Training Report on
“Lawyers and Transitional Justice Mechanisms and Process in Tunisia”

Organised under the Transitional Justice Academy
By Al-Kawakibi Democracy Transition Centre, the Tunisian Bar Association and No Peace Without Justice

29-30 March 2013
Hotel Borj Dhiafa-Sfax
1. Background

On 29-30 March 2013, Al-Kawakibi Democracy Transition Centre (KADEM), in collaboration with the Tunisian Bar Association and No Peace Without Justice, organised a training under the Transitional Justice Academy on “Lawyers and Transitional Justice Mechanisms and Process in Tunisia” in Sfax. The main objective of this training was to consolidate lawyers’ knowledge on transitional justice process and principles in order to promote their engagement in their country’s democratic transition.

2. Summary of the training

2.a Participation

Participants in the training were 22 lawyers from the city of Sfax and half of them never attended training on transitional justice before this event. For a complete list of participants, please see Annex I.

2.b Trainers and training program

Mr Fakher Gafsi, a lawyer, Ms Asma Gharbi, a lawyer and a university professor; and Ms Monia Amar, a judge in the Court of Cassation, conducted the training. All three trainers are members of the Tunisian Group on Transitional Justice and already had participated in activities under the framework of the Transitional Justice Academy, of which they are members.

Amine Ghali, the Program Director of KADEM and the President of the Tunisian Bar Association in Sfax opened the training. The two-day training offered an occasion for participants to address the role of lawyers in transitional justice, highlighting how their effective participation in the process is necessary for its implementation. All training sessions were interactive and encouraged dialogue and discussions among all participants. For more information on the training program, please see Annex II.

2.c Training

The first session started with a presentation of basic assumptions on transitional justice. TJ processes aim to reach peace through both accountability, by holding people accountable for violations committed in the past, and reconciliation among people to rebuild society according to democratic principles. Its objectives are mainly revealing the truth, providing accountability and ensuring reparations and rehabilitation for people who suffered from past violations.

The second session dealt with truth-seeking mechanisms. Knowing the truth is one of the first needs of victims but also of the whole society, to draw a picture of what happened and to reconstruct the nation through memorialisation and rehabilitation processes. Revealing the truth also contributes to rewriting the history of a country and is also relevant for academics and researchers.

Tunisia has already implemented some TJ measures; however, they are already facing impediments to carry out their missions completely. In order to support these mechanisms, a number of recommendations were discussed. The Truth and Dignity Commission, which is envisaged in the Draft Legislation, should have full cooperation with administrative bodies in order to be able to reveal a comprehensive truth about past violations. In terms of documentation, protection and the free use of
official archives should be granted in order to rehabilitate victims and witnesses together with memorialisation processes.

Additional mechanisms might be implemented in Tunisia. Sources of truth are numerous – archives, records, reports from the government – and truth is available from diverse institutions: administrative, security and police bodies or human rights and civil society organisations. TJ authorities should conduct their investigations through hearings, visiting detainees and prisons and, importantly, through developing a close dialogue with victims, witnesses and families.

The third session addressed reparations and rehabilitation and concepts related to these principles. The notion of “victim” was discussed and that it can be either individuals or communities and even regions, which has been the case in many examples in Tunisia. The extent of the definition was directly tied to the idea of “violations” and participants concluded that any serious or systematic human rights abuse according to universal standards should be considered a violation. Participants worked on case studies related to reparations and truth processes in South Africa, Morocco and Ghana.

The presenters addressed the value of public hearing sessions in TJ. Public hearings aim to restore victims’ dignity by recognising past violations publicly, as a video documentary on Morocco presented during the training also showed. Conditions of public hearings were also discussed together with the difference between open and closed sessions. The presence of international and national civil society members was recognised as a positive factor and it was stressed that victims need to be prepared and supported during the whole process to avoid re-victimisation.

Finally, TJ processes’ results and the issue of timing were analysed. Tunisian authorities and civil society will have to deal with accountability and reconciliation processes at the same time, while advocating for democratic principles during the whole process. This is essential to avoid revenge.

The first session of day two started by reviewing the discussions from the previous day. The expert examined two systems of justice: transitional and ordinary justice. Transitional justice is a particular process that is distinct from “ordinary” justice, as it comes to deal with extraordinary issues, given extraordinary violations, with the aim to help build the future of the country during a transitioning period from a regime to a democracy. TJ aims to restructure the society in a fair, democratic and human way affecting political, social and legal dimensions since its mission focuses on investigating serious violations of human rights to promote justice. However transitional justice should be tied to ordinary jurisdictions in view of their complementary work regarding the judicial system.

In the following session, participants addressed the vital reform of State institutions to avoid the repetition of atrocities and to achieve a break with the past. TJ’s main objective is to fight impunity and institutional reform is a key component of the process to re-establish the rule of law and consolidate democratic principles and human rights. This discontinuity with the former regime also increases the trust in new institutions including army, police and administration, which will serve a lasting and unified State. Participants discussed perceptions of the judicial, security system and media reforms through working groups.

Finally, participants discussed the issue of truth commissions in Tunisia. These commissions are usually established to help fight impunity and bring accountability. They draw up a reparations strategy and deal with rehabilitation for victims. According to participants’ expectations, a Truth Commission in Tunisia must be established to reveal the truth and to report past political, economic, cultural and social violations by holding perpetrators accountable. This was helpful to conduct the final session on
the preparation of a final report for a Truth Commission. Participants presented their recommendations for a Commission and its final report:

− The Truth Commission should comply with international law standards;

− The Truth Commission should be established according to a law defining its creation, composition, members’ prerogatives and assignments, timeline, administrative functioning, sources of funding and general program;

− The final report should provide an analysis of the requests it received, the individual and collective programs it promoted and the hearing sessions it scheduled. It also needs to include their results – feedback, circumstances and the factors of past events pointing out the responsibility of State bodies; and

− The Truth Commission should implement memorialisation processes and institutional reform guaranteed under constitutional and legal frameworks while determining the role of the legislative branch and civil society organisations among these recommendations.
Annex I

List of Participants

Name and Surname
1. Dorra Kchaou
2. Boutheyna Bentaher
3. Aida Nasri
4. Hamida Elleuch Chaib
5. Moez Gdoura
6. Lassad Smaoui
7. Wajdi Atitallah
8. Samir Ennouri
9. Sofian Fakhfakh
10. Mohamed Amine Abid
11. Adlen Sarbeji
12. Olfa Kaffel
13. Mohamed Wajdi Aidi
14. Salma Besbes
15. Fatma Jemal
16. Naim Hentati
17. Kamilia Jellouli
18. Salma Aoui
19. Rafika Ben Gharsallah
20. Mohamed Ketata
21. Mohamed Ramsis Ayari
22. Mounira Benbey
Annex II

Program

First Day 29 March 2013

Facilitators: Judge Monia Ammar, Professor Asma Gharbi and Professor Fakher Gafsi

8.30 – 9.00: Registration of participants

9.00 – 9.30: Opening – introducing to participants – agenda and methodology of work/ expectations of the participants

9.30 – 10.30: First session: Reminding of the general concepts of Transitional Justice
    Historic, definition, mechanisms and objectives
    Asma Gharbi

10.30 – 11.00: Break

11.00 – 12.30: Second session: Revealing the truth
    Sources of truth: issues and impediments, new mechanisms to bring truth
    Fakher Gafsi

12.30 – 14.00: Third session: Reparations and rehabilitations
    Asma Gharbi

14.00 – 15.00: Lunch

15.00 – 16.00: Fourth session: Public hearing sessions: a mechanism to know the truth and to establish victims' rehabilitation, models of public hearing sessions
    Fakher Gafsi

16.00 – 16.15: Break

16.15 – 17.30: Fifth session: Accountability and Reconciliation
    Asma Gharbi

Second Day: 30 March 2013

8.30 – 9.00: Conclusion of the first day discussions

9.00 – 10.00: Sixth session: Transitional Justice and Ordinary Justice
    Monia Ammar

10.00 – 10.15: Break

12.15: Seventh session: Non repetition of violations and institutional reform
    Monia Ammar
Working groups on the perceptions of the judicial, security system and media reforms

12.15 – 13.30: *Eighth session:* Truth commissions
   Monia Ammar
   Workshop on the perception of Truth Commissions in Tunisia

13.30 – 14.45: *Lunch*

14.45 – 15.30: Preparation of the final report on Truth Commissions,
   Fakher Gafsi

15.45 – 16.30: Closure and delivering of certificates