Report of the Training Workshop on
Transitional Justice and the International Criminal Court in Libya and Tunisia
Tunis, 11-12 June 2013
1. Background

On 11-12 June 2013, Al Kawakibi Democracy Transition Center (KADEM) and No Peace Without Justice (NPWJ) organised a two-day training workshop for Tunisian and Libyan media representatives on Transitional justice and the International Criminal Court (ICC) under the Transitional Justice Academy framework.

The Transitional Justice Academy is a joint initiative of KADEM and the Arab Democracy Foundation, in partnership with NPWJ and the Deutsche Gesellschaft für Internationale Zusammenarbeit. The Academy was launched in Tunisia in December 2011 and aimed to provide a conceptual space within which main stakeholders and actors can gather and build their knowledge and capacity on transitional and international justice issues.1 The activity was the second regional event held under the framework of the Academy and it was very successful, confirming the great potential the experience, best practices and lessons learned on transitional justice and accountability from Tunisia has for Libya. Since July 2011, KADEM and NPWJ have been working in Tunisia to support its democratic transition through transitional justice.2 NPWJ has been working in the MENA region since 2011 to promote democracy and human rights protection through incorporating Transitional Justice, Accountability and Reconciliation in decision-making on conflict resolution and stability, democratic development and reconstruction planning, including on Bahrain, Libya and Syria.3

2. Course Summary

2.a Participation

The workshop brought together 20 Libyan and Tunisian media representatives to share lessons learned and best practices on Transitional Justice and the ICC, reinforcing their respective capacities to work on these issues (for the list of participants, please see Annex I). Given the lack of transparency under the former regimes, Libyan and Tunisian media are not yet fully accustomed to covering news and events relating to justice and they often have misconceptions and misunderstandings that are reflected in their work.

2.b Presenters and Program

Mr Fadi Al Abdallah, ICC Spokesperson and Head of the Public Affairs Unit, conducted the sessions on the ICC while the Tunisian expert, Monia Ammar, focused on Transitional Justice. The program alternated substantive sessions, practical exercises, working groups and brainstorming sessions (for the detailed program, please see Annex II).

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1 For more information on the Academy, please visit NPWJ’s website on http://www.npwj.org/node/3602.
2 For more information on the work of NPWJ and KADEM in Tunisia, please visit NPWJ’s website on http://www.npwj.org/node/3745.
2.c The Workshop

Day One

- Introducing trainers and participants / Overview of workshop program

Ms Wafa Belhaj Omar opened the workshop and made a brief presentation of the work undertaken by KADEM and the support it lends to the process of transitional justice in Tunisia. She also underlined the important role of the media in promoting justice. Mr Amine Ghali welcomed the workshop guests and presented the topics of the workshop, which is the first that brings together Libyan and Tunisian participants. He also highlighted KADEM’s role, in partnership with NPWJ, in raising civil society’s awareness about transitional justice. Mr Ghali added that the aim of the workshop is to achieve a kind of complementarity between Libya and Tunisia in terms of transitional justice. He pointed to the role of the International Criminal Court in promoting accountability as part of the process of transitional justice.

Ms Greta Barbone presented a definition of transitional justice as a set of measures to achieve accountability and provide reparations for victims. She highlighted the importance of the ICC in terms of accountability. However, she added, the ICC intervenes only in a small number of cases that involve serious violations addressing only those who bear the greatest responsibility. For example, in Libya the ICC only has three cases against the former President Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah al-Senoussi. This means that there is an impunity gap that national systems must address, whether through ordinary or transitional justice, so that lower level perpetrators will also be held accountable for human rights violations. Ms Barbone highlighted the necessity to incorporate the Rome Statute into national law so as to provide the legal framework for transitional justice.

Ms Monia Ammar, Tunisian expert and judge, stressed the importance of transitional justice and the role of the media in disseminating the culture of humanitarian law and transitional justice and in terms of fact-finding, reparations and truth-seeking. Dr Fadi Abdallah, the ICC spokesperson, emphasised that the Court seeks to build positive public opinion on its role in terms of accountability that would be binding on States.

- Overview of the Rome Statute

The general rules governing the work of the ICC are many and complex. The presenter focused on the ICC’s jurisdiction and distinguished the Court from the Special Courts and Tribunals in the former Yugoslavia, Rwanda, Lebanon and Sierra Leone. He also focused on the rules on elections of the principals and judges, thereby guaranteeing the Court’s independence and impartiality. Dr El Abdallah highlighted that the ICC prosecutes persons rather than States, in line with the principle that criminal responsibility is always personal and individual.

ICC jurisdiction: Crimes within the jurisdiction of the ICC include

1. The crime of genocide;
2. Crimes against humanity; and
3. War crimes.

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4 The case against Muammar Gaddafi was declared closed after his death in October 2011.
Dr El Abdallah also mentioned the crime of aggression, which is referred to in the Rome Statute but the Court exercises no jurisdiction over it yet.

Participants in the workshop raised questions about the prosecution of a person in a non-State Party. In response, Dr El Abdallah referred to the example of Sudan, which is a non-State Party to the Rome Statute, but where the situation in Darfur was referred to the ICC by the UN Security Council. Member States of the United Nations are bound by the Security Council resolutions (Sudan being a member of the United Nations). The same holds true for Libya, another non-State Party to the ICC.

Some of the participants asked about the situation of the Sudanese President Omar Al-Bashir, who has travelled to many countries without being arrested. Dr El Abdallah responded that the ICC prosecutes individuals, but does not have its own police. It is for States to execute arrest warrants issued by the Court. It may, however, submit the case to the Security Council which, in turn, may impose sanctions on these States for non-compliance with its resolutions.

Dr El Abdallah presented the Office of the Prosecutor which, he explained, is independent of the other organs of the ICC and is in charge of prosecutions. He added that the Court guarantees the right of defense for the accused and appoints lawyers to represent them if needed. It also allows them access to relevant files and documents in the possession of the Court, along with any items of evidence that can help them to prove their innocence. Dr El Abdallah mentioned that the ICC’s most severe punishment is 30 years and exceptionally lifetime imprisonment.

- **How to bring cases to the ICC and the relevant procedures concerning Libya**

Dr El Abdallah first explained the principle of complementarity, underlining that the ICC can intervene only when national courts are unable or unwilling to prosecute. He mentioned the current cases at the ICC, referring to the rules on how to bring cases to the Court. Some of the participants raised questions about the Palestinian cause and Dr El Abdallah replied that in 2009, Palestine filed a declaration accepting ICC jurisdiction over all the human rights violations committed by the State of Israel against the Palestinian people. The declaration was rejected by the ICC on the ground that Palestine did not then qualify as a ‘State’. However, he added that after the recognition of the State of Palestine in 2012 by the UN General Assembly, the ICC can now accept their ratification or acceptance of jurisdiction, if they wish to do so.

One of the participants asked whether the ICC could intervene in the Tunisian case of the assassination of Chokri Belaid, who was killed in February 2013 in front of his house in Tunis. Dr El Abdallah replied that the assassination of the politician Chokri Belaid is considered as an individual act and alone does not fall within the systematic crimes over which the Court has jurisdiction.

Dr El Abdallah focused on the ICC Libyan cases and explained the ICC decision rejecting the admissibility challenge presented by the Libyan Government. In particular, the judges considered that the Libyan authorities were unable to investigate and prosecute Saif al-Islam Gaddafi since the Libyan Government was not able to secure his transport from the militia in Zintan to the State’s custody, in addition to many other shortcomings, including the lack of effective protection for witnesses. The case is still at the stage of appeal to decide on its admissibility.\(^5\)

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• **The Rome Statute and its importance in the Tunisian context**

Ms Monia Ammar stated that Tunisia’s ratification of the Rome Statute showed the initial commitment to respect and to spread the culture of human rights. This was followed by training workshops and the establishment of committees to bring national legislation in line with the Rome Statute and other human rights conventions. However, she also highlighted the main challenges in Tunisia as regards guaranteeing respect for human rights. Adapting legislation to human rights principles is not a priority and the draft constitution provides for the immunity of the Head of State, which would impede his prosecution even after his mandate expires.

• **Transitional justice: Principles and mechanisms**

Ms Monia Ammar presented the concept of transitional justice, considering it as a means to remedy violations of the past and as a set of judicial and non-judicial mechanisms and processes through which society seeks to address the heritage of past violations and to guarantee accountability, justice and reconciliation. The contexts of transitional justice, she added, are the shift from a state of war to a state of peace, or from a tyrannical regime to democratic rules. She highlighted the objectives of transitional justice and the important results achieved through a successful implementation of this process, particularly ensuring democratic transition, truth-seeking and accountability.

• **Working groups on the opportunities and challenges for the ICC and TJ in the MENA region**

The participants divided into three groups on the challenges and opportunities for TJ and the ICC in the MENA region and a third group mediated among the first two groups (for the result of the working groups, see Annex III).

**Day Two**

• **The role of the media in promoting the ICC and transitional justice**

Dr El Abdallah explained that the ICC allows journalists to interview judges, provided that the interview does not concern pending cases under their examination. One of the participants asked whether it is necessary for the ICC to have a Facebook page. Some considered this to be necessary to ensure the largest access to the Court, given the crucial role it plays in terms of accountability. Another participant asked whether it is necessary to launch a TV channel for the ICC. Dr El Abdallah considered this suggestion to be too costly, indicating that there is a link on the Internet that allows all interested people to follow the ICC sessions.

Another participant asked whether it is possible to organise such workshops in Libya in order to raise awareness of the importance of the ICC. In response, Dr El Abdallah replied that this is not possible due to the current security situation in Libya. Dr El Abdallah also noted that there are no ICC field offices in Libya to facilitate work and communication with local communities, authorities and the media. He explained the incident of the arrest of the ICC staff in Libya during a visit to Saif Al-Islam Gaddafi. He noted that Libya had pledged to allow Saif Al-Islam Gaddafi’s lawyers and members of the ICC Registry to visit him and to secure this visit. Upon arrival, however, and during the meeting, the secrecy of the meeting was violated, for fear documents and information would be...
leaked. One of the participants underlined the lack of sensitisation regarding the role of the Court in Libya, indicating that the media never addresses the case of Saif Al-Islam Gaddafi. The problem between the ICC and Libya, she added, lies in the possibility that Saif Al-Islam Gaddafi’s foreign relations interfere with and influence the work of the Court, which may lead to his release.

Dr El Abdallah presented the ICC website and distributed materials and documents.

- **Transitional justice in Tunisia and Libya**

  Ms Monia Ammar drew a comparison between the transitional justice legislation in Libya and Tunisia and pointed out that in general, a transitional justice law should be based on a participatory approach that involves all components of civil society, which actually took place in Tunisia. She also highlighted the shortcomings in the Libyan and Tunisian legislations.

- **Transitional justice and the ICC (exercise)**

  Participants were asked to draw up a report on a press conference given by Dr El Abdallah (representing the International Criminal Court) and Ms Monia Ammar (representing the International Committee of the Red Cross) on international law and transitional justice. The two speakers addressed issues in connection with reconciliation commissions and the participation of perpetrators in reconciliation. Some of the participants raised questions regarding the main purpose behind the cooperation between the ICC and ICRC and how to involve perpetrators and victims in reconciliation. Others asked about the mechanisms through which these institutions can support Truth Commissions and also about the degree of the Libyan cooperation with these institutions to promote transitional justice.

  Each participant was then given 20 minutes to draw up his/her press report on this meeting. Each participant presented his/her report to the experts. All the reports were then discussed in terms of their strengths and weaknesses.

- **Closing of workshop**

  In the closing session, the trainers and organisers gave certificates of participation to participants.

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6 In July 2012, the Libyan authorities released the four staff members of the ICC, who were detained since 7 June 2012. The ICC staff members had been in Libya to meet with Saif al-Islam Gaddafi, who is subject to an ICC arrest warrant for crimes against humanity allegedly committed in Libya since 15 February 2011.
## Annex I - List of Participants

<table>
<thead>
<tr>
<th>Name and last name</th>
<th>Institution</th>
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<tbody>
<tr>
<td>1 Khaoula Chabbeh</td>
<td>Jadal</td>
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<td>2 Hajer Charif</td>
<td>Jadal</td>
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<td>3 Oussama Safi</td>
<td>Jadal</td>
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<td>4 Fadoua Chtourou</td>
<td>TV nationale</td>
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<td>5 Teber Naimi</td>
<td>Radio Jeunes</td>
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<td>6 Abdelbasset Fridhi</td>
<td>TAP</td>
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<td>7 Imen Zarouk</td>
<td>Shems FM</td>
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<td>8 Imen Abdelatif</td>
<td>Essabah</td>
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<td>9 Lilia Weslaty</td>
<td>Nawat</td>
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<td>1 Abdul Wahab Ashir</td>
<td>Libya Herald</td>
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<td>2 Faisel Amar El Hemali</td>
<td>The New Libya</td>
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<td>3 Suliman Abdelhamid KH. Muftah</td>
<td>Ajua Albalad Radio</td>
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<td>4 Hanin M. Ibrahim Bushosha</td>
<td>Libya Alhurra</td>
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<td>5 Abdulwahab Ali Mlitan</td>
<td>Libya Ahrar TV</td>
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<td>6 Rabiah Abduallah</td>
<td>Libya alwatanya, Aljauhara, Libya Aljadida</td>
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<td>7 Ahmed Budabous</td>
<td>Alnabaa News Channel</td>
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<td>8 Mostafa Muftah Zawaibk</td>
<td>Sirt News</td>
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<td>Mbarka Boubaker</td>
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<td>10</td>
<td>Moatez W. Said el Slam</td>
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<td>11</td>
<td>Majid Taher Belhassan</td>
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Annex II – Program

**Tuesday 11 June 2013**

8.30-9.00  **Registration**

9.00-9.30  **Introductory remarks**

  Presentation of the trainers and participants, overview of the Training Program and objectives

9.30-10.45  **General overview of the Rome Statute**

  Fadi El Abdallah: General overview, including crimes falling under the ICC jurisdiction, jurisdiction criteria, victims’ participation, fair trial rights

10.45-11.00  **Coffee Break**

11.00-12.30  **Bringing cases before the ICC and proceedings in the Libya situation**

  Fadi El Abdallah: Brief overview of current ICC situations and cases, including Libya, the principle of complementarity, situations under preliminary examination and the Palestinian case

12.30-13.15  **The Rome Statute and its relevance for the Tunisian context**

  Monia Ammar: Opportunities and challenges for implementation of the Rome Statute in Tunisia.

13.15-14.15  **Lunch break**

14.15-15.30  **General overview of transitional justice, its principles and mechanisms**

  Monia Ammar: Presentation of the main components and objectives of TJ, including the relation between the ICC and TJ, brainstorming and exercise.

15.30-15.45  **Coffee break**

15.45-17.00  **General overview of transitional justice, its principles and mechanisms (continued)**

  Monia Ammar: Presentation of the main components and objectives of TJ, including the relation between the ICC and TJ, brainstorming and exercise.

17.00-18.30  **Working Groups on the current opportunities and challenges for the ICC and Transitional Justice in the MENA region**

  Participants will be given a practical exercise on the opportunities and challenges for the ICC and transitional justice in the MENA region

  17.00-17.30:  Group work

  17.30-18.30:  Presentations from participants and feedback from the trainers

**Wednesday 12 June 2013**

9.30-10.30  **The role of the media in promoting the ICC and transitional justice, including Public Information and the ICC website**
Fadi Al Abdallah/Monia Ammar: Overview of how the media can contribute to promote the ICC and TJ, advancing accountability in their countries. During this session trainers will also suggest specific initiative on the ICC and TJ that participants could implement.

10.30-10.45  *Coffee break*

10.45-13.00  **Transitional justice in Tunisia and Libya**

Monia Ammar: Overview and prospects of the implementation of TJ measures in Tunisia and Libya, including the draft legislations on TJ

13.00-14.00  *Lunch break*

14.00-15.15  **Transitional justice and the ICC: a practical exercise**

Fadi Al Abdallah and Monia Ammar will simulate a Press Conference with participants, who will be given a practical exercise to test their capacity to report on ICC and TJ-related issues

Press Conference simulation

Participants individual work

Presentations from participants and feedback from the trainers

15.15-15.30  *Coffee break*

15.30-16.15  **Closing session**

Evaluation of the training, distribution of certificate of participation and closing remarks

16.30-18.30  **Interviews**

In case participants want to, they will have the opportunity to conduct interviews with Fadi Al-Abdallah and Monia Ammar and representatives of KADEM.

*Thursday 13 June 2013*

Departure of Libyan participants
Annex III – Working group on the opportunities and challenges for the ICC and TJ in the MENA region

Group 1: Presentation of challenges
- The force of arms and absence of the rule of law (armed people).
- Tribal society ruled by traditions rather than by law.
- Recent establishment of legal institutions.
- Fear from the return of colonialism through allowing foreign interference.
- Absence of evidence and use of immunity by certain perpetrators.
- Religious extremism.
- ICC sanctions are insufficient, non-deterring and do not guarantee non-recurrence.

Group 2: Presentation of opportunities
- Transitional justice is a means to guarantee the rehabilitation of victims of violations, restitution of rights, and accountability.
- Arms proliferation in Libya. Insistence on the importance of dialogue in establishing a transitional justice law and in avoiding race-based and ideology-based conflicts.
- The importance of citizens’ confidence in the judiciary.
- The importance of reforming the legal system.
- Breaking with the past does not mean breaking with all laws.
- The importance of promoting dialogue in order to settle conflicts.
- The important role of the ICC in terms of accountability.

Group 3: Arbitration committee between Groups 1 and 2
- Transitional justice does not create new laws but rather alternative laws.
- Laws in Libya came to serve the old regime.
- Absence of political will to promote transitional justice.