

## Transforming Tunisia

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# **Transforming Tunisia: Transitional Justice and Internet Governance in a Post- Revolutionary Society**

**By Christalla Yakinthou and Sky Croeser<sup>1 2</sup>**

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<sup>2</sup> The authors would like to thank Habib Nassar, Anne Massagee, Kelli Muddell, Salwa El Gantri Omran, Reem El Gantri, Steve McCauley, and anonymous and named interviewees for sharing their time and knowledge with us. We especially appreciate the comments on the final draft received from phoewass and the comments received by the reviewers, including from Stefan Wolff and Nick Wheeler, all of which have made this a much stronger piece of work. We remain grateful.

## **Transforming transitional justice: lessons from Tunisia's Internet reform process**

### **Abstract:**

In this article we argue that examining efforts at Internet reform in Tunisia holds important lessons for transitional justice theory and practice, as well as for the way the field defines itself in a space where technology plays an important role facilitating both repression and transitions. Given the impact of the Tunisian revolution in inspiring the Arab uprisings, as well as those elsewhere, a close examination of the Tunisian revolution offers many lessons in understanding the transition away from authoritarian government: here, we focus specifically on what the Tunisian process of Internet reform can tell us about the increasingly-institutionalised implementation of the transitional justice framework. This process is particularly notable because it has been informed by transitional justice goals and discourse while remaining outside of the formal mechanisms implemented in the wake of the revolution. This paper sheds light on the more flexible and responsive ways in which local institutions and activists might approach transition, including through attempts to memorialise the impacts of a regime or conflict; build trust; incorporate diverse voices in new partnerships; and manage the international dimensions of post-conflict reconstruction. Finally, given the central role of the Internet both as a tool for repression and as a site of resistance and democratic engagement, our findings indicate the importance of future work considering how transitional justice can begin addressing Internet governance as a vital aspect of conflict resolution and rebuilding.

**Keywords:** Internet governance, transitional justice, Tunisia, censorship, surveillance.

## Section One:

### Introduction

As institutional practice around transitional justice develops, there is a growing distance between the roots of transitional justice as a process grounded in local conditions, and increasingly uniform applications of a 'toolkit' based on comparative experiences. This has become an important theme both in the academic literature, and for practitioners.<sup>3</sup> In light of this, one of the key gaps in the literature is work focusing on balancing the need for transferable lessons with encouraging organic transitional justice efforts grounded in local experience. As transitional justice is primarily concerned with healing and transforming societies that have experienced conflict/repression, it is vital that such processes are grounded and localised.

In this article, we argue that Internet reform in Tunisia, and specifically the experience of the *Agence Tunisienne d'Internet*, Tunisian Internet Agency (ATI), provides us with one such opportunity to examine the transitional justice framework. The ousting of Zine El Abidine Ben Ali's dictatorship in Tunisia in January 2011 after a long campaign of civil resistance was the forerunner of the Arab Uprisings. The Internet received particular attention in journalistic and academic coverage, with numerous sources crediting online organising as key to overthrowing the dictatorship.<sup>4</sup> As Tunisia rebuilds, a significant part of the process involves unpacking the legacy of Ben Ali's repressive apparatus. The ATI was the Ben Ali regime's sole Internet service provider and the technical arm of the regime's surveillance and censorship machine. While it is only one part of a complex system of

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<sup>3</sup> See Paige Arthur, "How 'Transitions' Reshaped Human Rights: A Conceptual History of Transitional Justice," *Human Rights Quarterly* 31, no. 2 (2009): 321–67; Habib Nassar, "Transitional justice in the Wake of the Arab Uprisings: Between Complexity and Standardisation," in *Transitional justice and the Arab Spring*, ed. Kirsten J. Fisher and Robert Stewart (Routledge, 2014); Kimberly Theidon, "Editorial Note," *International Journal of Transitional Justice* 3, no. 3 (November 1, 2009): 295–300, doi:10.1093/ijtj/ijp022.

<sup>4</sup> See Mike Elkin, "Exclusive: Tunisia Internet Chief Gives Inside Look at Cyber Uprising," *Wired*, January 28, 2011, <http://www.wired.com/2011/01/as-egypt-tightens-its-internet-grip-tunisia-seeks-to-open-up/>; Anita Breuer and Jacob Groshek, *Online Media and Offline Empowerment in Democratic Transition: Linking Forms of Internet Use with Political Attitudes and Behaviors in Post-Rebellion Tunisia*, SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, October 1, 2012), <http://papers.ssrn.com/abstract=2180788>.

Internet governance composed of overlapping legal, institutional, and architectural structures,<sup>5</sup> it has been a key driver of reform and is therefore the focus of this article.

Although the processes surrounding Internet governance are taking place at a remove from transitional justice reforms, the ATI has had to think about the very same issues that characterise transitional justice debates, including the extent to which past structures of abuse are revealed and discussed; the locus of responsibility for the abuse and the possibilities of punishment; debates around transparency and reform; the protection mechanisms against return to rights-violating systems; vetting; new uses for contested sites that facilitated abuse by the former regime; and whether space should be left for memorialisation. The ATI's approach to these issues has been informed by, but not officially a part of, the transitional justice process, and therefore provides an opportunity to explore innovative local approaches to transitional justice. In examining work by the ATI and others in the area, we make a vital contribution to rethinking the transitional justice framework both within academia and in practice.

A close examination of the Tunisian revolution and transition has the potential to offer many lessons in understanding transitions away from authoritarian government. Here, we focus specifically on what the Tunisian process of revising Internet governance can tell us about the increasingly-institutionalised implementation of the transitional justice framework. This allows us to gain a better understanding of how processes of reform and rebuilding can work when informed by the transitional justice discourse, but not contained within the theory's formal mechanisms. This case study is particularly important in light of the growing critiques of transitional justice; especially those that argue the field as it stands has a limited capacity to innovatively incorporate new challenges, that it largely

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<sup>5</sup> For more detail, see Alexis Artaud de la Ferrière and Narseo Vallina-Rodriguez. "The Scissors and the Magnifying Glass: Internet Governance in the Transitional Tunisian Context." *The Journal of North African Studies* 19 (5) (2014): 639–55.

perpetuates structural inequalities,<sup>6</sup> dehumanises victims,<sup>7</sup> lacks internal cohesion around its core goals,<sup>8</sup> and pursues global legal principles that may suffocate local efforts at societal transformation.<sup>9</sup>

This work therefore examines Internet governance in Tunisia as an aspect of broader conflict transformation efforts, positioning the Internet not just as a communicative tool but also as a symbolic site of struggle, which serves as a focus for new discussions around justice, reform, and political inclusion; Internet reform overlaps significantly with core transitional justice principles. The ATI's efforts impact society's ability to communicate openly, and to organise and create networks as active citizens outside of formal political frameworks. This perspective brings something new to the literature, emphasising how Internet governance in Tunisia is engaging with previously under-developed aspects of transition.

This case study is particularly relevant as a bellwether for the new generation of transitions. In Tunisia, the discussion about how change should look is taking place not just in the constitutional committees and between political parties, which are highly polarised, but also on the streets, online, in the expanding civil society sector, and within institutions that were formerly vehicles of the Ben Ali regime. Not all of this, however, is being filtered into the collection of official initiatives looking at the

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<sup>6</sup> Piers Pigou, "Special Feature: IJTJ Interviews," *International Journal of Transitional Justice* 5, no. 3 (November 1, 2011): 504–18, doi:10.1093/ijtj/ijr024.

<sup>7</sup> Sherene H. Razack, "Stealing the Pain of Others: Reflections on Canadian Humanitarian Responses," *Review of Education, Pedagogy, and Cultural Studies* 29, no. 4 (July 5, 2007): 375–94, doi:10.1080/10714410701454198; Tshepo Madlingozi, "On Transitional Justice Entrepreneurs and the Production of Victims," *Journal of Human Rights Practice* 2, no. 2 (July 1, 2010): 211, doi:10.1093/jhuman/huq005.

<sup>8</sup> Bronwyn Anne Leebaw, "The Irreconcilable Goals of Transitional Justice," *Human Rights Quarterly* 30, no. 1 (2008): 95–118, doi:10.1353/hrq.2008.0014; Kieran McEvoy, "Beyond Legalism: Towards a Thicker Understanding of Transitional justice," *Journal of Law and Society* 34, no. 4 (December 1, 2007): 411–40, doi:10.1111/j.1467-6478.2007.00399.x;

<sup>9</sup> Hugo van der Merwe, "Transitions in the Middle East and North Africa: new trajectories and challenges for transitional justice?". In *Transitional Justice and the Arab Spring*, edited by Kirsten J. Fisher and Robert Stewart. Routledge, 2014; Godfrey M. Musila, "Options for Transitional Justice in Kenya: Autonomy and the Challenge of External Prescriptions," *International Journal of Transitional Justice* 3, no. 3 (November 1, 2009): 445–64, doi:10.1093/ijtj/ijp018; Jaya Ramji-Nogales, "Designing Bespoke Transitional justice : A Pluralist Process Approach," *Michigan Journal of International Law* 32 (2011 2010): 1; Eric Stover, Hanny Megally, and Hania Mufti, "Bremer's 'Gordian Knot': Transitional justice and the US Occupation of Iraq," *Human Rights Quarterly* 27, no. 3 (2005): 830–57, doi:10.1353/hrq.2005.0044.

legacy of violence of previous regimes that are gathering momentum under the rubric of transitional justice, but whose grassroots legitimacy is also being challenged.<sup>10</sup>

While we do not argue that Internet governance should be central to transitional justice efforts, there are grounds for considering the ways Internet reform and transitional justice processes overlap, and might mutually inform each other. In this article we argue that examining one organisation's efforts at Internet reform in Tunisia holds important lessons for transitional justice theory and practice, as well as for the way the field defines itself in a space where technology plays an important role facilitating both repression and transitions.

### **Methodology**

This article seeks to understand what the Tunisian process of revising Internet governance can tell us about the increasingly institutionalised implementation of the transitional justice framework. While the work is using the case of Tunisia to re-think transitional justice as a theoretical and empirical framework, it is not testing a hypothesis, but rather exploring a question. It therefore situates itself within the pragmatic social sciences approach, using mixed methods to arrive at its conclusion. The primary framework was inductive and the purpose of the research exploratory; that is, we were using the case study to reflect back on both the existing theory and practice of transitional justice. A strong feature of this approach is a grounded methodology led by the concerns of practitioners working in the field, rather than by theoretical imperatives. This article draws together a deep engagement with the field of transitional justice, including both the academic literature and the practice associated with organisations such as the International Center for Transitional Justice (ICTJ),<sup>11</sup> with qualitative critical discourse analysis, and qualitative, semi-structured interviews carried out in Tunisia.

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<sup>10</sup> See for example Olfa Belhassine, 'Tunisia Transitional Justice Unit Focuses on Victims', *allAfrica*, July 27, 2015 <http://allafrica.com/stories/201507281275.html>

<sup>11</sup> Yakinthou was the country manager of ICTJ's Cyprus office, and has also managed components of ICTJ's Lebanon programming as well as consulting on other transitional justice programming both for ICTJ and other initiatives.

By grounding this reflection on transitional justice as an academic theory and as a body of practice in the experience of Tunisians negotiating the transformation of Internet governance, the paper allows a better understanding of how transitional justice can meet the challenges it faces, and which have been outlined above. This case study was chosen because Tunisia has frequently been cited as best practice for current transitional justice work.<sup>12</sup> It is a process that has had five years to mature, giving some opportunity for transitional justice mechanisms to take shape. At the time research was undertaken, Tunisia was the only case in the early enough stages for us to understand how perceptions of transitional justice and its importance to reform are developing in civil society and government structures *during an active transition*, and how an administrative body which *has* reformed understands itself in relation to transitional justice processes.

Over two weeks in March and April 2013, a crucial period in which the transitional justice process was still very much under way, fifteen in-depth, semi-structured interviews were carried out with activists and policymakers in Tunisia. These interviews were targeted at building a complex picture of different perspectives on the transitional justice process, and on Internet governance in the post-revolution period. Interviewees included people who took part in implementing censorship and surveillance under the Ben Ali regime, Internet freedoms activists, members of transitional justice-specific Tunisian and international non-governmental organisations, and policymakers within the current Tunisian government. This range of participants allowed us to understand the transitional justice process both from within, and from the perspective of outsiders who were more involved in reconstructing Internet governance, and who did not see their work as part of the transitional justice process. A purposive sampling strategy was used for those involved in the transitional justice process, and the first author's access to the transitional justice community was used to draw up an initial interviewee lists. Some informants, however, were part of hidden populations and so we also made

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<sup>12</sup> Luca Urech, "Challenging History: The Power of Transitional Justice in Tunisia", *Al Nakhlah*, June 10, 2014; David Tolbert, " 'Tunisian Spring' Continues, But Challenges Remain", *The World Post*, August 8, 2015; Ali Anouzla, "Tunisia's Transition", *Al Arabya*, November 6, 2014.



use of snowball sampling methods. Two sets of interview guides were developed, one for transitional justice-related actors and another for Internet governance and social media activists. In each case, some questions were adapted to the expertise of the informant. Particular key questions about the transitional justice process, how interviewees came to know about transitional justice, and its relation to Internet governance remained through every interview, as a means of seeking consistent themes.

All interviewees were offered the option of anonymous participation, and in these cases further attempts have been made to ensure that participants are not identifiable through details of their employment or lives. While this is vital to ethical research, some participants, particularly activists, have compelling reasons to prefer being identified by name, or by a well-known pseudonym. If we are to take seriously the injunctions to treat activists as experts in their own right, and co-producers of knowledge,<sup>13</sup> we also must acknowledge that at times activists will value the visibility and acknowledgement of their work that comes with real-name or pseudonymous participation. Activists' decisions to seek visibility for their work is also, at times, informed by the potential protection afforded by international attention, as was seen in the case of efforts to free Egyptian blogger Alaa Abdel Fatah.<sup>14</sup> A commitment to ethical research processes and respect for participants' knowledge and autonomy must also include leaving room for participants' informed decisions to balance potential harms and benefits of anonymity.<sup>15</sup>

This research has obvious limitations. First, it is a single case study with an individual organisation as the primary unit of analysis. Ideally the findings of this research would be tested against other case studies in a larger comparative study, across longer time periods. Second, we

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<sup>13</sup> Graeme Chesters and Ian Welsh, "Complexity and Social Movement(s)," *Theory, Culture & Society* 22, no. 5 (2005): 145.

<sup>14</sup> Mostafa Mohie and Manal Hassan, "Get the Facts: The Case of Jailed Egyptian Activist Alaa Abd El Fattah," *Global Voices Advocacy*, June 13, 2014, <http://advocacy.globalvoicesonline.org/2014/06/13/get-the-facts-the-case-of-jailed-egyptian-activist-alaa-abd-el-fattah/>; Jillian C. York, "Good News: Alaa Abd El Fattah Freed On Bail," *Electronic Frontier Foundation*, September 15, 2014, <https://www.eff.org/deeplinks/2014/09/good-news-alaa-abd-el-fattah-freed-bail>.

<sup>15</sup> Research was carried out in line with the Helsinki Declaration of 1975 (2000), and was approved by the Curtin University Human Research Ethics Committee, ID: 4427, 19 March 2013.

acknowledge that as an exploratory work that expands the discussion of transitional justice to a new area, we have limited space for deep theoretical reflection. We focus, rather, on drawing together empirical material to highlight innovations to the transitional justice framework that would benefit from more comprehensive elaboration in future publications.

### **Outline**

Section Two sets out our case study, outlining the transitional justice framework in Tunisia and information controls (including Internet censorship and surveillance) in Tunisia under Ben Ali. This section highlights the ways in which the legacy of information controls (and therefore also Internet reform processes) overlap with broader transitional justice concerns, in Tunisia and elsewhere. Section Three holds a deeper analysis of our findings, including the ways activists and institutional actors in Tunisia have addressed national and international legacies of information controls and attempted to build new structures for Internet reform. Finally, the conclusion focuses on how these findings might translate into broader contributions to the discussion of three key criticisms of the transitional justice framework. Firstly, that it is inflexible and does not respond effectively to new experiences and needs; secondly, that more attention must be paid to structural inequalities between transitional justice practitioners/experts and local communities; and thirdly, that it fails to address international complicity in human rights abuses.

### **Section Two**

#### **Through the Looking Glass: Internet Governance and the Transitional Justice Framework**

Transitional justice is a field that has emerged over the last roughly three decades of human rights practice. Over the first decade of its development, there was no uniform approach to addressing

legacies of state-sanctioned violence.<sup>16</sup> However, the last period has seen a move towards the standardisation of approaches across contexts, particularly as it becomes part of the international community's post-conflict agenda. The establishment of transitional justice institutions like the ICTJ in 2001 (and others subsequently), the publication of the UN Secretary-General's key 2004 report on transitional justice ('The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies'), and the 2012 establishment of a UN Special Rapporteurship on the promotion of truth, justice, reparation and guarantees of non-recurrence have played a significant role in its entrenchment as an area of both practice and study. The latter two have formally brought the field into the UN system.

Transitional justice can be defined as a series of judicial and non-judicial efforts to overcome legacies of significant human rights abuses. Though it is rooted in principles including the rights to truth, justice, and non-repetition, at its most conservative it is articulated, especially by the ICTJ and the UN, as a collection of "mechanisms" to address these legacies. These centre on criminal prosecutions, truth commissions, reparations programmes, and institutional reforms.<sup>17</sup> While there are a number of interpretations of transitional justice that challenge this framing,<sup>18</sup> they will be discussed in Section Three. We use this particular understanding here because it is these actors that are setting agendas and guiding transitional justice programming in Tunisia.

Internet governance is not considered part of the transitional justice framework. Academic and policy analysis of transitional justice barely even mentions the Internet, and certainly does not provide in-depth examination of the place of Internet governance within the transitional justice

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<sup>16</sup> Paige Arthur, "How 'Transitions' Reshaped Human Rights: A Conceptual History of Transitional Justice,"

<sup>17</sup> See ICTJ 'What is Transitional Justice', <https://www.ictj.org/about/transitional-justice>; 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General', *United Nations Security Council Document S/2004/616* section III-8.

<sup>18</sup> For a summary, see Hugo van der Merwe's concluding chapter in a recent work on transitional justice in MENA. Hugo van der Merwe, 'Transitions in the Middle East and North Africa: new trajectories and challenges for transitional justice?'

framework. This is not surprising, given that the framework's development preceded the widespread use of the Internet.

However, the literature and practice of transitional justice does touch on key issues related to Internet governance. For example, the transitional justice literature addresses the need to allow avenues for citizens to make their concerns heard and question authority;<sup>19</sup> to balance lustration law with the right to political expression;<sup>20</sup> and more generally to build a robust democracy and an engaged citizenry, which is assumed to include a healthy media environment as a 'fourth pillar' of democracy.<sup>21</sup> While some authors and practitioners are addressing the role of the Internet in democratic reconstruction,<sup>22</sup> this is not happening within the transitional justice framework.

### **The Tunisian Transitional Justice Landscape and Emerging Critiques**

Although the Tunisian transition has been the face of the new generation of transitional justice and of the MENA revolutions, it has also been challenged by a variety of push and pull factors for and against reform. While the country is moving towards the implementation of a new constitution it also, in November 2014, elected a president with strong links to the old regime.<sup>23</sup> This may change the landscape of the transition and has implications for transitional justice efforts.<sup>24</sup> At the same time, two 2015 terrorist attacks purportedly by Daesh-affiliates have negatively impacted laws around a number

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<sup>19</sup> Aneta Wierzynski, "Consolidating Democracy through Transitional justice : Rwanda's Gacaca Courts," *New York University Law Review* 79 (2004): 1934.

<sup>20</sup> Roman David, "Transitional Injustice? Criteria for Conformity of Lustration to the Right to Political Expression," *Europe-Asia Studies* 56, no. 6 (2004): 789–812.

<sup>21</sup> Rupert Skilbeck, "Building the Fourth Pillar: Defence Rights at the Special Court for Sierra Leone," *Essex Human Rights Review* 1, no. 1 (2004): 66–86.

<sup>22</sup> Anita Breuer and Jacob Groshek, *Online Media and Offline Empowerment in Democratic Transition: Linking Forms of Internet Use with Political Attitudes and Behaviors in Post-Rebellion Tunisia*, SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, October 1, 2012).

<sup>23</sup> 'Essebsi wins Tunisia presidential vote', *Al Jazeera*, 23 December 2014.

<sup>24</sup> In the October 2014 parliamentary elections, the secularist party Nidaa Tounes won the majority of seats. The party's head, veteran politician Beji Caid Essebsi, won the subsequent presidential elections. There are considerable implications for the transitional justice landscape in Tunisia, as Caid Essebsi was prime minister under Habib Bourguiba, Ben Ali's predecessor. This has most clear implications for the Truth and Dignity Commission (discussed in this paper), as the TDC's mandate includes human rights violations committed under the Bourguiba period, and Caid Essebsi has already made comments about repealing aspects of the transitional justice law. For indicative political analysis, see Rim El-Gantri, "Transitional Justice in Tunisia: The Implications of Political Change", *Insight on Conflict*, 5 May 2015.

of civil rights for citizens.<sup>25</sup> There is a perception that the government is quietly undermining freedom of expression laws, and that there is a return of censorship and surveillance through agencies that have no independent oversight. There are also concerns about the lack of real reform in the security sector and judiciary, and ongoing police violence.<sup>26</sup>

While all this happens, a wide variety of actors previously excluded from political processes are also starting to be involved in them, as well as in reform efforts. In this tense climate, the revolution's vanguard, and its watchdog, has been and continues to be civil society and Internet activists, including critical voices linked to independent media online. This makes the nexus between Internet reform, via the work of the ATI, and transitional justice mechanisms, important to watch. Where mainstream media is largely silent and owned by a shrinking group of key political actors, bloggers have continuously forced issues into public consciousness (see, for example, Smadhi's<sup>27</sup> coverage of the court case against blogger Yassine Ayari on *Tunisia Live* and Guerfali's<sup>28</sup> coverage of protections for free speech online in the Tunisian Constitution on *Nawaat*). It is fitting, then, that the one area that underwent constant and steady reform to general widespread satisfaction in the early days after the fall of Ben Ali was Internet governance.

The ATI's approach to reform has been inclusive, creative, and almost entirely off the radar of the transitional justice process. Its experiences hold relevant lessons, particularly in the broader context of a visible tension in both the literature and practice between the need for transition

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<sup>25</sup> Eileen Byrne, "Tunisia's President Declares State of Emergency Following Terrorist Attack", *The Guardian*, July 4 2015; Vanessa Szakal, "Counterterrorism Law: looking beyond laxity vs. despotism, security vs. human rights", *Nawaat*, April 12 2015.

<sup>26</sup> Hanen Keskes and Robert Joyce, "Tunisian Police Accused of Torture," *Al Jazeera English*, November 10, 2013; Reuters and Bouazza Ben Bouazza, "Police Brutality Claims Shadow Tunisia Elections," *News 24 Tunisia*, October 22, 2014; "HRW Demands 'Credible' Probe on Tunisia Detainee Death", *Al Arabiya*, 19 May 2015.

<sup>27</sup> Asma Smadhi, "Yassine Ayari Plans to Return to Tunisia to Challenge Prison Sentence," *Tunisia Live*, January 30, 2014.

<sup>28</sup> Riadh Guerfali, "La Tunisie, 1er Pays À Constitutionnaliser La Protection de L'usage de l'Internet," *Nawaat*, December 25, 2013.

processes to learn from within—that is, from local experiences—and the need for best practice learning from other contexts.

On the other hand, transitional justice in Tunisia seems to have followed a more conventional path. Ghali<sup>29</sup> has argued that there have been two primary phases of transitional justice in Tunisia that correspond to the periods between the revolution and the election (January to October 2011) and between the post-revolution election until the adoption of the constitution in January 2014.<sup>30</sup> We would add that a third phase began with the adoption of the Transitional Justice Law,<sup>31</sup> and the launch of the Truth and Dignity Commission (TDC) in June 2014.<sup>32</sup> The first phase focused on the establishment of investigative commissions looking at corruption, embezzlement and human rights violations,<sup>33</sup> as well as early conferences introducing transitional justice, held by Tunisian centres for democracy. This shaped early conceptions of transitional justice in Tunisia. Included in the second phase are events such as the establishment of the landmark Ministry of Human Rights and Transitional Justice and the expansion between 2011 and 2012 of civil society organisations with a transitional justice focus and a base in capacity building, and a very broad spectrum of rights agendas. With the involvement of key international transitional justice actors (particularly the ICTJ and UNDP), a technical commission was also formed to manage the national debate on TJ, producing the draft transitional justice law.

While this second phase demonstrated a remarkable capacity and willingness of local

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<sup>29</sup> Amine Ghali, “The Evolution of Transitional Justice in Tunisia, from the Revolution to Today,” in *Rule of Law and Transitional justice : Towards a Triangular Learning* (European Inter-University Centre for Human Rights and Democratisation conference publication, 2013).

<sup>30</sup> English translation of document by UNDP available at [https://www.constituteproject.org/constitution/Tunisia\\_2014.pdf](https://www.constituteproject.org/constitution/Tunisia_2014.pdf)

<sup>31</sup> Draft Organic Law on the Organization of Transitional Justice Foundations and Area of Competence, adopted by the National Constituent Assembly on 15 December 2013. Arabic, French, and English versions available at: <http://www.constitutionnet.org/vl/item/tunisia-draft-organic-law-foundations-and-organization-transitional-justice>.

<sup>32</sup> On the TDC and its progress, see Carlotta Gall, “Torture Claims in Tunisia Await Truth Commission”, *The New York Times*, 19 May 2015.

<sup>33</sup> These commissions were announced by Ben Ali in the last days of his presidency in an effort to quell public anger, but were formalised and implemented by the transitional government.

institutions to begin working on transitional justice processes, it also highlighted some of the issues surrounding the framework, including the overwhelming pressure to develop transitional justice institutions quickly at the expense of building deep and broad public platforms for discussion, which takes time; the exclusion of certain voices; and the need to provide space for people to shape their own visions of transitional justice, instead of boxing public voices into pre-existing strategies. On the other hand, this process was useful in building a common language and framework around which visions of the future can be modelled. This also affects the context within which sideline reform efforts like the ATI's have been shaped: from our primary data, it appears that interplay exists between the articulation of reform in Tunisia as laid out so comprehensively by the transitional justice landscape, and efforts with aligned goals that are outside the official transitional justice framework.

Our interviewees' critiques of the Ministry and dominant approaches to transitional justice in Tunisia speak to broader concerns around the balance between the creation of an organic process which is at least in part responsive to specific citizens' needs, and implementation of core transitional justice mechanisms that address global principles of reform and the attainment of justice. This tension is best articulated by an anonymous interviewee working in the field:

If you see any debate on transitional justice it's [...] very much focused on procedure. How do you proceed, rather than what kind of place you want to live in, which is the essential question. What is our vision for the future of this country? How do we see ourselves 20 years from now? *This* is transitional justice. It's not about, you know, what sort of procedures should be placed, what sort of laws should be placed. It's part of the process of course to have laws about this, but it's not the main process.

Speaking to broader criticisms concerning consequences of transporting the 'transitional justice industry' to Tunisia, an anonymous interviewee working for an international organisation commented that:

The community that is involved in this [Ministry of Human Rights and Transitional Justice] is a very closed community. It's really not open to many people, and it's also a technical community. So they come with all these really established ideas for what counts as TJ, what counts as reparation. And what they do is they go and talk to people in the regions, then they translate or try to translate what these people say into their own legalistic language of reparation, of non-repetition, etc. But I would much rather have the opposite happen, which is basically that people talk [and we get to what people want from there].

This model of transitional justice feeds into broader concerns with the increasing inflexibility of both the theory and the field, captured by Nassar's recent critique that the transitional justice priority (particularly in MENA) has been flipped towards a consolidation of the normative framework of transitional justice at the expense of the actual needs of the society in question: that '[s]tandardizing policies and mechanisms generates a rigidity that precludes transitional justice from fully addressing the regional and national complexities'.<sup>34</sup> Five years in, warning signs are clear: our interviewee noted the specific impact of this standardised framework on the development of transitional justice in Tunisia:

What I see happening is you have this top-down framework that is taking much space, public space, but there are small processes on the side, which are not recognised as transitional justice processes, because they don't fit into this global framework. So you have, I hear it in the regions I visit, very nice debates on, for example on ending discrimination against certain groups. I mean these debates would fit under transitional justice but they're not part of this national discussion because they're happening locally, because these people don't have access to this machinery of transitional justice that the

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<sup>34</sup> Nassar, "Transitional Justice in the Wake of the Arab Uprisings: Between Complexity and Standardisation," 73.



government has set up.

We argue that the introspection, reform, and re-framing of the ATI as a defender of civil liberties may well be one of those ‘small processes on the side’ that carry significant local innovation. Examination of this particular sideline process illuminates the importance of an area that is of increasing relevance to the issues around reconciliation and rebuilding trust, which are central transitional justice concerns. It also offers broader lessons about how the increasingly-formalised transitional justice process might be rethought to better meet local needs.

### **Internet Governance in Tunisia**

In contrast with the recognised transitional justice processes, here we use the informal process surrounding Internet reform in Tunisia—focusing on the ATI’s role—to underline some of the criticisms and weaknesses outlined in the literature. While Internet governance may not be considered part of the transitional justice framework, in this case it both echoes and grapples with many of the field’s concerns. To understand this, it is useful to briefly review the country’s history of Internet censorship and surveillance, which we refer to collectively as “information controls” to capture their complexity and reach. There were a number of important characteristics of this regime. These include the central role of the ATI within Internet governance; the purchase of European censorship and surveillance technology; and the ways censorship and surveillance overlapped with other mechanisms of state control and, subsequently, with the lived experience of Tunisians under the dictatorship.

The history of Internet regulation in Tunisia mirrors the increasing importance of controlling online spaces for many governments (authoritarian or otherwise). Wagner<sup>35</sup> argues that there have been four stages in the Tunisian government's approach to the Internet, shifting from a complete lack of regulation in its early days through to censorship, surveillance, and then active

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<sup>35</sup> Ben Wagner, “Push-Button-Autocracy in Tunisia: Analysing the Role of Internet Infrastructure, Institutions and International Markets in Creating a Tunisian Censorship Regime,” *Telecommunications Policy* 36, no. 6 (July 2012): 484–92.

attacks on targeted sites and accounts. While the extent of controls implemented by the Tunisian government are more extreme than in many other states, they are part of a continuum that includes democratic states. This is particularly evidenced by the provision of censorship and surveillance technology to Tunisia from European and US companies. Information controls were not only an issue during Tunisia's dictatorship, but are an ongoing area of contestation during transition and peace-building around the world.

Under Ben Ali, the ATI was not entirely responsible for information controls: some of this responsibility seems to have lain directly in Ben Ali's hands. While Kamel Saadaoui, director of the ATI for three years, emphasised that the ultimate power lay with the government, he also acknowledged the ATI's role in hosting and maintaining censorship and surveillance technology, and the widespread public perception of the ATI as a vital part of the Tunisian government's Internet control framework.<sup>36</sup> Similarly, Moez Chakchouk, head of the ATI after Saadaoui, leading much of the reform process within the institution, said in an interview that the ATI maintained the equipment, but that the Ministry of the Interior accessed and controlled it. At the same time, he recognised that the ATI's previous administration was implicated in these processes, and that there was a need to rebuild trust. Wagner's work makes it clear that although the Ministry of the Interior did develop blacklists, manually filter emails, and engage in other decisions around censorship and surveillance, the ATI was integral to this process, including through its development of in-house products for email filtering.<sup>37</sup> Crucially, while many decisions about censorship and surveillance were carried out by 'a special unit within the interior ministry [...] the ATI was still branded as Ammar404 [the nickname given to the censorship mechanisms by Tunisian Internet users] in public.'<sup>38</sup> This means that separate to the extent of its responsibilities, which remain unclear, the ATI came to be seen as an important institution (albeit not

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<sup>36</sup> Mike Elkin, "Exclusive: Tunisia Internet Chief Gives Inside Look at Cyber Uprising,"

<sup>37</sup> Wagner, "Global Internet Governance Research and Public Policy Challenges for the Next Decade," 487.

<sup>38</sup> Ibid., 489.

the only one) responsible for the implementation of the dictatorship and, thus, implicated in the process of post-conflict change.

The ATI has also engaged with questions around international complicity in human rights abuses. Although some aspects of the information control regime after 1997 were developed and administered within Tunisia, imported technology played a vital role in online censorship. In the wake of the Tunisian revolution, Saadaoui spoke in detail about how Internet control technologies were acquired, listing companies from the US, UK, Germany, and other European countries as providing support.<sup>39</sup> Chakchouk said in 2013 that as the ATI was still in the process of sorting through and finalising contracts for this equipment, including completing final payments to international companies; he followed Saadaoui in respecting non-disclosure agreements where they were in place. However, he publicly name the companies with which there were no non-disclosure agreements at the 2011 Arab Bloggers' Meeting. The role of international companies in facilitating Tunisian information controls, and the costs and difficulty of dismantling its legacy, should make it clear that Internet governance is an ongoing issue which—like so many aspects of transitional justice—extends beyond Tunisia's borders, has complicated questions around international responsibility and complicity, and has a longer temporal framework than may immediately be recognised. In this respect, while the ATI's efforts to grapple with international complicity in the regime's information controls do not offer a complete solution, they do point to some areas that need to be addressed.

It is important to connect this to the lived experiences of activists and others targeted by censorship and surveillance. Attacks on email were one of the most notable examples of this, and after 2003 'interior ministry operators went through emails, sometimes dropped or modified the

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<sup>39</sup> Vernon Silver, "Post-Revolt Tunisia Can Alter E-Mail With 'Big Brother' Software," *Bloomberg*, December 12, 2011.

contents and then forwarded emails, often hours later to their intended recipients.<sup>40</sup> This aspect of the regime also impacted people who weren't involved in politics but whose email included content critical of the government, as Silver's investigative work in 2011 showed.<sup>41</sup> The ability of the surveillance apparatus to modify, as well as read and censor emails, had particularly chilling effects. While on occasion email content would be replaced by garbled symbols or advertising, at times it also included messages such as, 'you can run but you can't hide,' pornographic material, or inappropriate sexual or threatening content to recipients.

The moment of jubilation that accompanied the end of Ben Ali's information control regime has been followed by the recognition that significant work is still required to deal with its after-effects, and to build an alternative system of Internet governance (not to mention restricting surveillance of mobile and other communications). As well as dealing with the distrust created by years of information controls, the ATI remains in possession of many of the machines used by the regime, and has borne the financial costs of the final periods of contracts with providers of censorship and surveillance technology, as Chakchouk noted. A series of highly visible cases relating to freedom of expression online have arisen, with some worrying outcomes,<sup>42</sup> although in other cases Net freedoms activists have been more pleased with results.<sup>43</sup> Even committed Net freedoms activists with whom we spoke often saw the need for some form of regulation of online content, and Chakchouk talked about the need for a clearer delineation of the ATI's role as the provider of a technical service. Recent research<sup>44</sup> demonstrates that while blanket censorship has ended in Tunisia, technical

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<sup>40</sup> Wagner, "Global Internet Governance Research and Public Policy Challenges for the Next Decade," 487.

<sup>41</sup> Vernon Silver, "Post-Revolt Tunisia Can Alter E-Mail With 'Big Brother' Software,".

<sup>42</sup> See, for example, Human Rights Watch, "Tunisian Rapper Sentenced to Two Years in Prison for a Song," *IFEX*, June 17, 2013; Smadhi, "Yassine Ayari Plans to Return to Tunisia to Challenge Prison Sentence."

<sup>43</sup> Afef Abrougui, "Tunisia: Court Quashes Verdict Ordering the Filtering of Pornography," *Global Voices*, February 22, 2012.

<sup>44</sup> Alexis Artaud de la Ferrière and Narseo Vallina-Rodriguez. "The Scissors and the Magnifying Glass: Internet Governance in the Transitional Tunisian Context."

mechanisms that would allow mass surveillance remain in place. These concerns, as well as many others, require ongoing negotiation and dialogue about what the Internet will look like in post-revolutionary Tunisia, and the ATI has been at the forefront of these discussions.

These issues play a significant role beyond the limited sphere of Internet governance. Internet regulation in post-revolution Tunisia will undeniably shape a wide range of personal freedoms, and the democratic potential of the political system: the Internet has become a key platform for citizen engagement.

### **Separate universes or concentric circles? Transitional justice and Internet governance as they currently stand**

In Tunisia, both the gap between transitional justice and Internet reform/governance and a recognition of areas of overlap were reflected in interviews. One Internet activist, Phoewass, when asked whether changes to the ATI's functioning after the revolution were part of the transitional justice process replied emphatically not, in part because of the *success of* Internet reform, in contrast to the perceived failure of the transitional justice process. NGOs, similarly, did not often see these issues as connected; Hisham Sharif from the Tunisian Centre for Transitional Justice replied to the same question that, 'no, it is not transitional justice, it is Internet reform.' At the government level, Internet reform is also not being addressed. In an interview with Mohsen Sahbani, Advisor to the Tunisian Minister of Transitional Justice and Human Rights, he noted that there was little if any coordination with or awareness of the work of the ATI. However, key staff involved in the ATI's work, both during and post-dictatorship, firmly placed Internet governance within the remit of transitional justice: 'Internet reform is part of transitional justice...it is the life of a person. Everywhere. It is in your phone, your home, your job. I have to work ...to get the real solution without touching the freedom of the other person.'

This recognition of the ATI's reform work as related to the broader transitional justice

process demonstrates the reach of the transitional justice narrative and its potential impact beyond formal mechanisms, but the ATI has few links with either government or international institutions implementing the framework. It is unclear whether incorporating Internet reform within formal transitional justice mechanisms in Tunisia would have helped or hindered the process: while this may have provided additional resources and political attention to the urgency of Internet reform, it may also have diminished the ability of the ATI and other actors to develop flexible and responsive processes. Additionally, it makes it clear that activists' and other practitioners' understandings of different issues' relationship to transitional justice (in this case, Internet governance) is shaped in part by how effective and participatory transitional justice processes are seen to be. It would therefore be useful to build on this research by exploring the contestation through which different areas are included or excluded from local understandings of transitional justice. In the following section, we explore some of the arguments for considering Internet governance within the aegis of transitional justice reforms.

### **Section Three**

#### **Transforming Transitional Justice: Learning Lessons from Tunisia**

##### **“If It Looks Like a Duck...”- The ATI’s Reform Processes**

While the harms caused by Internet surveillance and censorship were, as many of our interviewees noted, far less serious than the systematic imprisonment, torture, exile, and other forms of oppression faced by many under the Ben Ali government, they nevertheless played an important role in sustaining the dictatorship and in the day-to-day repression experienced under the regime, as highlighted above. Some bloggers and online journalists were jailed and tortured; this leaves the ATI (and Internet governance mechanisms more generally) with a legacy closer to transitional justice concerns than has to-date been acknowledged. Tunisian blogger Zouhair Yahyaoui was arrested in 2000 for ‘inviting readers to vote on whether Tunisia was “a republic, a kingdom, a zoo or a prison”.’

He died in 2005 of a heart attack after being extensively tortured in prison.<sup>45</sup> In 2009, bloggers' advocacy site *Global Voices* placed Tunisia after Iran as 'one of the most repressive countries towards bloggers and online activists'. Blogger Fatma Riahi<sup>46</sup> and journalists Zuhair Makhoul and Taoufik Ben Brik were also arrested after criticising the government. The introduction of a new framework for Internet governance is therefore vital to the reconstruction process.

Just as the opening-up of the Internet underpins many of the transitional justice processes being put in place, particularly around freedom of expression, there is also a sense of Internet governance as one of the few areas where transition is happening effectively. One Internet activist, Slim Amamou, said of the shift, 'it [the ATI] was the enemy, the censor guys, and they made a point in fighting against censorship. I mean, they fought against the decision in court for censoring pornography'.

Another, Phoewass, said, 'Actually, the only thing that's gone into transition is the ATI. Moez Chakchouk and his team represent the only institution that is *really* committed to making a democratic transition.' Another activist, who also has experience with international institutions working in Tunisia, Douha Ben Youssef, said, 'The only transitional justice case that succeeded is the case of the ATI. When you see Fatma Riahi (Arabicca) who was in jail [...] going to the ATI, discussing and laughing with all the team, making interviews, and saying thank you on Twitter to the ATI, to Moez, to all the team, it's the only thing that ... it's the only case that succeeded.'

The ATI has been a key actor driving broader processes of Internet reform, and has grappled with issues around vetting and employment of regime staff, internal reform and transparency, and restitution. Since its reform, the ATI has created opportunities for dialogue both within its walls

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<sup>45</sup> Amanda Watson-Boles, "Without a Net", *Committee to Protect Journalists*, 2004. See also: <http://threatened.globalvoicesonline.org/blogger/zouhair-yahyaoui>

<sup>46</sup> Meris Lutz, "TUNISIA: Online Activists Rally to Free Fellow Blogger Fatma Riahi [Updated]," *LA Times Blogs - Babylon & Beyond*, November 6, 2009, <http://latimesblogs.latimes.com/babylonbeyond/2009/11/tunisia-blogger-fatma-riahi-arrested-held-incommunicado.html>.

and with activist and Internet governance communities about its role during the dictatorship, including through the establishment of the 404 Lab at the site of the former centre for Internet censorship.<sup>47</sup> The nature of the violations committed by the ATI means that vetting and prosecution procedures have been easier for the agency to sidestep: very few people were imprisoned, tortured, or killed as a result of the ATI's machinery, and the ATI is able to say that, as a technical body, it did none of this directly itself. At the same time, it was the surveillance arm of a deeply repressive state, and it has chosen to confront this legacy directly.

In addition, the ATI has consciously made what can be framed in transitional justice terms as a global restitution initiative, becoming the first country in Africa to install TOR servers. These servers will allow people in countries that use Internet censorship to use Tunisian servers to 'freely access the internet'; the initiative was firmly positioned as legacy project.<sup>48</sup> The ATI has been involved in leading conferences on Internet freedom, and developing relationships with the US-based Electronic Frontiers Foundation and other international Net freedoms groups.<sup>49</sup> Tunisia has also joined the Freedom Online Coalition, a network of 23 governments committed to protecting freedom of expression, association, assembly and privacy online. Often these discussions have included frank declarations of how the ATI worked under the regime, the companies that provided surveillance equipment to the agency, and the challenges it faces today including around pressure to continue censorship and surveillance.

The management's perspective on vetting and institutional reform processes, and its pre- and post-revolution role has also been interesting. When asked about vetting, reform, and accountability, Chakchouk replied that his board's approach was to balance the need to retain skilled

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<sup>47</sup> "Tunisian Hackers Decrypt Dictator's Old Internet Censorship Machines," *The Observers*, June 24, 2013, <http://observers.france24.com/content/20130624-tunisia-internet-censorship-hackers-servers>.

<sup>48</sup> Ibid and interviews with ATI staff.

<sup>49</sup> Jillian C. York, "The Freedom Online Coalition in Tunis: A Call To Governments To Limit Surveillance," *Electronic Frontier Foundation*, June 24, 2013, <https://www.eff.org/deeplinks/2013/06/tunis-coalition>.



staff (some have left) with ensuring deep intra-institution understanding and buy-in about the importance of civil liberties and especially open Internet:

We don't need to go to a court and put them in jails. After all, okay, they made it for a reason, Ben Ali's pressures. We really tried with the board to regularise, or to make things clear, without putting people in a position to face a court, or lawyers, and so on.

This has included initial internal discussions around the future of the ATI, accountability for its staff, and media accessibility and interviews for ATI staff.

Individual accountability has also been given an interesting shape: as well as talking to journalists himself about the surveillance state and how it worked, Chakchouk began involving his staff, asking those who had also worked under the Ben Ali regime to speak, 'to explain what happened before. So for me it's really important to involve people now.' This was positioned as both signalling to staff that their help (and their own transition) is valued and recognised, and as a kind of accountability exercise by talking to journalists about the role they played in the regime. This approach was discussed with the ATI's 70 staff members, and supported by them. However, the relationship of trust by ATI staff in their leadership was also very important in the public accountability process. One of the ATI's staff who we interviewed anonymously highlighted this: 'the first time I went to the media I was scared, I didn't know if someone would get up and accuse me of doing something. But I had Moez' support... that was important'. This issue of trust is one that many transitional justice bodies struggle with, and is worthy of note.

Chakchouk has argued that there should be more public discussion regarding the role of the ATI in the dictatorship's machinery, to encourage accountability. However, at the time of our interview, what this might look like was still a question:

[What we need to say now is], "this is what ATI has done. This is the equipment." [...] And also I think what is important is just to have a process, to open those things, to get out

those archives in ATI to try to show to people a lot of details [...] it's not [only] our process, I think the government and the state have to be involved in it, and the state has to show the way to the people, they have to open all those archives, and they're really huge.

The opening of archives was positioned by Chakchouk as a part of the ATI's debt to Tunisian society, but one that needed active assistance from civil society to happen. At the same time, Slim Amamou argued that the key issue that needs attention is the decision-making process, rather than decrypting the technology or opening archives. Amamou's comment is particularly important given that questions still remain about information control chains of command and the relationships between the Interior Ministry, the police and judiciary, and the ATI. A clear aim of truth seeking and institutional reform is to bring to light exactly these kinds of relationships and to implement change that blocks reversion to such structures of control.

One outcome of the ATI's 'public legacy' thinking is the creation of the '404 Lab'; the transformation of the former surveillance headquarters' basement, where the regime kept its surveillance hardware, into a dual memorial/educative site. The 404 Lab was launched in June 2013 as an open innovation space, designed in collaboration with civil society and hacktivists.<sup>50</sup>

In engaging with aspects of its legacy by championing a free Internet, creating an open public space on the site of former surveillance headquarters, encouraging discussions by regime staff with media about how the system worked, working with civil society to push for the opening of ATI archives, setting up global legacy projects for other less-open societies, and thinking through the balance of individual and collective accountability, the ATI can be said to be leading its own form of truth-seeking discussion about violations committed through its agency, attempting to provide accountability for its role in the dictatorship's machinery, and engaging in efforts at restitution. Essentially, these efforts can be seen within the framework of a commitment to address its role in the

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"Tunisian Hackers Decrypt Dictator's Old Internet Censorship Machines."

legacy of state-led violence and repression against Tunisian citizens.

This is not to say, however, that the ATI's role has been entirely unproblematic. One interviewee, Phoewass, cited the ATI's support for deep packet inspection<sup>51</sup> (which allows packets of data to be filtered by their content) as very concerning. There are also questions around how much the ATI's reforms have taken root: much of the trust that has been built, post-Ben Ali, in the ATI, has also been attributed to the work done by Moez Chakchouk. Internet activists note that this is a precarious situation, and Chakchouk's recent departure from the ATI raises questions about the future of the institution. More broadly, there are concerns about whether attempts to resist Internet censorship and surveillance can be sustained without institutional support within the ATI (or other key organisations). This is particularly the case as deep packet inspection and other technical structures discussed by de la Ferrière and Vallina-Rodriguez leave the door to mass surveillance open.

### **Reflecting on the Transitional Justice Framework**

The Tunisian experiment with Internet reform alongside ongoing transitional justice reforms holds lessons for transitional justice theory and processes. Despite the constructive intentions underlying transitional justice, a number of important criticisms have been raised about its framework. The first of these is related to structural inequalities between transitional justice practitioners and local communities. In this regard, Madlingozi is among the more radical voices criticising orthodox transitional justice efforts,<sup>52</sup> particularly their way of treating 'victims and victims' stories, as a form of cultural imperialism, of "stealing the pain of others", dehumanising victims further and reinstalling First Worlders as morally and racially superior in relation to them'.<sup>53</sup> Reflecting on the field's interaction with the contexts in which it operates, Madlingozi has argued that 'transitional justice scholars and

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<sup>51</sup> This is the International Telecommunication Regulation. Information on signatory states can be found at: <http://www.itu.int/osg/wcit-12/highlights/signatories.html>.

<sup>52</sup> See also Piers Pigou, "Special Feature: IJTJ Interviews,"; Sherene H. Razack, "Stealing the Pain of Others: Reflections on Canadian Humanitarian Responses,".

<sup>53</sup> Tshepo Madlingozi, "On Transitional Justice Entrepreneurs and the Production of Victims,"

practitioners have not genuinely interrogated how their programmes and interventions have led to the disempowerment or empowerment of victims<sup>54</sup> or of the society more broadly. We also see some of these criticisms echoed in our interviews with Tunisians involved in transitional justice processes. The ATI's experience allows us to examine processes related to reform and peace-building as carried out by local practitioners outside the formal transitional justice institutions, but nevertheless informed by many of the ideas underpinning the transitional justice framework. What is remarkable in this regard is the ATI's horizontality, focus on collective ownership of change, and close and reciprocal relationship with civil society activists located beyond the small networks of peace activists usually engaged in peacebuilding work.

A second important area of learning relates to inconsistencies within the transitional justice framework, including the lack of internal cohesion of its goals, the extent to which its agendas are set by international rather than local actors, and the pursuit of core mechanisms which represent certain global legal principles that may impede or suffocate locally-defined efforts to come to terms with legacies of conflict.<sup>55</sup> This last area is particularly contested because transitional justice, as a field, has been built upon the pursuit of these legal principles, which themselves come out of human rights frameworks.<sup>56</sup> Critic-practitioners like Nassar<sup>57</sup> have argued that the growing focus on implementing very specific mechanisms in place of thinking innovatively about addressing the

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<sup>54</sup> Ibid., 225.

<sup>55</sup> See, for example, Fionnuala Ni Aolain and Colm Campbell, "The Paradox of Transition in Conflicted Democracies," *Human Rights Quarterly* 27, no. 1 (2005): 172–213; Janine Natalya Clark, "Transitional justice, Truth and Reconciliation: An Under-Explored Relationship," *International Criminal Law Review* 11 (2011): 241; Bronwyn Anne Leebaw, "The Irreconcilable Goals of Transitional justice,"; Kieran McEvoy, "Beyond Legalism: Towards a Thicker Understanding of Transitional Justice"; Godfrey M. Musila, "Options for Transitional justice in Kenya: Autonomy and the Challenge of External Prescriptions,"; Jaya Ramji-Nogales, "Designing Bespoke Transitional justice: A Pluralist Process Approach,"; Eric Stover, Hanny Megally, and Hania Mufti, "Bremer's 'Gordian Knot': Transitional justice and the US Occupation of Iraq,".

<sup>56</sup> For the legal framework from which transitional justice stems, see also Louis Joinet, *Question of the Impunity of Perpetrators of Human Rights Violations (civil and Political)*. UN Doc E/CN.4/Sub.2, 1997; Diane Orentlicher, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*. UN Doc E/CN.4/2005/102/Add.1, 2005.

<sup>57</sup> Nassar, "Transitional Justice in the Wake of the Arab Uprisings: Between Complexity and Standardisation."

underpinning norm (for example on truth commissions representing the right to truth rather than on innovative approaches to upholding the right to truth), as well as on the prioritising of certain comparative experiences over others, may be undermining creative domestic approaches to dealing with the past. Such criticisms also point out underlying system bias: the choice of which experiences to include and exclude depends on whose definition is taken as legitimate by those actors implementing and funding transitional justice efforts. This point was raised both by ATI practitioners and interviewees.

A final relevant criticism of transitional justice's deep institutionalisation relates to its consequent hesitation around comprehensively addressing issues of international complicity, including the complicity of both governments and private companies in human rights abuses.<sup>58</sup> As we have highlighted, the Tunisian experience of transitional justice, cast against the silence around the role of private companies supplying the regime with surveillance technology, speaks directly to this "elephant in the room".

Robins and Gready argue that the co-option of transitional justice approaches into prescribed and legalistic processes has significant limitations, and prefer to refocus on a newer, broader, concept, termed 'transformative justice'.<sup>59</sup> This resonates with the Tunisian context, where much of the rebuilding process is taking place with reference to existing narratives and practices of transitional justice. The current transitional justice framework and institutions' rigidity are highlighted by

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<sup>58</sup> Juan Pablo Bohoslavsky, "Tracking Down the Missing Financial Link in Transitional Justice ", *International Human Rights Law Review*, 1(2012): 54-92; David C. Gray, "Devilry, Complicity, and Greed: Transitional Justice and Odious Debt," *Law and Contemporary Problems* 70, no. 3 (July 1, 2007): 137-64; Charles T. Call, "Is Transitional Justice Really Just?," *Brown Journal of World Affairs* 11 (2005 2004): 101. On this, see also attempts by victims of egregious human rights violations to use the US judicial system under the Alien Tort Statute to hold private parties accountable. Particularly see *In re South African Apartheid Litigation*, *Kiobel v. Royal Dutch Petroleum Co*, *Doe v. Exxon*, and *Flomo v. Firestone*.

<sup>59</sup> Simon Robins and Paul Gready, "From Transitional to Transformative Justice: An Agenda for Research and Practice," *Transformative Justice in Egypt and Tunisia*, accessed December 2, 2014, <http://www.transformativejustice.co.uk/from-transitional-to-transformative-justice-an-agenda-for-research-and-practice/>.

transitional justice's failure to even glancingly address Internet reform. While we do not argue that Internet governance should be central to transitional justice efforts, the Internet has become a key platform for political communication and engagement, and as such it requires some attention with the field, and particularly in local contexts where online censorship and surveillance were prevalent.

## **Conclusions**

Tunisia is the face of transitional justice in the MENA region. However, the growing critical literature, our summary of the current transitional justice process, and discussion of the ATI's work show that the course of transitional justice is not linear – especially not in a context like Tunisia, where the dictatorship's end has exposed deep economic, political, and religious tensions. This paper has used an example of Internet governance reform in Tunisia to challenge the idea that a transitional justice path should consist of a set of well-formulated mechanisms representing the primary pillars of a transitional justice programme. Instead, it shows that there are other ways of addressing legacies of widespread human rights violations that are doing equally well, which combine an outlook informed by transitional justice discourse with local processes in order to grapple with the larger questions of accountability, memory, truth, and reform.

The ATI's work to deal with its legacy, and indeed to shift the broader Internet reform process in Tunisia, holds lessons for transitional justice. It certainly speaks to three significant criticisms of the field: the first, and broadest, is that the transitional justice framework is inflexible and is not incorporating new experiences and needs. Both our interviews and the literature have shown that the ATI's reforms are not on the radar of transitional justice practitioners either in-country or internationally, but its work began early, and has tackled all the key elements that underpin transitional justice concerns. It has engaged with its legacy of repression by championing a free Internet, establishing a kind of global restitution by setting up legacy projects for other less-open societies and

sharing its knowledge and transition with some of its neighbour states grappling with similar issues, creating its own version of a 'memorial space'; a public site of learning on the grounds of the former surveillance headquarters, encouraging public and media discussions by regime staff about how the system worked, and showing evidence of attempts to balance individual and collective accountability while also trying to push debates on international complicity and the protection of freedom of speech and information.

It can be argued that this work is particularly important for us to learn from because, as our interviews have shown, there are already important voices within Tunisia signalling that some perspectives are being closed out or ignored by a transitional justice machine that seeks to 'translate or try to translate what these people say into their own [the international community's/practitioners'] legalistic language' (Name withheld, 2013). It is telling that the ATI has managed its transformation while operating in a context that is clearly informed by, but not linked deeply into, the country's transitional justice landscape: that is to say that perhaps being left to its own devices was a key to its apparent success.

This case study contributes in two main ways to the broader work around accusations of inflexibility and marginalisation of particular voices: first, it is an example of innovative thinking that addresses the underlying norms but that does not fit within the prescription or the areas of attention given to transitional justice reforms. Second, Internet reform and governance is likely to become an area of increasing importance for transitional justice over the coming decade; both because of the Internet's growing role in citizen engagement and because it grapples with how to deal with structures of the legacy of surveillance and censorship.

The second criticism of transitional justice explored relates to the ways in which the ATI's work speaks to the criticism of structural inequalities between transitional justice practitioners and experts and local communities, and questions around the extent to which transitional justice

programming truly empowers or disempowers local communities and victims. The attempts at Internet governance and reform undertaken by the ATI post-revolution could be considered an unorthodox case study, undertaken by local actors outside the formal transitional justice context but unavoidably infused by the broader context of seeking to engage with legacies of repression. This is perhaps an ideal relationship between awareness of a broader culture, goals and lexicon of dealing with the past, but teamed with the autonomy to create change in a way that is internally meaningful and relevant.

The third and final criticism we have addressed relates to its failure to more honestly consider international complicity in human rights abuses. While the principle of universal jurisdiction has taken us some way towards global accountability, less has been done on international accountability for both governments and the private sector. In this respect, naming companies and countries which offered technology and support to Ben Ali's surveillance architecture has opened a space for discussion around an issue continuously ignored; perhaps primarily because donor governments to transitional justice programming are often also the same states from which the technology comes. This issue will become increasingly relevant, as both democratic and authoritarian governments employ information controls with varying degrees of corporate cooperation.



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