Intervention by Greta Barbone, No Peace Without Justice/Al-Kawakibi Democracy Transition Center

on the occasion of the Conference

“Transitional Justice in Tunisia: for a Participatory and Consultative Process”

Bullet Points – The role of victims in TJ and how civil society can contribute to victims’ participation

- During our work on transitional justice in Tunisia with Al-Kawakibi, through capacity building and consultations with the public and victims, we have had the opportunity to appreciate the approaches of various relevant stakeholders towards TJ. In general, Tunisians have started clamouring for justice and redress for past wrongs. While initially there was some reluctance in relation to TJ, the need for the establishment of a national transitional justice process has now emerged clearly. Some of the ways TJ can help Tunisian society in its transition from the authoritarian regime of Ben Ali towards a democratic and peaceful society is by ending impunity, reaching national cohesion, shining a light on the past, developing a shared understanding within society, acknowledging the wrongs committed, guaranteeing non-repetition of human rights abuses, including through institutional reform, deterring future violations, restoring trust in State institutions, reinforcing the rule of law, providing reparations to victims.

- In other countries, victims have participated in TJ processes with different degrees of involvement in various ways, by giving testimony and telling their stories in truth-seeking mechanisms, being beneficiaries of reparations, whether monetary or symbolic, etc.

- Victims and their families suffered directly from the violations that TJ aims to address. As such, they are among the most relevant stakeholders in any transitional justice process. However, they have historically been involved to a lesser degree during the design of TJ mechanisms than other stakeholders.

- Consultation of victims in this initial phase is crucial to foster a sense of ownership of the TJ mechanism. If victims feel to be part of the TJ process and this is actually designed taking into consideration their expectations towards justice, the results of the overall process have a better chance to be accepted by one of its major stakeholder. Acceptance of the results of TJ will depend on a number of factors and their interplay along the whole process, but the sense of ownership of the process by the population, and in particular by victims, plays an important role. However, to build this sense of ownership it is necessary to lay down its basis now through proper consultation.

- Tunisia has the opportunity to engage in this consultative process with victims properly, starting from the outset and making sure there are efforts to reach all victims, especially vulnerable groups who have difficulties having their voices heard, let alone acted upon. Victims should be consulted to express their views on how they would like to obtain redress for the abuses they suffered. They should be informed of the possible TJ approaches, their pros and cons and consequences for them, in order to be able to communicate what approach they would favor. It is important they are consulted on their expectations and that their views are reflected into the fabric of TJ and the choice of its objectives and mechanisms.
- Al-Kawakibi and NPWJ in the implementation of our activities on TJ, have consulted with victims in Tunisia. One message they have expressed in all events is the need for development and social justice. Any TJ process that will be established in Tunisia would need to take this into account as well as the widespread diffusion of corruption and economic crimes under the old regime.

- TJ has its proper objectives, which are different from development, economic growth and distribution. However, there are links between TJ and development and TJ measures can be shaped in such a way to promote development and social justice.

In Tunisia many victims have suffered from economic crimes and corruption and it is important not to exclude this large group of victims from a TJ process since this would inevitably reduce its perceived legitimacy and impact. Thereby, it is important the mandate of a TJ Commission encompasses this kind of crimes. It should also have the mandate to investigate and analyse the socioeconomic structures within which corruption and economic crimes took place and elaborate recommendations to reform and ensure non-repetition.

The report of the national Commission on embezzlement and corruption constitute a solid basis on which to build on and it is important to ensure implementation of its main recommendations, including the establishment of a permanent Anti-corruption institution.

Reparations could also be shaped in a way that fosters development and social justice. For examples they can promote health and education programs, using community and collective forms of reparations. Reparations can also include alternative forms of compensation that can boost local development and have a longer impact. Distribution of shares in microfinance institutions recognised to be reliable could be added to monetary compensation.

- Another message coming clear from victims in Tunisia is the need for public recognition of the wrongs committed. In Tunisia the Commission on Abuses and the Anti-corruption Commission have investigated the violations committed after 17 December 2010. However, there is a need to provide a more comprehensive historical account of what happened under the Ben Ali regime. The establishment of truth-seeking mechanisms could help achieving this objective. However, victims have asked not only for truth but also for recognition. This involves the State or direct perpetrators to acknowledge publicly and officially the wrongs and abuses committed.

- As it commonly happens in countries in transition, victims in Tunisia have showed great interest for justice. During consultations, they have asked information on the trials that have started in relation with incidents occurred after the revolution and on the procedures available to assist them. Victims with whom we have spoken about basic TJ concepts have also showed interest and in general expressed the desire to be engaged in such a process. Thereby, TJ mechanisms in the country should be shaped in a way that promotes participation of victims in the process.

- In general, victims of atrocities have considered the act of giving testimony in itself very important. In my previous experience in Uganda, where I had the opportunity to meet with victims of the Lord Resistance Army, in the majority of cases, victims expressed relief for having had the opportunity to tell their stories. In Tunisia TJ should provide victims with a forum where their stories can be heard.

- However, to render the experience of participation beneficial for victims it is necessary that safeguards are established to protect them from further suffering and re-victimisation as a
consequence of participation in the proceedings. In particular, it is necessary that the process is explained to victims so they can take a fully informed decision on whether to participate or not. They should be informed of the TJ mechanisms established, their mandate, limits, procedures and how and under what conditions they can participate as well as what they can expect from reparations. It also must be ensured that victims participate in a safe and secure way in the process and support is provided to them. Psychological support needs to be available as well as other types of support, including creating a referral system to other actors who can meet those needs the TJ process cannot.

- In order to cope with the time and resource constraints affecting TJ, very often the number of victims who can participate directly in the process within the timeframe the TJ mechanism is operating are limited. One way to overcome this problem is public hearings to engage a broader public; also the use of focus groups can reach larger numbers of victims, both subject to victims feeling comfortable with these approaches. However, to avoid that the process is considered somewhat arbitrary, it is particularly important that victims who are not selected understand why their stories are not told. A clear and transparent mandate effectively communicated and understood by victims, also through outreach activities, significantly contributes to build the legitimacy of TJ mechanisms.

- Generally civil society has better access to victims and victims groups than the government or State institutions and they can play an important role in reaching out to victims during the designing of TJ and later during its implementation.

- Civil society can organise consultations with victims to understand their concerns and views on TJ. It can also act as a bridge between victims and the government and other stakeholders, raising with them victims’ expectations and advocating to shape and implement TJ mechanisms that address their concerns.

- NGOs are also best suited and equipped to organise capacity building activities directed to victims groups on TJ, modules on organizational and managerial skills necessary to establish an organisation, as well as advocacy methods and strategies such as communications and engagement with policy-makers.

In Tunisia networks and organisations of victims are emerging, but in most cases they rely on personal relations. Some victims we have met with have pointed out that there is a strong relation between the members of the group and they consider themselves part of a single family and they assist and support each other. This is an enormous resource and civil society should try to be in contact with these groups to encourage them to create organisations to represent their interests

- Civil society can play a vital role in conducting outreach activities with victims. By outreach I refer to the process of establishing a two way dialogue with victims on the TJ mechanism, which is aimed at promoting understanding and support for the process.

- Outreach is primarily the TJ’ institutions responsibility given the need for the information to be viewed as impartial. In addition, there are some messages that have to come from the TJ institutions to be credible.
For example, while the SCSL had jurisdiction over people aged 15 above at the time of the alleged commission of the crime, children would not fit into the definition of "those who bear the greatest responsibility" (SCSL jurisdictional limitation in the Statute). NPWJ and other NGOs said this for a long time but it was not until David Crane, then Prosecutor, said it that people fully believed it.

However, generally these institutions cannot reach alone the majority of victims and there is a complementary role for civil society to play. In particular, civil society can organise trainings and activities to engage victims on the nature, purpose and role of TJ, the process and the procedures available to them as victims need to understand their role in the proceedings and the transitional justice mechanisms in order to accept the limits of their participation and use of their testimony. It is also necessary that misconceptions and unrealistic expectations, especially regarding reparations, are prevented to spread. Left unchecked they could lead to frustration of the population with transitional justice mechanisms, undermining the credibility of the overall process.

In holding the various activities, particular attention should be given to specific groups, including women, youth and children. Young people are vital constituents in transitional processes: not only do they have the right to participate in crucial decisions that affect their lives, but they will inherit the results of the process and take it forward in decades to come. However, they are very often not involved in transitional justice processes.

Equally, although women in Tunisia enjoy higher levels of equality than in many other countries, they are still often excluded from decision-making. Women are usually disproportionately affected under authoritarian regimes and TJ offers a means to address these abuses and pursue gender justice. It also provides an opportunity to promote women’s leadership, enhance access to justice and build momentum for fundamental women’s rights reform. Unfortunately, women’s and youth rights groups are usually not vocal in civil society coalitions shaping and monitoring TJ processes. Thus, more efforts are needed to engage these groups in discussions and capacity building on transitional justice issues.

During the actual phase of participation of victims in the TJ procedures civil society can also provide legal or other forms of assistance and can assist in providing psychological support or referring victims to structures where they can receive the assistance needed.

One concluding thought on civil society not only in relation to victims but in general. In countries emerging from authoritarian regimes the secretive environment imposed during the dictatorship is a legacy that takes some time to be dealt with. In this context, civil society and various actors might need some time to appreciate fully the advantages and importance of cooperating, sharing information and coordinating their actions. Since the revolution, civil society has flourished in Tunisia reclaiming its proper role and forming new groups and organisations that are active and vocal in the field of TJ as well as in other areas. The emergence of this large number of groups is a great opportunity for civil society to maximise the potential positive impact and reach of its activities. By ensuring enhanced coordination and cooperation among various groups and NGOs, civil society can strengthen its role in contributing in the transition to democracy.