secular,” “modernist” Bourguiba camp against the “Islamic” nationalist Salah Ben Youssef and his supporters, including the Zeitouna students. With the support of the French colonial power, Bourguiba repressed and eliminated the Youssefists’ threat. Following the independence in 1956, Bourguiba continued a policy of controlling and repressing religion and “Islamists” in the public sphere. This policy was exacerbated after the Islamic revolution in Iran which preceded the establishment of the Movement of Islamic Tendency (*Mouvement de la Tendance Islamique*, MTI) in 1981. The repression of Islamists along with leftists and nationalists continued more severely under Ben Ali. In fact, Tunisia was the first Arab majority country to adopt a counterterrorism law in 2003 (Alzubairi 2019; Ikeda 2015; Perkins 2014; Wolf 2017).

Following the revolution in 2011, the discourse on “Islamism” and “terrorism” continued which impacted the TJ process in Tunisia. On the one hand, the victimhood of “Islamist” victims was questioned by different TJ actors with many accusing Ennahda of exploiting the TJ discourse for its own political ends. On the other hand, following the election of Beji Caid Essebsi, the former Minister of Foreign Affairs under Bourguiba, as President in 2014, counter-revolutionary forces lined up to question and undermine the TJ process in the country. As will be explained in the next chapter, a discourse emerged and further gained momentum undermining the victimhood of “Islamists” as “terrorists” and “non-deserving” victims. The Tunisian truth commission was also accused of serving the interests of Ennahda and its work was constantly undermined and disrupted by the government’s lack of cooperation. Thus, although the IVD had a relatively broad mandate, its material impact on socio-economic and structural justice has been limited. The result of years of aggressive

“secular” policies repressing “Islamists” was that in post-revolutionary Tunisia, the discussion of TJ was influenced by the constructed narratives of “Islamism” and “terrorism.” This was facilitated by counterterrorism laws and policies in force, and led to a redirection of narratives of socio-economic marginalization and injustice, with demonstrations demanding socio-economic rights continuing and increasing in recent years.⁶⁰

In French Sudan (current day Mali), with the rise of Islamic reformist movements in the 1920s and 1930s, the French colonial authorities in French West Africa became wary of Islamic anti-colonial ideas and decided to adopt a policy to control the spread of Islam in the region (Brenner 2001; Cardaire 1952; Clarke 1999; Harrison 1988; Kaba 1974; Thurston 2013). Following independence, the principle of “secularism” was enshrined in both the 1960 And 1992 Constitutions of Mali. During the rule of Modibo Keita, Mali’s first President, Muslims were heavily surveilled and a ban on Islamic organizations was imposed. State policies regarding reformists and Islamic organizations, however, continued to fluctuate and change under the following governments (Brenner 2001; Clarke 1999; Lebovich 2019; Thurston 2013). This coupled with the historical marginalization of Tuareg and Arabs in northern Mali as well as the expansion of Islamist movements in neighboring countries, including Algeria, led to the uprising and unrest in 2012.

Despite the complexities of the conflict, however, a simplified narrative about the conflict dominates the narratives of justice. This narrative focuses on the crimes of “jihadist” groups in Mali, marginalizing the violations committed by the Malian and French forces in the context of the WoT as well as structural injustice and marginalization that is at the root of

⁶⁰ See ACLED data (Raleigh et al. 2010); Kazemi (2019)

violence in northern Mali. The dominance of a security approach in justice narratives has led to a hierarchy of perpetratorship, with “terrorists” at the apex of this hierarchy and other perpetrators occupying lower ranks. The impact has been not only an aggressive military approach to counter-terrorism in Mali but also in terms of TJ, it has led to a military and criminal accountability approach to deal with violations committed by “jihadist” groups. This is accompanied by due process violations of those arrested and accused of corruption. The Malian and foreign forces, on other hand, have not faced the same consequences for their violations under Malian and international laws. The focus on “jihadist” violence has also come at the expense of excluding intercommunal violence that impacts central Mali now even more gravely.

V. Conclusion

As Humphrey (2005, 207) puts it, the main objective underlying the liberal TJ agenda is the re-establishment of state sovereignty; “[t]he project of national reconciliation is a strategy to recover (interior) peace essential to the re-establishment of the state’s sovereignty after internal wars or conflict.” The awareness that the aim of liberal peace was in fact the replication of hegemonic structures of cultural and political domination, exclusion, and marginalization (Shinko 2008; Tellidis 2012) led to the realization that a more critical agenda that “should be broadly representative of all actors at multiple levels, public and private, [...] and of multiple identities” was necessary (Richmond 2008, 162). TJ must be understood and analyzed in its particular historical, political, and social context (Hafetz 2015; Teitel 2000). Transitional societies must assess the trade-offs of pursuing TJ and take into account the “costs of settlement” (Horwitz 2010). The TJ discourse is dominated by

narratives surrounding the conflict and political violence that shape decisions regarding the adoption of TJ as well as the terms of the debate in the narratives of justice.

In the post-9/11 world, the hegemonic narrative of the WoT has shaped priorities and justice narratives in post-conflict and post-authoritarian contexts. The WoT discourse is based on a military approach against an enemy that is monstrous and irrational. This discourse represents the WoT as a “righteous cause.” (Anderson 2004, 31). The TJ meta-narrative also casts the figure of the individual in two key roles, that of a “perpetrator” criminally responsible for human rights violations and mass atrocities, and that of a “victim” that should be saved from the perpetrator’s violence. In other words, the TJ discourse creates a narrative made up of “good victims” and “evil perpetrators” (Clarke 2019; Govier and Verwoerd 2004; Humphrey 2003; Moeffett 2014; Nwogu 2010; Tabak 2011). The literature also demonstrates a hierarchy within the categories of “victims” and “perpetrators” (Carrabine et al. 2004; Ferguson et al. 2010; Jankowitz 2018; McAlinden 2014; McEvoy and McConnachie 2012), with “terrorists” at the apex of the hierarchy of “perpetrators” and victims who are deemed to be sympathetic or otherwise affiliated with “terrorists” at the bottom of the category of “victims.”

As scholars of critical terrorism studies show, the WoT narrative has become hegemonic in the context of many Muslim majority countries. This has led to a security approach to issues of justice and post-conflict PB in these countries. In other words, the dominant discourse of the WoT depoliticizes and decontextualizes the grievances of groups and societies and by consequence makes any discussion of the reasons and conditions that may have contributed to the violence appear unnecessary in TJ initiatives (Jackson 2007; Malkki and Sallamaa

2018). This approach has been enabled and reinforced by the TJ liberal legalistic meta-narrative and the institutional discourses that define the parameters of justice narratives. This along with the hierarchies the WoT has been used by governments to avoid accountability and has also marginalized a discussion of the reasons why groups turn to “terror” in their struggle. Moreover, it has excluded the narratives of marginalization, inequality, unfair resource distribution, economic disparity, and the role of foreign powers in perpetuating violations and structural injustice.

The UN Special Rapporteur on Human Rights and Counter-Terrorism has pointed out the risks coming from the manipulation of terms, such as extremism and terrorism, against political opponents (UNHRC⁶¹ 2016). More importantly, the securitization of matters related to post-violence development and PB impacts the delivery of essential services such as health, education, and social services. This is especially the case when resources are diverted to counter-terrorism actions instead of going toward meeting the needs and demands of people living in communities that are perceived to pose security risks for violent extremism (Frank 2017). Many of the factors associated with terrorism and violent extremism are political and structural issues that have a long and deep history in how power and resources are distributed and require long-term and structural solutions that take into account the deep histories of marginalization and injustice. Justice narratives, therefore, tend to be community-focused, rather than addressing the structural problems identified as factors associated with violent extremism. TJ scholars and practitioners should then ask whether a focus on citizens and communities rather than states as the source of problems in justice

⁶¹ UN Human Rights Council

narratives would exacerbate rather than improve the prospects for addressing violence and conflict, including what is labeled as “terrorist” (Ibid.).

This chapter traced the discourse on the WoT as related to Islamism and Islamic extremism. This discourse mainly emerged in the US and was dispersed and adapted in other contexts, including Tunisia and Mali. The emphasis on “danger” and “threat” from within and without influenced the terms of debate in TJ contexts and crowded out other discourses about conflict and political violence. The next two chapters use the cases of Tunisia and Mali to demonstrate how this impacted the TJ processes in these countries and limited their scope.

CHAPTER 4: CONTESTED VICTIMHOOD IN THE TRANSITIONAL JUSTICE PROCESS IN TUNISIA

“[Islamists] were terrorists. Frankly, they're terrorists. When you think that that they conspired against the state, it is terrorism.”⁶²

I. Introduction

In the public discourse, the story of the 2011 Tunisian revolution is entangled with the story of Mohamed Bouazizi, a street fruit and vegetable vendor who set himself on fire in Sidi Bouzid after municipal police confiscated his wares because he did not have a permit.⁶³ His fate caused a wave of demonstrations in Sidi Bouzid which later spread to the whole country and the region, as the story goes. For many Tunisians and people living across the region, he represented the socio-economic suffering they had been subjected to under corrupt authoritarian governments. Although the story of the Tunisian revolution is more complex than this widely circulated narrative shows,⁶⁴ Mohamed Bouazizi became the face of the Tunisian revolution. Socio-economic demands were at the heart of the revolution and one reason why it is called the “dignity revolution.”⁶⁵ Now, ten years after the ouster of Ben Ali from power, most of the socio-economic demands that led to the uprising have not been met,

⁶² Interview with IVD psychologist, La Marsa, Tunisia, 2018.

⁶³ The reports differ on the details of the event, but all of them converge on him self-immolating outside the local governor's office on December 17, 2010, and later dying in hospital on January 4, 2011.

⁶⁴ For example, see Chomiak (2011) on existing informal and extra-institutional political activities that finally led to the revolution in 2011.

⁶⁵ ثورة الكرامة

It is also called the “Jasmine revolution” although mainly by the Western media. Jasmine is the national flower of Tunisia. For a critique of the use of the term, see El Amrani (2011).

with demonstrations still ongoing at the time of writing despite restrictions to prevent the spread of the coronavirus. If anything, the pandemic and its impact on marginalized communities have brought to the fore the socio-economic grievances that led to the revolution in the first place.⁶⁶ Despite economic difficulties though, Tunisia stands as the only successful example of transition to democracy in the countries of the so-called “Arab Spring.”⁶⁷ As will be explained below, Tunisia was also the only post-“Arab Spring” country to adopt a comprehensive TJ initiative after its transition in 2011.

This chapter focuses on the Tunisian TJ process. It uses primary and secondary sources to investigate the impact of the discourse on “terrorism” on TJ in Tunisia. It draws on interviews conducted with 32 TJ actors during a fieldwork trip to Tunisia in late 2018 as well as interviews conducted online later due to the coronavirus pandemic. Interviews were semi-structured and lasted from 30 minutes to 4 hours. Some of the TJ actors were interviewed multiple times to either follow up on issues raised in earlier interviews or just to discuss the new developments in the TJ process in the country. Interviewees were identified online or were recommended by other research participants. They ranged from Islamists – including former and current Ennahda and Karama⁶⁸ members – to secularists and others who did not

⁶⁶ See Kazemi 2020. At the time of revising this manuscript, following demonstrations denouncing the economic situation and the response to the pandemic in the country, the Tunisian President, Kais Saeid, froze the parliament and took over the executive power in a move some described as a “coup” (Aljazeera 2021).

⁶⁷ The use of the “Arab Spring” label has been critiqued as an example of the persistence of “orientalism,” mainly for its reduction of a diverse range of identities in the MENA region to “Arab” as a homogenous distinct identity (Ventura 2017). Further, with the events happening across the region, including the 2013 coup d’état in Egypt and the conflicts in Libya, Syria, and Yemen, the hope for the establishment of democracies in the region seem to have largely failed, with some scholars now calling it the “Arab Winter” (See Feldman 2020).

⁶⁸ Karama Association was created after the revolution as a victim group association, including largely long-term Islamist political activists. In 2019, the Karama Coalition was established as an

necessarily affiliate themselves with either side. Unless publicly known, I did not ask my interviewees about their political affiliation as I considered it to be a politically sensitive issue. Some of them, however, mentioned their political leaning while discussing the TJ process in the country. What I also observed was that political identities in Tunisia are much more complicated than what is often portrayed as an Islamist-secularist binary. For example, two of my interviewees – a civil society actor and an IVD employee - who wore *hijab*, self-identified as Muslim and secular but told me that they were often distrusted by secularists and feminists who considered them as “Islamists” or “sympathetic to Islamists.”⁶⁹ Before delving into the TJ process in Tunisia and the impact of the WoT discourse on the process, I briefly discuss the historical context that led to the construction of the Islamist-secularist binary as well as the adoption of TJ measures in the country. A comprehensive discussion of the history of Tunisia is beyond the scope of this chapter and this dissertation. The focus instead is on the conditions that resulted in contesting the very notion of victimhood that is at the heart of TJ processes.

Tunisia was officially under the Ottoman Empire’s rule for nearly three centuries, gradually turning into an effectively autonomous province under its rule. Following a period of increasing political and economic influence in Tunisia, the French government which had already established a colonial presence in neighboring Algeria, concluded the Treaty of Bardo with the Tunisian bey, Muhammad as-Sadiq, on May 12, 1881, thereby gaining control over certain areas of the country and taking over the defense and foreign policy powers of

independent political party and won seats in the parliamentary elections. For more on this, see Robins and Bouchiba (2021).

⁶⁹ Interview with civil society actor 3, Berges du Lac, Tunisia, 2018; Interview with two IVD sociologists, Tunis, Tunisia, 2018.

Tunisia. This was followed by the signing of the La Marsa Convention between the French Resident Minister⁷⁰ and Ali Bey on June 8, 1883, which formally established the French Protectorate over Tunisia. The French control of Tunisia continued for more than 70 years. In 1920, the Destour party (Constitutional Liberal Party; *Parti Libéral Constitutionnel*)⁷¹ was formed as the central organization for opposing French colonial control. A radical wing of Destour split from the party under Habib Bourguiba's leadership who founded the Neo-Destour party (New Constitutional Liberal Party; *Nouveau Parti Libéral Constitutionnel*)⁷² in 1934. As will be discussed later in this chapter, another split within the Neo-Destour party between Habib Bourguiba and Salah Ben Youssef – the Secretary-General of the party – in the 1950s put two visions of a future independent Tunisia and the identity of *la tunisianité* in contrast with each other: a “secular” Tunisia, advocated by Bourguiba and his supporters, versus a pan-Arab nationalist and Muslim Tunisia, envisaged by Ben Youssef and his followers. This divide has had a long-lasting impact on the politics of Tunisia up to this day.⁷³

The country eventually gained independence from France in March 1956 and the Republic of Tunisia was established a year later under Habib Bourguiba's leadership. As he had promised, Bourguiba followed an aggressive “modernization” program that was entangled with his “secularization” policies until his ouster from power by his newly appointed Prime Minister, Zine El Abidine Ben Ali, in a bloodless coup d'état on November 7, 1987.⁷⁴ Although

⁷⁰ The title was changed to Resident-General on June 23, 1885, and later changed again to High Commissioner from September 13, 1955 until independence.

⁷¹ الحزب الحر الدستوري

⁷² الحزب الحر الدستوري الجديد

⁷³ For a comprehensive study of the history of modern Tunisia in English, see Perkins (2014). For colonial history more specifically, see Anderson (1986); Lewis (2014); Ikeda (2015).

⁷⁴ In what is known as a “medical coup d'état,” Bourguiba was declared to be medically unfit for the office of Presidency.

Ben Ali first advocated for opening the political arena to Islamists⁷⁵ and other opposition parties, the popularity of the prominent Islamic movement – Ennahda – in the 1989 parliamentary elections,⁷⁶ followed by the events in Algeria, led to a radical shift in his policies toward Islamists, and widespread repression of Islamic movements in the country (See among others Ikeda 2015; Perkins 2014; Wolf 2017; McCarthy 2014; 2018; 2019). With the start of the so-called global WoT, the repression was further legitimized. Tunisia was, in fact, the first Arab-majority country to respond to Security Council resolution 1373 (2001) by adopting the Law in Support of International Efforts to Fight Terrorism and the Repression of Money Laundering in 2003 (Alzubairi 2019). According to HRW (2013), more than 3,000 people were prosecuted under the law during Ben Ali’s rule, in most cases without due process. According to the same report, “some people were charged for planning to join violent militant groups abroad or inciting others to join, rather than for planning or committing specific acts of violence.” The law, therefore, also worked as a master narrative to serve the interests of Ben Ali’s regime in its crackdown on any opposition to his power and policies. Following the revolution in 2011, however, space opened for the participation of Islamists and other opposition parties in politics with Ennahda gaining a plurality in the

⁷⁵ The author is cognizant of the limitations of the label “Islamists” and the “Islamist-secularist” binary and the dangers underlying their use (For more on this point, see Allani 2009; Antoun 2001; Ismail 2001). However, in the literature on Tunisian politics, these terms are widely used. More importantly, during my research fieldwork, these terms were constantly utilized by my research participants which in and of itself shows the impact of the discourse against Islamic groups in Tunisia on the politics of TJ. The Ennahda’s leader, Rached Ghannouchi (2016), has recently disassociated the party from the Islamist label, instead identifying it “as a party of Muslim democrats.”

⁷⁶ Ennahda was not recognized as an official political party and therefore, had to participate in the elections through independent lists.

National Constituent Assembly (*Assemblée Nationale Constituante Tunisienne*, ANC)⁷⁷ elections in October 2011.

The uprisings known as the “Arab Spring” started in Tunisia in December 2010 and soon spread to the whole MENA region, with an impact even beyond that region. Most of the countries impacted by the wave of pro-democracy demonstrations grappled with the question of TJ. These measures ranged from the establishment of a truth commission in Bahrain to ICC indictments and the passage of the Political Isolation Law in Libya as well as a draft law on TJ and national reconciliation in Yemen.⁷⁸ Tunisia, however, was the only country to prioritize and implement TJ by adopting a comprehensive law to carry it out. This widespread interest in TJ in the region was due to the globalization of TJ as an integral element of the UN’s rule of law toolkit for conflict and violence-affected settings, as well as the emergence of regional organizations in the MENA region, such as Al-Kawakibi Center, that drew on the TJ experiences in Morocco, Algeria and other countries in Africa and Latin America to advocate for TJ across the Arab region.⁷⁹ The Organic Law on Establishing and Organizing Transitional Justice (hereafter Organic Law on TJ), adopted in December 2013, established the Truth and Dignity Commission (*Instance Vérité et Dignité*, IVD) to address violations committed under the previous authoritarian governments of Bourguiba and Ben Ali. The law also tasked the IVD with referring cases of grave human rights violations to Specialized Criminal Chambers (*Chambres Criminelles Spécialisées*, CCS) created within ordinary courts to prosecute those responsible for human rights violations (Organic Law on

⁷⁷ المجلس الوطني التأسيسي التونسي

⁷⁸ For more on TJ in the context of post-“Arab Spring” countries, see among others Fisher and Stewart (2014) and Sriram (2017).

⁷⁹ Interview with civil society actor 2, Tunis, Tunisia, 2018.

TJ, Art. 8). From the very beginning, there was an emphasis on “local” agency and ownership of the TJ process in Tunisia. However, a “theme” that was brought up by almost all my interviewees was the nature of the victimhood of “Islamists.” Several of my interlocutors pointed out how TJ has benefited this group, including “Salafists,” and has been “used and exploited” by Ennahda for political purposes. Ennahda members and some other actors also referred to the discourse against Islamist victims as one of the main obstacles in the TJ process in the country. This discourse was to a large extent in opposition to the discourse used by Islamist actors who saw TJ as a medium through which they could get acknowledgment and redress for their suffering before the revolution. It should be noted that while, as will be explained later, Islamist organizations and civil society spheres began to emerge in post-revolutionary Tunisia, the composition of prominent national human rights institutions remained unchanged and largely with “secularist” leanings.

The elections in 2014, which coincided with the start of the work of the IVD as the principal TJ mechanism in the country, led to the victory of Nidaa Tounes, a party loosely constituted by elements of the former regime and the dissolved Democratic Constitutional Rally (*Rassemblement Constitutionnel Démocratique*, RCD).⁸⁰ Nidaa Tounes⁸¹ gained a plurality of votes in the parliamentary elections in October and Beji Caid Essebsi, a former Minister of Foreign Affairs under Bourguiba and the Speaker of the Assembly under Ben Ali,⁸² was elected as President two months later. Although TJ was a priority up until then, under

⁸⁰ التجمع الدستوري الديمقراطي

RCD was dissolved following a court ruling in March 2011.

⁸¹ حركة نداء تونس

It means “call for Tunisia.”

⁸² He also served as the Interim Prime Minister following the revolution from February 27 until December 24, 2011.

Essebsi's rule, the government and counterrevolutionary forces undermined the legitimacy of TJ initiatives, with some accusing Islamists of exploiting TJ for their own purposes and condemning the IVD for serving their interests. This discourse was reinforced by institutional discourses, including a new anti-terrorism law adopted in 2015. Although economic crimes and corruption were included in the IVD's mandate, issues of structural and socio-economic justice were to some extent sidelined by the discourse on the "undeserved victimhood" of Islamists and accusations targeted at the IVD for serving Ennahda's interests. This discourse was challenged by several TJ actors, but the events happening in the country coupled with public narratives reiterated by the media undermined contradictory narratives in favor of the existing dominant narrative.

This chapter includes two main sections. The first section briefly reviews the historical background leading to the revolution in 2011. It starts with the independence movement and the schism that emerged in the movement between the two camps of Bourguiba and Salah Ben Youssef. Relying on the rich literature on the history of Tunisia, it discusses the rise of Islamic groups in Tunisian politics and their repression under both Bourguiba and Ben Ali. The secularization policies and the marginalization of Islamists are also discussed as a necessary element of the repressive apparatus of both governments. The second section then delves into the TJ process in Tunisia, with a focus on the impact of the hegemonic discourse of the WoT on justice narratives. It starts by discussing the TJ measures implemented in post-revolutionary Tunisia and then drawing on the notion of "contested victimhood," it investigates how the narrative of the WoT, itself rooted in a broader narrative of "Islamism," impacted the perceptions of victimhood as well as the legitimacy and

effectiveness of TJ initiatives in Tunisia. The chapter concludes with a discussion of the implications of the findings and lessons learned for the TJ literature and practice.

II. Historical Background

Tunisia is a small country of nearly 12 million people in the North Africa region, neighboring Algeria to the west and Libya to the southeast.⁸³ The majority of the population are Arab-Berbers and Sunni Muslims. This section provides a brief overview of the conditions that led to the revolution in 2011 and the adoption of TJ measures to deal with human rights violations under Bourguiba and Ben Ali. It is divided into two subsections: the first part discusses the events happening from independence in 1956 until the coup d'état against Bourguiba. The second part then discusses the Ben Ali era and the suppression of Islamic movements under his rule.

From Independence to Ben Ali's Rule

In order to understand the creation of the Islamist-secularist binary in Tunisia and its impact on TJ, it is necessary to discuss the historical background going back to the independence struggle and the schism that emerged between the two camps in the independence movement. Following the signing of the Treaty of Bardo in 1881 and the La Marsa Convention in 1885, Tunisia officially became a French Protectorate. The Neo-Destour party, split from the Destour party under the leadership of Habib Bourguiba, became the leading voice in the Tunisian nationalist movement. However, a polarization emerged between Habib Bourguiba – representing a “secular” vision of post-independence Tunisia –

⁸³ The World Bank Data, Available at <https://data.worldbank.org/country/tunisia>.

and the Secretary-General of the Neo-Destour party, Salah Ben Youssef, and his followers, including Zeitouna students – representing a pan-Arab Muslim Tunisia.⁸⁴



Figure 1 Map of Tunisia⁸⁵

⁸⁴ The followers and supporters of Salah Ben Youssef are known as Youssefists. Islamists, including Ennahda members, drew on the same discourse throughout their activism. For more on this, see Wolf (2017).

⁸⁵ Source: Perry-Castañeda Library Map Collection, The University of Texas at Austin, Available at <https://legacy.lib.utexas.edu/maps/tunisia.html>

Critical of Bourguiba's lenient approach toward the French and the internal autonomy agreement concluded in April 1955 with foreign affairs and defense remaining in French hands (in effect a return to the situation in 1881),⁸⁶ Ben Youssef was eventually expelled from the party at the Sfax congress. In response to Ben Youssef's call, hundreds of *fellaghas*⁸⁷ took up arms, leading to an increase in guerilla tactics against Protectorate officials followed by mass arrests of his followers and an attempt to arrest him (Ikeda 2015; Perkins 2014; Wolf 2017). The IVD's final report uncovers documents in French archives showing the French direct support and encouragement of Bourguiba to repress and eliminate Ben Youssef and his supporters, a task Bourguiba took on and implemented with the help of the French forces in the late 1950s.⁸⁸ The majority of resistance fighters were eventually captured, imprisoned, and in many cases executed. In order to ensure continuing influence over an independent Tunisia, France also supported Bourguiba in the 1956 elections

⁸⁶ Under the Treaty of Bardo signed on May 12, 1881, France gained control over certain areas of the country and took over the defense and foreign policy powers of Tunisia. The La Marsa Convention changed the situation and formally established the French Protectorate over Tunisia in June 1883.

⁸⁷ *Fellaghas* are the armed fighters who fought the French colonial forces.

⁸⁸ The Final Comprehensive Report (2019, 137-138) includes a statement by Roger Seydoux, the then High Commissioner of France in Tunisia, on the plot to arrest and eliminate the threat of Youssefists, what he calls a "small coup":

"I pushed Bourguiba to make a decision as he wanted to preserve his superiority and popularity. I told him that he had to choose between the imprisonment, arrest or exile of Salah Ben Youssef. I asked Bourguiba to come to the general residency headquarters ... During the dinner, I explained to him my theory. I told him that things could not continue like this. Bourguiba told me: 'You have to put him on a French plane and send him to Libya.' I answered: 'But I am not representing Tunisian authority anymore, you are the Tunisian authority. It is up to you to take the decision.' ... Finally, the following decisions were made: detaining Salah Ben Youssef and the visit of the Youssefist cells identified by the police and detaining their elements. This is it, a small coup. It totally succeeded because it had been decided right then at midnight and was carried out at 4 a.m. at the crack of dawn. I do consider, without any doubt, that I care about Bourguiba's future, but what I care about much more than that is French politics. And French politics cannot be ensured without the maintenance of Bourguiba."

(Bubeck and Marinov 2019). Ben Youssef lived in exile until he was assassinated in Frankfurt in 1961 with Bourguiba's direct order as explained in the IVD's report.⁸⁹ This proved to be an important turning point for Tunisia as it signifies the emergence of an important fissure in Tunisian politics, the impact of which continues today.⁹⁰ Tunisia became independent on March 20, 1956, following the signing of the Franco-Tunisian Protocol although France continued to maintain control in Tunisia by keeping military bases in the country, including one in Bizert until 1963.

Following independence and the 1956 Tunisian Constituent Assembly elections, Habib Bourguiba was appointed as the Prime Minister of Tunisia in a government dominated by members of the Neo-Destour party. In 1957, the Constituent Assembly voted to abolish the monarchy, removing Lamine Bey, the last Husainid Bey, as the King of Tunisia. It also declared the establishment of the Republic of Tunisia with Bourguiba as President. Upon ascendancy to power, Bourguiba pursued aggressive "secular" policies, making Tunisia part of "the iron triangle of aggressive *laïcité*,"⁹¹ according to Alfred Stepan (2016, 100). He launched a campaign to "modernize" the country and curb the traditional expressions of Islam. He himself though used religion when it fitted his goals (Hajji 2004; McCarthy 2014; Perkins 2014). This demonstrates how religion and secularism are in fact co-imbricated and not two completely separate and independent spheres. Several scholars have questioned and critiqued the secular-religious binary by reframing discussions of religion and secularism in

⁸⁹ The details of the event are explained in the IVD report, Vol. 2 (2018), 68-81.

⁹⁰ For more on the colonial legacy and TJ in Tunisia, see Kazemi (2021).

⁹¹ Including France, Tunisia, and Turkey. See also Alexander (2010); Hermassi (1991); Moore (1965); Zghal (1991).

the social sciences.⁹² In the case of Tunisia, McCarthy (2014, 734) notes that it was not a secular country under Bourguiba and Ben Ali if we define secularism “as the separation of religious from state institutions or the separation of religion from politics.” He instead draws on Talal Asad’s approach, conceptualizing secularism “as a process of defining, managing, and intervening in religious life by the state” (Ibid.).

As part of his reforms, Bourguiba adopted several measures, including the confiscation of the property of the Habus Council,⁹³ discrediting Sufi leaders, and *ulama* for having supported and collaborated with the French Protectorate. Sharia and rabbinical courts were also abolished in 1956. The same year the Personal Status Code was adopted, stipulating a set of laws bolstering women’s rights. It prohibited polygamy and set a minimum age for marriage. It, however, followed Islamic rules in some areas, including inheritance laws. In a wide-reaching educational reform, Zeitouna University also lost its autonomy and was absorbed into the University of Tunis as the Faculty of Sharia and Theology. In 1981, the government issued a ban on *hijab* and “sectarian dress” in schools and public offices with the adoption of Circular 108 (Abun-Nasr 1987; Anderson 1986; Charrad 1997; Mestiri 2011; McCarthy 2014; Moore 1965; Perkins 2014; Wolf 2017). According to McCarthy (2014), these measures did not mean that religion was banished from Tunisian politics altogether. Cognizant of the sway of religion over a significant segment of the society and its utility for his legitimation, Bourguiba presented his own interpretation of religious tradition and

⁹² For example, see Calhoun et al. (2011).

⁹³ Islamic land foundations (in charge of *Awqaf*)

placed himself along the line of Islamic reformers.⁹⁴ Bourguiba's approach, however, began to gradually lose legitimacy.

The Ennahda movement originally emerged as a preaching circle in the late 1960s and early 1970s,⁹⁵ called *al-Jamaa al-Islamiyya*⁹⁶ (the Islamic Group), with informal links to the Muslim Brotherhood⁹⁷ in Egypt. They were originally tolerated by Bourguiba as his attention was mainly focused on eliminating the threat of the far-left movement in the country. In the late 1970s, Islamists realized that they could go beyond theological questions and take on socio-economic issues as well. One important factor in this change of course was the 1979 Islamic revolution in Iran (Abadi 2013; Allani 2009; Wolf 2017). According to Wolf (2017, 48), the Iranian revolution led to Islamists' realization that they "can go beyond talking in theoretical ways about justice and codes of conduct, and enter the political sphere." Consequently, *al-Jamaa al-Islamiyya* activists became more interested in social and economic issues impacting Tunisia. To reflect this change, in July 1979, the organization changed its name to the Islamic Tendency Movement,⁹⁸ adopting a language similar to the one used by Ayatollah Khomeini in Iran.⁹⁹ Two years later, the MTI asked for official

⁹⁴ One example of this is when Bourguiba appeared on TV during the month of Ramadan in 1964 and drank a glass of juice on national television, exhorting Tunisians to give up fasting in Ramadan which he saw as an impediment to working. He justified this as jihad against poverty and economic underdevelopment (McCarthy 2014). Hajji (2004) argues that Bourguiba genuinely sought an evolution and reform of Islam.

⁹⁵ The late 1960s and 1970s also marked government's crackdown on leftist groups and activists.

⁹⁶ الجماعة الإسلامية
⁹⁷ جماعة الإخوان المسلمين

⁹⁸ Mouvement de Tendance Islamique, MTI

حركة الاتجاه الإسلامي

⁹⁹ Including siding with the oppressed (*al-mustadafun*) against the oppressors (*al-mustakbirun*) and claiming an Islamic state. According to Allani (2009, 259), the movement's magazine, "*Al-Maarifa* praised the moral qualities of Khomeini and viewed the revolution in Iran as a triumph for Islam and for all the miserable, deprived people on earth."

recognition and applied for a license to register as a political party. The request, however, was rejected. This was followed by a large-scale crackdown on the movement during which more than a hundred religious activists, including two of the MTI founders, Rached Ghannouchi and Abdelfattah Mourou, were imprisoned. The repression, however, strengthened the MTI's public image, helping it gain visibility among the population and civil society actors. When the so-called "bread riots"¹⁰⁰ erupted in January 1984 over the increase in the price of basic commodities due to an austerity program imposed by the International Monetary Fund (IMF), the suppression of which led to several fatalities, the riots were actively supported by the MTI members. This resulted in another wave of repression against Islamists (Perkins 2014; Wolf 2017).

After a short period of rapprochement between the MTI and the government under Prime Minister Mohamed Mzali in the mid-1980s, violence escalated in the country. Anti-government demonstrations were repressed and hundreds of activists were jailed. In August 1987, four hotels were bombed in Tunisia, and despite the fact that a group called Islamic Jihad claimed responsibility, the government linked the attacks to the MTI and Islamists broadly. As a consequence, several MTI members, including Rached Ghanouchi, were sentenced to death. When the news of an impending planned coup by Ennahda's military wing, the Security Group, reached the then Prime Minister Zine El Abidine Ben Ali, he reacted swiftly and toppled Bourguiba in what became known as a "medical coup" (Ibid.; Hermassi 1991; McCarthy 2014).

¹⁰⁰ أحداث الخبز

On November 7, 1987, the newly appointed Prime Minister of Tunisia, Zine El Abidine Ben Ali, removed Bourguiba from power for “incompetence” based on “a medical report” (New York Times 1987). Upon taking power, Ben Ali adopted several measures to open the political arena in the country; he issued amnesties for thousands of political prisoners, abolished the presidency for life, and ratified the UN Convention against Torture (Alexander 1997; Lamont and Boujneh 2012; Sadiki 2002). In 1988, the name of the Socialist Destourian Party (*Parti Socialiste Destourien*, PSD)¹⁰¹ was changed to the Democratic Constitutional Rally¹⁰² in parallel with the government’s imposition of economic reforms to increase economic liberalization and privatization. Under Ben Ali, Islamists and other opposition parties benefitted from a short period of respite and joined the National Pact which was mainly designed to garner legitimacy for Ben Ali. As McCarthy (2019) points out “[t]he pact sought to co-opt and undercut the Islamist challenge by defining a ‘specific Arab-Islamic identity’ for Tunisia and a reformist project of ‘ijtihad.’” Thus, similar to Bourguiba, Ben Ali also drew on Islam for his own legitimation.

The MTI officially changed its name to the Ennahda Movement (Movement of the Renaissance)¹⁰³ in order to comply with a new law prohibiting parties based on religion, and hoping to be finally recognized as an official political party. Ennahda members participated

¹⁰¹ الحزب الاشتراكي الدستوري
The Neo-Destour party was renamed PSD in 1964 to convey “the official embrace of” socialist ideology for political and economic development (Perkins 2014, 151).

¹⁰² Rassemblement Constitutionnel Démocratique, RCD

التجمع الدستوري الديمقراطي
¹⁰³ حركة النهضة

in the April 1989 elections through independent lists and won more than 14% of the votes overall, emerging as the strongest opposition block. However, the Ennahda was denied any parliamentary seats and instead faced widespread crackdown and repression, with many of its members either being exiled or detained and tortured in security prisons in Tunisia.¹⁰⁴ Within weeks from the elections, waves of arrests began leading to mass trials in July 1992 in which Ennahda members were charged with “terrorism” and threats to state security. Many were also sacked from their public sector jobs and forced to register several times a day at police and national guards’ offices. Moreover, new laws were adopted as tools of regime control, including a revision of the Press Code banning propaganda based on “extremism” as well as amendments to the Penal Code criminalizing acts inciting “religious fanaticism” (Amnesty International 1992; HRW 1992). The success of the Algerian Islamist party, Islamic Salvation Front (*Front Islamique du Salut*),¹⁰⁵ in the parliamentary elections followed by a military coup d’état in January 1992 was another factor reinforcing the securitization of Islam and Islamists under Ben Ali’s regime in Tunisia. The events in Algeria further legitimized anti-Islamism based on the fight against “terror” argument with the clear support of the international community (Alzubairi 2019; Andrieu 2016; Lamont and Boujneh 2012; McCarthy 2014; 2018; Perkins 2014; Volpi 2013; Wolf 2017). The policy against wearing *hijab* also stiffened under Ben Ali, with women who wore headscarves facing serious repercussions, from expulsion to harassment by the police on the streets (ICTJ 2016).

¹⁰⁴ Around 30,000 were imprisoned, including the future Ennahda ministers Hamadi Jebali, Ali Larayedh, and Samir Dilou. The leader of the movement, Rachid Ghannouchi, fled into exile abroad (McCarthy 2014).

¹⁰⁵ الجبهة الإسلامية للإنقاذ

Other actors, including the military and the youths, were not spared in the wave of crackdown. In 1991, a suspected military coup was responded to by a campaign of repression that included detention and torture against more than 300 military officers. This is known as the *Barraket Essahel* affair after the name of a town near Hammamet in the Nabeul governorate where the coup was supposed to take place (Andrieu 2016; Kourda 2012). Furthermore, in 2008, youths' demonstrations over employment in the phosphate mines in the region of Gafsa were severely repressed, leading to fatalities and casualties among demonstrators as well as hundreds of people getting arrested. Gafsa demonstrations marked a turning point in opposition to Ben Ali's rule (Allal 2012; Andrieu 2016; Gobe 2010).

In the aftermath of the 9/11 attacks and the launch of the global WoT, Tunisia became an important global actor in the fight against terrorism, especially after an attack on a synagogue in Djerba that resulted in the death of 19 civilians, including German and French citizens.¹⁰⁶ Ben Ali found the discourse on the WoT, which primarily targeted Islamic groups, as a useful tool against Tunisian Islamists, particularly Ennahda members, who posed a threat to his power and rule. According to an Amnesty International report (2009),

“[t]he authorities continue to use their ‘security and counter-terrorism’ concerns to justify arrests and other repression of Islamists, and political dissent in general – including the rights to freedom of expression, association and assembly – and arrests and harassment of alleged Islamist youths are common. At the same time, the government’s preoccupation with the rhetoric

¹⁰⁶ Al-Qaeda claimed responsibility for the attack (BBC News 2002).

of counter-terrorism and security has enabled it to strengthen Tunisia's cooperation with other states and attract international assistance."

The global wave of efforts against Islamist terrorism that followed 9/11 made legal or extra-legal anti-terrorism policies in Tunisia more acceptable. As Noyon (2003, 110) points out, "[b]y carefully emphasizing the alleged terrorist character of An-Nahda, the regime was able to undermine the movement's legitimacy in the eyes of the people and to jail and repress its members. As 'terrorists,' they could be viewed as less than human or as carriers of a 'disease,' as the regime has since termed Islamism." According to an American diplomat in 2005, "since the mid-1990s, the [government] has been waging a war of words with religious elements, characterizing conservative Muslims as 'Islamists' and 'terrorists.' This policy has been quite successful, as the two terms are used practically interchangeably in Tunisia today" (Quoted in Wolf 2013, 562).¹⁰⁷

Following the 9/11 attacks, the UN Security Council adopted resolution 1373 in September 2001, calling on the UN member states to take several measures, including to identify terrorist acts "as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts" (Para 2. e). Tunisia was the first Arab country to respond to the resolution by adopting a separate anti-terrorism law in 2003 under which thousands of people were prosecuted (Alzubairi 2019; HRW 2013). The 2003 anti-terrorism law included a broad definition of terrorism, criminalizing acts such as "disturbing public order" (Alzubairi 2019, 210). As the UN Special Rapporteur on Human Rights and Counter-Terrorism points out in his report (UNHRC 2012, 2), the anti-terrorism

¹⁰⁷ US Embassy (Tunis) cable to State Department, 05TUNIS2420, "The Dichotomy of Islam in Tunisia," Confidential, November 29, 2005.

law “did not provide more security to the Tunisian people, but was in the past widely abused as a tool of repression against any form of political dissent.” The government exploited the law to restrict public and individual freedoms, including freedom of opinion, expression, and information, and to monitor and suppress the activities of independent associations and their sources of funding.

By the late 2000s, Tunisia was ranked as one of the most repressive states in the world (Lamont and Boujnef 2012). Although the economy, in general, grew under Ben Ali, with a 3.2% average annual growth in GDP per capita between 1987 and 2008. In the wake of the global economic crisis in 2008, the growth dropped.¹⁰⁸ The GDP growth, however, had a limited impact on the lives of Tunisians, with unemployment remaining high at around 15% during this period.¹⁰⁹ This rate was double among the youth.¹¹⁰ Further, the reconfiguration of the economy during the colonial period, which was also pursued in the post-colonial era, led to the privileging of the country’s coastal areas while overlooking the interior and border areas. This resulted in a significant inequality between these two regions in terms of economic development (Chomiak 2017; Meddeb 2020). In addition, the embedded corruption and crony capitalism, based on favored relations between businessmen and the state, meant that Ben Ali and his clan benefitted from economic policies, while the large majority of the Tunisian population, especially in the hinterland, remained marginalized (WB 2014). The figures below show the unemployment rate in Tunisia over the course of 20

¹⁰⁸ This data is from the WB website and can be accessed here: <https://data.worldbank.org/country/tunisia>

¹⁰⁹ See <https://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=TN>

¹¹⁰ See <https://data.worldbank.org/indicator/SL.UEM.1524.ZS?locations=TN>

years as well as the regional disparity in economic development as shown by unemployment and poverty rates:



Figure 2 Unemployment, total (% of total labor force) (modeled ILO estimate) - Tunisia¹¹²



Figure 3 Unemployment, youth total (% of total labor force ages 15-24) (modeled ILO estimate) - Tunisia¹¹³

¹¹¹ For more on the impact of political economy on the Tunisian revolution, see Gherib (2012).

¹¹² Source: The World Bank, Available at <https://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=TN>

¹¹³ Source: The World Bank, Available at <https://data.worldbank.org/indicator/SL.UEM.1524.ZS?locations=TN>

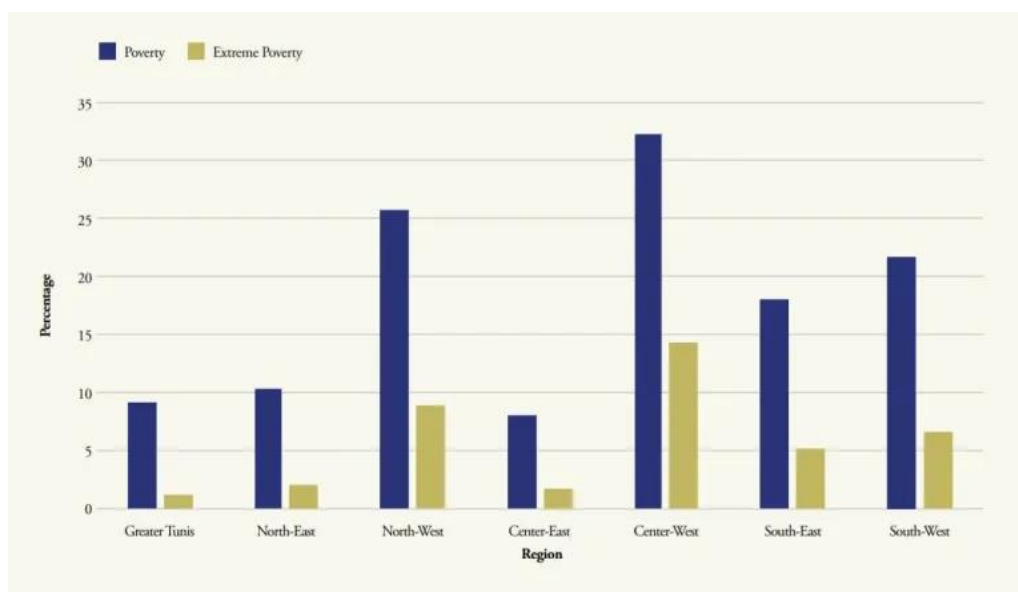


Figure 4 2010 Poverty and Extreme Poverty Rates by Region¹¹⁴

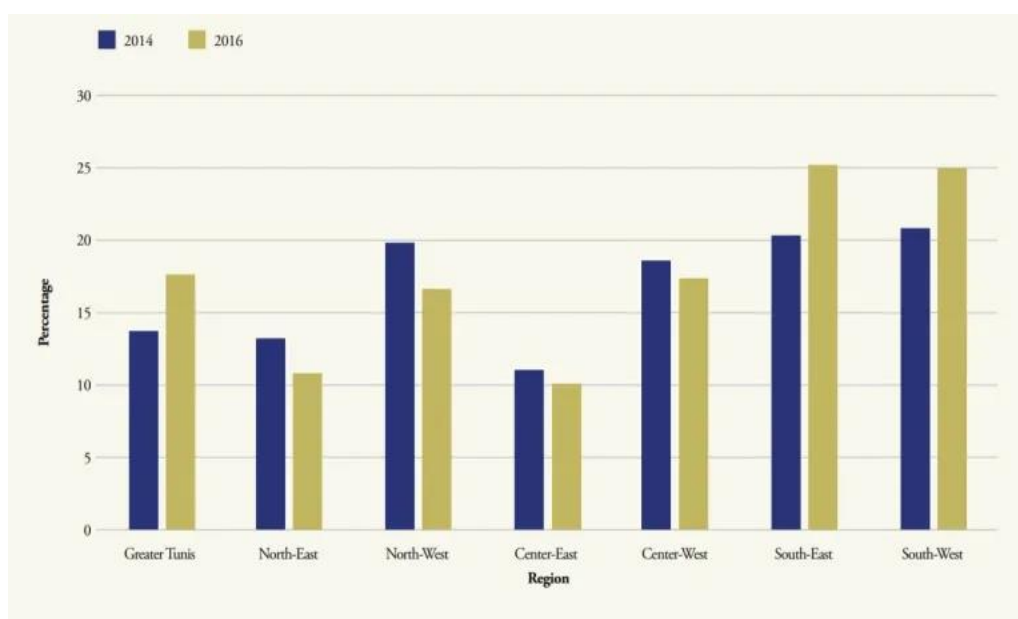


Figure 5 Tunisia Unemployment by Region in 2014 and 2016¹¹⁵

¹¹⁴ Source: L'Institut National de la Statistique (INS) [The National Institute of Statistics], Available at https://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Measuring_Poverty_Inequalities_and_Polarization_in_Tunisia_2000-2010.PDF

¹¹⁵ Source: L'Institut National de la Statistique (INS) [The National Institute of Statistics], Available at <http://regions.ins.tn/TNCNSRPRGVN2016/general-census-of-the-population-and-the-household-2014-by-governorates?indicator=1000280-unemployment-rate&governates=1000000-tunisia>

From 2003 to 2011, opposition groups from different camps, including secularists and Islamists, collaborated in the fight against Ben Ali, culminating in a document widely known as the “Call from Tunis” in 2003 and a 2005 manifesto, “Collective of October 18 for Rights and Freedoms.”¹¹⁶ A militant core of each side, however, remained opposed to any collaboration between the two groups (Stepan 2016). Eventually, in December 2010, resentment against the repressive dictatorial rule and deep-seated economic grievances led to a countrywide uprising, inspiring protests across the region. The crackdown on public protests resulted in over 300 deaths and 2000 injuries.¹¹⁷ On 14 January 2011, Ben Ali fled to Saudi Arabia where he later died in 2019 (Aboueldahab 2017; Lamont and Boujnef 2012).

III. Transitional Justice in Tunisia

The previous section demonstrates how the discourse on “Islamism” and “terrorism” constructed Islamist actors as a “threat,” “danger,” or a “disease,” leading to their repression under the governments of Bourguiba and Ben Ali. This section moves on to discussing the TJ process in Tunisia and the impact of the discourse on “terror” on the contestation of victimhood through notions of “guilt” and “innocence” (Jankowitz 2018; Lawther 2014; 2020; McEvoy and McConnachie 2012). Inspired by the discussion with two of my research participants, I divide this section into two subsections: the TJ start-up phase which is considered to be a relative success, and the TJ consolidation phase which coincides with the coming to power of the elements of the *ancien régime* following the 2014 elections.¹¹⁸

¹¹⁶ Collectif du 18 Octobre pour les Droits et les Libertés

¹¹⁷ These figures were confirmed in a report released by an investigative commission in Tunisia led by Taoufik Bouderbala.

¹¹⁸ Interview with civil society actor, Le Bardo, Tunisia, 2018; Interview with a former Minister of Justice, Tunis, Tunisia, 2018.

Transitional Justice with a Limited Mandate

In an attempt to staunch challenges to his power, Ben Ali himself initiated the discussion on TJ in January 2011. In a televised address to the nation before his departure from power, Ben Ali pledged to create three commissions for the investigation of corruption, human rights abuses, and political reform. He also promised to hold those responsible for the acts of violence against demonstrators accountable (Lamont and Boujneh 2012). Following Ben Ali's ouster from power, RCD officials attempted to seize control of the transition process. Mohamed Ghannouchi, Ben Ali's Prime Minister, took control of the government but was later forced to resign due to widespread protests in the country. Following his resignation, Beiji Caid Essebsi replaced him as the head of the government. Under both interim governments, TJ had a very limited mandate. During that time, TJ's focus was confined to the use of violence against protesters in the aftermath of December 10, 2010, and economic crimes and corruption perpetrated by Ben Ali's close inner circle. Therefore, the investigative bodies that were established had a limited temporal and subject-matter jurisdiction (Lamont and Boujneh 2012; Lamont 2017; Lamont et al. 2019).

In February 2011, the interim government of Mohamed Ghannouchi adopted a decree,¹¹⁹ granting a general pardon to all prisoners convicted between 1989 to 2011 for political reasons, including for belonging to an illegal organization or violating the protest law. The amnesty law also provided for reparations and professional rehabilitation through

¹¹⁹ Decree No. 1, February 19, 2011.

preferential hiring in the public sector to compensate for the loss of income associated with their imprisonment. These measures proved to be very controversial as they arguably led to the release of the “jihadists” from the prison as political prisoners¹²⁰ (Andrieu 2016; El Gantri 2015; Lamont and Boujneh 2012). The interim government also issued three other decrees establishing three commissions:¹²¹ the National Commission for the Investigation of Bribery and Corruption, the National Commission for the Investigation of the Facts of Abuses Recorded during the Period from 17 December 2012, and the High Commission for the Fulfilment of the Revolutionary Goals and Democratic Transition¹²² (Lamont and Boujneh 2012).

In addition, under the interim government headed by Essebsi, a decree was adopted on the “Compensation of Martyrs and Wounded of the Revolution of 14 January 2011.”¹²³ Limited monetary reparations were paid under this decree to the injured and the families of those killed between December 17, 2010, and February 28, 2011. The payments were distributed in two installments – in February and December 2011. In addition, by “October 2013, more than 2,700 wounded had been recruited in the public sector, as well as 200 family members of martyrs” (Andrieu 2016, 273). The decree also included symbolic reparations, including public commemoration and memorialization efforts as well as the reform of school history textbooks to include the January 14th, 2011, revolution.¹²⁴ However, a survey conducted by

¹²⁰ Some analysts trace the presence of “jihadists” in Tunisia as well as the relatively large number of Tunisian foreign fighters active in the MENA and West Africa to the release of the political prisoners following the amnesty (Arieff and Humud 2015).

¹²¹ Decrees No. 7, 8, and 9 established each commission respectively.

¹²² The Higher Political Reform Commission and the Committee for the Protection of the Revolution merged to form the High Commission for the Fulfilment of the Revolutionary Goals and Democratic Transition.

¹²³ Decree No. 97, October 24, 2011.

¹²⁴ Ibid., Arts. 1-5

a local NGO shows that the majority of beneficiaries were unsatisfied with the limited reparations they received.¹²⁵ An amendment to the law that limited reparations to those having “sacrificed one’s life for the revolution”¹²⁶ further politicized the issue of reparations by tying victimhood to notions of “heroism” (Ibid.; El Gantri 2015). The vocational rehabilitation caused another issue as former political prisoners were either recruited in their former positions after several years of not working in their capacities and faced challenges in their workplaces,¹²⁷ or were given positions beneath their qualifications and salaries before their arrest (Andrieu 2016).

In addition to TJ initiatives discussed above, military courts also initiated criminal prosecutions against Ben Ali, two former Interior Ministers, and high-ranking security and army officials for acts of violence against protesters. The trials, however, were criticized for being selective and only targeting *les symboles de l’ancien régime* rather than all the perpetrators, leading to widespread demonstrations after the Permanent Military Court of Appeal reduced the sentences of some of the convicted offenders even in cases of serious crimes (Aboueldahab 2017; Andrieu 2016; Lamont and Boujneh 2012). Ben Ali was sentenced to 66 years of imprisonment for corruption charges in three separate trials. In another trial, he was sentenced to life in prison for his role in the killing of protesters during the revolution.¹²⁸ As the head of state, it was recognized that he had direct or indirect supervision of security forces. Other former senior officials, however, got more lenient

¹²⁵ “Reparations within the framework of Transitional Justice, Impact, and Effectiveness,” a local survey organized in Gafsa by the Tunisian Network of Transitional Justice with the support of ICTJ, UNDP, and OHCHR in 2014, and published in April 2015. Cited in El Gantri (2015).

¹²⁶ Decree No. 26, December 24, 2012, Amending and Supplementing Decree No. 97 of October 24, 2011.

¹²⁷ Interview with civil society actor 4, Tunis, Tunisia, 2018.

¹²⁸ He did not serve his sentence and died while in exile in Saudi Arabia.

sentences (Aboueldahab 2017). With the adoption of the decrees on the establishment of the CCSs,¹²⁹ the expectation was that military courts should defer the cases to the CCSs. In a controversial case, the Tunisian Court of Cassation, however, ruled that until the chambers were established, military courts could continue to try these cases.¹³⁰

National Dialogue and the Adoption of the Law on Transitional Justice

The ANC election was held on October 23, 2011, and the Ennahda party re-emerged after decades of suppression and exile and gained the plurality of votes. Having failed to get a majority, Ennahda formed a three-party coalition government with two other parties - Congress for the Republic (*Congrès pour la République*, CPR)¹³¹ and Ettakatol¹³² - known as the Troika, with Hamid Jebali from Ennahda as the Prime Minister, Moncef Mazrouki from the CPR as President, and Mustapha ben Jaafar from Ettakatol as the head of the ANC. Ennahda's victory brought the debate on TJ to the center of the debate on transition. In addition to regional and international organizations advocating for TJ, soon after the revolution, two civil society coalitions were formed by victim groups and civil society organizations to push for the adoption and implementation of TJ measures. Secular organizations formed the National Coordination for TJ, while Islamist groups established the National Network for TJ.¹³³ The establishment of these groups in 2011 represented an important step in bringing together the important organizations from each side to exert pressure on decision-makers and frame the direction of TJ within Tunisia. Moreover, the

¹²⁹ See Decree No. 2887, August 8, 2014, and Decree No. 4555, December 29, 2014.

¹³⁰ Interview with a former Minister of Justice, Tunis, Tunisia, 2018.

¹³¹ المؤتمر من أجل الجمهورية

¹³² Forum Démocratique pour le Travail et les Libertés

التكتل الديمقراطي من أجل العمل والحريات

¹³³ Interview with civil society actor 3, Berges du Lac, Tunisia, 2018.

newly elected government adopted a decree on the temporary organization of power, also known as the “small constitution,” article 24 of which mandated the ANC to adopt an organic law on TJ.¹³⁴

In January 2012, a Ministry of Human Rights and Transitional Justice was created under the leadership of Samir Dilou from the Ennahda. The creation of the Ministry was widely criticized because for many civil society actors, TJ was considered to be “the affair of civil society” and the belief was that there was no need to have a whole ministry dedicated to that. For them, “the government was putting its hand on the process.”¹³⁵ The Ministry, however, was critical in planning the national dialogue launched in April 2012 (Lamont et al. 2019). Many secularists refused to participate in the national dialogue “because it was led by the Ennahda.”¹³⁶ Moreover, to oversee the national dialogue and alleviate concerns, Dilou established a technical commission as an independent body outside the Ministry that included representatives from civil society and the Ministry. The commission was tasked with writing a draft law on TJ based on the recommendations obtained during the national dialogue through six regional consultative commissions engaging with victims and relevant stakeholders and supervised by the technical commission (Lamont and Boujneh 2012). The process of drafting the law, in general, is considered to have been quite positive and participatory.¹³⁷

¹³⁴ Constituent Law No. 6-2011 on “the Provisional Organization of Public Powers, December 16, 2011. Article 24 stipulates that “[t]he National Constituent Assembly must enact an organic law regulating transitional justice, establishing its boundaries and remit.”

¹³⁵ Interview with civil society actor 1, Berges du Lac, Tunisia, 2018.

¹³⁶ Interview with civil society actor 2, Berges du Lac, Tunisia, 2018.

¹³⁷ Interview with civil society actor 3, Berges du Lac, Tunisia, 2018.

Not surprisingly, Islamists and in particular the Ennahda members were among the major actors in the national dialogue. During the 2011 election campaign, Ennahda used the discourse on TJ in its quest for power and promised reparations to its supporters and as soon as TJ was put in place, the leadership encouraged its members to file their claims.¹³⁸ As pointed out by a representative of a regional NGO that played a central role in advocating for TJ in Tunisia:

“A large number of people [who] faced repression are from the Islamist movement ... [especially] in the 90s and 2000s ... and victims affiliated with the Ennahda were more disciplined. So, when there were consultations because of the number and because of party discipline or ideological discipline, these people took part and participated more in the consultations. So, it's obvious that we are talking about consultation and reflecting the opinion of participants and three-quarters of your participants are from certain ideas, these ideas will probably reflect into the reports, then into the law on transitional justice.”¹³⁹

By the time the national dialogue was over and the draft law on TJ was being debated in the Assembly, Tunisia descended into a political crisis, which was also influenced by the coup against President Mohamed Morsi from the Muslim Brotherhood's Freedom and Justice Party in Egypt. The political assassination of two prominent opposition leaders, Chokri Belaid and Mohamed Brahmi in 2013, along with the contentious debate over the

¹³⁸ Interview with IVD psychologist, La Marsa, Tunisia, 2018.

¹³⁹ Interview with civil society actor 2, Tunis, Tunisia, 2018.

Constitution¹⁴⁰ put the country on an uncertain track. A coalition of civil society actors¹⁴¹ formed the Tunisian National Dialogue Quartet to mediate between Ennahda and the secular parties. The Quartet could finally strike a negotiated settlement between the opposing parties and a roadmap was signed to reignite the stalled political process. In January 2014, the Constitution was adopted and Mehdi Jomaa took office to lead a caretaker government until elections as part of the agreement (Haugbølle et al. 2017; Masri 2017; Yousfi 2017).

The political assassinations in 2013 effectively suspended the TJ process.¹⁴² As mentioned above, the law on TJ was being negotiated and drafted at the peak of the crisis and the debate over the identity of the state, and this significantly impacted the politics of TJ in the country.¹⁴³ When the draft law was sent to be adopted, there were modifications, including to how the members of the Commission were to be nominated. The rules on how to elect the IVD members were subsequently changed to a quota system.¹⁴⁴ The amendment meant that the nomination was based on partisan criteria and the selection committee in the ANC would be composed of the representatives of the main blocs in the Assembly.¹⁴⁵ This further politicized the TJ process in the country and caused friction among civil society and the nascent TJ initiative. The Organic Law on TJ was eventually passed in December 2013, setting forth a comprehensive framework to address violations committed during the dictatorship

¹⁴⁰ The main points of contestation included the role of *Sharia*, the prohibition of blasphemy, and women's rights in the Constitution and domestic law. For more on this, see Sadek (2013).

¹⁴¹ Tunisian General Labour Union [UGTT], Tunisian Confederation of Industry, Trade and Handicrafts, the Tunisian Human Rights League, and Tunisian Order of Lawyers

¹⁴² Interview with civil society actor 2, Berges du Lac, Tunisia, 2018.

¹⁴³ Interview with civil society actor 2, Tunis, Tunisia, 2018.

¹⁴⁴ Interview with civil society actor 2, Berges du Lac, Tunisia, 2018.

¹⁴⁵ Interview with civil society actor 1, Berges du Lac, Tunisia, 2018.

period and initiating a TJ process with the aim of “understanding and dealing with past human rights violations” (Art. 1).

The Consolidation Phase

The Establishment of the IVD and the Ensuing Controversies

The IVD was formally established in June 2014. Article 1 of the Organic Law defines TJ as

“an integrated process of mechanisms and methods used to understand and deal with past human rights violations by revealing their truths, and holding those responsible accountable, providing reparations for the victims and restituting them in order to achieve national reconciliation, preserve and document the collective memory, guarantee the nonrecurrence of such violations and transition from an authoritarian state to a democratic system which contributes to consolidating the system of human rights.”

The IVD’s mandate is innovative and broad, covering over 50 years and numerous violations, including corruption and economic crimes.¹⁴⁶ However, as will be explained below, the IVD’s impact in addressing the long history of violations and economic crimes remains limited as the IVD had to work within the parameters set by the liberal legalistic framework of TJ. When the law was being drafted, there was a debate over how far back the temporal mandate should go and whether it should also include violations committed under the government of Bourguiba.¹⁴⁷ As interlocutors of Aboueldahab (2017) also noted,

¹⁴⁶ Interview with civil society actor 2, Berges du Lac, Tunisia, 2018.

¹⁴⁷ Interview with lawyer, La Goulette, Tunisia, 2018.

Islamists and Youssefists pushed for the expansion of the IVD's temporal mandate to ensure it included violations committed against them in the 1950s and 1960s. Consequently, article 17 of the Organic Law stipulates that "[t]he Commission's work shall cover the period extending from 1 July 1955 up to the issuance of this law."

Moreover, the definition of victim in the law is broad, including individuals, groups of individuals, and regions. Individual victims also consist of indirect victims "who were the wives, daughters, sons, or siblings of political activists and were punished because of their relatives' activism," but as noted by a civil society actor, "one can argue that they were actually victims; they were sacked from their jobs, prevented to continue their studies, or even raped as children."¹⁴⁸ Victim groups include, for example, "the Tunisian League for Human Rights which experienced many problems under the former regime, or the Workers' Union [UGTT], it also underwent a lot of human rights violations during the former regime."¹⁴⁹ Several of my research participants pointed out the importance of the notion of victim regions. As noted previously, during the colonial period, the economic development of Tunisia was based on a centralized and export-oriented economy that led to the marginalization of the rural regions in the hinterland while coastal areas were better off. In other words, the center treated the periphery as a source of extraction, but without the redistribution of benefits in the form of economic and social development. Apart from economic reasons, some regions were neglected for political reasons.¹⁵⁰ For example, regions

¹⁴⁸ Interview with civil society actor 3, Tunis, Tunisia, 2018.

¹⁴⁹ Interview with OHCHR officer, Berges du Lac, Tunisia, 2018.

¹⁵⁰ Interview with civil society actor 4, Tunis, Tunisia, 2018; Interview with researcher and journalist, Tunis, Tunisia, 2018.

that supported Ben Youssef against Bourguiba were marginalized and neglected.¹⁵¹ This model of uneven development and colonial structure continued after independence. Some of these regions, such as Kasserine, are now where the “terrorists” supposedly are.¹⁵² The IVD’s broad mandate made its work rich but also very difficult. According to an NGO actor, “one of the biggest mistakes that civil society made was to give the IVD a large mandate ... In my opinion, the mandate is bigger than [its] ability so it has not been able to play its role properly.”¹⁵³

In addition to the notion of victim regions, the Organic Law also includes provisions dealing with economic crimes and corruption. According to article 45, a technical committee for arbitration and reconciliation was established within the IVD that had the power to consider requests for reconciliation related to cases of financial corruption. According to the same article, “the implementation of the terms of reconciliation judgments in cases related to financial corruption entails suspension of litigation or suspension of executing the sentence.” Article 8, which stipulate the establishment of CCSs within courts of first instance, also entrust the CCSs with adjudicating cases “related to election fraud, financial corruption, misuse of public funds” referred to them by the IVD in addition to “gross violations of human rights as specified in international agreements ratified by Tunisia and in this law.”¹⁵⁴ The issue, however, was the lack of transparency on the part of the IVD when dealing with corruption cases. As a TJ actor confided in me, “[the IVD] has arbitration in terms of how to

¹⁵¹ Interview with lawyer, researcher, and educator, Tunis, Tunisia, 2018.

¹⁵² Interview with researcher and journalist, Tunis, Tunisia, 2018.

¹⁵³ Interview with civil society actor 2, Tunis, Tunisia, 2018.

¹⁵⁴ Including deliberate killing, rape and any form of sexual violence, torture, enforced disappearance, and execution without fair trial guarantees

deal with corruption. They have a commission, but we don't know what this commission has done.”¹⁵⁵ As will be explained later, with the adoption of the Administrative Reconciliation Act, the IVD’s jurisdiction over corruption and economic crimes became obsolete.

During the course of its work, the IVD received more than 60,000 cases and heard testimony from around 11,000 people. In a historic moment, it held its first set of public hearings in November 2016. The hearings were broadcasted on live TV and online and covered a range of human rights violations, including imprisonment, sexual assault, and torture. Public hearings are considered to be one of the main successes of the TJ process in the country. In addition to 49,654 secret hearings, 14 public hearings were held.¹⁵⁶ Several participants pointed out to me that public hearings had an important impact on them. According to a civil society actor and a former victim under Ben Ali: “The major reason I think [TJ] is a positive experience is because of the version of justice we saw during the public hearings. People got more information about what was done, who the victims during the dictatorship were, what [the IVD] addresses, and what was done for these victims.”¹⁵⁷

However, soon after the IVD started its work, it plunged into controversy and encountered many obstacles. It was embroiled in both internal and external conflicts not only with the government but also with several civil society actors.¹⁵⁸ This resulted in a boycott of the IVD’s work by some civil society organizations even before it was established. A number of secular forces, for example, the Tunisian Association of Democratic Women (*Association Tunisienne des Femmes Démocrates*, ATFD), submitted their files to the IVD very close to the submission

¹⁵⁵ Interview with civil society actor, online, 2018.

¹⁵⁶ These numbers are from the IVD’s official website: <http://www.ivd.tn/>.

¹⁵⁷ Interview with civil society actor, Le Bardo, Tunisia, 2018. See also ICTJ (2017).

¹⁵⁸ Interview with civil society actor 2, Berges du Lac, Tunisia, 2018.

deadline set by the Commission.¹⁵⁹ As an IVD employee put it, “silent victims who did not submit a claim to the IVD are more numerous than victims who submitted claims.”¹⁶⁰ The IVD’s legitimacy was questioned on different grounds. First, the Organic Law on TJ provides for 15 Commission members, but for most of its operation, the IVD worked with nine members, less than the required two-thirds quorum needed to adopt decisions. According to a civil society actor, “the mismanagement by the IVD’s president and the dominance of a particular ideology within the Commission led to the firing and resignation of neutral and reliable people on the Commission.” He added that “out of the 15 commissioners, I think five to six were not part of the ideology of other members and they were the first to either resign or get fired.”¹⁶¹ Second, there were allegations against the IVD and particularly its president, Sihem Ben Sadrine. She was accused of corruption, an authoritarian personality, as well as serving Ennahda’s interests by giving priority to cases against Islamists at the behest of Ennahda.¹⁶² The president of a prominent national NGO put it this way: “We think that this [IVD] is not very independent ... we think that it is dependent on a political party [Ennahda] ... I don't want to exaggerate; I want to be objective. But [beneficiaries of the TJ process] are almost all from the party that won the elections in 2011.”¹⁶³

The IVD was working in a very hostile environment and sometimes opened up to civil society and sometimes it was totally closed to civil society actors.¹⁶⁴ Moreover, the

¹⁵⁹ Interview with civil society actor 1, Berges du Lac, Tunisia, 2018; Interview with civil society actor 5, Tunis, Tunisia, 2018.

¹⁶⁰ Interview with IVD psychologist, La Marsa, Tunisia, 2018.

¹⁶¹ Interview with civil society actor 2, Tunis, Tunisia, 2018.

¹⁶² Interview with journalist, independent activist and analyst, online, 2018.

¹⁶³ Interview with civil society actor 6, Tunis, Tunisia, 2018.

¹⁶⁴ Interview with civil society actor 3, Tunis, Tunisia, 2018.

media's coverage of the TJ process was often quite negative. There was a clear defamation and delegitimization campaign against the head of the IVD, but also a broader smear campaign against the whole process.¹⁶⁵ Sihem Bensedrine was continuously attacked by the media who accused her of being “a prostitute, a thief and a spy” (The Guardian 2015). The ownership and editorial structure of the Tunisian media have remained largely unchanged since Ben Ali's rule and therefore, media had a direct stake in the TJ process in the country (Belghith 2018). As the IVD report (2019, 5-6) elaborates:

“High governmental officials wanted to achieve reconciliation at the detriment of victims' rights. They encouraged perpetrators of gross violations to go unpunished, which prompted lobbies from corruption networks to advocate the culture of denial (denying the violations that had happened or playing down their importance) while trying to disrupt the process of Transitional Justice through their media supporters and partisans on the cultural arena. The latter staged smear campaigns, disseminating hate speech, spreading resentment and grudge against victims, demonizing and insulting them using inappropriate language. All of these attempts failed miserably.”

Counterrevolutionary Forces Undermine Transitional Justice

The elections in 2014 considerably changed the TJ dynamics and agenda in Tunisia. The Nidaa Tounes party, founded by Beji Caid Essebsi and including former RCD members, gained a plurality of votes in the parliamentary elections. Two months later, Essebsi won the

¹⁶⁵ Interview with researcher and journalist, Tunis, Tunisia, 2018.

second round of presidential elections. Some members of the Nidaa Tounes party, including Essebsi himself, were accused of human rights violations, and the party ran on an anti-Islamist platform. They drew on the same discourse as Bourguiba and Ben Ali in depicting their Islamist opponents as obstacles to progress (McCarthy 2014). For example, Beji Caid Essebsi in an interview said:

“We are for a modern state of the 21st century. They are for a society that has a religious connotation largely marked by imposing their ideas. We say a modern society needs a secular state where religion doesn't intervene. They want a state with Islamic colouring. We are moving in completely different directions” (Quoted in McCarthy 2014, 735).

Essebsi was a firm critic of TJ and several times stated the need to “not talk about the past” and focus on the present to move forward with the transition (El Malki 2017). As a researcher in Tunisia pointed out:

“The actions from 2013 onwards were very much part of a counter-revolutionary program. I mean, really a program, not just a discourse, but a program which also undermines directly and quite explicitly transitional justice ... [For example,] there was a member of security forces saying, don't talk to us anymore about martyrs of the revolution. The real martyrs are the security forces who are fighting terrorism.”¹⁶⁶

¹⁶⁶ Ibid.

The Essebsi government did not cooperate with and in some instances, even tried to directly undermine the IVD's work. The government refused to give the IVD access to presidential and interior ministry archives, although the presidential archives were later made accessible to the IVD following a lawsuit (Aboueldahab 2017; Lamont and Pannwitz 2016). Moreover, according to a civil society actor, some archives just disappeared after the revolution.¹⁶⁷

In order to ensure its political survival, the Ennahda party had to change its political agenda. Pursuing compromise and integration for fear of repression and marginalization, the Movement not only diverged from its original Islamist ideology but also jettisoned its revolutionary demands. In April 2014, a draft electoral law, known informally as the Law to Immunize the Revolution, which would have excluded senior RCD figures from political life, was defeated in the ANC by a single vote. In general, the Ennahda took a step back from political exclusion (McCarthy 2018; 2019). Moreover, although in the immediate aftermath of the revolution, the Ennahda did not perceive Salafist groups as a threat and instead saw them as an expression of new political and religious freedoms, in 2013 and following the assassination of political opposition figures, *Ansar al-Shari'a*,¹⁶⁸ the main Salafist group in Tunisia, was declared a terrorist organization. This was followed by a wave of arrests that made some Ennahda members uncomfortable as reminiscent of a return to the “demonization” and “Machiavellian instrumentalization” of the past (McCarthy 2019, 8). Moreover, nearly all Ennahda members voted in favor of the new anti-terrorism law adopted in 2015, arguably as proof of their anti-terrorism credentials (Ibid.). The new law has been

¹⁶⁷ Interview with civil society actor 7, Tunis, Tunisia, 2018.

¹⁶⁸ أنصار الشريعة

widely criticized by civil society actors for limiting civil liberties. As one of my interlocutors pointed out in 2018, “[t]he anti-terrorism law that was voted on in 2015 and they are amending it¹⁶⁹ today to make it even more restrictive for civil society organizations and for people. It defines terrorists, not the act of terrorism ... which is totally ridiculous. You never define the perpetrator, you define the crime that is being committed.”¹⁷⁰

The Ennahda also supported an amnesty bill proposed by the Essebsi government. While economic crimes and corruption were included in the IVD’s mandate, in an attempt to undermine the TJ process, the government proposed an “Economic Reconciliation” (later renamed the Administrative Reconciliation Act) bill as an alternative TJ mechanism that would grant amnesty to those accused of financial corruption and misuse of public funds. The bill was portrayed as a necessary measure to revive the Tunisian economy and was highly criticized by civil society as an instrument to weaken the IVD’s mandate. Activists widely mobilized against the bill voicing strong opposition through campaigns such as “Mainich Msamah”¹⁷¹ (Aboueldahab 2017; El Malki 2017). These efforts finally culminated in the withdrawal of the bill and the introduction of a weaker version of amnesty for former officials implicated in economic crimes which was eventually passed in September 2017. The whole debate over the bill showed that there was not a genuine political will to fight impunity

¹⁶⁹ On January 10, 2019, the Tunisian Parliament ratified amendments to the 2015 anti-terrorism law. The law now legally defines perpetrators of terrorist crimes.

¹⁷⁰ Interview with civil society actor 3, Tunis, Tunisia, 2018.

¹⁷¹ مانيش مسامح

Meaning I do not forgive

and corruption. It also undermined the arbitration procedure at the IVD and the power to transfer files of corruption and economic crimes to the CCSs.¹⁷²

In July 2016, the Carthage agreement was formalized to produce a government of national unity, including the Nidaa Tounes and Ennahda parties. The first priority in the agreement was “winning the war on terror,” followed by economic development, fighting corruption, and reform of the government. According to McCarthy (2019), the Carthage agreement and the consensus driven from the agreement resulted in the marginalization of the original revolutionary demands of the 2011 revolution and questions of social and economic justice. By joining the agreement, the Ennahda officially consented to the same securitized discourse that was used against it under Bourguiba and Ben Ali. In his speech in May 2016, Ghannouchi declared support for the state, including in countering Islamic extremism, as an Islamic value (Ibid.). The Ennahda, therefore, became part of a coalition government that adopted the state of emergency and security measures to counter terrorism that were described by Amnesty International (2018, 4) as “arbitrary, discriminatory and disproportionate.” According to the same report, the implementation of these measures “has led to a range of human rights violations, including arbitrary restrictions on freedom of movement, torture, arbitrary arrests, and searches of homes without warrants.”

The Contested Victimhood of Islamists

Lawther (2020, 3) argues that “in a context of contested victimhood and an unresolved past, the ‘political currency’ of victimhood may lead to the domination and embellishment of certain voices and narratives and the concurrent silencing of others.” In Tunisia, the

¹⁷² Interview with civil society actor 3, Tunis, Tunisia, 2018.

contestation of the victimhood of “Islamists,” led to the emergence of three major discourses overshadowing and undermining the narratives of Islamists as discussed below. It is worth mentioning that in the aftermath of the revolution, the composition of prominent civil society organizations remained unchanged with many of them still having secular and anti-Islamist leanings. Islamist and independent organizations were gradually formed in the years following the revolution, but it is undeniable that secular civil society actors had and still have considerable influence on Tunisian politics. Although I did not ask my research participants about their political affiliation, many of them expressed opinions that were aligned with the secular camp. However, other TJ actors, including Islamists and others who did not affiliate themselves with either camp reaffirmed the existence of the same discourse and its impact on the TJ process as shown below. This discourse was evidently in contrast to the discourse used by Islamists who saw TJ as an opportunity to get acknowledgment and redress for their suffering under the authoritarian governments of Bourguiba and Ben Ali. Moreover, my discussion with several TJ actors demonstrated an existing polyvocality that challenged the persistence of the Islamist-secularist binary as well as contradictions within the TJ discourse. For instance, some of my interviewees accused a prominent human rights institution of having a pro-Islamist leaning while a number of others referred to that organization as a secular, anti-Islamist organization. Also, even within the IVD and among the IVD commissioners, political leanings varied. An IVD employee explained to me that the IVD members were also divided into different camps when it came to their politics.¹⁷³ Several other actors, including a number of former Ennahda members and supporters, pointed out how despite the fact that their politics were not in compliance with Ennahda’s position, they

¹⁷³ Interview with two IVD sociologists, Tunis, Tunisia, 2018.

were often assumed to be Islamists by secular actors because they wore *hijab*. One of my interlocutors, who was the head of the women's rights section in an NGO, was forced to resign from her position because of this perception.¹⁷⁴ Therefore, while there is an ongoing polyvocality and contestation of the Islamist-secularist binary, its impact remains visible in Tunisian politics. The aim here is not to oversimplify and overlook this polyvocality; however, contestations of victimhood in Tunisia mainly occurred as a result of the persistence of these categories' salience for Tunisian TJ actors which was a result of a historically rooted discourse against Islamism reinforced by the WoT narrative. This discourse remained influential and was distributed and propagated by political actors and the media. Now I turn to discuss the three major "victimhood" discourses that I uncovered during my research:

The first discourse challenges the fact that Islamists constitute the majority of the victims. As a civil society actor from a prominent human rights NGO stated:

"[Most of the victims] were not Islamists. They were leftists from leftist groups ... I mean, [those victimized] by [state] institutions, almost all the victims are leftists."¹⁷⁵

Another NGO actor reiterated the same point:

"It is not only Islamists who are the group most affected by the violations, but they are the most structured who submitted files. They are not the most affected by violence, because the Tunisian left, nationalists, trade unionists

¹⁷⁴ Interview with civil society actor 3, Tunis, Tunisia, 2018.

¹⁷⁵ Interview with civil society actor 6, Tunis, Tunisia, 2018.

were there well before the Islamists. There are [also] those who have been affected by corruption without having an ideological cap.”¹⁷⁶

The second major discourse questions the “innocence” of the Islamist victims, drawing on the dominant anti-Islamist discourse in the country. An IVD employee highlighted the perceived contrast between Islamist and leftist victims:

“There is not a left-wing movement [in Tunisia] that has ideas, connections, or relations with other terrorist organizations in the Arab and Islamic world. The left-wing movement was always a peaceful protest movement, so it is quite normal that the persecution of the state goes toward Islamists. There was no torture of those on the left, but [Islamists] were terrorists.”¹⁷⁷

Before recounting the story of her own victimhood at the hands of an Islamist student at university, an NGO actor from a prominent national organization pointed out:

“Many victims are members of the Ennahda political party. Do you know why they were in prison? These victims were responsible for many terrorist acts against the Tunisian people. That's why they were in prison. So we want the whole truth. We don't want only the half-truth. We want the IVD to tell us that's why they are victims. Not all of them, but many of them were victims of Ben Ali, because they are also responsible for many terrorist acts. They are responsible for physical violence against people, Tunisian people. So why are we hiding this part of the truth? And now Tunisia is in great difficulty [because

¹⁷⁶ Interview with civil society actor 7, Tunis, Tunisia, 2018.

¹⁷⁷ Interview with IVD psychologist, La Marsa, Tunisia, 2018.

of] economic issues. Everybody knows that. And here she's going to give money to these people.”¹⁷⁸

One of my interlocutors acknowledged the pervasiveness and dominance of this discourse and blamed the media for its propagation:

“You know even though I have to follow up TV debates, I have to read news articles, but sometimes I'm a little fed up. When I watch TV and we come back to the same rhetoric, we come back to the same discourse like ‘these are terrorists.’ This takes me back to the life before the revolution, and it's the exact same discourse.”¹⁷⁹

The second major discourse significantly impacted Muslim women.¹⁸⁰ Gary and Coonan (2013) find that Islamist women were disappointed with how secular feminist organizations, such as the ATFD, excluded them from their advocacy efforts because they did not accept them as victims. My research participants also critiqued how Islamist women were perceived by secular TJ actors in post-revolutionary Tunisia. An NGO actor referred to an unpublished internal report at the IVD:

“In the report, they portray the leftist women as women who are activists, as direct victims, and as women who are opponents to the regime, they took the decision to be opponents, [but] they portray the others as weak women who

¹⁷⁸ Interview with civil society actor 6, Tunis, Tunisia, 2018.

¹⁷⁹ Interview with civil society actor 3, Berges du Lac, Tunisia, 2018.

¹⁸⁰ I use the term “Muslim” here to encompass both Islamists and those women who are not necessarily Islamists but are often associated with Islamists because they wear hijab.

were following their husbands, their brothers, their fathers, and who are victims because they were following them.”¹⁸¹

According to several of my interlocutors, there was also an attempt by the IVD to minimize the number of sexual and gender-based violations. Two former IVD employees shared with me that there was a push in the Commission to register sexual violations as torture and inhuman treatment.¹⁸² This led to a rift between the head of the Women’s Commission¹⁸³ and the rest of the commissioners after the publication of the final report.

The third discourse undermines the victimhood of Islamists by resorting to tropes of the instrumental use of TJ by the Ennahda. There is a perception that over time Ennahda’s approach to TJ turned to what one of my research participants called “transactional calculation” - reparations for one side in exchange for amnesty for the other side.¹⁸⁴ Another interviewee pointed out that Ennahda “doesn’t care about transitional justice, they exploited it politically.”¹⁸⁵ A former minister opined:

“Islamists have made political concessions, but in fact, in terms of transitional justice, they did not make concessions. Right afterward [after the 2014 elections], we felt that transitional justice is no longer a priority for this party; the debates on the law on [economic] reconciliation is especially proof of that.”¹⁸⁶

¹⁸¹ Interview with civil society actor 3, Berges du Lac, Tunisia, 2018.

¹⁸² Interview with two IVD sociologists, Tunis, Tunisia, 2018.

¹⁸³ Ibtihel Abdellatif

¹⁸⁴ Interview with civil society actor 3, Tunis, Tunisia, 2018.

¹⁸⁵ Interview with lawyer, La Goulette, Tunisia, 2018.

¹⁸⁶ Interview with a former Minister of Justice, Tunis, Tunisia, 2018.

The issue of Islamist women is again central in this discourse. According to a Tunisian feminist:

“To get voters’ support, Islamists used the narrative of oppressed veiled women as victims of the former authoritarian regime. They published documentaries and interviews with some mothers and wives of prisoners to evoke people’s empathy and support for Islamist women as bearers of an authentic moral and political order that had been repressed. Although the veil was no longer considered as a problematic issue in the new political context in the sense that women were free to wear it, Islamists provoked a debate about its earlier ban under Ben Ali” (Grami 2018, 37).

The IVD published its report in March 2019. The final report includes a section on “violations against Islamists”¹⁸⁷ and a short section on “violations while countering terrorism.”¹⁸⁸ The latter focuses on the violations committed in the context of the implementation of the 2003 anti-terrorism law. The IVD received 1307 files related to human rights violations committed by security forces under this law, including arbitrary arrests, torture, and cruel and inhuman treatment during detention, and other sorts of harassment following release from prison (IVD report 2018). As the IVD points out in its report “inhumane and illegal treatment can only result in the ‘production of terrorists,’ and it may be intended by parties wishing to feed terrorism in Tunisia for suspicious purposes, by pushing young people into a suicide bind, closing all doors of life in their face and

¹⁸⁷ See pp. 158-176.

¹⁸⁸ See pp. 226-229.

preventing them from making a living, which hinders their reintegration into civilian life” (Ibid., 339). Following the election of Kais Saied as President, the final report was eventually published in the government’s official journal, but so far, the implementation of the recommendations has staggered due to the coronavirus pandemic as well as numerous political crises in the country among other things.

The Limitations of the Specialized Criminal Chambers

More than ten years after the revolution, impunity persists in Tunisia. Although CCSs were established to address some of the concerns related to trials by military tribunals, their impact has been limited because of their institutional limitations. First, CCSs can only deal with cases that the IVD has sent them and the cases are very selective, only including famous and symbolic cases.¹⁸⁹ In total, 173 cases were transferred to 13 chambers covering the whole country. They were chosen specifically because they represented different kinds of abuses. The cases ranged from the assassination of Salah Ben Youssef, to bread riots, and the Barraket Essahel affairs as well as the 2011 revolution,¹⁹⁰ but they also include a mixture of Islamists and leftists as victims.¹⁹¹ No verdict has yet been handed down and it remains to be seen if the process will continue or will be disbanded (Amnesty International 2021). Second, most defendants are absent at these trials. Only in a few cases, defendants were actually present. Therefore, it is to be expected that judgments, if any, will be issued in absentia.¹⁹²

¹⁸⁹ Interview with sociologist and educator, Tunis, Tunisia, 2018.

¹⁹⁰ For more on each of these events, see the historical background section.

¹⁹¹ Interview with researcher and journalist, Tunis, Tunisia, 2018.

¹⁹² Interview with a former Minister of Justice, Tunis, Tunisia, 2018.

Another issue that was raised in my research fieldwork was the limitations imposed by legal principles. For instance, “[t]he principles of double jeopardy and legality introduce complications in the process. Double jeopardy prohibits anyone from being prosecuted twice for the same crime.”¹⁹³ Further, “[s]everal crimes are not found in the Tunisian criminal law, especially at the level of punishment ... There are principles and we cannot dismiss them because we are before justice ... double punishment ... or crimes that do not exist in the law.”¹⁹⁴ These principles have limited the reach of judicial institutions. Despite the ambitious TJ mandate laid out in the Organic Law on TJ, in practice, the impact has not been as significant as it was hoped for. Nonetheless, the Tunisian TJ stands as a lesson and model for other Muslim-majority countries.

IV. Conclusion

The role of politicization in the TJ process has been extensively studied (Grodsky 2010; Loyle and Davenport 2016; Subotic 2009). Robins (2021, 34) defines politicization “as the engagement with transitional justice of a range of actors – from political parties to victims to foreign governments - who see it as a potential vehicle for advancing their interests.” However, the literature mainly focuses on “spoilers of justice,” those who attempt to undermine or subvert “genuine” justice (Sriram 2013; Wiebelhaus-Brahm 2021). The interaction between dominant narratives of violence and the politicization of TJ has received less attention in the literature. Van der Merwe and Moyo (2020) point out that the Tunisian experience represents the increased politicization of TJ. In Tunisia, due to the anti-Islamism

¹⁹³ Interview with civil society actor 2, Berges du Lac, Tunisia, 2018.

¹⁹⁴ Interview with magistrate, Tunis, Tunisia, 2018.

discourse, which was rooted in colonial practices of surveillance and repression and later reinforced by the global discourse on the WoT, this politicization manifested itself along the secular-Islamist lines. In post-revolutionary Tunisia, the Islamist-secular schism persisted, and it interfered with TJ leading to its politicization despite the claims that TJ should remain judicial and above all political matters.

The politicization, or “partisanship” of the TJ process as one of my research participants called it,¹⁹⁵ along with the passage of more than 10 years from the revolution, while socio-economic demonstrations have continued,¹⁹⁶ has led to a sense of fatigue and disappointment with the TJ process.¹⁹⁷ Although the TJ mandate was broad and ambitious, the process was embroiled in controversies from the start, often as a result of a lack of trust toward one of the TJ’s major actors – the Ennahda and Islamists in general. Years of demonization and dehumanization of Islamists under Bourguiba and Ben Ali translated into resistance on the part of actors who could not accept Islamists’ claims to “victimhood” and political power. The repression of Islamists was particularly reinforced under Ben Ali’s rule who found the global WoT as a useful discourse in entrenching his power. The same discourse was used after the revolution by different actors, including the members of the former regime, to question and undermine the legitimacy of TJ in the country. Further, legal principles restricted the scope of accountability for those accused of human rights violations.

¹⁹⁵ “There is no transitional justice without politicization. Otherwise, we call it justice. Yes, it’s of process. The challenge is to make it a nonpartisan process. We can keep it a politicized process, but make it a nonpartisan process.” Interview with civil society actor 2, Tunis, Tunisia, 2018.

¹⁹⁶ For more on this, see ACLED data (Raleigh et al. 2010) and Kazemi (2020).

This is not to deny that in terms of political and civil liberties, Tunisia has made significant progress, especially if compared with the other “Arab Spring” countries.

¹⁹⁷ Interview with researcher and journalist, Tunis, Tunisia, 2018.

Faced with a threat to its political survival, the Ennahda also acquiesced to the same discourse it once denounced, although this is not to deny that the party had also found the discourse on TJ as a useful tool in the immediate aftermath of the revolution to garner support and legitimacy. Despite all the labeling and accusations going around, the main TJ initiatives in the country did not adequately address the underlying causes of “terrorism” and the socio-economic conditions that led to its emergence. As a Tunisian TJ actor put it, “if we don't address economic and social issues, we are not addressing the root causes of the revolution and the root causes of conflict, and we are not really working for a transition in Tunisia.”¹⁹⁸ The TJ process in Tunisia has not yet come to an end and given the current circumstances, it is unclear what the future holds, but TJ actors in other countries must analyze the Tunisian experience to avoid the same issues and problems. TJ must address the issue of sub-state terrorism. It should, however, go beyond a colonial mindset that is based on dehumanization and othering. It should instead delve into the root causes of violence and terror, including socio-economic inequality and marginalization, without letting the discourse on terrorism dominate over and perpetuate the notions of perpetratorship and victimhood.

¹⁹⁸ Interview with civil society actor 3, Berges du Lac, Tunisia, 2018.

CHAPTER 5: HIERARCHIES OF PERPETRATORSHIP AND VIOLENCE IN THE TRANSITIONAL JUSTICE PROCESS IN MALI

“The security paradigm is getting more and more important, and it's kind of the dominating paradigm to interpret everything that's going on in Mali currently.”¹⁹⁹

I. Introduction

This chapter focuses on the ongoing TJ initiative in Mali, and the impact of the WoT discourse on narratives of justice after the 2012 rebellion in northern Mali. It draws on primary and secondary sources, including interviews I conducted with 26 TJ actors during a fieldwork trip to Bamako as well as online interviews during the coronavirus pandemic. Interviews were semi-structured and followed a narrative interviewing approach (Kartch 2017; Jovchelovitch and Bauer 2000). I spoke with some of the research participants multiple times to ask clarification questions or follow up on some of the points discussed in the previous discussions. TJ actors interviewed included the CVJR commissioners, representatives from national human rights and victim organizations, as well as public officials from the Ministry of Justice. Although I had informal conversations with some military forces, due to security concerns, I was asked not to cite these conversations in my publications. It is also worth mentioning that several of my research participants pointed out that although some society actors called for the adoption of TJ measures in Mali, it was in large part initiated by international actors, including the UN, and the government of Mali itself in case of ICC prosecutions. As will be discussed later in this chapter, this is particularly

¹⁹⁹ Interview with MINUSMA officer 1, online, 2020.

evident in the establishment of the first Malian truth commission which was later disbanded following criticisms of its top-down approach. The TJ initiative is still ongoing in the country and two military coup d'états in August 2020 and May 2021 have complicated the TJ efforts. This chapter, therefore, situates the discussion on TJ in Mali in light of the developments during the years since the end of the 2012 rebellion. Future research will shed light on the progress and effectiveness of TJ efforts in the country. A comprehensive discussion of the historical background in Mali is beyond the scope of this chapter. However, an explanation of the conditions that led to the adoption of TJ measures is necessary in order to discuss the impact of the WoT discourse on the Malian TJ process.

Before gaining independence in 1960, Mali was under French colonial control for more than 60 years. France started to expand the territories under its control in West Africa toward the end of the 19th century. In the 1885 Berlin treaty, it succeeded in claiming a large swath of territory in the Sahara and Sahelian West Africa. By the early 20th century, the current-day territory of Mali fell completely under French control and became part of the French West Africa (*Afrique Orientale Française*) federation, with French Sudan (*Soudan Français*)²⁰⁰ as its center (Thiam and Mann 2020). Although Muslims were long present in the region, in the 20th century, a rapid wave of Islamization engulfed French West Africa. In the 1930s, a Muslim reform movement originating in the Middle East emerged which set itself apart from the Sufi brotherhood establishment, reflecting its discontent with the dominant Tijaniyya brotherhood and the abandonment of their initial mission of resistance and confrontation for cooperation and submission to the French colonial forces (Clark 1999;

²⁰⁰ Current day Mali; from 1890 until 1899, and then from 1921 until 1958, it was formally called French Sudan.

Harrison 1988; Kaba 1974; Thiam and Mann 2020). With the continuing rise of reformist Islam in French West Africa in the 1930s and 1940s, the French colonial administration became wary of the spread of Islamic anti-colonial and anti-imperial discourse and adopted several measures to control Islam and *ulama* that could pose a threat to its power and authority (Lebovich 2019). A containment policy was adopted which included measures to promote certain categories of experts on Islam while undermining others as well as the surveillance of prominent religious figures. Elsewhere in the north, most Tuareg²⁰¹ groups initially resisted French colonial conquerors and defeated French forces a number of times until they all surrendered at the beginning of the 20th century. As will be explained in the next section, over time, the Tuareg gained a privileged place in the colonial imagination with rather mixed effects (Grémont 2010; Lecocq and Klute 2013; Triaud 1993).

The short-lived Mali Federation, including French Sudan and neighboring Senegal, collapsed in August 1960. Following its dissolution, the republic of Mali was born as an independent state under the leadership of Modibo Keita from the Sudanese Union – African Democratic Rally (*Union Soudanaise-Rassemblement Démocratique Africain*, US-RDA) party. Under Keita's rule, Muslims continued to be surveilled and Islamic organizations were banned (Clark 1999; Lebovich 2019; Thiam and Mann 2020). In the late 1950s, the Tuareg people also sought independence, but as a result of colonial boundaries and postcolonial state-making, they found themselves split across five countries: Algeria, Burkina Faso, Libya,

²⁰¹ The Tuareg are a nomadic group of over 2 million that live in several countries in the Sahara region. They speak a similar language to Berbers, called Tamasheq, and are considered to be their ethnic kin. The Tuareg constitute around 10 percent of the population in Mali and are the most significant nomadic group in the country in security terms. They have historically been divided by tribes and clans, and are not monolithic (Cline 2013).

Mali, and Niger. In 1957, France created the Common Organization of the Saharan Region (*Organisation Commune des Régions Sahariennes*, OCRS) which drew support from Saharan Arabs and Tuareg who opposed living under black southern Malian rule. The OCRS was, however, dissolved in 1963 without fulfilling the independence aspirations of the Tuareg people (Abdalla 2009; Lebovich 2017; Lecocq 2010).

With the establishment of the Republic of Mali, the elites in the south focused their efforts on the political and economic development of southern Mali, gradually marginalizing and imposing a military rule on the northern region (Chauzal and van Damme 2015). The exclusion and marginalization of the north as well as the historically rooted distrust of elites in the south led to four uprisings following independence: in 1963, 1991, 2006, and 2012. Although peace agreements brought each rebellion to an end, they largely failed to address the underlying economic and political issues, resulting in the persistence of the “problem of the north” (Wing 2013, 478). In 1968, a coup d’état by General Moussa Traoré toppled the dictatorial regime of Modibo Keita. Traoré’s policies toward religion were more favorable as he permitted the establishment of religious organizations, but he also instrumentalized Islam for political ends (Clarke 1999; Thurston 2013). Another coup in 1991, this time orchestrated by General Amadou Toumani Touré, put an end to Traoré’s authoritarian rule.

The fall of Traoré led to the establishment of a democratic government in Mali under President Alpha Oumar Konaré following the constitutional referendum and presidential and parliamentary elections. The new Malian Constitution reaffirmed the principle of *laïcité*, and religiously based political parties were outlawed, but due to the state's greater commitment to freedom of association and expression, there was a proliferation of religious

associations and organizations at the time (Ibid; Lebovich 2019; Lecocq and Klute 2013; Soares 2006). Under Konaré, Mali was praised as a model for transition to democracy and implementation of economic reforms and liberalization, and was labeled as a “poster child for democracy in Africa” (Chauzal and van Damme 2015, 13). The government of Konaré also signed a new peace agreement with dissident groups in the north which stipulated several measures, including special programs for the northern region, to appease the Tuareg and Arabs living in the region. Several other initiatives were also adopted that could bring about a fragile peace for at least a decade (Lecocq and Klute 2013).

The WoT discourse following the 9/11 attacks, however, changed the geopolitical situation in the Sahara region. As Lecocq and Klute (Ibid., 428) point out, “[a]s part of its post-9/11 ‘War on Terror,’ the United States turned its attention to the outer reaches of the Muslim world, including the Sahel and the Sahara, where the propagators of worldwide jihad were active.” In the early 2000s, the Algerian Salafist Group for Preaching and Combat (*Groupe Salafiste pour la Prédication et le Combat*, GSPC) became active in the Sahara region thriving on money coming from abduction, ransom, and other illegal trades such as smuggling. The GSPC later pledged support to al-Qaeda and changed its name to al-Qaeda in the Islamic Maghreb (AQIM) (Ibid.; Lebovich 2017; Lecocq and Schrijver 2007). In 2006, conflict flared up again in Mali and Niger. A short-lived peace in Mali followed the signing of a peace agreement in the same year. Conflict resumed, however, after a year, ending in 2009 with a promise of increased development funds for the north (Lecocq 2010; Rabasa et al. 2011). Peace was again fleeting. With NATO’s²⁰² intervention in Libya in 2011 and the fall of

²⁰² North Atlantic Treaty Organization

Muammar Gaddafi's regime, Tuareg fighters and other Sahelian mercenaries, who had joined the Libyan National Army, returned to Mali. While some of them were integrated into the Malian army, others joined the National Movement of Azawad (*Mouvement National de l'Azawad*, MNA) and formed the National Movement for the Liberation of Azawad (*Mouvement National de Libération de l'Azawad*, MNLA). Conflict broke out again in January 2012 and the MNLA with the help of Islamist groups took control of the northern region. Meanwhile, a coup by mutinying Malian soldiers ousted President Amadou Toumani Touré from power in March 2012 for his failure to contain the rebellion. Shortly after the MNLA declared the independence of Azawad, its alliance with Islamist rebel groups collapsed. After clashes with these groups, it was driven out of most conquered cities in the north (Lecocq and Belalimat 2012; Lecocq and Klute 2013).

The rebellion came to an end with a government-requested French intervention and a peace treaty signed in 2015, but the conflict is still going on with multiple other militant groups, oftentimes labeled as “jihadist” or “terrorist” groups. The Algiers Accord aimed to put an end to the conflict in the country's vast northern desert. Article 47 of the Accord specifically mandates the government of Mali to “promote genuine national reconciliation” through different measures including the “development of a National Charter for peace, unity and national reconciliation; creation of transitional justice mechanisms in particular by operationalizing the Truth, Justice and Reconciliation Council (Commission Vérité, Justice et Réconciliation, CVJR).” The interim government of Dioncounda Traoré, the former President of the National Assembly who had assumed the presidency in an interim capacity until elections, also referred the situation in Mali to the ICC in July 2012 to investigate “alleged

war crimes committed since January 2012, mainly in three northern regions of Gao, Kidal and Timbuktu, with incidents also occurring in the south in Bamako and Sévaré.”²⁰³

Despite the complexities of the conflict, however, a simplified narrative about the conflict dominates discussions about the situation in Mali. This narrative is influenced by the discourse on the WoT, focusing on the violations and crimes of Islamic rebel groups in northern Mali. This is despite the fact that the data and reports on conflict and political violence in Mali demonstrate the prevalence of violations committed by state forces oftentimes with the support of international forces.²⁰⁴ The focus on fighting “terrorism” in the north has also come at the expense of less attention to issues of intercommunal violence in central Mali. Since 2016, clashes between communal ethnic militia, mainly Fulani pastoralists and Dogon farmers, have been on the rise in the central region of Mopti which has resulted in hundreds of fatalities among civilians. According to the report published by the International Crisis Group (2020), “[t]he Malian government is partly responsible for the discord, having focused on fighting terrorism without paying sufficient attention to communal reconciliation or the state’s other vital functions.” The hegemonic narrative of the WoT has led to an overwhelming securitized approach not only in attempts to put an end to violence but also in the working of TJ initiatives. This narrative has created a hierarchy of perpetrators, with “terrorists” at the apex of this hierarchy, and it has been used by state actors to pursue a military counter-terrorism and criminal accountability approach to deal with violations committed by the so-called “jihadist” groups. As will be discussed later, aided by institutional discourses, including an immunity law adopted in 2019, the state actors have

²⁰³ ICC website, <https://www.icc-cpi.int/mali>.

²⁰⁴ See ACLED data (Raleigh et al. 2010); Dufka (2020); Nsaibia (2020).

largely avoided accountability as the state is authorized to use “legitimate” violence as part of its apparatus of control (Asad 2010). Moreover, the linguistic construction of Islamic rebels in the north as “monsters” and “executioners” has sidelined the stories of these actors, rendering a discussion of the reasons why they turned to violence as well as stories of longstanding marginalization and subjugation outside the boundaries of TJ. This is not to deny that the stories of these actors might also be exclusionary and violent, but to draw attention to the power relations that empower and reinforce certain narratives while silencing others.

This chapter discusses the impact of the dominant narrative of the WoT on TJ in Mali. The first section provides a historical background to the conflict that led to the adoption of TJ measures. It starts with a discussion of the rise of Islam in French Sudan and then delves into the relationship between religion and politics in post-colonial Mali under different governments. It also briefly discusses the various rebellions in northern Mali, with a focus on the most recent uprising in 2012 and international intervention in the aftermath of that rebellion. The second section then examines the ongoing TJ initiatives in the country, mainly two major TJ institutions, namely the Malian truth commission and prosecution by the ICC. Through discussing these measures, the section provides empirical evidence demonstrating the hierarchies of perpetration and violence that have emerged in Mali as a result of the WoT discourse. The chapter concludes with a brief discussion of the main findings and the similarities and differences with the case of TJ in Tunisia.

II. Historical Background

Mali is a landlocked country in West Africa, sharing borders with Algeria on the north, Niger on the east, Burkina Faso and Cote d'Ivoire on the south, Guinea on the south-west, and Senegal and Mauritania on the west. It has a population of nearly 20 million people.²⁰⁵ It is a very diverse country in terms of ethnic groups living in Mali and the languages that are spoken. The majority of the population are Muslims and followers of the Maliki school of Islam. Mali was under French colonial rule for more than 60 years. Drawing on the existing literature, I discuss the historical background in Mali under French colonial rule until independence in the first sub-section. The second part then discusses the post-colonial period with a focus on northern rebellions and the rise of Islamic groups.

Mali under Colonial Rule until Independence

By the early years of the 20th century, most of the territories in West Africa, including present-day Senegal, Benin, Guinea, Mali, Cote d'Ivoire, Burkina Faso, and Niger, were under French control as part of the French West Africa federation. The northern areas in Mali inhabited by the Tuareg and Arabs were among the last territories in Africa to be conquered by French colonial forces. After heavy resistance, most Tuareg tribal federations surrendered although revolts broke out again during the first World War (Aouad-Badoual 1993; Grémont 2010; Lecocq and Klute 2013; Triaud 1993). Lecocq and Klute (Ibid., 425-426) point out that over time, “the Tuareg came to occupy a privileged place in the French

²⁰⁵ The World Bank website, available at <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=ML>

colonial imagination, with mixed effects. The Tuareg were exempted from forced labour and military conscription, but also from western education, until the mid-1940s.”



Figure 6 Map of Mali²⁰⁶

²⁰⁶ Source: UN

Grémont (2012) traces this “colonial privilege” (Lecocq and Klute 2019) to the French colonial policy of strictly distinguishing between and applying a differential rule to black and lighter-skinned, nomadic and sedentary populations. During the colonial era, ethnic and racial identification became even more important. In fact, the French colonial administration used a Western concept of race relying on skin color and physical differences to categorize different groups in Mali. Consequently, following the departure of French forces, perceptions of race focused primarily on skin color and less on other phenotypic differences. As a result, while southern Malians were identified as being black, the Tuareg and other northern Malians were identified as part of a non-black and Arab culture (Ibid.; Bergamaschi 2013; Lecocq 2010). On the other hand, the Tuareg and Arabs in the north were also considered to be a source of “threat” because of their proximity to and perceived affiliation with Arabs in the colonial world. For instance, in the words of the governor of French Sudan in 1898:

“Considering that we will never succeed in making friends with these [Tuareg and Arab] tribes because of their religious and racial hatred towards us, and because we have deprived them of their only resource, namely plunder and theft, we have to eliminate them if we can. This is best done by starving them: the people by preventing them from buying the cereals that they need, and their beasts by keeping them away from the riverbanks. As a result, the tribes will either starve, or escape to other areas, or else they will feel powerless and will unconditionally surrender, and then we will be able to force them to adopt a way of life that will prevent them from doing any harm” (Quoted in Grémont 2012, 135-136).

Although Islam already had a presence in the West Africa region, Sufi orders were dominant (Seesemann and Soares 2009). However, starting in the 1930s, African Muslims traveling to the Middle East, either to perform *hajj* or to study, were exposed to a milieu of religious activism and were affected by the ideas and values espoused by Islamic reformist movements and debates around what it means to be a Muslim in the mid-20th century (Brenner 2001; Cardaire 1952; Clark 1999; Harrison 1988; Kaba 1974). “Reformists” who returned from the Middle East posed a challenge to the domination of both the French and the local Muslim establishments and *uluma*, known as “traditionalists,” who were favored by the French. Consequently, the French colonial authorities became increasingly wary about the internationalization of Islam and the spread of pan-Islamist anti-colonial ideas in West Africa. In 1950, the French Minister of the Overseas (*Ministère des Outre-mer*) wrote to the General Governors of French West Africa and French Equatorial Africa, requesting a policy to control the spread of Islam. The directive called for a policy of containment of Islam in West Africa (*la politique d'endiguement de l'Islam en Afrique de l'Ouest*) to prevent the flood of “fanatical and xenophobic” Islam and called for the appointment of experts on Islam that are not “seduced by the external aspects of Islam or by the relative learning of certain black Africans or who are interested only in aesthetic or intellectual satisfaction, but those who really perceive in Islam an eminent danger and are capable of denouncing and combating it” (Quoted in Brenner 2001, 87). As Thurston (2013, 48) points out, by the early 20th century, an identifiable “Muslim policy” existed in French West Africa.

As part of the policy of containment, the French colonial authorities started the surveillance of prominent religious figures with the assistance of the Office of Muslim Affairs (*Bureau des Affaires Musulmanes*). This policy also involved detention, exile, and other punishments for

Muslims who were perceived as dissidents. In the context of this new battle against the spread of Islam, Marcel Cardaire was appointed to the Office of Muslim Affairs to collect information on the rise of reformist movements in French West Africa and the contacts that might exist between the Islamic community in the region and active movements in the Middle East (Ahmed 2015; Brenner 2001; Thurston 2013). Cardaire approved a counter-reform program, but as Brenner (2001, 102-103) opines:

“French concern was not aroused so much by reform as such, as by the challenges to their own political interests which were emerging in the Arab and Islamic worlds: Algeria, Nasser in Egypt, Suez, Arab nationalism, pan-Islamism, Wahhabi religious propaganda, to name only some of the more salient issues of the period. Counter-reform emerged in this context, as part of a broader policy to counteract the possible influence of such political ideas and to limit the spread of the Arabic language. Significantly, it was an African initiative that was endorsed and supported behind the scenes by the administration.”

French policy, therefore, included the promotion of certain Muslim leaders as well as a “working relationship between this establishment and the French” (Soares 2005, 57). As such, the colonial rule in French Sudan was not “secular” if we define it as the separation of religion from political power (Thurston 2013, 48), but “secular” also implies a relation of power—it defines the place of religion, and the relation of religion to society. In that sense, the colonial rule is secular because it is setting the terms of power and politics and the role of religion in the public sphere (Asad 2003). As will be explained below, similar to what

happened in other areas under French control, this impacted the relationship between religion and politics in post-colonial Mali. With the rise of anti-colonial movements across the colonized world, the African Democratic Rally party (*Rassemblement Démocratique Africain*, RDA) was established in 1946 with chapters in different French colonial territories. Over time, the US-RDA²⁰⁷ became the dominant political party and voice against colonial domination in French Sudan. From 1958 to 1960, the Sudanese Republic (*République Soudanaise*) was a semi-autonomous colonial territory. In 1959, it formed the Mali Federation with Senegal and was recognized by France as an independent federation within the French Community (*Communauté Française*). Two months later in June 1960, the Mali Federation declared its complete independence from France. However, due to internal disagreements over the leadership of the unified government, the Federation was short-lived and collapsed in August 1960 after Senegal's withdrawal. Thus, the Republic of Mali was established as an independent state under the leadership of Modibo Keita from the US-RDA (Chafer et al. 2020; Kurtz 1970; Thiam and Mann 2020).

Post-Colonial Mali and Northern Rebellions

The Malian Constitution adopted in 1960 declared Mali a “secular” republic (Thurston 2013). Keita's socialist regime made Islam “officially invisible,” and banned reformist organizations (Brenner 2001, 171). Referring to the suppression of Islam in the public sphere and repression of the Tuareg, Thurston (2013, 49) notes that “the early postcolonial state and its homogenizing vision of nationhood suppressed some of the very identities that are the most deeply contested in Mali today.” Although a significant segment of Mali's

²⁰⁷ Sudanese Union – African Democratic Rally

population supported the US-RDA government, most Tuareg and Arab populations in the Sahara saw the rule from the south as illegitimate. With the failure of the OCRS and feeling “colonized” by the Malian state, clashes broke out between Tuareg rebels, mostly from the Kel Adagh tribe, and the Malian military forces in 1962. The Malian army brutally repressed the revolt by 1964, adding a new set of grievances to the historical memory of Tuareg suppression (Ba 2014; Boilley 1999; Lecoq 2010; Morgan 2012; Thiam and Mann 2020; Thurston and Lebovich 2013). President Modibo Keita dissolved the National Assembly in January 1968. A few months later, a group of military officers, led by General Moussa Traoré, overthrew Keita’s government and established a Military Committee of National Liberation (*Comité Militaire de Libération Nationale*) to take control of the government. The country was under military rule for the next 23 years (Thiam and Mann 2020).

Under Traoré, the government’s policies toward the role of religion in politics and the public sphere were more favorable. He took Islam into greater account in policy-making. In fact, Traoré used and instrumentalized religion to entrench his power (Thurston 2013). According to Clark (1999, 163), “[t]he military government increasingly adopted the trappings of a Muslim identity in public and on a national level. Traoré and his colleagues officially portrayed Mali as a Muslim country with a secular constitution.” The Center for the Promotion of the Arabic language and the Malian Association for the Unity and Progress of Islam were established respectively in 1979 and 1980 to control and redirect increased Islamic activism in Mali. Over time, however, religious leaders withdrew their public support from the regime and the government became increasingly repressive toward groups perceived as a threat, including religious groups (Ibid.; Brenner 1993; Thurston 2013).

In March 1991, another coup by General Amadou Toumani Touré ousted the military government of President Traoré following days of demonstrations and violence in Bamako. Demonstrators demanded a rapid shift to democracy and the end of the single-party regime,²⁰⁸ but were violently repressed. Touré established the Transition Committee for the Salvation of the People (*Comité de Transition pour le Salut du Peuple*). The Committee led the country's transition to democracy. Although its first decree establishing freedom of association led to the flourishing of Islamic associations and media, the second decree it issued banned political parties based on religion. It also organized a referendum on a new constitution. The Constitution that was adopted in 1992 clearly stipulates the principle of *laïcité* in the preamble and several articles. Article 118 states that “[t]he republican form and the secularity of the State as well as multipartyism shall not be the object of revision.” National multi-party elections were held in early 1992 and Alpha Oumar Konaré was elected as President (Brenner 2001; Clark 1999; Lecocq and Klute 2013; Thiam and Mann 2020; Thurston 2013).

In post-colonial Mali, Tuareg and Arabs were largely marginalized from political power and economic development. The southern political and military elites dominated the power structures of the post-colonial state, feeding a southern nationalism and excluding Tuareg and Arabs from having sufficient representation in the Malian political system. Furthermore, the Tuareg pastoral lifestyle and the loss of access to livelihood resources due to the droughts and lack of state intervention is another factor in their marginalization. Severe droughts in

²⁰⁸ The new Constitution adopted in 1974 provided for a single-party political system. The Democratic Union of the Malian People (Union Démocratique du Peuple Malien) was founded in 1975 and became the only legal party in Mali. It was dissolved in 1991.

the 1970s and 1980s pushed many members of northern ethnic groups to seek refuge in neighboring countries, including Niger and Libya, in search of job opportunities. With the deterioration of economic conditions in the host countries by the end of the 1980s, many Tuareg and Arab migrants returned to Mali, some of them with considerable military experience serving in Gaddafi's army. Many of the returnees, known as "ishmurs" (derivative of the French term *chômeurs*, or unemployed) formed the central core of the rebel groups in the 1990s (Benjaminsen 2008; Chauzal and van Damme 2015; Kisangani 2012; Krings 1995; Lebovich 2017; Thiam and Mann 2020; Thurston and Lebovich 2013). In 1990, the Tuareg and Arabs launched another rebellion against the Malian government in what became a low-intensity conflict. The Popular Movement for the Liberation of Azawad (*Mouvement Populaire de Libération de l'Azawad*, MPLA) under the leadership of Iyad Ag Ghali won a number of victories against the Malian military forces. Facing a democratic opposition movement in the capital, Traoré signed a ceasefire agreement²⁰⁹ with the MPLA in 1991. Upon taking power, Konaré signed a new peace agreement in 1992. The National Pact included the integration of former rebels into the Malian armed forces, special economic and development programs for the north, and increased autonomy for areas with large Tuareg populations. The National Pact, however, did not put an end to the fighting. Internal clashes continued and rebel groups splintered into several different factions. Local reconciliatory initiatives led by traditional leaders culminated in a ceremony in Timbuktu called "*La Flamme de la Paix*" in 1996 which brought about a fragile peace that lasted for about a decade

²⁰⁹ Accord de Tamaanraset

(Klute 2009; Lebovich 2017; Lecocq 2010; Lecocq and Klute 2013; Poulton and ag Youssouf 1998). According to Gutelius (2007, 63):

“Following the final peace settlement in 1996, cities such as Timbuktu, Gao and especially Kidal were in many ways cut off from the rest of the country – partly because the ceasefire compelled a military withdrawal of Malian forces from key areas in the northern tier of the country. Reconstruction in the north from 1996 brought new opportunities for social mobility and negotiation, enabled in large measure by growing competition for aid dollars from abroad. The late 1990s saw a kind of desert bloom in local Muslim grassroots self-help organisations ... some, including the Saudi Da’wa and Pakistani Da’wa al-Tabligh, came to Mali more interested in spreading particular interpretations of Islam to counter what they saw as an African bastardisation of religion.”

New associations and projects including madrassas (Koranic schools), radio stations, libraries, and cooperatives were established in the north during the 1990s. Moreover, competition emerged among foreign donors for “converts,” and among local Muslim leaders for financial support and political clout. The rivalry between Saudi, Pakistani, and Libyan aid projects and missions intensified with local leaders using this opportunity to access the resources these missions brought. Reformist Muslim associations also expanded in northern Mali with ties outside the country. The local leaders drew on the new Islamic rhetoric to challenge economic and political marginalization and existing notions of social inferiority (Ibid.; Brenner 2001; Claisse 1999).

Conflict broke out again in 2006, this time as a result of the mass desertion of former rebels who had been incorporated in the Malian army. The deserters complained about discrimination against the Tuareg in the army and organized themselves into a new group: the Democratic Alliance for Change (*Alliance Démocratique pour le Changement*, ADC). They launched attacks against army positions in the north. Within a year, a peace agreement was reached between the government and the ADC, but a faction under the title of the Alliance of Niger-Mali Tuareg (*La Nouvelle Alliance Touareg du Niger et du Mali*, ATNM) broke away and continued fighting until a final peace accord was concluded in 2009 with the mediation of Libya (Cline 2013; Emerson 2011; Rabasa et al. 2011).

The MNA was founded in 2010 with the aim of achieving autonomy for the Tuareg people. Its demands were, however, ignored. With the defeat of Gaddafi in Libya following NATO's intervention in 2011, the Tuareg and other Sahelian mercenaries who had joined the Libyan National Army returned to Mali, carrying heavy weaponry into the northern region.²¹⁰ Although some of the returnees were integrated into the Malian army, others joined the MNA which was later merged into a new movement: MNLA. The MNLA openly demanded the establishment of an independent state of Azawad. In January 2012, hostilities broke out between the MNLA and military forces. Within a few weeks, the rebels conquered vast territories in the northern region. On April 6, 2012, the MNLA declared the independence of the state of Azawad. While the rebels were fighting against the Malian army in the north, a coup was staged by a group of mutinying soldiers in Bamako, ousting Amadou Toumani

²¹⁰ The extent to which the fall of Gaddafi impacted the rebellion in northern Mali is subject to speculation. Cline (2013) argues that the returnees from Libya played an important role in the leadership structure of the MNLA.

Touré, who had been elected president in 2002 and reelected in 2007, from power. Touré had been widely criticized for his approach in dealing with the rebels in the north. The disarray that followed the coup was a major factor in the army's defeat. The MNLA in alliance with Islamic groups, in particular Ansar Dine, took control of a large swath of territory in the northern region. This alliance, however, was short-lived. Following clashes between the MNLA and Islamic rebel groups, including Ansar Dine and Movement for Oneness and Jihad in West Africa (*Mouvement pour l'Unité et le Jihad en Afrique de l'Ouest*, MUJAO),²¹¹ the MNLA was driven out of most of the conquered cities in the north (Bellagamba and Klute 2008; Chauzal and van Damme 2015; Lebovich 2017; Lecocq 2010; Lecocq and Klute 2013; Thiam and Mann 2020; Thurston and Lebovich 2013). Therefore, the armed groups were obliged to negotiate with the state because they no longer had control over the ground.²¹²

Following the 9/11 attacks and the launch of the global WoT, the US turned its attention to the Sahel and Sahara where Islamic groups were forming. Starting from the early 2000s, the GSPC had established a presence in the Algerian Sahara, northern Mali, and Niger. The GSPC changed its name to AQIM in 2007. The US army was already active in the region by then. In 2002, the US armed forces established the Pan-Sahel Initiative (PSI) which was later changed to TSCTI²¹³ with the objective to set up anti-terrorism units and bases for operation in the Sahel countries (Lebovich 2017; Lecocq and Klute 2013; Lecocq and Schrijver 2007).²¹⁴

²¹¹ جماعة التوحيد والجهاد في غرب أفريقيا

²¹² Interview with civil society actor 4, Bamako, Mali, 2020.

²¹³ Trans-Saharan Counterterrorism Partnership

²¹⁴ For more information, see <https://www.state.gov/trans-sahara-counterterrorism-partnership/>



Figure 7 Map of Azawad²¹⁵

²¹⁵ Source: Aljazeera

Following the adoption of the UN Security Council resolution 2085 (2012) and an official request by the Malian interim government for French military support, France launched Operation Serval on January 11, 2013, deploying French forces to Mali. The objective was to halt the rebels' offensive toward southern Mali and preserve the integrity and unity of the Malian territory. It also aimed to facilitate the deployment of the African-led International Support Mission to Mali (AFISMA) and the European Union Training Mission in Mali (EUTM) for Malian military forces (Bere 2017; Boeke and Schuurman 2015). Operation Serval lasted until July 2014 and could drive out Islamic rebels from the main towns previously under their control in the north. The "jihadist" groups were, therefore, weakened, and lost control over the territories they had conquered (Tramond and Seigneur 2013). The Operation was replaced by Operation Barkhane on August 1, 2014,²¹⁶ which has a broader geographical mandate and aims to support G5 Sahel countries²¹⁷ in their fight against terrorism (Bere 2017).

French intervention opened space for the entry of the MINUSMA and the negotiation of a roadmap for political transition (Bratton 2016). Security Council resolution 2100 (2013), adopted in April 2013, authorized the establishment of the MINUSMA whose mandate includes the re-establishment of state authority, supporting the implementation of the transitional road map, protection of civilians, promotion of human rights, and support for humanitarian assistance, cultural preservation, and national and international justice. Counter-terrorism is not included in MINUSMA's mission.

²¹⁶ Following the coup in Mali in May 2021, France announced the end of Operation Barkhane in its current form.

²¹⁷ Burkina Faso, Chad, Mali, Mauritania, and Niger

On June 18, 2013, the transitional government and two rebel groups – MNLA and HCUA²¹⁸ – signed a ceasefire agreement in Ouagadougou, Burkina Faso. Two other groups - MAA²¹⁹ and CMA²²⁰ – declared their adherence to the agreement the same day. The agreement aimed to ensure peaceful elections, inclusive peace talks, and the establishment of an international investigation of the international crimes committed in Mali. Presidential and parliamentary elections were held in the summer and fall of 2013 and Ibrahim Boubacar Keita²²¹ was elected as president. Keita advocated for negotiations with rebels and national reconciliation. He also espoused TJ measures through investigations of past human rights violations (Bratton 2016). On June 20, 2015, the government and several rebel groups signed the Algiers Accord, aiming to re-establish peace and security in the north.

Despite the presence of multiple international forces, the conflict has not yet come to an end and attacks and confrontations between the non-signatory armed groups,²²² international forces, and Malian military forces persist. According to a public official working in the Ministry of Justice, “[t]he international forces are here. They fail to contain the terrorist phenomenon, but it is a very complex phenomenon and difficult to combat.”²²³ As Bere (2017) also points out, international military intervention in Mali is largely driven by the global WoT agenda, neglecting the causes of the conflict, including socio-economic grievances as well as the historical marginalization and exclusion of the northern population

²¹⁸ High Council for Unity of Azawad (Haut Conseil pour l'Unité de l'Azawad)

²¹⁹ Arab Movement of Azawad (Mouvement Arabe de l'Azawad)

²²⁰ Coordination of Azawad Movements (Coordination des Mouvements de l'Azawad)

²²¹ Keita is a common last name in West Africa and there is no relation between Modibo Keita and Ibrahim Boubacar Keita.

²²² It is used to refer to armed groups that have not signed the Algiers Accord.

²²³ Interview with public official, Bamako, Mali, 2020.

by the elites in the south. The measures taken by the international community have, therefore, failed to address the root causes of violence and hostilities in the country, leading to mass protests against foreign presence as well as government policies. The figure below shows the economic disparity as shown by poverty trends across different regions in Mali:

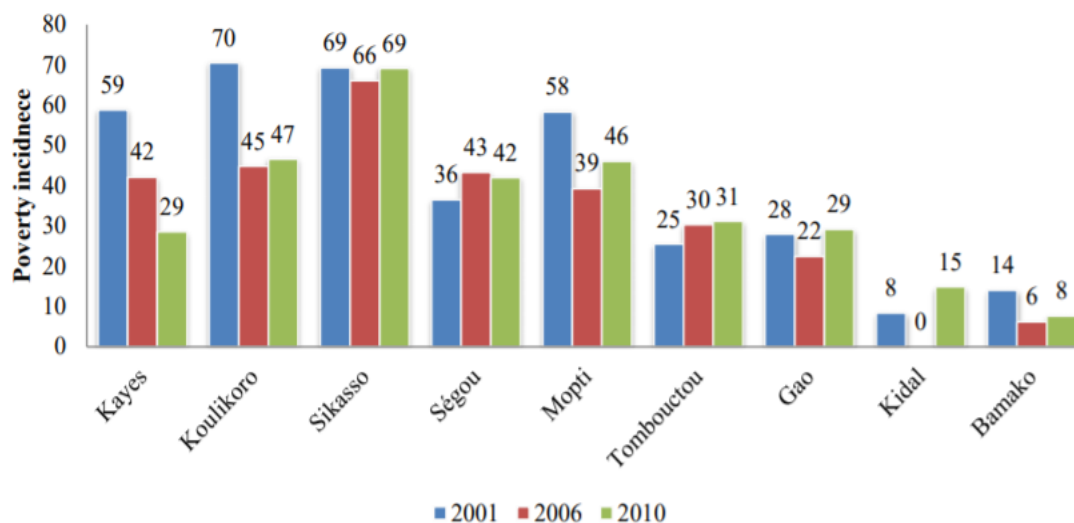


Figure 8 Poverty Trends: 2001-2010, by Region²²⁴

The military coup d'état that followed this mass discontent further put Mali and the TJ process on an uncertain path. On August 18, 2020, a military junta, led by Colonel Assimi Goita, toppled the democratically elected government of Ibrahim Boubacar Keita, gaining the title of the first coup d'état of the coronavirus era for Mali (The Washington Post 2020). Following the coup, the country was governed by a transition government. Nine months later, in May 2021, Colonel Goita staged another coup after a government reshuffle in which

²²⁴ Source: WB (2015)

The report mentions that poverty in Sikasso is overestimated.

two military leaders were sacked from their posts. The Malian Constitutional Court later declared the coup leader as the country's new interim president (Reuters 2021).

The conflict landscape in Mali is very complex with the presence of multiple rebel groups, state actors, and local militia and self-defense groups. Furthermore, since 2016, we have witnessed an increase in intercommunal violence in the central region of Mali, particularly pitting the Fulani pastoralists against the Dogon farmers. As explained above, a focus on fighting "terrorism" and the lack of state presence in northern and central regions are some of the reasons for this discord (International Crisis Group 2020). A comprehensive discussion of the different aspects of the conflict in Mali is beyond the scope of this chapter and dissertation. This section aims to give an overview of the situation that has led to the adoption of the TJ initiatives in the country and the context in which the TJ mechanisms have been working.

III. Transitional Justice in Mali

This part discusses TJ in Mali and the impact of the discourse on the WoT on justice narratives emerging from its TJ initiatives. It focuses on two main TJ institutions: the first subsection examines the truth-seeking initiatives set up to shed light on violations committed in Mali. The second subsection then discusses the criminal accountability measures adopted, including the role of the ICC in investigating human rights violations and holding perpetrators accountable as well as "traditional" justice mechanisms.

Truth-Seeking in the Aftermath of the 2012 Rebellion

Several truth-seeking measures were adopted in Mali. Among them are the establishment of two national truth commissions as well as an international commission of inquiry to investigate serious violations of international human rights law and international humanitarian law. In January 2013, the Malian Parliament adopted the roadmap for transition. In addition to the organization of free and fair elections, this document also called for the establishment of a National Dialogue and Reconciliation Commission (*Commission Nationale de Dialogue et de Réconciliation*, CNDR). The CNDR was established after two months, with a two-year mandate and including 33 commissioners, the majority of whom were from the south (Ladisch 2014).²²⁵ Among the objectives of the CNDR were the identification of political and social forces and armed groups in the reconciliation process, the registration of cases of human rights violations committed in the country from the start of the hostilities in 2012 until the complete recovery of control over the country, the alleviation of the victims,²²⁶ the highlighting of the value of dialogue, peace, social cohesion, and national reconciliation, and the emergence of social consciousness and the promotion of democratic values (FMA²²⁷ 2013-2014).

The CNDR, however, was widely criticized for its limited engagement with civil society and victim groups as well as a lack of progress in its work. Thus, the government dissolved the Commission a year later under pressure from both national and international actors (ICTJ

²²⁵ According to Ladisch, around 70 percent of the commissioners were from the south.

²²⁶ The temporal mandate of the CNDR was limited to the period of the rebellion, and therefore, the majority of the victims were considered to be civilians victimized during the uprising at the hands of the military forces or armed groups.

²²⁷ The Multi-Stakeholder Forum on Governance (Forum Multi-Acteurs sur la Gouvernance, FMA) is an initiative of the Alliance for Rebuilding Governance in Africa (l'Alliance pour Refonder la Gouvernance en Afrique).

2016). The CNDR was mostly a political commission, with the objective of promoting dialogue between the parties to the conflict amid ongoing negotiations for a peace agreement. It was not victim-centered and truth-seeking was not at the center of its activities, and therefore, was different from most other truth commissions established as part of TJ measures in the aftermath of conflict and political violence. Several actors thought that the creation of the CNDR “was pushed by the executive branch without involving the political and social forces of the country in its conceptualization” (Ba 2013, 12).

Following the dissolution of the CNDR, the Ministry of Reconciliation and Development of the North (*Ministère de la Réconciliation Nationale et du Développement des Régions du Nord*), led by Cheick Ouamar Diarra, announced the creation of a new truth commission to replace the CNDR. The CVJR was created by decree number 2014-003 adopted on January 15, 2014.²²⁸ Its mission includes “contributing to the establishment of lasting peace through the truth-seeking, reconciliation and the consolidation of national unity and democratic values.” In contrast to the CNDR, the CVJR’s mandate not only covers the most recent crisis in the north, but also goes back to the establishment of the independent state of Mali in 1960. It was first created with 15 members, but the number of the commissioners was later raised to 25 members, including from armed rebel groups.²²⁹ The CVJR has six regional offices in Bamako, Segou, Mopti, Tombouctou, Gao, and Kidal, and is divided into five subcommittees on: gender; awareness and reconciliation; studies, reports, and documentation; support for victims and reparations; and search for the truth. During the negotiations between the government and rebel groups to conclude a peace agreement, TJ initiatives were also

²²⁸ l’Ordonnance n°2014-003/P-RM du 15 Janvier 2014

²²⁹ Interview with public official, Bamako, Mali, 2020.

discussed and included in the Algiers Accord (2014, 46) to “promote genuine national reconciliation” by the “creation of transitional justice mechanisms in particular by operationalizing the Truth, Justice, and Reconciliation Council (Commission Vérité, Justice et Réconciliation, CVJR).”

According to the CVJR’s Internal Regulations (Arts. 5 and 7), the term “victim” is defined as anyone who has suffered harm as a result of human rights violations, including “murder and arbitrary executions, arbitrary arrest or detention, kidnapping and forcible confinement, forced recruitment and attempted recruitment, rape and other sexual violence, looting, theft, and destruction of property, enforced disappearances, torture and other cruel, inhuman or degrading treatment, and destruction of cultural heritage.” The definition of “victim” also includes those who have suffered as a result of their ties to a family member. Furthermore, according to article 6, perpetrators can be state actors or groups or individuals acting in the name of the state or with its support, as well as organized groups or individuals acting on their behalf. The CVJR, therefore, had a much broader definition of victimhood as opposed to the CNDR and it followed the dominant model of truth commissions in TJ in putting victims and their victimhood at the center of its work.

The CVJR, as the main TJ institution in the country, has faced several challenges in its work. According to several of my research participants, the biggest challenge is the continuation of the conflict and lack of security which poses an enormous problem in reaching out to victims,²³⁰ but also in terms of protection of witnesses and victims. In particular, the

²³⁰ Interview with CVJR commissioner, Bamako, Mali, 2020; Interview with civil society actor 1, Bamako, Mali, 2020; Interview with civil society actor 5, Bamako, Mali, 2020.

persistence of conflict has made it difficult “to establish a list of victims for reparations, but also to establish the truth, if the conflict is ongoing and [new] victims are created day after day, how can you arrive at anything final and anything that will satisfy people?”²³¹ A related challenge is that everything is centralized in Bamako and it is difficult to reach the northern and central regions because some parts of the country are very difficult to access.²³² Certainly, the CVJR has made an effort to cover the entire territory but its work has been largely limited to main cities in different regions.²³³

Another issue is the “huge” temporal mandate of the CVJR, stretching from independence until the end of 2019.²³⁴ The mandate is particularly considered to be “too large” given the resources at the CVJR’s disposal.²³⁵ Instability is another major issue. Since 2013, there have been so many changes in the government which has disrupted TJ’s progress in the country. The 2020 and 2021 military coups have further complicated the TJ landscape in Mali. In light of the recent developments, the question arises as to how the CVJR will look into all the violations committed by the army throughout the years, and there are “rumors currently that the military is trying to influence where the Commission is going with regards to the violations committed by the military.”²³⁶

There are also discussions now on whether to include intercommunal violence in central Mali in the CVJR’s mandate. As discussed before, since 2016, intercommunal violence has

²³¹ Interview with civil society actor 1, Bamako, Mali, 2020.

²³² Ibid.

²³³ Interview with MINUSMA officer 2, Bamako, Mali, 2020.

²³⁴ Interview with MINUSMA officer 1, online, 2020.

²³⁵ Interview with civil society actor 1, Bamako, Mali, 2020.

²³⁶ Interview with MINUSMA officer 1, online, 2020.

been rising in central Mali, mainly in the Mopti region, but also in Segou. While the Dozo militiamen mainly from the Dogon community accuse pastoralist Fulanis of supporting the “jihadists,” tensions between local communities stem in part from rivalries between herders and farmers and struggles for local power and access to land (Jezequel 2019). The inclusion of intercommunal violence in the CVJR’s mandate could be problematic “as the conflict dynamic has significantly changed in the country. The conflict is not over, but it has considerably changed and we are looking into a completely different dynamic when it comes to the issue of ‘jihadism’ in Mali. And when it comes to what’s happening in central Mali currently, we haven’t really decided whether a separate transitional justice process would not be better.”²³⁷

Another significant challenge is the question of ownership and the overreliance on international expertise. According to several international TJ actors in Mali, Malian actors are heavily relying on international actors instead of “owning the discourse.”²³⁸ The composition of the CVJR has also sometimes made it difficult “to really agree on something and just get along with it, as the members were nominated from different groups, including the armed groups, who considered themselves as representing those groups more than representing the Commission as a whole.”²³⁹

²³⁷ Ibid.

²³⁸ Ibid.; Interview with UNICEF specialist, Bamako, Mali, 2020; Interview with civil society actor 1, Bamako, Mali, 2020.

²³⁹ Interview with civil society actor 1, Bamako, Mali, 2020; Interview with civil society actor 8, Bamako, Mali, 2020; Interview with public official, Bamako, Mali, 2020; Interview with MINUSMA officer 2, Bamako, Mali, 2020.

The CVJR has not yet published its report and it remains to be seen how it tackles the issue of “terrorism,” but as a head of a prominent Malian human rights organization put it, it seems that to some extent the CVJR has opted for “the option of not taking terrorists into account in transitional justice because, in my view, we will not engage in a dialogue with these people insofar as their demand is not realistic, namely the application of sharia law ... and the departure of foreign forces, [including] MINUSMA and Barkhane forces ... From this point of view, I can accept that armed movements, former rebels are actors in the transitional justice process, but not terrorists.”²⁴⁰ This in effect erases the narratives of the so-called “terrorists” and the reasons why they turned to violence from the justice narratives produced by the CVJR.

The Algiers Accord (2014, Art. 46) also provided for the creation of an International Commission of Inquiry for Mali. The UN established the Commission in 2018 to “investigate allegations of abuses and serious violations of international human rights law and international humanitarian law, including allegations of conflict-related sexual violence, committed throughout the territory of Mali between 1 January 2012 and the date of the establishment of the Commission (19 January 2018).”²⁴¹ The final report of the Commission was made public in January 2021. The report clearly points out the imbalance in the anti-impunity struggle in Mali: “The vast majority of the alleged perpetrators of the abuses committed in Mali since the beginning of the conflict remain unpunished and continue to enjoy total impunity. The situation is even more grievous in the case of the conflict-related

²⁴⁰ Interview with civil society actor 2, Bamako, Mali, 2020.

“Rebels” refer to signatory armed groups to the Algiers Accord while “terrorists” refer to non-signatory armed groups who are also affiliated with transnational militant groups.

²⁴¹ See <https://www.un.org/en/our-work/commission-of-inquiry-for-mali>

abuses committed by the defence and security forces, none of which have led to a criminal trial” (UN 2021, para 58). The report goes on to note that “the absence of sanctions against perpetrators of serious human rights violations could suggest that the Malian authorities tolerate or even encourage such practices, particularly with regard to violations and crimes committed by the defence and security forces” (Ibid., para. 1036). In 2020 and 2021, Malian state forces were responsible for a significant number of civilian fatalities, as shown by ACLED and UN data (MINUSMA 2021; Nsaibia and Duhamel 2021). The figure below shows organized political violence by different actors in central Mali in 2021:

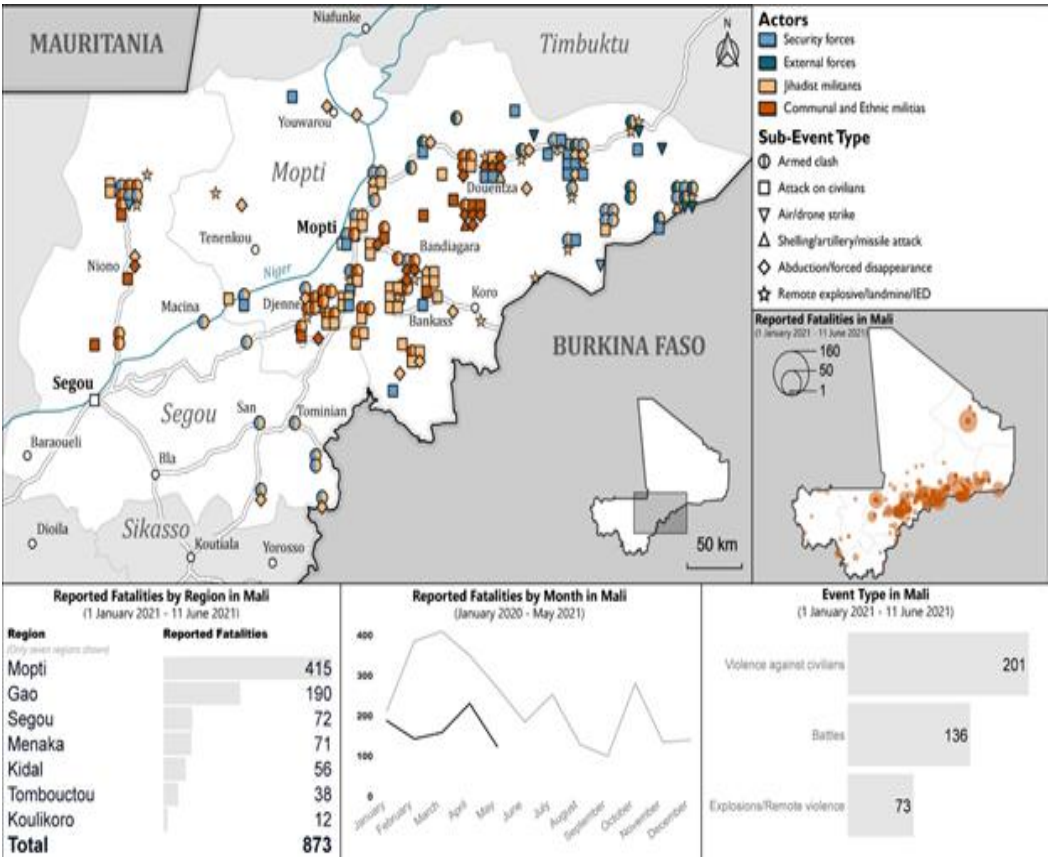


Figure 9 Organized Political Violence in Segou and Mopti in Mali (1 January 2021 - 11 June 2021)²⁴²

²⁴² Source: Nsaibia and Duhamel 2021

As will be explained in the next section, the Malian government has so far used the discourse on the WoT to limit accountability measures mainly for the actors called “terrorists” or “jihadists” and given the reports of military’s intervention in the CVJR’s work, it is also in the process of influencing the narrative coming out of the CVJR.

Criminal Accountability

When it comes to holding perpetrators of human rights violations accountable, the impact of the WoT discourse becomes even more clear. So far, the focus of criminal accountability measures has almost exclusively been on members of groups identified as “terrorists.” As a MINUSMA officer put it:

“I think it’s kind of cheap justice. And because of the push for fighting impunity on the international level, I think the transitional justice discourse has a little bit suffered. And it’s not correctly perceived in the public eye, when you look into how the war on terror is more of the security discourse, the security paradigm. And this is something that has been on the rise for a long time. Fighting impunity is currently seen by the government as something they can deal with by just holding terrorist suspects. So we see a lot of trials focusing mainly on terrorism acts and mainly on low-level perpetrators, and this is the fight against terrorism. So I’d say the security discourse has really impacted upon the fight against impunity, and then you have this kind of antagonism between fighting impunity and the transitional justice discourse.”²⁴³

²⁴³ Interview with MINUSMA officer 1, online, 2020.

This shows how the securitization of justice narratives has transformed TJ discourses. The ICC has been one of the main actors in the TJ process in the country. Mali ratified the Rome Statute in 2000. Following the events in northern Mali, in July 2012, the interim government of Dioncounda Traoré referred the situation in Mali to the ICC which started its investigation in 2013 over crimes committed on the territory of Mali or by its nationals with a focus on alleged war crimes since January 2012. Although the ICC has jurisdiction over the whole territory of Mali, it has focused on three northern regions: Gao, Kidal, and Timbuktu, with certain incidents in Bamako and Sévaré in the south.²⁴⁴ It has only issued arrest warrants in two cases so far. The first case concerns Ahmad Al Faqi Al Mahdi, a member of Ansar Dine in Mali. In 2016, he was found guilty of the war crime of “intentionally directing attacks against religious and historic buildings in Timbuktu, Mali” and was sentenced to nine years of prison. A decision one of my interlocutors called “a big disappointment.” Despite all the violations and crimes committed against the civilian population in the north and all the evidence, the ICC convicted the defendant “only for [the destruction of] monuments ... This is evidence that they [victims] were left behind. Monuments were even more important than what happened to them.”²⁴⁵

In 2018, a case was opened against another member of Ansar Dine, Al Hassan Ag Abdoul Aziz, on charges of crimes against humanity and war crimes allegedly committed in Timbuktu, Mali, including rape and sexual slavery and intentionally directing attacks against buildings dedicated to religion and historic monuments. The hearings for this case are still

²⁴⁴ All this information is from the ICC website and can be accessed here: <https://www.icc-cpi.int/mali>

²⁴⁵ Interview with former MINUSMA officer, online, 2020.

ongoing and no decision has been made yet. Despite the widespread violations in the country by multiple groups including military forces, these are the only ICC cases for the situation in Mali. Even in these two cases, the ICC has not tried the “highest-level perpetrators.”²⁴⁶ Several of my interlocutors pointed out that it is the government of Mali that decides which cases should be sent to and prosecuted by the ICC, and therefore, it is no surprise that so far the focus has been on non-signatory armed groups.

The national judicial system is still weak and has played a limited role in holding perpetrators of human rights violations accountable. Insecurity is one of the reasons why cases are not being tried. Due to lack of security, there has not been much progress in cases at the national tribunals as “the judges fear for their own lives if they push these cases.”²⁴⁷ Furthermore, since the conflict is still ongoing, the focus has been mostly on peace and reconciliation instead of justice and truth-seeking, and it is not easy to identify perpetrators.²⁴⁸ Additionally, national and international courts “can’t necessarily try the military forces because it’s the Minister of the Army [Minister of Defence] who says if the person can be tried or not ... He has the final word on whether someone is sent to justice or whether they are kept with military justice, which is not really active.”²⁴⁹ The agreements concluded with foreign forces have also excluded them from being held accountable in

²⁴⁶ Interview with civil society actor 1, Bamako, Mali, 2020.

²⁴⁷ Interview with former MINUSMA officer, online, 2020.

²⁴⁸ Interview with civil society actor 1, Bamako, Mali, 2020.

²⁴⁹ Ibid.

Mali.²⁵⁰ Therefore, for example, even in the case of “the most serious human rights violations committed by French forces on Malian territory, they are excluded from responsibility.”²⁵¹

In June 2019, the controversial Law on National Unity (*Loi d'Entente Nationale*) was adopted by the Parliament that granted amnesty to certain groups in the context of events linked to the 2012 “crisis” (Thiam and Mann 2020). The law was widely criticized by civil society actors as it was deemed to deny victims any prospects for justice. It was also used by the court to stop the proceeding against General Amadou Haya Sanogo, the head of the military junta that led the coup in 2012, and his co-perpetrators in a case known as “*l'affaire des bérets rouge*” (Amnesty International 2021).

In 2013, the Specialized Judicial Unit against Terrorism and Transnational Organized Crime (*Pôle Judiciaire Spécialisé Contre le Terrorisme*) was established in Bamako for investigating terrorism offenses. Its jurisdiction was later extended to include international crimes and therefore, it also got involved in the investigation and prosecution of massacres committed in the context of intercommunal violence in the central region.²⁵² The Specialized Judicial Unit became operational in 2017. It conducts investigations and then sends the cases to the courts in Bamako jurisdiction. According to one of my interlocutors who worked with the Specialized Judicial Unit, the vast majority of cases investigated by the Unit focus on “Islamist extremists” and it “does not have jurisdiction over crimes committed by the defense and

²⁵⁰ Interview with civil society actor 3, Bamako, Mali, 2020.

²⁵¹ Interview with MINUSMA officer 2, Bamako, Mali, 2020; Interview with civil society actor 6, Bamako, Mali, 2020.

²⁵² Interview with civil society actor 6, Bamako, Mali, 2020; Interview with MINUSMA officer 3, online, 2020.

security forces because that falls under the jurisdiction of the [military] courts.”²⁵³ Most of the trials referred by the Specialized Judicial Unit take place in absentia, mainly because of the prisoner releases in the context of the peace process. These releases are considered by the judicial system to be extrajudicial as there was yet no amnesty law in place when most releases were done. In cases of trials in absentia, “there is no discussion of the evidence at all. Basically, the policy is that the accused are convicted to the highest applicable sentence. So many of them have been sentenced to death, for instance, in absentia.”²⁵⁴ Further, there is a complete absence of victims in proceedings although the law allows for victims’ participation in criminal trials. Exceptions, however, do exist. In terrorism cases, the pre-trial detention period is three years but many defendants are held for a longer period with due process violations.²⁵⁵ Also, there is a recognition by civil society actors that security forces target certain communities for arrests “because the ‘terrorist’ groups in the area, they recruit in the vast majority among this community [Tuareg and Arabs].”²⁵⁶

A major challenge faced in the justice sector is the deployment of the public justice service throughout the territory in Mali.²⁵⁷ In fact, since 2012, “there are many communities that have not seen a single judge.”²⁵⁸ Following the occupation of territories in the north, the jurisdiction of the courts in the northern region was transferred to courts in the capital. In 2015, the Supreme Court issued a ruling to restore competence to the courts in the north,

²⁵³ Interview with MINUSMA officer 3, online, 2020.

²⁵⁴ Ibid.

²⁵⁵ Interview with lawyer and civil society actor, Bamako, Mali, 2020.

²⁵⁶ Interview with MINUSMA officer 3, online, 2020.

²⁵⁷ Written communication with MINUSMA officer 4, online, 2020.

²⁵⁸ Interview with civil society actor 7, Bamako, Mali, 2020.

but progress has been slow.²⁵⁹ A 2014 survey conducted by Afrobarometer found that access to justice remains severely compromised in Mali. In fact, the survey found that among the 36 surveyed African countries, Malians have some of the lowest contact rates with the judicial system. Instead, many Malians rely on local and traditional authorities regarding judicial issues rather than taking matters to courts.²⁶⁰

This is one reason why the Algiers Accord emphasizes the importance of traditional and religious mechanisms of justice in the context of national reconciliation. In the northern region, *cadis* – Islamic judges – are considered to be important figures in the justice sector and the Accord recognizes their role in the transitional process. The recognition of the role of *cadis* in the TJ process in Mali, however, poses a dilemma: on the one hand, the lack of state presence and the formal justice system in northern regions leaves Malians living in these areas with limited options other than the informal justice system. On the other hand, many *cadis* and religious figures are accused of having been implicated in human rights violations during the conflict.

According to a former MINUSMA officer, many Malians in the north prefer “traditional justice” to “classic justice” and if given the choice, they would choose the former. The problem, however, is that there is “an overlap between *cadis* and armed Islamic groups as some of *cadis* are members of these groups.” In fact, according to her, armed groups pushed for the inclusion of the role of *cadis* in the Algiers Accord to avoid accountability.²⁶¹ That is

²⁵⁹ Interview with civil society actor 6, Bamako, Mali, 2020.

²⁶⁰ The survey can be found here: <https://afrobarometer.org/surveys-and-methods/survey-topics/access-justice-0>

²⁶¹ Interview with former MINUSMA officer, online, 2020.

one reason why several of my research participants expressed concern about the inclusion of cadis in the TJ process, finding it problematic not only because some of the cadis are affiliated with rebel groups, but also because “traditions are fluid and not frozen. It’s not something that exists and remains the same. Traditions are called to change as contacts with other cultures occur, so it’s impossible to institutionalize a traditional mechanism when you have so many traditions.”²⁶² While cadis are used in some parts of Mali, in other parts, they are not recognized and other institutions, such as traditional authorities, notables, imams, traditional chiefs or village chiefs play the same role.²⁶³

It is true that even in the north, “the traditional justice system is not uniform. Throughout Mali, every region has its own system and the traditional authorities themselves, they make a very big distinction between their role in the past, which is rather like dispute settlement, and are very proud of it, and then the whole justice aspect.”²⁶⁴ Cadis have traditionally settled civil disputes and not criminal cases which are “virtually unknown to traditional justice.”²⁶⁵ Also, the head of a prominent human rights organization in Mali pointed out that “Mali is a secular country, a secular republic, traditional justice cannot be allowed to impose rules on citizens who do not have the same religion as that of the cadis. That’s the problem ... In cases of civil affairs, if the individual decides to entrust the matter to a cadi, that is not a problem. It is like arbitration.”²⁶⁶ In cases where all factors are “local,” cadis can in fact help resolve issues, but not in all cases.²⁶⁷ The role of cadis in the north remains contested and it is to be

²⁶² Interview with civil society actor 4, Bamako, Mali, 2020.

²⁶³ Interview with civil society actor 3, Bamako, Mali, 2020.

²⁶⁴ Interview with MINUSMA officer 1, online, 2020.

²⁶⁵ Interview with civil society actor 7, Bamako, Mali, 2020.

²⁶⁶ Interview with civil society actor 2, Bamako, Mali, 2020.

²⁶⁷ Interview with civil society actor 7, Bamako, Mali, 2020.

seen how the next civilian government will tackle the issue of traditional justice, especially when it comes to intercommunal violence. It is indisputable, however, until the justice sector is reformed and established in the whole territory of Mali, cadis and traditional figures in general might be the only accessible option for the population living in the north.

The Discourse on the War on Terror and the Hierarchy of Perpetrators

TJ narratives are based on a “hierarchy of offending” with the ideal offender placed at the top of the offending hierarchy. This ideal perpetratorship is grounded in the parallel notions of evil, guilt and the deserving of contempt (McAlinden 2014). In Mali, the WoT discourse has not only been used by state actors to securitize the narratives of peace and justice in the country, but it has also decentered victims as the primary priority in the peace process. As a Malian civil society actor put it to me, “what or who is the priority in the peace process? I think it’s a political issue ... I feel like victims are left behind during the process.”²⁶⁸ What she means here is that the definition of “victimhood” is dictated and changes according to political expediencies on the ground. Also, many civil society actors in Mali challenge the sharp distinction that is often drawn between victims and perpetrators. There is a recognition that sometimes the perpetrators of violations may end up being victims or vice versa.²⁶⁹ Many of the violations occurred when there were no “terrorist groups,” but now there are many victims who are considered to be victims of these groups because the local rebel groups were transformed into “terrorist” groups.²⁷⁰ Thus, combating terrorism “has

²⁶⁸ Interview with former MINUSMA officer, online, 2020.

²⁶⁹ Interview with civil society actor 7, Bamako, Mali, 2020.

²⁷⁰ Interview with former MINUSMA officer, online, 2020.
One example is the Ansar Dine led by Iyad Ag Ghali.

become too complicated because we do not know who really is a terrorist today in Mali. We name groups, but we do not really know who's terrorist and who's not."²⁷¹ Also, as one of my research participants pointed out, an important distinction that should be made is between foreign fighters and Malian locals who join armed groups for various reasons, including economic reasons.²⁷²

The WoT discourse entirely sidesteps the fact that “the people sometimes were able to reject the state for the benefit of jihadist groups that brought them food [and provided] public services.”²⁷³ Hence, the approach has generally been to eliminate presumed “terrorists,” those who are identified as “terrorists.” In the midst of this, people are penalized, including those “who are not necessarily terrorists. We take people, we lock them up because they are supposedly ‘terrorists’ and it creates frustrations and creates new victims and creates new conflicts.”²⁷⁴ Communities are targeted and people are arrested, “because they are accused of being ‘terrorists’ and are often not tried, but are instead executed extrajudicially.”²⁷⁵ Their demonization as “monsters” and “not humans” perpetuates this approach, creating new grievances among targeted communities.²⁷⁶

Another term that came up in several of my interviews with TJ actors to refer to members of Islamic groups was *bourreau* – executioner. As a civil society actor explained, “it's basically perpetrators, but it's different. *Bourreau* is the person who executes the death penalty, so the

²⁷¹ Interview with civil society actor 8, Bamako, Mali, 2020.

²⁷² Interview with civil society actor 2, Bamako, Mali, 2020.
For an overview of causes of terrorism, see Newman (2006).

²⁷³ Interview with civil society actor 4, Bamako, Mali, 2020.

²⁷⁴ Interview with civil society actor 4, Bamako, Mali, 2020.

²⁷⁵ Interview with civil society actor 6, Bamako, Mali, 2020.

²⁷⁶ Interview with civil society actor 4, Bamako, Mali, 2020.

person who literally cuts the head off. It's not a neutral term like the perpetrator. It's basically like saying a monster. So it's very, very negative ... Its use is very problematic because if you look at the period from 1960 to today, of course, people who were victims at some point possibly have been perpetrators later."²⁷⁷ Other civil society actors defended the use of the term, pointing out that "[b]eheading is what exactly they do. Etymologically, the term is used to refer to those who cut heads off ... This is a bit strong, but it has been used a lot [in the official discourse]."²⁷⁸ A CVJR investigator reiterated the same point that the situation is so complex that "those who were victims yesterday have become 'executioners' today. And those who are 'executioners' today can also be victims. So, finally, there's no point in wanting to punish them."²⁷⁹

This narrative has been used by state actors to avoid accountability as the "criminal response, national and international, almost exclusively focuses on terrorism" while the WoT discourse is also used as "a big selling point at different international forums."²⁸⁰ Institutional narratives, including laws adopted, international agreements concluded with foreign governments, and principles of legal temporality and jurisdiction, on the other hand, limit the reach of criminal accountability measures. This has resulted in a hierarchy of offenders with "terrorists" or "executioners" at the top of the hierarchy, overshadowing the stories of grievances and marginalization that "started from the question of Azawad."²⁸¹ The

²⁷⁷ Interview with civil society actor 1, Bamako, Mali, 2020.

²⁷⁸ Interview with civil society actor 8, Bamako, Mali, 2020.

²⁷⁹ Interview with CVJR investigator, Bamako, Mali, 2020.

²⁸⁰ Interview with civil society actor 1, Bamako, Mali, 2020.

²⁸¹ Interview with CVJR employee, Bamako, Mali, 2020.

hierarchy of violence and perpetratorship is the product of the state power to define its own violence as legitimate (Asad 2010).

The ICC's victim-perpetrator paradigm, with its limited temporal jurisdiction, narrows down the space to address historical processes of subjugation and marginalization (Clarke 2019). In the case of Mali, the ICC limited its jurisdiction to crimes committed since January 2012, thereby, focusing on a relatively short period in the history of the Malian state. Further, in the Al Mahdi case, limitations imposed by evidentiary rules led to his prosecution solely for directing attacks against historic monuments and buildings and not violations against civilian populations. It remains to be seen how the Al Hassan Case, which is still at the trial stage, will pan out in the future. As mentioned previously, the ICC has not yet issued any indictments against state actors and is not expected to do so at least in the near future.

Furthermore, Mali has adopted a Counter-Terrorism Law on July 23, 2008,²⁸² that incorporates the offenses required in the international instruments against terrorism, such as the offenses related to civil aviation, vessels and fixed-platforms, dangerous materials, diplomatic agents, hostage-taking, financing of terrorism, and nuclear terrorism (UN 2009). As discussed above, the law has been used to hold "terrorism" suspects in detention for an indefinite period and with due process violations.²⁸³

International rules and customs regarding functional immunity also protect international actors from the legal process for acts they perform in their official capacity in the country of their operation. For instance, article 15 of the cooperation treaty concluded between Mali

²⁸² Law No. 08-025

²⁸³ Interview with lawyer and civil society actor, Bamako, Mali, 2020.

and France in 2014 explicitly states that “[t]he competent authorities of the State of origin shall exercise as a priority their right of jurisdiction in the event of infringements resulting from any act or negligence of a member of the staff carried out in the exercise of his official functions.”²⁸⁴ This has been translated into a de facto impunity for French forces in Mali.²⁸⁵

These institutional discourses limit the reach of TJ measures. As is evident in the case of Mali, they have further reinforced and perpetuated the WoT discourse by targeting those labeled as “terrorists” while letting state actors off the hook. This is not to deny the violence perpetrated by the armed groups, but the aim is to draw attention to the power relations embedded in the WoT discourse and its impact on selective justice in TJ processes. The WoT discourse has evolved over the years and it is implemented with variation across different countries and under different governments, however, by achieving the status of a dominant or background narrative, it has succeeded in imposing a monolithic securitized discourse on justice narratives.

IV. Conclusion

Although the circumstances that led to the adoption of TJ measures differ in Tunisia and Mali, following the 9/11 attacks, the WoT discourse in both countries turned into a dominant narrative that defines and sets the terms of debate on political violence and conflict. This has led to the securitization of the discourse on peacebuilding and TJ in these countries. In Mali, the slow progress of national TJ initiatives along with a controversial ICC ruling has led to a

²⁸⁴ The treaty of cooperation can be accessed here: <https://www.assemblee-nationale.fr/14/pdf/projets/pl3498-ai.pdf>

²⁸⁵ Interview with civil society actor 7, Bamako, Mali, 2020.

feeling of disenchantment with the whole process among the victims. As a civil society actor put it, victims generally feel that “justice is not for us, justice is for powerful and rich people.”²⁸⁶ Despite the presence of several international forces, the conflict is still ongoing in the northern and central regions of the country. To many, it seems that the priority for most international actors is to support the government and expand its power and control over the Malian territory. An unintended consequence of this has been a rise in violence against civilians committed by the Malian military forces as well as foreign forces that have been granted impunity for human rights violations. Two military coups within the span of nine months is another indicator that the approach to focus on strengthening military forces has backfired. The coup leader, Colonel Assimi Goita, was in fact trained by US forces aimed to counter extremist groups operating in the Sahel region (Gramer 2020). The coups have further complicated the political situation on the ground, with unofficial reports indicating that the military is trying to influence the CVJR’s work.

As in other French colonies, there is a long-lasting discourse on the identity of Mali as a *laïc* state, but it is undeniable that religion and religious actors play an important role in the lives of many Malians as well as in the politics of Mali. The uprisings in northern Mali, however, traditionally drew on a secular discourse on self-determination for the people of the Azawad. It was only at the beginning of the 21st century when Islamic rebel groups started putting forward a rather distinct discourse against state and foreign influence in the country. In response, Mali became one of the main sites of the WoT, leading to several counter-terrorism measures and the adoption of an expansive anti-terrorism law. The WoT discourse became

²⁸⁶ Interview with former MINUSMA officer, online, 2020.

a useful tool for the Malian and foreign forces to expand their military influence and foothold in the country. TJ initiatives were adopted in the aftermath of the 2012 rebellion as part of the Algiers Accord that entirely excluded non-signatory armed groups. The WoT discourse, however, led to the securitization of the TJ narratives. While the judicial system in the country is rather weak, international and national prosecution efforts have mostly focused on holding “jihadists” accountable, resulting in impunity for most other perpetrators facilitated by a 2019 reconciliation law.

The conflict landscape in Mali is very complicated, with multiple armed groups and foreign state forces active in the country alongside the Malian armed forces. Alliances and relations between different armed groups often fluctuate and change with the developments on the ground, and some “local rebel groups have transformed into terrorist groups.”²⁸⁷ The rise in intercommunal violence in central Mali has further complicated the situation. Despite these complexities, however, a simplified narrative dominates discussions about the conflict. This has resulted in a securitized approach to conflict resolution and peacebuilding which has also impacted the TJ process in the country. The demonization and dehumanization of certain groups as “monsters” and “executioners” sidesteps a discussion of how these groups came to be and what their grievances are. This is not to say that alternative narratives do not exist. In my discussions with Malian civil society actors, a more nuanced picture was revealed. The narratives they offered made a distinction between foreign fighters in the country and Malians who join armed groups for either economic reasons or to gain protection. They also pointed out how Malian and foreign forces are using the discourse

²⁸⁷ Interview with former MINUSMA officer, online, 2020.

against terrorism to avoid accountability and further isolate the northern region. Legal frameworks limit the possibility of holding foreign state forces accountable and the ICC has also avoided holding actors other than the Islamic rebel groups accountable, partly due to the arrangements between the Malian government and the ICC, and partly because it relies on the state's cooperation to investigate violations. The CVJR in Mali has not yet published its report and it remains to be seen how it tackles the question of "terror" and if it can change the justice narrative in the country, but it has faced several challenges in its long period of operation. As with any other truth commission, its powers are limited and it can only issue "recommendations, [and] the state will do what it hears."²⁸⁸

²⁸⁸ Interview with civil society actor 2, Bamako, Mali, 2020.

CHAPTER 6: DISCUSSION AND DIRECTIONS FOR PRAXIS AND FUTURE RESEARCH

I. Introduction

In PB and TJ, there is a tendency to group people based on their ethnic or religious identity, mainly because it would make analysis and discussion for both academics and policymakers easier and more convenient. There is a danger, however, in representing ethnic and religious groups as homogenous entities as it erases the complexity and diversity that exists among them as well as their grievances. Creating an understanding of the narrative landscape that exists surrounding these groups and its impact on political issues, including the question of TJ, is one way of uncovering how these groups make sense of their political and socio-economic situation and react accordingly. Understanding such groups only from sources such as the media or think-tank and government analyses reveals an image of the ideal victim and perpetrator in conflict and political violence situations. What is absent from these narratives is the long-lasting histories of marginalization, exploitation, and injustice that lead to struggle, dissent, violence, and conflict.

The dominant storylines about political violence and conflict in Tunisia and Mali are anchored by a religious discourse although in different ways. This highlights the importance of understanding the interplay between religious discourse and TJ in both countries. The stories elaborated by PB and TJ actors are, however, often in contradiction with the religious discourse used in the local communities in these societies. An examination of the power relations that dominate and police the narrative landscape sheds light on how master

narratives, such as the WoT discourse, render it difficult for narratives incongruous with them to emerge and propagate in TJ initiatives. Concepts such as “religious conflict,” “Islamic extremism,” “political Islam,” and “jihadist violence” are common frames for PB and TJ programs in Muslim-majority countries. A narrative lens and analysis of how these discourses generate exclusions or hide particular socio-political realities on the ground is an area that deserves particular attention. While the recent “local turn” in TJ has brought about attention to some of the local narratives and how they contradict and interact with transnational narratives, the cases of Tunisia and Mali illuminate the complexity of narrative dynamics constituting such processes and their tension with how people within and across communities relate to them.

Master narratives of violence and conflict grip political imagination and crowd out possible alternatives; stories that do not include vilification and dehumanization, stories that contradict the dominant narratives perpetuated by powerful international and domestic actors. This also impacts narratives of justice and how TJ actors navigate the narrative landscape in transitional contexts. TJ initiatives should go beyond the dominant narratives of violence propagated by domestic and international political actors to uncover the root causes of violence and the longer histories of marginalization, exclusion, and repression. The dominant narrative of the WoT uses local communities as scapegoats in narratives of “terror” and “terrorism” and focuses on how to discipline and police them. This in turn perpetuates cycles of violence. Further, the WoT discourse is often accompanied by an abundance of resources allocated to fighting “terrorism;” resources that can be used for the socio-economic development of the communities that are now fallen prey to countless “anti-terrorism” and “deradicalization” programs and projects. More importantly, the WoT

discourse leads to the securitization of certain communities as “usual suspects.” These are the same communities that are also victims of narrative violence in TJ and the broader political discourse.

As national TJ mechanisms are reliant on states for their resources and the implementation of their recommendations, it is only natural that they face obstacles and limitations in overcoming the dominant narratives propagated by state actors. International TJ mechanisms also often face restrictions as they are expected to work within the framework of international norms and discourses. Both forms of mechanisms are also reliant on donor states and the limitations imposed on them in using their funds. TJ actors, however, should prioritize local communities, their needs, their narratives, and their grievances. Locally-driven forms of justice can challenge dominant narratives of violence and conflict, such as the WoT narrative, and provide an alternative channel for local narratives and for going beyond the limitations of national initiatives. While local initiatives have the potential to empower the voice of local communities, their stories, demands, and grievances, research also shows that they can be exploited and used by governments in service of their interests.²⁸⁹ More importantly, in order to have an impact on states’ policies, local initiatives should have a channel to communicate with the state. The challenge, therefore, is twofold here: to get resources and push for the implementation of demands that in most cases also include regional development and socio-economic equality, local efforts highlighting local narratives should rely on the same actors that seek to subjugate and marginalize these local narratives.

²⁸⁹ See for example Branch (2014) and Iliff (2012).

This chapter concludes this dissertation with a focus on the implications of the findings for the praxis and future research in TJ. The first section discusses the importance of research findings for the praxis of TJ and how they can be used to guide future TJ initiatives, especially in Muslim-majority countries. The second section then reviews the limitations of this research project and offers avenues for further research. The last section concludes this chapter and the dissertation by reviewing some of the lessons learned from this research project and the experience of the Tunisian and Malian TJ initiatives.

II. Discussion of Findings and Their Relevance for Praxis

This dissertation develops a consolidated narrative approach to TJ and then draws on this approach to investigate the impact of the dominant narrative of the WoT on justice narratives in Tunisia and Mali. The narrative approach it develops first emphasizes that political actors, including political leaders and elites, use dominant narratives in service of their political objectives and interests. Second, it takes into account the role of public and institutional narratives, especially narratives of the rule of law in TJ, and their role in empowering and reinforcing the sway of dominant narratives on narratives of justice. Research shows that the WoT narrative has turned into a master narrative in the aftermath of the 9/11 attacks, defining political identities and relationships with and in Muslim-majority countries (Krebs and Lobasz 2007; Lustick 2006). As TJ is expanding to Muslim societies emerging from conflict and authoritarianism, there is a need to explore and understand the impact of the dominant narrative of the WoT on TJ initiatives in these countries.

This dissertation contributes to this understanding by examining the cases of TJ in Tunisia and Mali. While both countries share various commonalities, they also differ in the conditions that led to the adoption of TJ measures in each country. While Tunisia is an example of a post-authoritarian TJ experience, TJ was adopted in Mali in the context of an ongoing conflict with foreign military intervention. The extent of the activities of Islamic armed groups also differs across the two countries. However, the recent turn of events in Tunisia and Mali is tied to the politics and events in the broader region of North Africa and Sahel. Both countries are Muslim-majority countries, with the majority of their populations adhering to the Maliki school of Sunni Islam. Both were also under French control until their independence in the 1950s and 1960s. Further, they have been impacted by the rise of Islamic movements in the region and have been the sites of foreign intervention to counter the “jihadist” threat in different forms, for example, by being part of the TSCTP. TJ was adopted in both countries in the context of the expansion of TJ to Muslim-majority countries following the events impacting the region in the 2010s. More importantly, lessons drawn from their experiences can provide important guidelines for future TJ initiatives in other Muslim-majority countries tackling the same issues, such as Syria and Yemen.

I find that the hegemonic narrative of the WoT is propagated in the context of TJ in these countries, leading to a dominant securitized approach. In the case of Tunisia and Mali, this has led to the creation of hierarchies within the categories of “victims” and “perpetrators.” In Tunisia, this was mainly reflected in discourses regarding the nature of the victimhood of “Islamists” and whether they deserve the very title of “victims.” In Mali, the WoT narrative was anchored in discourses surrounding the nature of violence and perpetratorship of Islamic groups in the north. In both countries, the encapsulation of narratives of justice by a

securitized approach and the hierarchical construction of the categories of “victims” and “perpetrators,” led to the sidelining of narratives of longstanding marginalization and socio-economic injustice and the role of state and international actors and their accountability for fostering violence and “terrorism.”

My research also shows general fatigue with the TJ process in both countries, what I call “TJ fatigue.” The passage of time along with the lack of progress has caused disappointment and disillusionment among the victims and the populations in these countries. In Tunisia, ten years have passed since the revolution and despite all the talks and the spotlight the IVD got in the country, the results have been far from ideal. As a civil society actor and a former IVD staff asked, “[b]ut have the [IVD] recommendations really been implemented? Are they really, for example, building schools [in victim regions]?”²⁹⁰ Several other interviewees also pointed out that Tunisia now faces “more important” problems and “people don’t really care about transitional justice anymore.”²⁹¹ Similar comments were made in Mali as well where the ongoing conflict makes the situation even more complicated. Nine years after the start of the rebellion, Mali is nowhere close to a state of peace and stability. TJ in the country has been operating with limitations due to the security challenges associated with performing in an ongoing conflict situation as well as the state’s lack of capacity and presence and control in several regions in the country. As a former UN officer in Mali pointed out about the lengthy TJ process in the country, “it took them more than two years ... to help [people] understand the process of transitional justice.” She further elaborated that TJ was largely unknown to the people in Mali in contrast to “traditional justice” which is very well known, “so many

²⁹⁰ Interview with former IVD psychologist, online, 2021.

²⁹¹ Interview with lawyer, La Goulette, Tunisia, 2018.

people were thinking of traditional justice and there was some confusion between traditional justice and transitional justice because they already know traditional justice.”²⁹²

Transnational networks of Islamic rebel groups have impacted a wide range of countries from Afghanistan in Asia to Mozambique in Africa although the context and reasons leading to violence in each country differ. Given the emphasis on experiential learning in TJ efforts and the frequent transfers of TJ experts from one context to the other, the TJ experiences in Tunisia and Mali and their success and limitations can provide important guidelines for TJ efforts in other sites of the WoT. Although it might be difficult for TJ actors working in different and in some cases unsafe conditions and while they have a huge chunk of responsibilities on their shoulders to go beyond and contest the dominant narratives of violence, the hegemonic narratives must be interrogated and questioned. In line with the call of several other scholars, I argue that this requires TJ actors to pay attention to the power relations underlying narratives of TJ in transitional contexts. The erasures, exclusions, and marginalizations that are embedded in TJ discourses should be uncovered and called out. While the use of violence by armed groups against civilians should be condemned and perpetrators should be held accountable, it should not be used by governments as a justification to commit human rights violations and sometimes massacres among populations that are considered to be implicated in or supportive of armed groups. Further, TJ actors should pay attention to the ways in which governments use the discourse on the WoT to deflect responsibility, avoid accountability and repress any opposition or voice of

²⁹² Interview with former MINUSMA officer, online, 2020.

grievance that calls for a radical and fundamental change in how political and economic power is structured and distributed in the society.

III. Limitations and Avenues for Further Research

Limitations

As is the case with any research project, this project is partial and focuses on a particular aspect of political violence and conflict and recovery from violence. In line with the narrative approach's call to complexity, it is necessary to consider the limitations in the contours of the narrative landscape of this research. One limitation of this research is that I arrived at a particular moment in the TJ process in each country. The TJ efforts in neither country have completely come to an end at the time of writing.²⁹³ In Tunisia, the IVD published its final report at the beginning of 2020, but the domestic trials continue and no official plan has been offered for the comprehensive implementation of the IVD's recommendations so far. In Mali, the CVJR is continuing its work which has been delayed due to the coronavirus pandemic. Trials at the ICC as well as on the national level are also still ongoing. In both countries, I missed the initial dynamics of TJ when it was being discussed and designed. In Tunisia, my fieldwork was close to the time the IVD was planning to release its report. This provided me with ample opportunities to attend conferences and workshops on TJ. Moreover, I could observe the public's reactions to the TJ process in the country and engage in discussions with

²⁹³ We should also ask whether TJ ever ends in conflict and political violence contexts and if so, when. Although the start date of TJ initiatives in countries is to some extent clear as it often, but not always, coincides with some sort of a "transition," its end date is less clear. For most countries, TJ is a continuing feature of post-transition politics. It, however, gets more attention by the media and the international community when it is being initiated. The question of the TJ's end date was raised in a conference where I was presenting my research and a participant tied it to the question of how long the donors are willing to provide resources and money for TJ initiatives.

Tunisian people about TJ. In Mali, I arrived in Bamako after the CVJR's first public hearing and when the Commission was planning and getting ready for more public hearing sessions.

The coronavirus pandemic obviously impacted the schedule for public hearing sessions as well as my plans for further fieldwork in both Mali and Tunisia. I was advised to leave Mali when the government adopted a decision to close the borders and I got on the last flight out to Paris. As I was not able to conduct further field research in either country, I obtained UCI IRB's approval to conduct interviews online. This obviously limited the range of actors I had access to, but it also provided me with an opportunity to contact actors in areas in each country that I was not able to travel to. For instance, I established contacts with TJ actors in northern Mali, mainly in Kidal. The pandemic also originally led to a halt in the TJ process in Mali while in Tunisia, the exacerbation of socio-economic issues as a result of the pandemic led to widespread demonstrations across the country which further deprioritized TJ.

The story I recount here, therefore, is incomplete. As is the case with most research projects on contemporary and ongoing political issues, it remains to be seen how TJ will unfold in each country and further research is needed to provide an updated narrative. I hope that although incomplete, my dissertation provides a much-needed caution about the power relations embedded in dominant discourses and how they impact TJ politics. If TJ is to bring about positive changes and prevent further deterioration of trust and marginalization in communities, it must be inclusive of all narratives and stories and get to the root causes of inequality and violence in TJ contexts. Reifying and reinforcing existing narratives that portray specific groups and communities as the source of "problem" and excluding their stories causes narrative violence and will further lead to violence.

Avenues for Future Research

TJ has been a relatively new process in Muslim-majority countries, but it is rapidly expanding to different countries in the Muslim world. Many of these countries are also on the WoT radar and among sites of foreign military presence and bases to supposedly fight and counter the spread of “jihadism” and “terrorism.” Military intervention, however, has proved to be largely ineffective in rooting out the issue of terrorism and it has instead caused further suffering on the part of civilian populations in these countries. Needless to say that the fight against “terrorism” has also been very selective, with allegations of Western countries’ support of “terrorist” groups in various countries, including in Syria to topple the regime of Bashar Assad and counter the spread of Iran’s influence in the region, still circulating and vying for attention. The US admission and acknowledgment of having supported Mujahedin in Afghanistan during the Cold War further highlight the necessity to take into account these allegations and their impact on the lives of people.

With the recent attention to TJ worldwide, TJ mechanisms provide a unique opportunity to discuss, challenge, and take on the power relations that enable foreign intervention and human rights violations in the name of the WoT. TJ has the potential to open the political space and can also be an appropriate channel through which issues of marginalization, exclusion, and the root causes of violence and conflict more broadly can be debated and shed light on. Truth commissions established within the larger TJ structure can be invaluable channels to give voice to those who normally would not get a say in politics and might resort to different forms of violence as a means of political communication. TJ, however, has had

limited success in broadening the political space to include marginalized communities and their voices so far.

Further research is needed to explore how TJ responds to increasing demands for truth revelation and accountability in societies affected by “terrorism.” The discourse emerging in these contexts is undeniably impacted by transnational and regional discourses on human rights and TJ, and the experience of Tunisia and Mali is already guiding several other emerging TJ initiatives in places as diverse as Burkina Faso and Syria. A number of questions deserve particular attention in future research:

1. Adoption of TJ measures: How do TJ efforts vary in different countries that are among the sites of the WoT? How do we define and identify these countries? What factors drive or prevent the adoption of different TJ mechanisms in these countries? Are certain mechanisms more suitable given the particularities of the WoT contexts? How do international, national, and local spheres of justice interact in the broader TJ structure?
2. Implementation of TJ measures: Given the seemingly unending WoT waged on the territories of Muslim-majority countries as well as in Western societies, how can national and local TJ initiatives adapt their efforts to counteract the dominance of the WoT discourse? If TJ is to be a truly participatory and inclusive initiative, how can it incorporate the narratives of those deemed to be “terrorists”? How can it go beyond these categories and instead focus on circumstances that lead to their material and linguistic constructions?

3. In the aftermath of TJ measures: My research also shows a “TJ fatigue” in societies emerging from conflict and political violence. In both Tunisia and Mali, there was an exuberance at the beginning of TJ initiatives, with the rush of TJ actors, funds, and media to both contexts to cover the emerging TJ efforts. However, given the amount of time that it takes to set up TJ mechanisms and for these mechanisms to complete their work, there is a sense of disenchantment among the populations toward and after the end of their work. What are the reasons leading to TJ fatigue and disillusionment? What role do these “emotions” play in the broader politics of post-conflict and post-transition societies? How does the WoT discourse impact the implementation of recommendations coming out of TJ mechanisms and their effectiveness?

IV. Conclusion

This dissertation examines narrative dynamics in the TJ processes in Tunisia and Mali to understand how the transnational dominant discourse on the WoT impacts TJ initiatives in these countries. By uncovering and exploring the narratives of justice used by political and TJ actors, it shows how the dominant narrative of the WoT grips the narratives of conflict and political violence, making more nuanced and complicated stories of the violence and conflict irrelevant. The cases of Tunisia and Mali provide a lens into the dominance of a securitized approach in WoT contexts which restricts the scope of TJ, rendering longer stories of violence and marginalization outside the peripheries of TJ. These cases also disclose narrative complexity and contention, revealing that narrative simplification and coherence can be used by political elites to further their own agenda. One impact of this is the erasure

of alternative storylines that contradict the simple narratives embedded in the WoT discourse.

Both Tunisia and Mali have relied on international law and TJ mechanisms in order to address the repercussions of conflict and political violence, but these mechanisms have been to a large extent insufficient for responding to the demands and grievances of the local populations. In Tunisia, although socio-economic issues were included in the TJ mandate and despite the IVD's attempts to tackle corruption and economic crimes, the politicization of the TJ process and the IVD's limited resources and powers restricted its ability to address the structural issues in the country. The long history of vilification and marginalization of "Islamists" under the previous two governments led to the emergence of a schism among two poles in post-revolutionary Tunisia, known as "Islamists" versus "secularists." Although this binary fails to provide a complete picture of Tunisian politics and it can be said that Tunisia is transitioning from and moving away from this ideological division, this discourse dominated the discussion surrounding TJ and its implementation in the country. As several scholars have pointed out, the TJ process in Tunisia was highly politicized (Robins 2021; van der Merwe and Moyo 2020). Its politicization,²⁹⁴ centering on the Islamist-secularist binary, undermined the legitimacy of the TJ efforts in the country and led to the marginalization of socio-economic issues and structural injustice that were initially included in the TJ mandate. The Islamism discourse itself was rooted in decades of marginalization and vilification of Islamists, a trend that was further reinforced and reinvigorated following the launch of the global WoT. In post-revolutionary Tunisia, this discourse was used by elements of the *ancien*

²⁹⁴ For a definition of politicization, see page 154.

régime to have a come back to politics. Ennahda as the major Islamist political party also eventually acquiesced to the very same discourse that was used to repress it under Bourguiba and Ben Ali in order to ensure its own political survival. Institutional narratives of the rule of law, including an anti-terrorism law adopted in 2015, as well as the limited reach of TJ initiatives further constricted the space available to dislodge the dominant narrative of TJ in the country.

In the aftermath of the 2012 rebellion, Mali has relied on international and national TJ mechanisms, including a national truth commission and national trials as well as trials by the ICC, to address political violence and human rights violations committed in the country. The approach it has pursued, however, has been met with challenges and resistance. Institutional narratives of TJ have produced “victims” and “perpetrators” as distinct categories while ignoring the interaction and overlap between these two groups and people’s multiple subjectivities. The implementation of TJ in the midst of an ongoing conflict in Mali and the presence of international forces on the Malian territory to fight the “terrorists” continue to threaten the Malians’ lives and entails vulnerability and precarity for civilians. The precarity and instability that it produces lead to fear and a feeling of lack of agency. Loosening the grip of master narratives or making them less rigid and cohesive would open up possibilities for more innovative solutions that can get to the heart of marginalization and exclusion that centers a violent response. TJ needs to create possibilities for destabilizing dominant narratives of violence and bring about new solutions that dislodge the notions of victimhood and perpetratorship.

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