مركز دعم التحول الديمقراطي وحقوق الانسان
Democratic Transition and Humain Rights Support Center

Access to justice in Tunisia

Frames and core issues

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General framing and supervision

Dr. Nouha Chaouachi,

Professor and lecturer at the University of Carthage: Faculty of Legal, Political and Social Sciences of Tunis II.

Key Experts

Ms. Dorra Fazaa

Lawyer

Mr. Walid Majri,

investigative journalist, founder and director of the Al-Katiba

Mr. Iskandar Salami,

Tax Advisor and President of the Tunisian Association for Tax Governance

Researchers

Conducted expert interviews, case studies, and questionnaire analysis, Research and Studies Unit at DAAM Support Center

Khalil Arabi, Asma Abid, Cyrine Guesmi

Technical and electronic design

Filmed and recorded interviews and case studies, the media lab at DAAM support center

Bilel Cherni, Ayman Abbasi, Wael Gharsa, Afef Hani, Saoussen Kaabi.

Review

Mohammed Omran,

founder and executive director of the Democratic Transition and Human Rights support centre (DAAM)

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Thanks and appreciation

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Additionally, all activists, legal experts, journalists, media professionals, and owners of initiatives and economic and social problems who provided us with the time to conduct a series of interviews or whi have participate in the roundtable to discuss the final draft of the study. It had a profound impact on the current form of the study. . We would like to say to all of them, with pride, affection and respect, thank you all.

Roundtable:

- Dr. Peter Artl, German Cooperation and Development Agency, Regional Projects, Director of the Project on Strengthening the Role of Law and Justice in Africa
- Vanessa Egert, German Agency for Solidarity and Development, Legal Adviser, Strengthening the Role of Law and Justice in Africa Project
- Mr. Boris Van Westerning, Free Press Unlimited, Project Coordinator for North Africa, Middle East and Pakistan
- Counselor Khalil Hassanein, Federal Bar Association - International Section - North Africa Hauer Ferney, Permanent Expert at the International Center for Transitional Justice
- Mrs. Ahlem Dhif, assistant professor at the Faculty of Legal, Political and Social Sciences of Tunis
- Mr. Faycel Bouguerra, Judge at the Administrative Court
- Mr. Achref Mejri, a judicial judge
- Mr. Neji Baghouri, former head of the National Syndicate of Tunisian Journalists
- Mrs. Chaima Bouhlal, a human rights expert and member of the advisory board at DAAM.

Questionnaire interviews:

- Mrs. Hanan Zbiss, journalist
- Mr. Iheb Chaouech, journalist and media professional
- Counselor Ragheb Zaoui
- Counselor Bassem Trifi, lawyer and vice-president of the Tunisian League for Human Rights
- Mr. Khalil Abidi
- Mrs. Mabrouka Khdir, journalist
- Mr. Achref Aouadi, President of IWATCH Organization
- Mr. Saifeddine Amri, journalist and press reporter
- Mr. Karim Ouannes, journalist and media professional
- Mr. Ahmed Souab, former Administrative judge and lawyer

Case studies:

- Moncef Whidi
- Imed Slama, General Manager of Smart Inspection Services
- Hichem Bouguerra, investor
- Hasina Darraji, lawyer at the cassation court
- Latifa Hosni, promoter of a tourism project (Dar Al Habayeb)
- Maher Abdelrahman, owner of Spectrum
- Intigo

DAAM's introduction

The Democratic Transition and Human Rights Support Center (Daam) seeks to contribute to the promotion of justice for the implementation of human rights principles, by formulating a systematic vision of the state of justice and its accessibility in Tunisia. As well as developing practical visions that fit the needs of the judicial and justice facility based on the principles of human rights in their universality and comprehensiveness, and far from political and ideological trends, specifically with regard to emerging economic institutions, minorities and marginalized groups. In this context, the Center sought to develop and produce this study, which came at the time of its implementation during the Corona pandemic and the ensuing effects, difficulties and obstacles, and in particular in all that required field work, necessary for the elaboration of the study.

Because of DAAM team's inherent and profound belief of the importance of persisting to complete this study, it overcame all these obstacles and coordinated with all the diverse participants in it during that difficult period and under the conditions of the health pandemic. The objective was for the study to come out in the best possible way and form, in order to contribute to the Arab human rights library as a study of relevance to the state of access to justice in Tunisia. As well, the study was catered with passion to achieve and thrive for success so it fuels studying the process of access to justice in Egypt and Libya during the coming years.

As usual, DAAM center relies on a participatory methodology in completing its human rights literature, and this modus operandi has been the backbnone of our work throughout all the stages of the study. In this sense, it is of prominent importance to mention the important roles of both Dear Naela chaaben, dean of the the Faculty of Legal, Political and Social Sciences in Tunis (University of Carthage) and Dr. Asma Ghachem, Vice Dean, who were both very cooperative and understanding. Their contribution added a great impact on the completion of the study.

By relying on the participatory methodology, a questionnaire was prepared with the knowledge of experts and passed electronically to a large number of parties related to civil society, legal experts, academics and media professionals, in addition to recording a series of interviews with Tunisian experts on the questions of the questionnaire.

DAAM team, with the assistance of experts also, identified case studies after a hard effort due to the health pandemic. The latter led to a high number of cancellations and drained a lot of time and energy with regards to redefining another set of case studies and working to coordinate with them during all the stages; for interviews, the study and the photography.

Dr. Nayla Chaaban, Dean of the Faculty of Legal, Political and Social Sciences in Tunis (University of Carthage), and her deputy, Dr. Asma Ghachem, provided all the support to contribute to the academic dimension of this study through providing of legal and academic experts, and discussing ways to develop the framework of the study. The three experts and the Research and Studies Unit at DAAM assisted in completing the initial draft of the study.

Afterwards, a roundtable was held to discuss this it in cooperation with the Faculty of Legal, Political and Social Sciences in Tunis (University of Carthage), the GIZ, and in the presence of a distinguished and selected group of researchers, journalists, media professionals, academics, Tunisian legal experts, as well as international experts. This discussion had a great effect on the organization and the development of the content of the study, and helped experts complete its final version. We hope it would constitute a significant contribution from DAAM center to enrich the Arab human rights library with regard to human rights and democratic transition in general and access to justice in particular. In publishing this study, the Center is taking its first steps in the direction of the Access to Justice Observatory, and this step will be followed shortly by a set of other steps to complete the work on the Access to Justice Observatory in Tunisia while aspiring to extend the work of the Observatory in Egypt and Libya in the coming months.

Mohamed Omran

President of the Democratic Transition and human rights Support Center (DAAM)

Contents

General frame of the report

The demand for justice has been at the center of the shouts of the rebellious people since 2011. The feeling of the absence of freedom, justice and human dignity generated a sense of injustice, resentment and indignation, which was the motive behind the masses' resorting to the streets. In the period prior to 2011, the institutional and legal system failed to provide the minimum guarantees related to the idea of justice, despite the enshrinement of the latter in the constitutional text and legislative texts and its announcement in the programs and development plans and the goals that the public authorities aspire to achieve, but de facto, consecration remained limited. This justifies this study's handling of the issue of access to justice, considering its extreme importance in achieving economic well-being and social security.

Referring to the legal system as a whole, we find that the lights when studying the issue of access to justice are usually shed on access to the judiciary as a constitutional authority guarantor of rights and freedoms and the application of the law in view of the important development that the Tunisian legal system has known in recent years, especially posterior to the promulgation of the Constitution of January 27, 2014.

The approach to justice from the point of view of access to the judiciary and obtaining a judicial ruling on the occasion of the emergence of a particular dispute is considered necessary as the basic legal mechanism for litigants to obtain their rights within the framework of respect for legal guarantees, but this approach remains limited, given that access to justice is a terminology that is broader in scope, as justice is not necessarily restricted to the judiciary, but includes other aspects, it is a humanistic conception based on achieving a balance between members of society at the level of rights enshrined within the legal system. This, would generate in the members of society a sense of justice, equality and non-discrimination. In this context, justice is not singular but rather multiple. It is permissible to talk about economic, social and cultural justice and justice before the judiciary as an aspect of justice. On this basis, recourse to justice is broader than the right to litigation, its conditions and procedures.

Expanding the concept of access to justice in this study will allow focusing not only on the right to access to the judiciary, but also on access to economic and fiscal justice as an aspect of justice from the point of view of the most vulnerable or precarious groups and the category of young people who have economic initiatives, through mentioning solely a few examples because economic and social rights are diverse such as the right to education, the right to work, the right to health, the right to an adequate standard of living, the rights of the child, combatting violence against women, the rights of minorities...

It will also address the problems posed by access to justice, whether in its narrow or broad sense. The recent national consultations conducted by the Ministry of Justice[1] highlighted that justice does not respond to all citizens' aspirations. Therefore, creating a justice that is really close to citizens is one of the means to lessen the gap between the citizen and the justice system. Achieving this goal requires reducing several distances between citizens and the justice system, which are geographic distances and time distances linked to long delays of adjudication and social distances resulting from economic pressures or cultural obstacles.

The Ministry of Justice also indicated that overcoming the aforementioned problems requires the development of various mechanisms to ensure real access to justice for all citizens. Among these mechanisms is the review of the judicial map that will enable the service of citizens through the establishment of district courts in rural geographical areas that witness population dispersion. Likewise, updating the procedures towards more flexibility and speed will enable the largest possible number of vulnerable people (Les plus démunis) to benefit from legal aid, which is one of the strengths of the justice

1- See the official website of the Tunisian ministry of justice.

system in Tunisia.

These mechanisms also include assistance in gaining access and knowledge of the law by encouraging state structures, legal professions and representatives of civil society to establish mechanisms for legal advice and assistance in order to guide litigants and users of the justice facilities and improve their knowledge of legal material and sensitize them of their economic rights.

The report mainly aims to explore:

- Difficulties related to focusing on access to justice as a right and a system
- Shedding the light on specific experiences on access to justice from the point of view of relevant specialists on this matter especially vulnerable groups and youth.
- The examination of the existing policies and strategies to focus on this right and the associated system.
- The access to justice approach from the inside and outside of the legal frameworks which despite their importance, have not been sufficient to guarantee it, given the reality of the social, cultural and economic hurdles that affect its establishment.
- Presenting a view of the dealing of media with access to justice.

The methodology of the report

From a methodological perspective, in order to verify the reports' aims, it was resorted to a set of meetings with interested people in activism, media and tax-related issues. Specific cases had to be kept track of, this shall be demonstrated through the annexed videos.

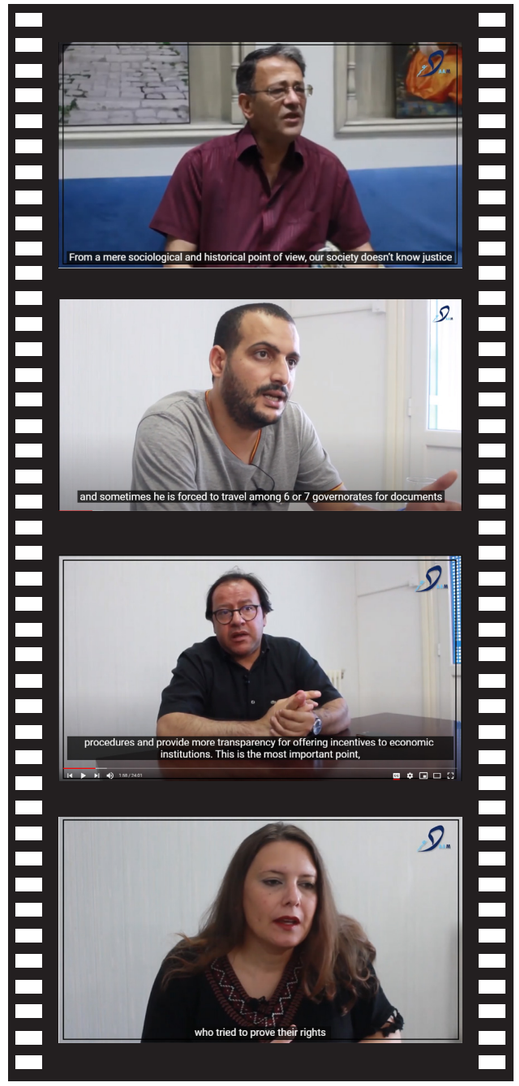
Meetings confirmed the reports' hypothesis which are linked to the access to justice approach which is limited to the right to litigation without its context. Confusion exists even among specialists. The aim was to clarify the need to renew this approach and open it to economic, social and cultural rights, the rights of minorities and vulnerable groups, as delicate cases that present important practical challenges that improve the system of access to justice in general.

As a first introduction, we could simplify views, situations and analysis mentioned in the questionnaire. The questionnaire of the Democratic Transition and Human Rights Support Center (DAAM), consists of 22 questions and the competencies of the interlocutors were divided between the press, law and civil society sectors. Therefore, the answers were distributed among several axes which we will try to summarize in the following points:

The first question focused on the access to justice approach and we noticed that there is

a misunderstanding between "the access to justice" and "the right to litigation" approaches. Thus answers were partial and focused on one aspect of the right to litigation. This is what made the concept of access to justice focus on the facility of the judiciary and court although the concept is broader than the right to litigation itself.

The attempt to simplify the current understanding of access to justice among the various questionnaires is linked to the problem that the right to access to justice is less important for the society. The problem was summarized in the slow administrative procedures from one side and the saturation of the Tunisian society with dictatorship that always presents in its vision, especially that the concept of justice has always been linked to the vision of the state's bodies which caused the citizen's lack of confidence towards the Judiciary as judicial rulings aren't implemented even if it brings justice to the victim. In addition, lacking legal and rightful awareness, the absence of political will and the citizen's ignorance of how rights are obtained greatly contributed to not recognizing the importance of the right to access to justice and understanding its depth. Despite the above, part of the questioners contradicted the aforementioned approach, as they considered that the right to access justice is not behind the scale of social importance. Their view is based on the developments that occurred after revolution and the demands for justice in all levels, although the reasons for inequality exist and the reasons for lacking respect and use of the law are frequent. This has led some persons to say, from a mere historical and sociological point of view, that Tunisian society does not know justice, ignores the law and is



far from the rule of law.

Overall, we conclude that the difficulty of the term that we presented and its lack of dealing not only among society, but also among groups who are interested in public affairs with a legal or media formation has led to short and unclear answers.

Based on the desire to scrutinize the concept of access to justice, the third question tended to link this right to the economic aspect regarding the establishment of economic institutions. Therefore, the answers took two approaches: An approach that relied on the effect of the right to access to justice, if it is available, on the society and another approach that presented the impact or importance of this right in the revival of economic institutions. In both approaches, the most important problems raised by our interlocutors were: The lack of trust, bureaucracy, delayed administrative procedures, the young researcher's failure to consult a lawyer while sending the project, and the many costs that the young researcher bears. This has expanded by dealing with access to justice, which is not just limited to the right to litigation, down to the opportunities for access to justice according to social class, age group and regional loyalty...

In our question concerning the most important problems that impede the young researcher in evaluating the performance of the public institutions in establishing economic projects in Tunisia, we discovered that almost all evaluations are negative, as they unanimously agreed on the institutions' bureaucracy and the multiplicity of the required administrative documents and the administrative bodies. In addition, it was questioned about the Single-window system which failed to present an alternative and facilities as it was founded inaccurately and was obstructed by the institutions itself in order to preserve the privileges which violate the legal texts. Thus, the duration of the project's establishment takes months in order to settle.

In addition, there is another problem which is the failure to include these means or stages of the project's formation in digitization that could facilitate all procedures. Moreover, the outdated laws that link the young researcher to the formation of the project which creates a crisis for us through the repetition and imitation of projects, besides lacking innovation.

The role of syndicates and civil society was the core of the fifth question which tackles the relation of the right to access to justice with syndicates and civil society, and their task to establish this right. The interactions of our interlocutors were between defenders and deniers as there are those persons who criticized their bad role and the absence of this right in their priorities. In addition, there are those persons who emphasized that syndicates are the defender of workers and not the creator of projects. Therefore, they have no role at all in establishing this right, which must be reviewed according to some of the interveners because their intervention in an advanced stage of project's research and their communication with the youth group of project researchers could contribute to changing matters, unlike its weak role.

In addition, some interlocutors argued that there is a failure of civil society in raising

the awareness of this right and that is due to the directions and specializations of the organizations. Moreover, the ideological effect on syndicates and organizations has an important role in dealing with that right.

The sixth question focused on the right to access to justice, reaching to its legislative framework and the extent of guaranteeing the opportunities for equality within it. Here, we return to posing the problem of implementation, as laws or the legislative framework in general guarantee the opportunities of equality, however it remains a mere dead letter for non-implementation. In addition, the problem is that laws have become incompatible with citizens and don't bring justice to them, and due to its complexity, the gap grows and becomes selective.

Some persons have pointed to the need to create a specialized judiciary and bar in this aspect, because the matter is not related to the principle of equality and its dedication, as it is related to creating exceptional solutions to the exceptional circumstance to ensure achieving equality in reality.

The seventh question dealt with the duality of position, margin, and affiliation in relation to access to justice. Everyone acknowledged the existence of a disparity between the interior and the major regions in which all institutions are located, as there is, for example, only one commentary court in Tunisia and located in the capital Tunis, even if Some areas have urbanized and increased in population. The infrastructure remains dilapidated and does not develop through institutions. There is someone who posed an alternative by invoking Germany such as the distribution of projects on the basis of the region's wealth and the vital sector therein (agricultural, industrial...) Thus, the projects are available to young

researchers, each according to their destination and location. This is what linked the majority of the interveners between providing the infrastructure for justice and the opportunities for developing the economy, society and culture. This created a similar ground between the various responses to justice institutions of all kinds and their economic, social and cultural context.

The eighth question poses the relationship of the principles of equality in spite of the sexual, religious and gender differences in order to gain access to justice. In addition, there are those persons who turn towards discrimination against women, especially in issues of inheritance and honor, and there are those who have proposed the possibility of discrimination between Muslims and other religious groups especially that the majority of judges have a conservative background who take the platform against religious and sexual minorities. The most prominent example of this is the famous case of homosexuals in Kairouan city, which reached the point of preventing them from re-entering the governorate of Kairouan.

The participants pose the absence of the principles of democracy in society, in addition to the administrative work and judicial performance. This confirmed that the access to justice is affected by the various factors inside the state and society.

The questions were not direct, however they provided a broad scope in order to analyze the reasons for not allowing equal opportunities to access justice. That was posed by the ninth question. The participants expanded their analysis for the reality of the access to justice. Some of them stated that the reasons are due to the reality of despotism, dictatorship and its economic, cultural and social origins, in addition to its historical origin which is linked to colonialism and the establishment of nation's independence. Other participants moved to the direct reasons which are in relation with the state and its institutions, especially the judiciary which lives in a crisis in terms of structure and logistics that is inseparable from the absence of its development with modern digital tools. In addition to the absence of a political will.

The tenth question concentrates on the level that isn't different from the last question, however it defines a question about the Tunisian cultural and collective vision, as the question tried to understand the civilizational, political and cultural interrelationship of the right to access justice, and was our collective vision a reason for obstructing the path of achieving the right to access to justice and its social establishment?

We noticed that almost all of the interlocutors interacted with the cultural side without paying attention to civilization and politics, as they unanimously agreed that the lack of education and the pervasive tyranny of social memory and the religious background of a conservative and concealed character have greatly contributed to the failure to achieve a rightful justice for all. In addition, after ten years of the revolution, a new democracy hasn't been formed yet which is capable of ensuring justice for all and equality among them.

In the eleventh question, the questioners unanimously agree on lacking partisan programs which are capable of adding to the system of access to justice. according to them, the parties' attempts are to control the system. Therefore, situations vary according to their decisions and their directions if they are in favor of one party or the other.

The participants pose the absence of the principles of democracy in society, in addition to the administratiue work and jvdicial performance. This confirmed that the access to jvstice is affected by the uariovs factors inside the state and society.

As for the twelfth question, everyone said that the legal procedures for forming companies are the same from the legal point of view, however inequality appears in the implementation. Most of the questioners directed us to the problem of regional inequality especially in gender, while bureaucracy is considered a necessary evil. Although the demand for reform exists, its negative characterization dominates. Bureaucracy is considered an opportunity for corruption in the absence of guarantees of accountability and responsibility. This urged some persons to demand registration of the name of the agent who worked on the file of forming a company for the sake of responsibility and accountability. This matter confirmed the demands for reform in order to facilitate procedures to push the economic movement. Another aspect confirms that the procedures for forming companies are based on the size of the company's capital which is under establishment in order to know the expected taxes, which means that the procedures should be changed in order to achieve justice instead of focusing on tax and money.

We conclude from the thirteenth question that excessive taxes kill the tax according to one of the participants, as the tax system suffers from dispersion and frequent change in addition to being difficult according to specialists. In addition, that is considered unfair as the Journal of Estimated Tax Systems cannot be fair, as employees pay 10 times more taxes compared to private-sector owners.

The current tax system does not provide tax scrutiny. Some of the questioners also linked it to its goals, the extent of its realization and the groups which benefit from it.

Some questioners considered in the fourteenth question that taxes put pressure on the youth, while others believe that taxes put more pressure on medium and large-sized foundations. It is generally a pressure that increases annually with every financial law. While those persons with influence find themselves in advanced positions that are capable of resistance and maneuver within the logic of lobbies.

On the other hand, the problems of the judicial system are due to the disputes which are related to investments, according to the fifteenth question. Deficiencies in the judiciary disrupt these disputes. This prompted some persons to suggest removing the Contracting Department from the Commercial Department to avoid litigation cases that last for many

years, especially before the administrative judge. This is part of a comprehensive reform that requires a political will that is now absent.

Regarding the structures which are capable of guiding young investors in litigation, the majority stresses in the sixteenth question that there are no specialized structures, while some have indicated the limited role of the judicial counseling institution. It is a limited institution and public structures to support young people are absent. Thus, the question is posed concerning the feasibility of some of them. Some persons considered that such a structure remains elusive, as a difficult dream.

Regarding the role of the citizen under a similar situation, the citizen is considered in the seventeenth question a victim according to the prevailing opinion, but he is responsible at some level to the extent of the negative behavior that he exhibits.

However, the responsibility belongs mainly to the state institutions through its policies and the public education facility, especially in establishing this societal awareness that is enshrined through citizenship, given that the citizen does not have sufficient power.

The bet in the eighteenth question on the judicial aid institution does not represent an eternally meaningful bet for some. Whereas legal professionals see the necessity of keeping the same institution, but with the creation of other institutions. Within the existing network of institutions and bureaucracy, the field is opened for a great effort to redress the weakest, despite the presence of some positive signs.

With regard to the authority of the media and its role in the nineteenth question, legal information is absent. It is one of the few areas that have been invested in, despite its importance after the revolution. Despite the presence of some initiatives from here and there, they are mostly unbalanced, while the majority of the questioners tend to focus on the judicial facility as a major problem and bet on an investigative media that plays a meaningful monitoring role at this level.

According to both the twentieth and the twenty-first questions, the media plays a major role in providing legal information which is one of the most basic solutions to raise legal awareness regarding access to justice as a comprehensive system. The sensitization is a role that is considered a focal point for the participants yet it is a role that has to go hand in hand with the needed media coverage that would eventually provide the appropriate discussions about the cases it poses.

Under a difficult situation described by many in the previous questions, most of them do not see in the last question a great hope in betting on a change imposed by the Corona crisis. Even digital justice and the digitization of the judicial facility during the health epidemic aren't expected to continue, especially given the infrastructure available today, which in turn suffers from severe problems.

The questioners linked the vision on which the report was based, to the concept of access to

justice, the legislative framework and the following elements related to information, fiscal and economic matters. Based on the existing intersections, it has become clear that the system of access to justice exceeds the right to litigation and to appear before the court to :

- The Citizens' legal awareness of individual and public rights and their entire duties
- The limited legal approach which is based on official texts and structures despite its importance and need for the role of civil society in strengthening and expanding the circle of access to justice
- The prevailing culture around individuals and societal perceptions, especially those related to women, children and minorities
- The role of the media discourse in developing the awareness of human rights, and codifying and directing the demands of justice and equality
- The role of the collection and tax system in strengthening the positions of the most vulnerable and weakest groups and providing opportunities for economic initiative and activity.
- The social and economic context
- The political history of the country, focusing on the guarantees of access to justice, and the need to remove the residues of the past in order to establish a true participatory democracy
- The role of public administration and the need to bypass the fatal bureaucracy, which has become an opportunity for corruption, abuse of influence and strike against the guarantees of justice and equality in society.

The results of the questionnaire

In this regard, the section on media and its role in dealing with the system of access to justice reviewed an extensive historical reading in the aspect of an authoritarian system that excludes many groups. The law played a role in structuring tyranny itself. This is mentioned, for example, regarding agricultural lands after colonization and after the experience of mutual aid. The state's programs regarding the development, its construction or the removal of their effects were not fair at all, and these effects continued for a long time. This section indicated that addressing justice together with thinking on it have roots in Tunisian history. The media has contributed to developing and demanding it as an observer and escort.

At the fiscal level, its section provided possible research paths on points that represent real obstacles to achieving fiscal justice and the equitable distribution of fiscal pressure. The tax represents a citizen's duty towards the national group, however many taxes kill the tax. It affects the healthy relationship between the citizen, the state and society, so instead of being a balanced relationship based on right and duty, the private goals of the private interest dominate which will search for a reason to bypass collection and taxes if they are not directed and fair. At this level, the relationship between citizenship, taxation, economics and justice is clearly evident, in terms of the latter, an integrated path and a required goal at the same time.

Part one:

The history of the concept of access to jvstice since the independence and how the media deals with this right

Conceptval introdvction

The notion of the right of access to justice as it is defined now only appeared posterior to independence i.e., posterior to 1956 and the announcement of the republic and the ratification of the 1959 constitution. In order to entrench the notion of justice in an independent Tunisia, Mohamed Amine Bey (the Bey of Tunisia) announced on the 21st of June 1956 that the state's emblem and its foundations will be order, freedom and justice.[2]

Linking the three values was applauded by politicians, syndicalists and journalists. For instance, the " al aamal journal" which was the 1st journal of the novel free constitutional party and the "l'action journal" addressed the 3 notions. Even the "Tunisian telegram" journal that is the French written journal under the control of the protectorate did address the 3 notions while comparing it to the French emblem: freedom, equality, fraternity.

However, the notion of justice in Tunisia was long consecrated before that. In fact, courts were established in the country since the 18th century when it was incorporated in the 1st constitution in the country on the 10th of September 1857 that is the fundamental pact (le pacte fundamental). The latter stressed in its 1st article on ensuring safety for all residents as far as their bodies, patrimony and their honor except for cases where the judiciary interferes.

Based on that, rules of law were drafted, courts stood and functioned until the abrogation of these laws in 1864. In 1870, judicial affairs became a part of the prerogatives of the 1st ministry and civil and penal courts were established for the Bey to sign it acting under his own volition and moods.

Pursuant to the study entitled "the history of Tunisian judiciary"[3] , aside from the two aforementioned courts, in Tunis the capital, another court existed. It is a 1st-degree court where a judge called "Al fariq" sits independently from the Bey. The most well-known judge is Salah Abbas. In January 13th 1896, judicial affairs administration was established and presided by a French governor and then judicial courts were established bit by bit. Regional courts were built by March 18th 1896 in Sfax, Gabes and Gafsa. And on the 25th of February 1897, a beylical decree was issued that founded the court of Sousse and Kairouan. The following year another founded the court of el Kef. As far as the court of the capital, it was founded by the beylical decree of May 1900. Yet the court in Beja took until 1930 to be established. In order to organize the work of courts, their composition, the election of judges, investigations, the appointment of lawyers and determine competence and procedure, the beylical decree of March 18 1896 was published.

The fundamental pact protected the minorities in Tunisia through its 4th article that stipulated that "the non-Muslim Tunisian must not be compelled to alter his religion nor must he be prohibited from practicing his religion. Non-Muslim temples must not be insulted. Non-muslims has all the rights and is subjected to the

2 The history of Tunisian judiciary, the open Tunisian encyclopedia , published and licensed.

.Id ٣

same obligations that the Muslim is obligated by. Moreover, the 8th article stipulates that all citizens are equal in customs and rules of law without preference."

The 10th article of the fundamental pact insists that "immigrants in Tunisia may perform whatever profession or act they wish under respect of the law of the country". The next article point out to the freedom of property. The fundamental pact contains 11 articles, 6 among which came for the sole purpose of protecting and nurturing minorities' rights in order to ensure safety, freedom of religion, equality in treatment, freedom of work and property. In application of its 1st article, Jews have their own judicial courts.[4]

After the start of the protectorate, the French law dated on the 27th of march 1883 established French courts in Tunisia in different cities including Tunis, Bizerte, Sousse, Sfax and El Kef to be competent in litigation in which French citizens or persons under the protection of the French protectorate are involved. On the 4th of April 1883, the Bey promulgated a decree to make the aforementioned French law applicable in the country.[5]

After founding the free constitutional party in 1920, it claimed piecing together courts, reforming it, reforming the agents' system and supporting the principle of separating administration from the judiciary which led to constituting the ministry of justice on the 26th of April 1921.

After the independence in 1956, the judiciary became united and national and Tunisian courts became competent regardless of the category of litigants. Making the courts 100% Tunisian and generalizing them in regions enhanced the principle of access to justice, removed religious, racial, and regional barriers that hinder the consecration equality before the law and the unity of accessing justice.

1. The state of independence: "the constitutionalization" of the judiciary and the legitimization of the state's economic violence.

A. The beginning of founding a national judicial system, restitution of lands and properties from French centenarians and confiscation of the Beys' properties.

The independence on the 20th of march 1956 represented an inflection point in the path of access to justice in Tunisia. Indeed, after 100 years, the functioning of the religious court (known as the "diwen") was finally terminated. In addition, the independence marked the cessation of work of the French Courts and Jewish courts by virtue of the Act dated on the 9th of September 1957 that abrogated the sitting of the Jewish council starting October 1st 1957 and transferring all cases to be heard by the court of first degree. Based on that, an administration for managing and administering the Jewish religious rituals was also created. Another inflection point was that of including Jewish personal status cases within the scope of

4 Id.
5 Id.

the code of personal status as promulgated in the 13th of August 1956.

These radical changes did not only unify the judicial branch but it made it hugely concentrated (directly or indirectly) and under the power of the executive branch that is a mixture of the party's power and the young state. The latter is the fruit of years of Beylical ruling and a Bey that was overthrown by virtue of a constitution (in 1959) that announced the start of a new era for Tunisia, the era of the republic.

The collapse of the Beys system labeled a dawn of new measures and procedures that were described by l'action journal, the party's journal, as revolutionary especially so far as the confiscation of the Beys' properties pursuant to the Act n°34-1969 relative to confiscating all properties of the late Hassine ben Mohamed Ben Nacer Bey. The Tunisian radio, the 1st public radio back then, addressed the confiscation matter redundantly mirroring president Bourguiba's view (the regime's view) without a shred of criticism.

The aforementioned act legitimized the confiscation the Beys' property without regard to a possibility of "violation of property" especially with the transfer of ownership to the state. Yet, posterior to the 2011 revolution, more than 40 years later, this act will come to the surface especially with the existence of the authority for truth and dignity.

B. the cooperatives experience

Between 1962 and 1969 ex-minister and president Bourguiba's right arm Ahmed Ben Salah imposed a novel economic system of communist origins based on gathering together ownership and production tools in the hands of the state after confiscating it from its private owners6. This experience was named the cooperatives experience and failed shortly causing

6- Al Sultani Moncef, « Tunisians and the cooperatives experience", politics post, February 27th 2019.

its founder to be prosecuted in 1970 for grand treason and sentenced for 10 years of jail from which he spent 3 years incarcerated before he managed to escape from prison to Algeria.7 Ahmed Ben Salah ended up taking alone full political and legal responsibility for the failing experience.

The cooperatives experience i.e., confiscating private property and making it collective under the care of the state, faced immense popular rejection notably from agricultures and land-owners that found themselves before the state's overly broad cudgel that lacked the basics of access to justice.

Meanwhile, Ahmed Ben Salah was the powerful and dominating minister who controlled economy and had the support of the syndicate along with the media. In fact, the media back then addressed the cooperative experience with applauding as it highlighted its positives side and completely disregarded its negative outcomes. For instance, "al aamal" journal, that of the ruling party, thoroughly explained its details and belittled its disadvantages.

Raising taxes to finance cooperative policy

Private property owners lost their properties due to the cooperatives' experience and found no resort to take back their rights during the years of the experience. That is due to the fact that the judiciary was servicing the state interest solely and not that of the litigants and the media was biased to the regime and insouciant of the people's maydays.8

1970 **1962**

%22.5

The rate of increase in taxes

Not only did the government confiscate private property but it also raised taxes by 22.5 % between 1962 and 1970 9to provide liquidity for implementing the new economic policy (the cooperatives policy). The most impacted layers were the poor and the middle class by 72.2%. Moreover, exterior debts, especially those granted by the USA and the world bank, were majorly relied upon as they represented 40% of the total investments in the 60's.

%72.2

The contribution of the middle and lower segments of the population

During the brief years of the cooperative, the state nationalized nearly all agricultural lands to the extent that by 1969, 1762 agricultural cooperatives measuring almost 4110000 hectares were created. As such, cooperatives were controlled by the state through its public employees in the regions. This control was deemed to be superficial at many times.10

As for the published journals back then, whether they were party-biased or independent, switching positions was not too complicated. In fact, as soon as late president Bourguiba suspended the cooperatives experience, Ahmed ben salah was prosecuted and held liable fully as a scapegoat for the regime, the journal quickly publicly joined the prosecution of the overthrown minister before it even judicially began.

"al aamal" and "l'action" journals were respectively the Arabic and French mouthpieces of the ruling party. These journals easily switched positions from defending Bourguiba's choice and analyzing his February 1965 speech during which he said that "we saw that the most efficient way is for the state to take over the biggest economic roles and to guide through planning all that is undertaken in the country... As a result, the era of absolute economic freedom is over".11 , to blindly conduct public prosecutions for Ahmed Ben Salah and to his "hybrid" and "failing" experience as described by "al aamal" journal. The quick switch of position occurred right after Bourguiba terminated the experience. The latter journals did not present any objective analysis of the situation and did certainly not provide any alternative opinions to those of the regime.

C. A Tunisian media conscripted to apply "the directives of the president"

While building an independent Tunisia, Bourguiba found himself playing two major roles and possessing two cumulative powers. First, the national leader, holder of quasi-absolute political power. Second, the godfather, holder of a moral authority applicable upon his people through guidance, advice and instruction.

Bourguiba made for himself a divine oracle of sacred origins. He is "the sole leader", "the grand moujahed", "the independence-binger", "the builder of the independent state" etc. all these descriptions were used by the media to legitimize and create his moral authority over Tunisians whom he addressed daily through radio and TV in a show called "the directives of the president".

This daily routine was the president's way to teach his "children" (his manner to address Tunisians) the foundations of patriotism, civility, clothing, cuisine, dedication in work, up to body and clothes' hygiene[12]. The publicity wrapped up in a fine layer of guidance and instruction contributed in making the media a mere megaphone for the regime and the president. This mortified any chance of providing criticism or evaluation.

7- Ahmed Ben Salah's political testimony, additions about: national and international activism., Dr Abdeljalil Altamimi, publications of al Tamimi institution for scientific research and information, Zaghouan-Tunis, 2002.
8- Tunisia throughout history, part 3, the center of economic and social studies, Tunsia,2007, p.188;189.
9- Zaabi Hicham, « did Tunisia know communism during the era of cooperatives?", al awan, November 14,2017. Available at: https://bit.ly/3jJ23XO .
10- Id.
11- Id.
12 Rajhi issam al din, « the directives of Mr. president Bourguiba", noonpost, May 11th,2017. Available at: https://www.noonpost.com/content/17937

Bourguiba used all powers he has overtaken and directed "the state's legitimate violence" towards terminating his opponents and political rivals and made no exceptions for his struggle of independence companions like "Al Yousfiyin" to refer to the followers of Salah Ben Youssef that was assassinated in Germany on August 1961.

Bourguiba fought left and right. He fought the communist party which he later froze its activity in 1962. He also fought the islamists (the Islamic movement party that later on became al Nahdha movement). Not only did he fight, he also mutilated them right after a truce he invested in his war against the opposing leftist opponents which he rendered inefficient. Moreover, he abolished fundamental liberties and imposed control over the media.[13]

On the 27th of December 1974, Bourguiba made himself president for life after amending the constitution.

2. The change of Nouember 7th 1987: "the new era" and new promises.

The rise of ex-president Zine El Abidine Ben Ali on November 7th 1987 after removing Bourguiba caused a radical change in the governing system that had been weakened and became a burden to the continuity of the state's institutions.

"The 7th of November shift", as baptized by Ben Ali, represented a lifeline for political entities, organizations and syndicates that suffocated during Bourguiba's ruling that made their

13 « al habib bourguiba », al jazeera net, september 17th, 2014. Available at: https://bit.ly/3jTZOkA .

activity nearly impossible in Tunisia by increasing political trials before the state security court.

A. An explosion of the freedom of press and a free dealing in litigation and ongoing cases.

During the first 3 years of Ben Ali's ruling, the press got emancipated and expression liberated. Oppression manifestations disappeared and were replaced by open criticism and pertinent analysis to the Ben Ali regime decisions and measures. Moreover, journals allowed multi-ideological opponents to publish their opinions and perceptions of the new Tunisia post Bourguiba.

At that time, Bourguiba's era was stamped as the "previous regime" in a pejorative sense and cases of the past floated to the surface to be criticized. These cases were a violation of rights such as the right to litigate and the right to compensation for the harm incurred by Bourguiba's regime. The latter was, indeed, characterized by dictatorship and abusing the state's authority to control governance and silence opponents.

The Media was quick to make itself both accessible and open to provide a safe space for opponents in a movement that was described by historians as one close to "a purging" from the previous state of submission and compulsory recruitment lived during the 30 years of Bourguiba's governance.

Yet, unfortunately, this emancipation did not exceed 3 years and the press quickly fell in traps of the Ben Ali regime that took it back to dictatorship and exploited it, again, to be its loyal megaphone.

B. A strong recurrence in compulsory recruitment of the Media and press by Ben Ali's regime.

Radical opposing parties' activities were frozen after 3 years of prosperous ideological freedom and Press(public and private) oppressed again to smoothly re-enter an era of biased "drumming'' for the regime and its achievements. The successes of the system that were Longley applauded by the media was limited to fictitious facts and was a mere political publicity to collect enough legitimacy and for the regime from internal and external parties.[14]

The media returned to its old habits of being obedient to the system that used this opportunity to codify its control over the press through establishing the ministry of communication, and the technical agency of foreign communication. This agency, which was terminated after 2011, bought the voice of so many journalists and aligned the media through dual-track and carrot-and-stick policies. These policies consisted of gifting the most loyal and implicitly punishing the opponents by drowning them in harassment and cases and

14- "tunisia from bourguiba to after the revolution" , Aljazeera.net, February 9th 2017.

prohibiting them from receiving help subsidy. Punishments for adverse parties could even reach jail-time and trials.[15]

Suffocating the press led to a consistent and recurrent impunity, spread of corruption, repetition of unjust enrichment cases and complaints against Ben Ali and Trabelsi family close friends and relatives.

In contrast, a huge number of private journals as an illustration " Al chourouq", "Al Hadath", "Al eelen", " al moulahedh", etc led campaigns against opposing persons whenever the regime demanded that they do so. These journals attacked, publicly prosecuted, accused of treason, alliance with external powers through embassies and accusations of attempts against the sovereignty of the state all persons that bothered the regime at that time. These journals benefited from a de facto immunity accorded by the regime.

Meanwhile, the notion of justice, independence of the judiciary, equality and equity before the rule of law, and restitution of rights were dwarfed and emptied of meaning as they continued to be present daily in newspapers to provide publicity for the regime. The emblem of the Ben Alin system was " a state of law and institutions."

During these evidently dark times for liberties, rights, state of law and institutions, a few Party-opposing journals and progressive opposition such as "Al mawqef" mouthpiece of the progressive democratic party and "Al tariq Al jaded" published by Al tajdid party (now active under the name "al masar", and "Mouwatinoun" published by the democratic bloc for work and liberties and "the people" journal mouthpiece of the syndicate in addition to some independent newspapers that were published outside the country (Al joraa, nawat website, Tunisianews etc) represented an alternative to obedient media. In fact, these alternatives uncovered the corruption of system, defended the freedom of press, expression, independence of the judiciary and supported justice to be founded as a pioneer for democracy.

C. Opening freedom of expression windows under the care of the system

Ben Ali regime got increasingly pressured by civil society Organizations and syndicates on the internal level and by external partners such as The EU and IMF starting the early years of the 2nd millennium. The regime was pushed around to commence radical reforms as far as supporting freedom of expression, independence of the judiciary and enhancing partisan multitude. These pressures drove Ben Ali who needed a renewal of term for presidency to loosen the rope around the press's neck. In this sense, Tunisia hosted in 2005 the 2nd edition of The World Summit of Information Society (WSIS).[16]

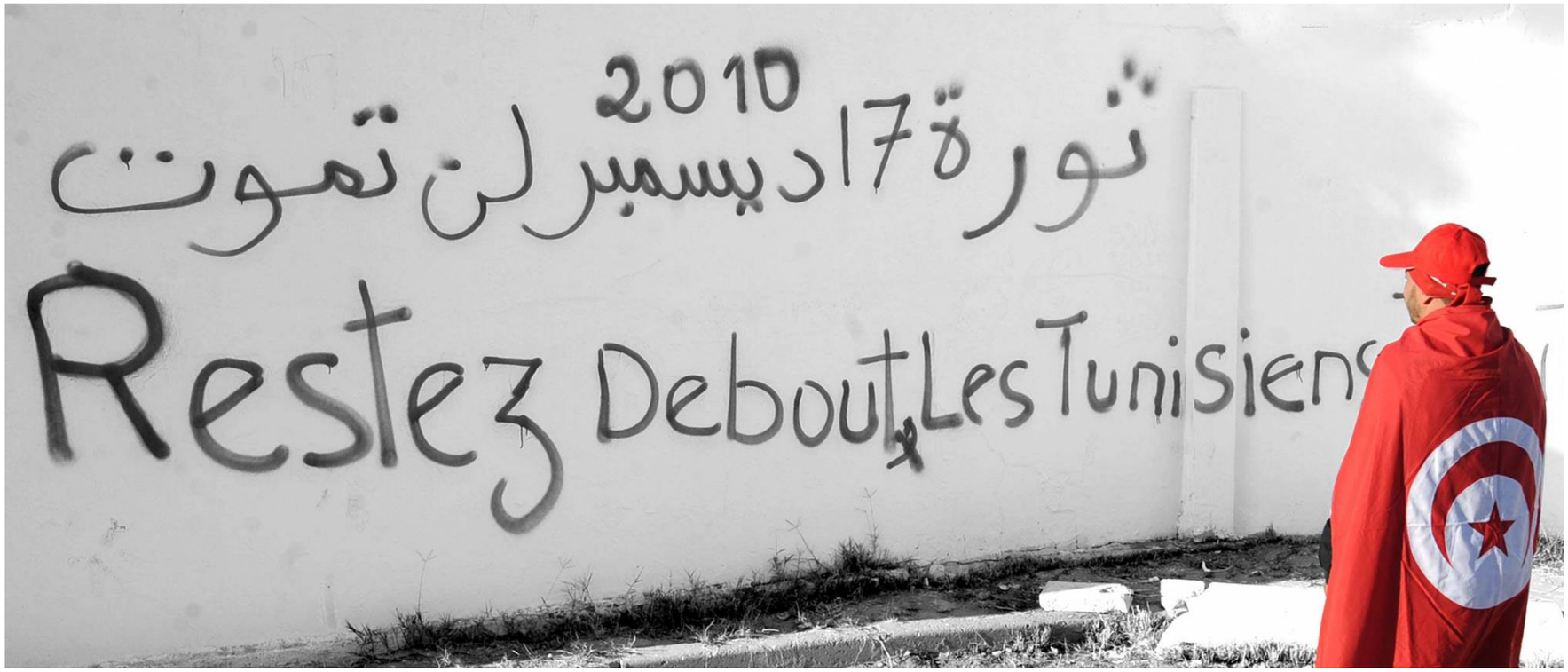
15- " in the testimony of Mohammed Bennour... stories about using the media during the times of Bourguiba and Ben Ali" , Ultratunisia, December 15th 2018.

16- See World Summit on the Information Society Forum official website.

According to the decision n° 183/56 of the general assembly of the United Nations, the world summit was organized on a two-stage basis. The 1st stage was in Geneva and took place between the 10th and the 12th of December 2003. The 2nd stage was in Tunisia and occurred from the 16th to 18th of November 2005. The international telecommunications union (ITU) was charged of the preliminary stages in cooperating with the interested parties among which we can find organizations and partners. Based on that, the Tunisian system had to compromise and settle with a few additional doses of freedom of expression and political activism. This situation lasted 3years during which bold programs emerged and addressed the issue of access to justice with the public who are struggling with it. "al Haq maak" that was initially broadcasted on the 1st national TV channel "7th Tunisia" before it was prohibited was among the 1st to emerge. Another illustration of a little emancipation of media during the aforementioned 3 years occurred with "al haqiqa – the truth" program broadcasted on Hannibal TV a private channel along with "BELMAKCHOUF- in the open" a show that unveiled corruption in the sports field additionally to other radio programs of social and economic interest.

After the "mine basin/reservoir" events in 2008, the regime stiffened the rope around liberties and promptly dominated the media again.

> The early years of the revolution were characterized by the focus of the Tunisian media, with all its affiliations, on past violations, by opening files of the past and returning to the most important major issues that occupied public opinion and could not be addressed previously due to censorship.



The reuolvtion of December 17th- Janvary 14th: transitional justice between the authority of Ben Sedrine and the law of the president.

By the end of 2010 and the beginning of 2011, ex-president Ben Ali was chased off by protestors and left Tunisia to Saudi Arabia where he stayed until his death in 2019.

The protests shifted from claiming merely social demands requesting for dignity and the right to employment to raising political emblems calling for reckoning Ben Ali's legacy and liquidating his regime which led to the prohibition of the ruling party, the dissolution of the parliament and the dismantling of the governing system including the ministry of communications and the technical agency for foreign communication[17].

A. A glut in covering the news about cases involving the old regime's cadres.

Posterior to the collapse of the Ben Ali regime, the Tunisian media was freed from decades of control and possession. Based on that, Tunisians lived in an era involving a media supporting the revolution either until the features of the new system gain visibility or in an attempt to purge years of sins by adding a revolutionary spirit and benefiting from the space

17- "the Tunisian revolution from the start until the running away of ben ali, al jazeeraa, june 14th 2017.

of liberty before novel updates take them back to compulsory recruitment and silencing again.18

The early years of the revolution were characterized by the media focus on the violations committed in the past years of dictatorship through opening up forbidden and long-forgotten dossiers. For instance, what was referred to as "the military group of Baraket Al Sahel"19and "political trials" and "security pursuits of students" and "Soliman's jihadi group" along with a number of buried cases whose "heroes" were the Ben ali and Trabelsi family and their close privileged entourage who violated people's rights and properties.

The media coverage focused on the victims and concentrated on advocates', judges' presences in TV programs (cases of ben ali, imed trabelsi, slim chiboub *etc*). During the last years, the media became a safe sanctuary for all victims of the old regime. Additionally, the media was used to pressure the judiciary in dealing with specific cases and bring justice and equity to the victims.

B. Transitional justice… material for the media that is not immune to ideological and political usage.

in early 2014, the authority for truth & dignity saw the light. This authority is competent as to the supervision of the transitional justice process during all of its stages. It is indeed an independent authority that enjoys legal personhood and administrative and financial independence20.

18-Ouannes Yosra, « in the memory of the revolution… did the Tunisian media surpass the hinders of the past?" ,al anadhoul, January 14th 2019. Available at: https://bit.ly/2Zd7Dbw .
19- « in the 29th memory of Baraket al Sahel's case", Al sabah news, May 28th, 2020. Available at: https://bit.ly/2L-NAmQW .
20- Official website available at : http://www.ivd.tn/livd/

The authority uncovers the truth surrounding violations, holds the responsible persons accountable and decides on liability and compensation for the genuine victims. The point behind it is to achieve national conciliation. The authority's workload starts, in principle, to treat cases who occurred between July 1955 until the promulgation of the law organizing it.

By virtue of the organic Act n°53-2013 dated on the 24th of December 2013 relative to establishing transitional justice and organizing it and to the organic Act n°17-2017 dated on the 12th of June 2014 relative to rules related to transitional justices and covering cases that occurred between December 17, 2010 and February 28th 2011 and in application of its bylaws and its specific procedures handbooks.

In November 2016, the authority organized the first public hearing/audition for the victims of the tyrannic system[28] . The audition was broadcasted on the 1st national TVand fully or partially broadcasted by a number of other public and private channels and online platforms. The number of Tunisian auditors was enormous, many confessions and testimonies about previous violations were given.

The auditions represented a golden space to uphold the notion of justice and bring it closer to the people and dismantle the violations systems in a simplified manner with concentration on the human aspect through the testimonials of the victims and the confessions of the violators instead of the usual focus on laws and procedures. The hearings were an opportunity for rehabilitation and an authentication of justice for a number of victims who willingly dropped their right to pursue their offenders and considered that informing other people about their painful experience was already enough justice for them.

Ad interim, transitional justice was not immune to political and ideological use which reflected badly on a big number of media institutions that kept being biased to the defenders of the transitional justice process or its opponents without providing an objective view unveiling the path and its shortcomings.

C. The administrative and economic conciliation Act… a powerful presence accompanied with conflicted legal and political readings.

With the rise of late ex-president Beji Caid al-Sebsi and its elections in 2014, the latter rapidly appointed experts to draft the Act of administrative and economic conciliation" known under the name of "the Act of conciliation", that is a bill consecrating -as per its opponents- a policy for impunity and obstacles the process for transitional justice under the guidance of the president of the authority for truth and dignity Sihem Ben Sedrine that shortly became President al Sebsi's biggest rival. [21]

mandat-de-livd/ .
21-Transitional justice is stumbling in Tunisia, Carnergie endowment for international peace, September 22nd ,2015.

The conciliation act caused an explosion between the presidency of the republic and the supporters of the act on one hand and the authority for truth and dignity and the supporters of the transitional justice process on the other hand.

Soon enough, the media covered this explosion and turned it into work material for talk shows and news reports. Despite the political and ideological use of the conflict between the two institutions, the media interference and coverage simplified it to be a popular matter and not an elitist one reserved to jurists and activists.

This popular interest reflected in reality in protests that supported the transitional justice process and acute resistance of the Act and its policy that consecrated impunity.

Among the most prevalent movements was the "manich msemah-I am not willing to forgive/ conciliate" movement that boiled down and simplified the notion of justice and fought against impunity.

Part Two:

The legal framework for the right of access to jvstice, between consecration and problematics

Access to justice is defined as the right to go to courts and practice defending material and moral rights through litigation in all its branches, is considered one of the most important principles of the rule of law and a necessary condition for protecting the rights of individuals, ensuring the social cohesion of society and achieving civil peace.

Perhaps, before expanding the concept of access to justice in addition to addressing it with a lesson in terms of being an important lever for the economy and closely linked to investment engines, achieving equality of opportunities at the economic level, equality before the administration in general, and the administration of collection in particular, it is necessary to first put forward the most important legal sources that regulate the principles that govern Access to justice in its shortened sense of the right to litigation and the guarantees required by it, which we have arranged in a manner that is required by the hierarchy of laws from the highest degree to the lowest.

However, it is worth noting that the texts on access to justice in the sense of litigation are scattered among a large group of legal texts, whether at the international level or at the national level.

For this report to not be limited to a mere listing of legal texts related to access to justice, explaining legal and factual issues emanating from these texts and hurdling that rights either partially or integrally needs to be done.

The Tunisian Constitution which was issued on January 27, 2017, is considered to be important as it consecrates what is theoretically called "principles for the 2nd republic". Indeed, this article stipulated the following:

Article 108: Every individual is entitled to a fair trial within a reasonable period. Litigants are equal before the law.

The right to litigation and the right to defense are guaranteed. The law facilitates access to justice and provides legal assistance to those without financial means. The law guarantees the right to a second hearing.

Court sessions shall be public unless the law provides for a closed hearing. Judgment must be pronounced in a public session.

As for Title two "Rights and Freedoms", Article 27 stipulated that:

"A defendant shall be presumed innocent until proven guilty in a fair trial in which he/she is granted all guarantees necessary for his/her defense throughout all the phases of prosecution and trial".

Art. 105 stresses that the legal profession is free, independent participated in establishing justice defending rights and freedoms. The lawyer enjoys legal guarantees which protect him and enable him to perform his tasks.

It is clear, then, that the Tunisian constitution guarantees the right to a fair trial and provides the basic principles to justice access in accordance with what is recognized within international treaties and the importance of this is extremely important because the constitutional

text, which is the highest degree in the ladder of laws and must be followed. In addition, it is inevitable to abide by its provisions when enacting all kinds of laws, so that they cannot deviate from these principles. It is beneficial to stress upon the fact that the 2014 constitution consecrated for the 1st time a set of principles as it considered that litigation should have reasonable delays (this is supposed to be determined by jurisprudence depending on the nature of the litigation, it has not yet been done). The constitution also considered that the legal profession as an aider of the judiciary participates in establishing justice and plays an original constitutional role in defending rights and liberties.

Announcing the aforementioned constitutional principles relies upon prominent constitutional mechanisms relating to the judiciary (judicial, administrative, and financial) and the establishing of the high judicial council (Art 112 *et s* of the constitution) which was consecrated by Law N°34-2016 dated on April 28 2016 then through electing the council's members. It supervises the wellness of the judicial power and guarantees its independence. Also, the constitutional judiciary through Art. 108 of the constitution that consecrates the Constitutional Court which regulating law has been promulgated since December 3rd, 2015 but has not seen the light yet. In addition, the constitution created a novel type of independent public Authorities which is endowed with numerous prerogatives in human rights and freedoms-related fields and as well kept away from the reach of the executive.

On the international level, The International Covenant on Civil and Political Rights 1966 guarantees the right to access justice and the right to a fair trial.[22]

22 Article 14 stipulates the following:
1 All persons shall be equal before the courts In the determination of any criminal

charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; however any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2 Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.
3 In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
a. To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
b. To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;
c. To be tried without undue delay;
d. To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
e. To examine, or have examined, the witnesses against him and to obtain the attendance and

examination of witnesses on his behalf under the same conditions as witnesses against him;
f. To have the free assistance of an interpreter if he cannot understand or speak the language used

in court;

On the regional level, The African Charter on Human and Peoples' Rights 1981

It is the charter that was enacted and adopted by the Council of African Presidents at its regular session No. 18 in Nairobi (Kenya) June 1981 and Tunisia ratified the African Charter on Human and Peoples' Rights on March 16, 1983. With regards to the issue of access to justice, it was stipulated in Article 7, which deals with the right to litigation and the proof of innocence, the right to defense and the right to a fair trial.[23]

Based upon the aforementioned, during this section, we will research the constitutional and legislative consecration for fundamental and necessary principles guaranteeing the right to access justice especially while other constitutional institutions like the Constitutional Court and independent Constitutional Authorities have not yet been established, this seriously limits the effectiveness of that right and the evaluation procedure.

Looking into the consecration of this right and the problematics hurdling its achieving imposes upon us the need to research the extent to which the Tunisian legal system consecrates the right to access the judiciary then secondly the right to access an effective judiciary.

1. The right to resort to a judge

The Tunisian constitution guaranteed the right to access the judge as well as exercising this right in time until all legal resorts are exhausted.

A. The right to access the judge for the first time:

This supposes that the judge exists, be close to the litigant and or has jurisdiction and that the litigant, at the time of filing the suit, be dealing with simple and uncomplicated procedures.

g. Not to be compelled to testify against himself or to confess guilt
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and

the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offense and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
23 Article 7 stipulates:
First: Every individual shall have the right to have his cause heard. This comprises:
- The right to an appeal to competent national organs
- The right to be presumed innocent until proven guilty by a competent court
- The right to defense, including the right to be defended by counsel of his choice;
- The right to be tried within a reasonable time by an impartial court or tribunal.

second: No one may be condemned for an act or omission which did not constitute a legally punishable offense at the time it was committed. No penalty may be inflicted for an offense for which no provision was made at the time it was committed. Punishment is personal.

● **That the judge exists**

The right to have access to the judge

1. That this judge be close: the judiciary of proximity
2. That the judge has jurisdiction
3. The procedures for filing and admitting the case should be simplified
4. The right to appeal (to recourse)

At the core of the judicial authority, the Tunisian constitution has consecrated three branches, namely the judicial judiciary, the administrative judiciary, and the financial judiciary, and that is through explicit constitutional provisions notably articles 115, 116 and 117.

Article 115: "The judicial judiciary consists of a cassation court, courts appeal, and courts of first instance.

The public prosecution is part of the judicial judiciary, and it is within the scope of the guarantees guaranteed to it by the constitution. Public Prosecution judges exercise their duties stipulated by law and within the framework of the penal policy of the state, in accordance with the procedures established by law.

The Court of Cassation prepares an annual report that it transmits to the President of the Republic, the Speaker of the Assembly of the Representatives of the People, the Head of Government, and the President of the Supreme Judicial Council, and it is published.

The law determines the organization of the judicial judiciary, its competencies, the procedures followed by it, and the organic law for its judges.

Article 116: "The administrative judiciary is composed of a supreme administrative court, administrative courts of appeal, and administrative courts of first instance. The administrative judiciary has the jurisdiction to consider the administration's overstepping of its authority, and in administrative disputes, and it exercises an advisory function in accordance with the law.

The Supreme Administrative Court prepares an annual report that it transmits to the President of the Republic, the Speaker of the Assembly of the Representatives of the People, the Head of Government, and the President of the Supreme Judicial Council, and it is published.

The law sets the organization of the administrative judiciary, its competencies, the procedures followed by it, and the statute for its judges.

Article 117: "The financial judiciary is composed of the Court of Accounts with its various bodies.

The Court of Accounts is specialized in monitoring the proper use of public funds, in accordance with the principles of legality, efficiency, and transparency. It judges the accounts of public accountants, evaluates methods of conduct and corrects errors related to it, and assists the legislative and executive authorities in monitoring the implementation of finance laws and the closure of the budget.

The Court of Accounts prepares a general annual report that it transmits to the President of the Republic, the Speaker of the Assembly of the Representatives of the People, the Head of Government, and the President of the Supreme Judicial Council, and it is published. The Court of Accounts also prepares, when necessary, specific reports that can be published.

The law determines the organization of the Court of Accounts, its functions, the procedures followed by it, and the organic law for its judges.

We conclude from these chapters that the will of the constituent power tended to preserve the judicial duality in Tunisia through the adoption of a judicial judiciary that includes the civil judiciary with all its specializations and the criminal (penal) judiciary on the one hand, and the administrative judiciary on the other hand, which specializes in administrative disputes. This enables the litigant to resort to the judge according to the nature of the dispute to which he is a party.

The Constitution, in its 117th article, also covered the financial judiciary, but the latter remains restricted to a certain type of litigants, as it is a special judiciary for public accountants and exchange commanders.

If we expand on the concept of justice, we can consider that access to independent public bodies also falls within the framework of the right to access to a specialized judge, according to the areas in which these bodies intervene, whether they exercise an economic adjustment function or are active in the field of human rights and freedoms. For example, the Financial Market Authority, the National Communications Commission, the National Authority for the Protection of Personal Data, the General Insurance Authority, the Information Access Authority...

It should be noted that the Tunisian legislator has created these specialized bodies to exercise, according to their field of intervention, an amending function that allows them to establish themselves as judicial bodies when deciding on disputes that fall within their respective jurisdiction.

● **That this judge be close: the judiciary of proximity**

Proximity refers to the geographical distribution of courts in Tunisia, which allows the

litigant to go to the court that is closest to his residence. International conventions and national constitutions stress in providing this right to the litigant. In this context, we note the presence of the judicial judiciary over the entire territory of the Republic through district courts, courts of first instance, courts of appeal and a single of court cassation (supreme court).

As for the administrative judiciary, it has witnessed an important development since 2017, at the level of the proximity judge. After being only located at the capital for more than forty years, by virtue of decree N° 620-2017, dated May 25, 2017, primary circuits branching from the administrative court in the regions were created, 12 courts were established. Setting these courts is considered to be a 1st step towards consecrating article 116 of the constitution effectively. The latter approved a new structure for the administrative judiciary, similar to the judicial judiciary. However, the problem today, which has not been surmounted, is that the appeal is only possible before the appellate circuits of the Administrative Court in the capital, which represents an obstacle to the right to resort to the administrative judiciary during the appeal phase.

- **That the judge has jurisdiction:**

The actual and real exercise of this right requires that the case's subject matter be within the judge's jurisdiction. This is enshrined in the Constitution through Articles 115 and 116.

Pursuant to Article 115, we see that it approved the judicial judiciary as a judicial body specialized in disputes between private persons and referred to the laws to clarify the various competencies.

With reference to the Civil and Commercial Procedures Code, the Code of Criminal Procedures, and other legal texts, the jurisdiction of the Civil Judiciary, Commercial Judiciary, Labor Judiciary, Personal Status Judiciary, Real Estate Judiciary, Social Security Judiciary as well as the Criminal Judiciary.

As for Article 116, it explicitly states that the administrative judiciary is competent to look into the administration's abuse of its authority, and in administrative disputes. Article 17 (new) of the June 1, 1972 Law, as revised by subsequent legal texts related to the Administrative Court, shows the jurisdiction of the first instance circuits of the Administrative Court in addition to the competencies assigned to the Administrative Court with a special provision.

However, the complications related to judicial duality in Tunisia and the lack of respect for the jurisdiction of the judicial judge and the jurisdiction of the administrative judge makes it sometimes difficult to determine the competent judge in each dispute. For instance, dispossession for the public interest, fiscal disputes, and social security disputes, which represent a limitation of the right to resort to justice.

It is not enough for the judge to have jurisdiction to look into the origin of the case and return the rights of the owners, but the procedures for filing and accepting the case must be easy and uncomplicated.

- **The procedures for filing and admitting the case should be simplified**

According to the procedural laws, the lawsuit is conditioned until it is accepted by the judge, which will allow the litigant to access justice. The plaintiff must fulfill conditions that concern capacity, interest, and legal status to acquire standing before the judiciary, otherwise the judge will formally reject his claim. These conditions are presented in Article 19 of the Civil and Commercial Procedures Code when it states: "The exercise of the action belongs to any person having quality and capacity to assert his rights in court. The plaintiff must have an interest in the exercise of the action.

However, in matters of summary proceedings and in the event of peril in default, the action may validly be brought by the minor endowed with the quality.

The court must automatically declare the action inadmissible if it appears from the file that the applicant is incapable or has no standing.

If the incapacity of the party with limited capacity is lifted during the proceedings, the action is considered to have been validly brought. "

The Administrative Court Law dated June 1, 1972, in its sixth chapter, referred to the condition of interest, in which it stated: "A claim of abuse of power is accepted from anyone who proves that he has a material or moral interest in canceling an administrative decision."

The validity of the procedures also requires that the plaintiff be properly represented.

The claimant must also file his claim within the deadlines stipulated by the laws, depending on the nature of the case (civil, criminal or administrative), as article 402 of the Code of Obligations and Contracts explains that every civil case shall not be heard after the lapse of fifteen years, except for excluded cases after the law decided it in special cases

As for the administrative matters, for example, and specifically in the article about canceling administrative decisions, a lawsuit for abuse of power is filed within the two months following the date of publication or notification of the contested decision, which is what was stipulated in Article 37 of the Administrative Court Law dated June 1, 1972. In case the legal deadline elapses, the right becomes subject to prescription.

The question arises as to whether these conditions established by the legislator for accepting cases represent a barrier to access to the judge.

These procedures are adopted in all legal systems and they do not conflict with the right to access to justice because the requirements of legal security and the proper functioning of the

judiciary justify them.

B - the right to appeal (to recourse)

The right of access to justice cannot be limited to the right to access justice for the first time, but must be a continuous right, through the right to appeal the primary judgment. In this context, the 2014 constitution guaranteed in its article 108th the right to litigation on two levels, giving it a constitutional value.

In principle, the right to litigation does not pose a problem in the judicial judiciary as it is absolutely enshrined, while the exercise of this right is not possible for some preliminary and final rulings. For example, we find that Article 41 of the Administrative Court Law of 1972, which states that decisions issued in matters of suspending the execution of administrative decisions or postponing their implementation shall not accept any form of recourse, including appeal. We can also refer to Article 85 of the Administrative Court Law, which requires that urgent decisions issued by the heads of the appellate circuits are not subject to appeal.
The Administrative Court, in its commentary decision No. 731225 dated May 15, 2017, had previously considered Article 85 of the Administrative Court Law unconstitutional for violating the principle of litigation at two levels as stated in Chapter 108 of the Constitution: The basic principles guaranteed by the constitution to the litigant, as it falls within the framework of international standards for a fair trial, which the judge must strive to achieve, within the limits of the possibilities available to him. However, the legislator overlooks this right surpassing a reasonable delay from the date of entry into force of the constitution. [24]

In contrast to the right to litigation at two levels, they did not consecrate recourse through cassation, as it is not considered an element of access to justice.

With regard to other methods of appeal, the law guarantees the party who did not appear in the case the possibility of discussing the judgment issued against him in absentia, whether before the judicial court or the administrative court. The right to resort to the judge also presupposes that a third party who was not summoned to be a party to the case and was not represented in it, and who suffered damages from it, could object to the judgment issued, which is what was stipulated in Article 79, Paragraph 2 of Law 1 June 1972

2. The right to effective access to justice

The right to access to justice is not limited to guaranteeing the right of every person to file his case before a competent judge and according to simplified procedures, but also assumes that access to justice is effective and not merely a formality. The right to effective access to justice is linked to some elements whose consolidation is necessary for the real exercise of this

24 Administrative court, Cassation, decision N°731225 dated on May 15, 2017. Unpublished.

right.

These elements have been enshrined in the Tunisian constitution dated January 27, 2014 as well as a number of other legal texts. These elements are represented in the right to defense through the appointment of a lawyer, the right to legal or judicial aid in the event that the litigant is without income and requisition, and the right to decide on the case is within a reasonable time and, finally, the right to execute the judicial ruling, as "it is not useful to speak with a ruling that has no enforcement."

A- Access to an independent judge:

The constitution guarantees the independence of judges through articles 102, 103, 104, 107, and 109, stressing that the judiciary is an independent authority that guarantees the administration of justice, the supremacy of the constitution, the rule of law, and the protection of rights and freedoms, and that the judge is independent and has no authority over him in his judgment except the law. In addition, the Constitution approved a set of guarantees for the benefit of judges, such as criminal immunity, not to transfer a judge without his consent, not to dismiss him, not to suspend him from work, to exempt him, or to impose a disciplinary penalty on him, except in specific cases and applying the guarantees set by the law and in accordance with a reasoned and motivated decision of the Supreme Judicial Council.

The 2014 constitution, through the establishment of the Supreme Judicial Council (Article 112) through a mechanism for electing its members, consecrated the theoretical independence of the judiciary, since the aforementioned council undertakes the professional and disciplinary path of judges. Thus, the legislator has abolished the executive authority's interference in the course of the judiciary and removed its hand from the possibility of transferring or disciplining judges according to their compatibility with the implementation of governmental or presidential instructions.

Despite establishing this council in practice, it still suffers from many obstacles, perhaps the most important of which is the weak budget assigned to it. But what concerns us at this level is the absence of the legal text regulating the authority of referral to the Council, and thus the continuation of the General Inspection at the Ministry of Justice in the possession of the authority to refer before the Council for judges to whom disciplinary proceedings are attached, and this is a major dilemma that limits the effectiveness of the Council in performing the most important roles entrusted to it, because the complaint is intended to follow a judge for committing a serious professional error or even for a penal error, such as receiving a bribe, or arbitrarily adapting the law to harm the rights of a litigant, or deliberately stretching and not resolving the dispute... It inevitably passes through submitting a complaint to the General Inspection at the Ministry of Justice, which is supervised by the Minister of Justice, which is supposed to undertake a set of research and inductions that end either with the dismissal or with referral to the disciplinary board, and here is the anchor, since the executive authority represented in the Minister of Justice is alone and without oversight over it, who decides if the actions attributed to a judge are sufficient to refer him to the Supreme Judicial Council as a disciplinary council, this approach results in a mechanism that governs the executive authority and its control over the outcome of the disciplinary proceedings against judges. The result is accountability for the non-cooperators protection for cooperators.

Accordingly, the path of the right to access to justice for a litigant who has been subjected to an injustice caused by one of the judges, we find it blocked in one way or another, or rather subject to the will of the Minister of Justice in arranging a referral to the Disciplinary Council (the Supreme Judicial Council). As long as an independent body has not been allocated with the authority and no law has been enacted for this purpose, the role of the Supreme Judicial Council in redressing brings back litigants' rights from the infractions committed by some judges remains an unresolved issue at all.

B- The right to legal aid (appointment of a lawyer, harness, and judicial aid)

Article 108, paragraph two of the constitution states the following: "The law facilitates recourse to the judiciary and guarantees judicial aid to those who are financially unable to do so." This article applies to litigants before the judicial judiciary and before the administrative judiciary, despite the fact that the term used by the founder is "judicial aid," which means the aid provided by the judiciary, whether it is judicial or administrative.

Based on the foregoing, we show the close relationship between resorting to justice and judicial aid to the financially vulnerable.

The duty imposed on the state to provide legal aid to the financially incapable (vulnerable) is justified by the principle of equality between litigants, which is stipulated in Article 108 of the Constitution, paragraph one, "Litigants are equal before the judiciary."

Although the principle is that the judiciary is free in Tunisian law, this principle does not

apply to lawyers who contribute to providing a good defense for litigants, which serves the quality of the judiciary and its smooth functioning. In this context, we recall a number of basic principles regarding the role of the lawyer in access to justice. These principles are adopted by the Eighth United Nations Conference on the Prevention of Crime and the Treatment of Criminals, held in Havana from August 27 to September 7, 1990, and the conference specifically addressed the right to have a lawyer, by stipulating important principles25, the most prominent of which of is that "Every person has the right to seek assistance from a lawyer of his own choice to protect and prove his rights, and to defend him at all stages of the criminal process."

On the occasion of the holding a conference on legal aid in the criminal system under the title "The role of lawyers, non-lawyers and other actors in legal aid in Africa, Lilongwe, Malawi 22-24 November 2004" The "Lilongwe Declaration" stipulated the essential points to ensure a fair trial and to facilitate recourse to justice Which are:

- Recognizing and supporting the right to legal aid in criminal justice
- Sensitizing all criminal justice stakeholders
- Providing legal aid at all stages of the criminal justice process
- Recognizing the right to redress for violations of human rights
- Recognizing the role of non-formal means of conflict resolution
- Diversifying legal aid delivery systems
- Diversifying legal aid service providers
- Encouraging pro-bono provision of legal aid by lawyers
- Guaranteeing sustainability of legal aid
- Encouraging legal literacy
- Recognizing and supporting the right to legal aid in criminal justice:

All governments have the primary responsibility to recognize and support basic human rights, including the provision of and access to legal aid for persons in the criminal justice system. As part of this responsibility, governments are encouraged to adopt measures and allocate funding sufficient to ensure an effective and transparent method of delivering legal aid to the poor and vulnerable, especially women and children, and in so doing empower them to access justice. Legal aid should be defined as broadly as possible to include legal advice,

25 Governments shall ensure the provision of effective procedures and responsive mechanisms that allow effective and equal access to lawyers for all persons within their territories and subject to their jurisdiction, without discrimination of any kind, such as discrimination on the basis of race, color, ethnic origin, sex, language, religion, or Political opinion or any other opinion, national or social origin, property, birth, or any economic or non-economic situation
2.Governments shall ensure the provision of adequate funding and other resources needed to provide legal services to the poor and other disadvantaged persons, as appropriate, and professional associations of lawyers shall cooperate in organizing and providing services, facilities and other resources.
3.Governments and professional associations of lawyers promote programs designed to inform the public of their rights and duties under the law, and the important role of lawyers in protecting their fundamental freedoms. Attention should be paid to helping the poor and other disadvantaged people in order to enable them to assert their rights and, if necessary, to seek the help of lawyers.

assistance representation, education, and mechanisms for alternative dispute resolution.26

It is worth noting at the level of lawyers' intervention in providing free and effective legal aid and facilitating legal knowledge that the matter poses a real problem at the level of implementation, as the introduction of lawyers through personal initiatives or through associations active in this field is met with great repulsion by the structures supervising the legal profession, which considers like the majority of lawyers, that volunteering of some to provide free legal services represents a flagrant violation of the principle of equality between those affiliated with this sector, and is even considered a justification for referring to the disciplinary board if it is not recommended in advance and within narrow limits (opinion cases exclusively).

Based on this, it can be said that the Tunisian lawyer has not yet internalized its constitutional character as a partner in the administration of justice in the broadest sense, and is concerned with a serious contribution to the consecration of the right to access to justice for all, as well as the development of public knowledge of the basics of the rights granted to it in the criminal dispute so as to enable it to deal well with the proceedings and accusation.

26 -Sensitizing all criminal justice participants:
Government officials, including police and prison administrators, judges, lawyers, and prosecutors, should be made aware of the crucial role that legal aid plays in the development and maintenance of a just and fair criminal justice system those persons who are in control of the various government criminal justice agencies and prisons should ensure that the right to legal aid is fully implemented for detainees and to prisoners. Government officials are encouraged to allow legal aid to be provided at police stations, in pretrial detention facilities, in courts, and in prisons.
- Providing legal aid at all stages of the criminal justice process:
A legal aid program should include legal assistance at all stages of the criminal process including investigation, arrest, pre-trial detention, bail hearings, trials, appeals, and other proceedings brought to ensure that human rights are protected including suspects and the accused persons. A person subject to criminal proceedings should never be prevented from securing legal aid and should always be granted the right to see.
-Recognizing the right to compensation for violations of human rights
Human rights are enforced when government officials know that they will be held accountable for violations of the law and of basic human rights.
Persons who are abused or injured by law enforcement officials, or who are not afforded proper recognition of their human rights, should have access to the courts and legal representation to compensate their injuries and grievances.
-Recognizing the role of alternative (unofficial) means of conflict resolution:
These mechanisms also have the potential to reduce reliance upon the police to enforce the law, to reduce congestion in the courts, and to reduce the reliance upon incarceration as a means of resolving conflict based upon alleged criminal activity.
- Diversifying legal aid delivery systems
Each country has different capabilities and needs when consideration is given to what kind of legal aid systems to employ. Several legal aid options can be explored, responsible official bodies to provide equitable access to justice for poor and vulnerable people.
-Diversifying legal aid service providers
4. Encouraging pro-bono provision of legal aid by lawyers:
Making free legal aid mandatory,
Strongly encouraging pro-bono provision of legal aid by lawyers:
-Guaranteeing a pro-bono and obligatory legal aid
Legal aid services in many African countries are donor funded and may be terminated at any time.
-Encouraging legal literacy;
Ignorance about the law, human rights, and the criminal justice system is a major problem in many African countries. People who do not know their legal rights are unable to enforce them and are subject to abuse in the criminal justice system.

The regional branch of lawyers in Tunisia, for example, had previously issued a notification in which all lawyers were prohibited from attending the audio-visual media without special permission from it, threatening violators to refer them to the disciplinary council. This matter made lawyers avoid media and refrain from providing free legal advice to the public.

This issue also raises another general question, which is how to monitor the implementation of international recommendations and decisions in relation to the right to access to justice and to devote the role of lawyers and their structures in this regard.

It is definitely noteworthy to remind of the United Nations principles and guidelines on access to legal aid in criminal justice systems within the framework of the United Nations General Assembly Resolution of March 28, 2013. In the context of its resolution, the General Assembly defined legal aid as an essential component of any fair, humane, and efficient criminal justice system based on the rule of law. Legal aid constitutes the basis for the enjoyment of other rights, including the right to a fair trial. The General Assembly has approved the following principles:

- Principle 1: Right to legal aid27
- Principle 2: Responsibilities of the State28
- Principle 3: Legal aid for persons suspected of or charged with a criminal offense29
- Principle 4: Legal aid for victims of crime30
- Principle 5: Legal aid for witnesses31
- Principle 6: Non-discrimination32
- Principle 7: Prompt and effective provision of legal aid33

27 States should guarantee the right to legal aid in their national legal systems at the highest possible level, including the constitution. Through that it Recognizes that legal aid is an essential element of a functioning criminal justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.

28 States should consider the provision of legal aid their duty and responsibility to that end, they should consider, where appropriate, enacting specific legislation and regulations and ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible. States should allocate the necessary human and financial resources to the legal aid system.

29 States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offense punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process.
Legal aid should also be provided, regardless of the person's means, if the interests of justice so require, for example, given the urgency or complexity of the case or the severity of the potential penalty
Children should have access to legal aid under the same conditions as or more lenient conditions than adults.
It is the responsibility of police, prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are provided access to legal aid.
30 Without prejudice to or inconsistency with the rights of the accused, States should, where appropriate, provide legal aid to victims of crime.
31- Without prejudice to or inconsistency with the rights of the accused, States should, where appropriate, provide legal aid to witnesses of crime.
32- States should ensure the provision of legal aid to all persons regardless of age, race, color, gender, language, religion or belief, political or other opinion, national or social origin or property, citizenship or domicile, birth, education or social status or other status.
33- States should ensure that effective legal aid is provided promptly at all stages of the criminal justice process.

- Principle 8: Right to be informed34
- Principle 9: Remedies and safeguards35
- Principle 10: Equity in access to legal aid36
- Principle 11: Legal aid in the best interests of the child 37

The Tunisian national legislation incorporates laws that embody this right, which are:

The Code of Civil and Commercial Procedure

It includes general provisions that frame civil conflict at the level of procedures, as well as being the reference for other types of conflict in the absence of special provisions for them. The most important articles devoted to the right to access to justice are Article 4 that stipulates that each party has the right to be communicated the documents of the procedure and of all the documents produced by his adversary. Also, Article 19 provides that: "The exercise of the action belongs to any person having quality and capacity to assert his rights in court. The plaintiff must have an interest in the exercise of the action.

However, in matters of summary proceedings and in the event of peril in default, the action may validly be brought by the minor endowed with the quality.

The court must automatically declare the action inadmissible if it appears from the file that the applicant is incapable or has no standing.

If the incapacity of the party with limited capacity is lifted during the proceedings, the action is considered to have been validly brought.

The court shall rule in the aforementioned cases in accordance with the provisions of article 16".

"The hearings are public, unless the court decides the closed session, either at the request of the public prosecutor or one of the parties, to safeguard public order, good morals or the inviolability of secrets of family". (Article 117)

Effective legal aid includes, but is not limited to, unhindered access to legal aid providers for detained persons, confidentiality of communications, access to case files and adequate time and facilities to prepare their defense.
34- States should ensure that, prior to any questioning and at the time of deprivation of liberty, persons are informed of their right to legal aid and other procedural safeguards as well as of the potential consequences of voluntarily waiving those rights.
States should ensure that information on rights during the criminal justice process and on legal aid services is made freely available and is accessible to the public.
35- States should establish effective remedies and safeguards that apply if access to legal aid is undermined, delayed or denied or if persons have not been adequately informed of their right to legal aid.
36- Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs.
States should also ensure that legal aid is provided to persons living in rural, remote and economically and socially disadvantaged areas and to persons who are members of economically and socially disadvantaged groups.
37- In all legal aid decisions affecting children, the best interests of the child should be the primary consideration. Legal aid provided to children should be prioritized, in the best interests of the child, and be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children

About Article 131, it obligates that the appellant must submit the appeal petition accompanied by a statement indicating that the information has been saved and that the evidence is included while handling it to the court's secretary. The secretary must not accept it unless the appellant has given evidence of obtaining legal aid"

In the context of facilitating access to the judiciary, Article 16038 exempted the state and the poor who have been granted judicial aid from paying 20 dinars to the tax administration as a fine that pertains to the rejection of the demand. Also, the exemption extends to all fees which the law stipulated their provision. In the same context we can mention articles 170 and 184 of the same code. 39

Tunisian Code of Penal Procedures

This Code is considered the backbone of the Tunisian Penal Judiciary and it included a set of legal guarantees which have to be applied in order to achieve the safety of procedures that are considered the legitimate interest of the accused person. The Failure to respect them may result in the nullity of the prosecution proceedings. One of the most crucial legal texts relating to guaranteeing proper access to penal justice and specifically to legal aid is Article 13 bis which provides that " Upon detaining the suspect, the law enforcement officers must inform him in a language that he understands of the measure taken against him, its reason, its duration, and its ability to apply the period of extension to detention in the fourth paragraph and recite what the law guarantees to him in terms of presenting him to a medical examination and his right to choose a lawyer to attend with him."

This procedure raises numerous and recurring problems on the practical level due to the tension in the relationship between the security officers on the one hand and the suspects on the other hand, who often find themselves in a state of complete isolation and under a feeling of fear and dread from the brutality of the police. So, they are forced to sign statements and recordings. In some cases, wrongfully recorded as abandoning their right to seeking the assistance of a lawyer or from submitting to a medical examination.

Perhaps one of the most important dilemmas of penal prosecution lies in dealing with

38- Any applicant for a civil request must deposit in the registration revenue the sum of twenty dinars for the fine to which he would be condemned if his request were rejected, as well as all rights whose deposit is provided for by law.
39- Article 170: "The opposition is formed according to the ordinary rules applicable before the court seizes. The opposing party must record the amount of the fine to which he would be sentenced if his appeal is rejected. This amount is 5 dinars, if the contested judgment is rendered by a single judge, 10 dinars if it is rendered by the court of first instance and 20 dinars if it is rendered by the court of appeal. The opposing third party must also record all rights, the recording of which is provided for by law.
Are exempt from this deposit, the State and the indigent beneficiaries of legal aid."
Article 184: "The court clerk must only accept the request if it is accompanied by the receipt of deposit in the receipt of the registration of the sum of 30 dinars in respect of the fine to which the applicant would be condemned if his request were rejected, thus than any rights the deposit of which is provided for by law. The State and the indigent beneficiaries of legal aid are exempt from this deposit.
If the plaintiff withdraws, the court may not sentence him to the fine recorded and order the restitution of its amount to his benefit".

suspects in detention centers, where the investigating judge is generally keen to ensure the formal validity of the procedures he undertakes, while the accused cannot confront in that completely dysfunctional situation.

On the occasion of the initial investigations, police stations witnessed many altercations, sometimes amounting to verbal and physical violence, between lawyers and judicial police agents in the absence of representatives from the Public Prosecution, given that they are used to dealing with these situations by giving instructions over the phone, most of which are one-way in favor of their assistants of the Judicial Police.

Also, Article 13 third paragraph states that: "... and if the crime, for which the act of arrest is committed, is a felony, and the suspect did not choose a lawyer and he requested that, he must appoint a lawyer.

The head of the regional bar association or his deputy shall appoint a lawyer from a list prepared for the purpose, and this shall be stipulated in the report. (statement) ..."

Severe problems, both with regard to its scope of application or with regard to the effectiveness expected from its enactment and the extent to which it respects the constitution and the relevant international treaties, since it restricts the process of employing a lawyer to defend the accused in felonies only, and felonies means that the penalty required for the perpetrator subject to prosecution exceeds imprisonment for a period of five years. Therefore, the legislator removes from the legal aid's scope all misdemeanors in which the punishment may reach imprisonment for five years, which is the largest part of the crimes committed and trialed by the criminal courts.

A person accused of a misdemeanor which may be serious and its elements are complex, does not automatically have the right to the assistance of a lawyer. The court can try him directly without stopping to raise his constitutional right to defense, which is a very serious matter that often means infringement of legal procedures and the legitimate interests of the accused.

That is on the one hand, on the other hand, the legislator assigned the head of the bar association to set a list that includes the names of lawyers involved in acquisition (harness). The dilemma here is that these lawyers who are appointed to defend defendants on serious charges leading possibly to the death penalty are often lawyers new to the profession and with limited experience. The aim of harnessing them is simply to enable them to have a source of income while facing the difficulties of the first years. Therefore, the harnessing process for these felonies will not have the desired effect, which is to enable the litigant to obtain a competent and effective defense to get acquittal from the charges.

Contrary to the consecrations of Article13 seventh paragraph which provides that : " The suspected person who isn't in a situation of detention by the law enforcement police, the victim, whether a natural or a legal person, may choose a lawyer to attend with him at the time of his hearing or facing others.

In this case, the law enforcement officer must inform the suspect, the victim, his guardian that he has the right to choose a lawyer to attend with him before his hearing or facing someone else, and this shall be stipulated in the report.

In this context, the lawyer could read the search procedures, take notes, and to submit his written requests with his support points when necessary. « Practically, the problem of dealing between the investigating magistrate and the accused or/and his lawyer, given that it poses a dilemma at the level of his interpretation, because the lawyer is often denied the right to review the file in advance and gets asked to bring his client, even though the latter is not being detained, here, the judge deliberately expands the application of the text that is being applied on detainees to include the rest of the accused who are not being detained.

Law No. 2016-5 dated February 16, 2016,40 which established the right of suspects to have a lawyer present before the investigating judge, and stand before prosecution, raised many problems at the level of interpretation. Despite the multiplicity of the problems and their violent nature in many cases, the agreement has not yet been reached between the partners in the administration of justice on the issue in the sense of the constitutional text in finding the optimal mechanisms for a radical solution to these practical problems. The Public Prosecution continues to monopolize the interpretation of the procedural text to take it out of its context in most cases.

● Law No. 52 of 2002 of June 3, 2002, relating to legal aid

This law regulates the conditions for profiting from legal aid, as it could "be granted in

40- Article 36: "The classification of the case by the Public Prosecutor does not preclude the right of the injured party to initiate public action under his own responsibility. In this case, it may, by becoming a civil party, either request the opening of an investigation, or directly summon the defendant before the Tribunal".
Article 57: If the indictment is for a crime and he has not chosen a lawyer and requests that he be appointed a lawyer, this designation is made by the president of the regional section of lawyers or his representative from the duty list established for this purpose, mention is made in the minutes. The lawyer may present his written observations together with his supporting documents, if applicable, directly to the examining magistrate during the period of custody or when it expires..."
Article 69: "During the first appearance, the investigating judge ascertains the identity of the accused, informs him of the facts attributed to him and the texts of the law applicable to these facts and receives his statements, after they have been warned of their right to respond only in the presence of counsel of their choice. Mention of this warning is made in the minutes.
If the accused refuses to choose a lawyer or if the latter, regularly summoned, does not appear, the examining magistrate ignores it.
In the absence of a lawyer, when the defendant is charged with a crime and requests that a lawyer be appointed, the lawyer must be appointed ex officio.
The appointment is made by the President of the Tribunal. Mention of this formality is made in the minutes.
Article 70: In the absence of a lawyer, when the defendant is charged with a crime and requests that a lawyer be appointed, the lawyer must be appointed ex officio. The appointment is made by the President of the Tribunal. Mention of this formality is made in the minutes.
Article 141: ".... The assistance of a lawyer is compulsory before the court of first instance when ruling on a crime, and also before the criminal court located at the seat of the court of appeal. If the accused does not choose a lawyer, the president appoints one ex officio".

civil matters to any individual claimant or defendant, at any stage of the proceedings. It can be granted in criminal matters to the civil party and to the applicant for review as well as in offenses punishable by a prison sentence of at least three years, provided that the applicant for legal aid is not in state of legal recidivism. Crimes remain subject to the provisions in force relating to requisition. Legal aid may be granted for the execution of judgments and the exercise of the right of appeal." (Article1).

As for persons who are entitled, there are material persons without income or legal persons which conduct a non-profit activity while having its headquarters in Tunisia. A foreigner could be entitled to this rights too when the Tunisian judiciary has jurisdiction in the context of a judicial cooperation agreement in the field of legal aid with the country of origin of the litigant. Pursuant to this law, "Legal aid is granted on condition that the applicant proves the following:

- First: That he has no income or that his certain annual income is limited and is not sufficient to cover the costs of justice and execution without his vital requirements being substantially affected.
- second: That it appears that the alleged right appears to be founded when it concerns a request for legal aid in civil matters".

The demand contains the name of the applicant, his last name, place of residence, profession, ID number or passport number or that of the residency card for foreigners. Also, the subject of the claim, docket number of the case whenever needed or the number of the judgment. The claim is annexed with a copy of the endorsing evidence upon which the claimant is relying on to prove his right. In addition, documents justifying that the applicant has no income or that his certain annual income is limited and is not sufficient to cover legal or enforcement costs without substantially affecting his vital living requirements. In the event that the applicant is unable to present all or certain documents due to the fact that he cannot pay the fees for them to be issued or the registration fees and the tax stamp which relate to them, he must indicate this in the request. (Article 6).

As for expenses covered by judicial aid, article 14 of the law disposes: "Total or partial legal aid includes the costs normally charged to the parties and in particular:

- the registration fees and the fiscal stamp relating to the documents that the applicant presents to establish his rights.
- late payment and fines incurred for non-payment of registration fees and the fiscal stamp within the legal deadlines,
- the costs of expertise and the various missions ordered by the court.
- the costs of notarial deeds whose issuance is authorized.

- the costs of the judges› raids on the scene.
- the remuneration of the appointed lawyer.
- the costs of citations and notifications.
- the costs of legal notices.
- translation costs, if applicable.
- execution costs.

As for the repercussions of granting legal aid, they were included in articles 20,23, and 29."41

Law 3/2011 of January 3rd 2011 concerning the judicial aid before the Administrative Court

To enable the financially incapable to access the administrative court, article 30 of the administrative court's law states that "the persons who need judicial aid when filing their claim pursuant to the procedures figuring in the texts in force". The 2011 law number 3 dated on January 3rd 2011 related to judicial aid at the administrative court is the text in force.

Article I of this law defines the scope of the judicial aid[42], Article 2 determines the entitled persons to this aid. [43]. In addition, the law regulates the way judicial aid is granted by the office of authority.[44]

41- Article 20: "The beneficiary of legal aid is exempt from the payment of the advance of the costs of the expertise and the deposit of the amounts due to the exercise of the right of appeal, as fixed by the texts in force. "
Article 23: "In the event of a judgment approving the transaction between the two parties, the State is subrogated in the rights of the beneficiary of legal aid with regard to the recovery of the costs which have been judicially allocated and which are covered by legal aid. "
Article 29: "It is forbidden for any auxiliary justice to receive from the beneficiary of a total legal aid any sum or other as payment of remuneration and costs covered by legal aid.
He is also prohibited from receiving from the beneficiary of partial aid sums exceeding the portion of his contribution to cover remuneration and costs, fixed by the decision granting the aid. "
42- Article 1: "Legal aid at the administrative court may be granted, in whole or in part, before or during the publication of the case or on the occasion of implementing or appealing its judgments".
43- Article 2: "Every natural person with Tunisian nationality or foreigner usually residing in Tunisian soil benefits from the legal aid, provided that the principle of reciprocity is respected. Legal aid is also granted to a legal person whose activity is not aimed at making profit, provided that his original residence is in Tunisia.
The applicant must prove that he is without income or that his annual income does not allow him to access his rights without substantially affecting his basic needs, and that the claimed right is based on serious reasons".
44- Chapter 2: the legal aid office at the administrative court
Section 1 the composition and function of the office
Article 3: " The legal aid requests are considered by a competent office called the legal Aid Office at the Administrative Court and it consists of:
An advisor at the Administrative Court or a deputy of the same status, as president.
Assistant advisor at the Administrative Court or a deputy of the same status, as a member.
A representative or deputy of the Ministry of Finance, as a member.
A representative or deputy of the Ministry of Social Affairs, as a member.
An attorney upon comment representing the National Bar Association or a deputy who has a position in the same department, as a member.
A court›s clerk assumes the position of the secretary of the office and shall not participate in the deliberations «.
Section Two: Procedures for Submitting and Considering Claims

As for the details of the demand and its content, they were provided in article 7 of the same law.[45]

Judicial aid imposes among different intervening parties obligations, as such, It is not possible for those who have been appointed among the lawyers, law enforcement officers and other judicial assistants to refuse to direct what he has been assigned to do except for a legal valid reason. In this case, the appointed judicial assistant could ask the head of the Legal Aid Office to compensate him. (Article 18).

As well, "It is forbidden totally for the appointed judicial assistant to receive from the beneficiary of a total legal aid any amount in the title of wages and expenses covered by the legal aid. In addition, it is forbidden for him to receive from the beneficiary with partial aid amounts exceeding the percentage of his contribution in covering wages and expenses that have been specified by the decision to grant aid". (Article 19)

As concerns the expenses covered by judicial aid, Article 20 stipulates that " Legal aid, whether in whole or in part, includes the expenses that are usually imposed on the parties and related to various lawsuits, procedures, works, and fees, especially including:

The registration fees and the tax stamp applied to the arguments provided by the beneficiary of the legal aid to prove his rights, delay penalties and the effects resulting from the failure to pay registration fees and tax stamps within their legal deadlines, expenses for exams or various tasks authorized by the court, expenses for inspections and interrogations, expenses of fair arguments authorized to be extracted, fees of the appointed lawyer, summons and notifications expenses, translation fees, when required, execution expenses."

Among the effects of granting legal aid The beneficiary of the legal aid shall be exempt from paying the text fees (Article 29). Indeed, the decision of canceling or modifying legal aid shall not affect the course of the relevant case and the professional obligations of the appointed judicial assistants (article 35).

● Act n°92-1995 dated on the 9th of November 1995 relative to the promulgation of the child protection code.

This code aims to implement the principles figuring in international conventions in correlation with the legal procedural aspects conferring advantages to the child regardless of his position (whether a victim or a wrongdoer). However, the implementation of such procedures remains, in reality, limited because of financial and human resources shortages. The coming procedures are prominent as regards access to justice for minors and they figure respectively in articles 2, 12, 15, 75, 87 and 93.46

As for protection, it is manifested through supervising execution, revision and amendment specifically through the 116th provision which affirms that "the mediation demand is presented to the delegate of child protection either by the child or by his legal representative. The delegate ensures conciliation between the different concerned parties. The mediation act will be drafted in paper form, signed and submitted to the competent judicial authority that will rely on it and endow it with the executive formula as long as it does not jeopardize public order (policy) or good morals. The child judge can review the conciliation act with consideration to the child's best interest". Article 98: "in case of ultimate necessity, the measures consecrated in article 97 of the present code could be taken by the relief judge pursuant to a demand submitted by the child or a member of his family or one of the child institutions or public prosecution"

As per Decree N° 79-2011 dated on the 20th of August 2011 relative to organizing the legal profession, it regulates the role of the lawyer in defending the litigant who appointed him or

45- Article 7: The application for legal aid is submitted by the relevant person or his representative, directly at the administrative court clerk›s office or by post, the receipt is guaranteed with notification of attainment .
The application shall contain the name of the applicant, his title, location, profession, civil status, a summary of the subject matter of the case and its grounds, the name and address of the lawyer he chooses to defend him and, if necessary, the number of the published case or a copy of the judgment that he intends to implement or appeal .
The applicant must attach his application to the following documents :
A copy of his national identity, passport, or residence card for foreigners .
Evidence that he is without income or that his fixed annual income does not allow him to access his rights without substantially affecting his basic needs .
Documents that support his rights in the case
A copy of the statutes of the legal person .
- Evidence of the approval of the lawyer whom he chose to defend him, when the request of legal aid is related to the representation of a lawyer.
The request is recorded in the court's secretary in a special book, and a rank number is assigned to it according to the date it was received.

46- Article 2: "this code guarantees the child's right to enjoy protective measures that are of social, educational and sanitary character along with other judgements and procedures aiming at the child's protection from all kinds of violence or harm or violation whether they are physical, moral, sexual or resulting from neglect or default leading to mistreatment or exploitation.".
Article 12: "this code guarantees to the accused child the right to a treatment that preserves his dignity and personhood."
Article 15: "the child that is under the care of a nurturing or a rehabilitation institution or that is detained has the right to health, physical and ethical protection as well as the right to social and educational care. The child's age, sex, abilities and personalities are determinant in guaranteeing these rights".
Article 75: "territorial competence of the child judge is the same as that of the court of first instance. Territorial competence of the child court is the same as that of the court of appeal"
Article 87: "the child's judge directly or through a qualified person does all the necessary work and investigations to unveil the truth and identify the child's personality and the adequate tools to reform and protect him.
For that reason, the judge initiates his work while regarding the best interest f the child and resorting to judicial assistance remains exceptional".
Article 93: "the examining magistrate of children notifies the parents, the tutors and the custodial of the charges and if the child or his legal tutor or the adult does not appoint an advocate, then the president of the national committee of lawyers requisites one for the child
The magistrate can order social investigations to be initiated by the relevant special social institutions, the judge can hand the child temporarily to:
-his parent, his tutor, his custodial or to a trustworthy person
-an observational center
-an institution or an education organization or a professional training or a treating institution that is authorized by the relevant authority.
Whenever needed, temporary custody under the system of surveyed freedom for a specific period of time that could either be extended or renewed.
-to a correctional center"

harnessed for his benefit as stipulated in articles 36 and 37.47

It is noteworthy to remind of the importance of legal guidance which could be done through courts or even public administrations.

● Legal guidance:

Pursuant to decree n°1949-1993 dated on the 26th of July 1993 relative to creating relations with citizens' offices in all ministries and governorates, these administrations are under the direct authority of the ministers centrally and regionally. .

The central office for relations with citizens in the presidency of the government was created.

It helps citizens overcome hurdles that might encounter them while interacting with the administration and enables them to get administrative services as stated in the laws and decrees in force.

To make this a general benefit, these offices were created in some institutions and public administrations which have an intensive interaction with citizens.48

We could also refer to a set of ministerial decisions in this sense we mention:

Decisions of the minister of interior affairs and local development dated on the 1st of August 2006 relative to administrative services provided by authorities belonging to the ministry of interior affairs and local development or authorities functioning under its supervision and conditions of attribution.49

47- Article 36: "the appointed or designated advocate must fulfill defense properly. If an impediment that hurdles him to properly defend appears the advocate must notify the president of the regional bar association of advocates. Meanwhile, the advocate must proceed in fulfilling the work on which rights depend even though a fellow advocate. À contrario, he will be held negligent vis à vis his professional obligations.
Article 37: "the lawyer appointed through legal aid or designated in penal cases is entitled to receive a grant from the treasury of state after presentation of the decision of designation to authorities. The appointed advocate through legal aid can claim payment from his client if the latter becomes solvable."

48 Article 1: "by virtue of this decree, every ministry shall have an office of "relations with citizens" that is under the direct authority of the minister. On the central level this office helps citizens overcome the hurdles that they possibly encounter while cooperating with the administration and enables them to obtain administrative services as legally consecrated."
Article 3: "either centrally or regionally, the office of relations with citizens is competent in:
-accepting citizens, their complaints and claims and studying them with the relevant authorities in order to find appropriate solutions.
-guiding citizens throughout administrative procedures and paths either directly or through mailing or by phone.
-gathering, studying incoming files from the administrative conciliator and coordinating with the different authorities to find appropriate solutions.
-discovering complexities on the administrative procedures level through deep analyzing of the complaints submitted by citizens and proposing the necessary reforms".

49- Article 1: "the authorities belonging to the ministry of interior affairs and local development or functioning under its supervision the upcoming services conforming to the conditions and procedures mentioned in the attached annexes:
1.securitary services.
2.civil status.
3.Urban field (construction and administration).
4.certificates and authorizations handed by the governors and mayors

C- The right to a fair trial

The 2014 constitution explicitly recognizes the right to a fair trial in Article 108 as enshrined in the 1966 International Covenant on Civil and Political Rights. The covenant has devoted Article 14 to detailing the principles and conditions of access to justice and the obligations of decision-makers at the member state level, including the right to a fair trial.

The General Comment No. 32 detailing the various principles to be activated by member states, and specifically for a number of basic concepts contained in Article 14 of the Covenant, included the following:

-The right to equality before courts and tribunals and to a fair trial, given that the right to equality before courts and tribunals and to a fair trial is one of the basic elements for the protection of human rights and is a procedural means to maintain the rule of law. Article 14 of the Covenant aims to ensure the proper administration of justice and to this end guarantees a set of specific rights.

Article 14 is particularly complex, as it contains various safeguards with different fields of application. which are:

- First: A general guarantee of equality before the courts50
- Second: Equality before courts and tribunals51

This guarantee also prohibits any discrimination in access to courts and tribunals that is not based on law and cannot be justified on objective and reasonable grounds. This guarantee is breached if certain persons are prohibited from bringing claims against any other persons for reasons such as race, color, gender, language, religion, political or other opinion, national or

5.authorizations for the different activities.
6.services of the national office for civil protection.
7.services under the regime of the terms of reference.

50- In the first sentence of paragraph 1 of the article there is a general guarantee of equality before courts and tribunals that applies regardless of the nature of the proceedings before such bodies. The second sentence of the same paragraph grants individuals the right to a fair and public trial before a competent, independent and impartial court established by law if they are facing any criminal charges or when deciding their rights and obligations in any civil suit. In these procedures, the media and the public may not be prevented from attending the trial except in the cases specified in the third sentence of the first paragraph. Paragraphs 2.5 of the article contain the procedural guarantees available to persons accused of criminal offences. Article 14 contains guarantees that states parties must respect regardless of their legal traditions and domestic laws.
Deviation from basic principles of a fair trial, including the presumption of innocence of the accused, is strictly prohibited.

51 - It includes:
The right to equal treatment before courts and tribunals.
Equality of access to courts and equal legal opportunities, ensuring that the parties involved in the case are treated without any discrimination.
The right of access to the courts to decide any criminal charge or rights and obligations in any civil case.
Effective administration of justice shall be ensured in all such cases to ensure that no one is deprived, in procedural terms, of the right to seek equity.
The right of access and equality before courts and tribunals must be available to all persons within the territory or subject to the jurisdiction of the State party, regardless of nationality, statelessness, asylum-seekers, refugees, migrant workers, unaccompanied children or other persons.

social origin, property, birth or other status.

The right to equality before courts and tribunals also guarantees equal legal opportunity. This means that all parties have the same procedural rights unless there is a distinction based on the law and has objective and reasonable justifications, and does not involve actual unfairness or unfairness to the defendant

- Third: A fair and public trial before a competent, independent and impartial judicial body

The right to a fair and public trial before a competent, independent and impartial judicial body established by law is a guaranteed right, and the speed of the trial is one of the important aspects that demonstrate its fairness. The lack of resources and chronic poor funding, so as much as possible, additional budgetary resources should be provided for the administration of justice. All trials relating to criminal matters or to a civil action must in principle be conducted orally and publicly. Holding court hearings in public ensures the integrity of the proceedings and thus provides an important guarantee for the benefit of the individual and society in general.

What is striking at the level of this principle is the clear link between the reasonable term of dismissal by the judiciary and the extent to which the resources and capabilities required to activate that principle and the legislative body to provide the human and material resources necessary to facilitate the work of the judicial facility and to put pressure on the deadlines for delivering rights to their owners

- Fourth, the presumption of innocence
- Fifth - The rights of persons accused of criminal offenses, the most important of which is the right of everyone who has been charged with a criminal offense to be informed, promptly and in detail, and in a language he understands, of the nature and causes of the accusation against him. Adequate facilities must include access to documents and other evidence, including all materials that the indictment plans to use in cou rt against the accused or exculpatory evidence.

The right to a lawyer requires that the accused be given prompt access to a lawyer. Lawyers should be able to meet their clients in private and to contact the accused in conditions that fully respect the confidentiality of such communications.

The issue of the lawyer's communication with his client in conditions that preserve confidentiality conditions is still a source of many and recurring problems, whether in detentioncenters or the preliminary investigation headquarters. Clashes often occur between lawyers, judicial police and prison agents who claim weak capabilities, while lawyers adhere to a complete absence of the simplest elements of confidentiality. In some cases, listening

machines have even been installed in the offices of visiting prisoners.

-The right of the accused to be tried without undue delay

-The right of any person accused of a criminal offense to defend himself in person or through a lawyer of his choice

-The right of the accused to be provided by the court with someone to provide him with legal aid whenever the interests of justice so require, without charging him a fee for that if he does not have sufficient means to pay this fee.

- Sixth, the events

In the case of juveniles, measures appropriate to their age and conducive to promoting work on their rehabilitation should be devoted.

- Seventh: Reconsideration by a higher judicial body

The right to have a conviction or sentence reviewed by a higher court, which is expressed in the right to litigation at two levels

- Eighth - Compensation in cases of a judicial error

The Covenant provides that compensation must be paid, in accordance with the law, to persons who have been convicted of a criminal offense by a final judgment and have been punished as a result of that conviction, and then have been rescinded or pardoned on the basis of a new or newly discovered fact that bears conclusive evidence of a judicial error . It is worth noting with regard to the principle of compensation referred to in this point, which is represented in the event that a person was issued a final judgment convicting him of a crime, and then this judgment was rescinded or a special pardon was issued for him on the basis of a new fact or a newly discovered fact bearing conclusive evidence of a judicial error, a compensation must be made to the person who has been punished as a result of that conviction, in accordance with the law, unless he proves that he bears, in whole or in part, responsibility for not disclosing the unknown fact in a timely manner. The Tunisian legislator did not enshrine it within its internal legislation until 2002 according to Law No. 94 For the year 2002 dated October 29, 2002 relating to compensation for detainees and convicts whose innocence has been proven.

It is also noted that the aforementioned law set short deadlines for the possibility of claiming compensation (6 months from the date of the final verdict of acquittal). Full discretion without any objective criteria for the judicial body entrusted with deciding on the compensation request

- Ninth: Not to be tried for the same crime twice

That no one may be subjected to further trial or punishment for an offense for which he has already been convicted or acquitted by a final judgment in accordance with the law and criminal procedures in each country

This point, in turn, raises a problem in Tunisia with regard to the updated law for the departments specialized in transitional justice, which have witnessed since 2018 and are witnessing to this day trials involving defendants who were previously judged according to final rulings, which caused great discontent among part of the political class and civil society about the compliance with the provisions of the constitutional principles of a fair trial.

In the same context, we can also refer to Law No. 2017-62 dated October 24, 2017, or the so-called Administrative Reconciliation Law, which led to the exemption of public officials and persons like them from criminal liability under the provisions of Articles 82 and 96 of the Penal Code. Sharp societal and surreal situations, since it exempted the original perpetrators from criminal liability, while continuing to track their non-state employed accessory and impose severe penalties on them in complete denial of the constitutional principles related to a fair trial, in particular the principle of equality before justice

- Tenth: The relationship between Article 14 and other provisions of the Covenant

Article 14, as a set of procedural guarantees, plays an important role in implementing the substantive guarantees contained in the Covenant that must be taken into account in the context of determining criminal charges and the rights and obligations relating to a person in a civil action.

D- Adjudicate the case in a reasonable time

Article 108 of the Constitution stipulates in its first paragraph: "Everyone has the right to a fair trial within a reasonable time." This idea is related to the problem of the length of adjudication of cases in the courts due to their increasing number and the lack of material and human resources granted to the courts, which places obligations upon the state to reduce the time it takes to resolve cases. But estimating the reasonable time is not an absolute principle, considering that this deadline is mainly related to the degree of complexity of the case, the method of investigation, the judge's conduct of it, and the parties' handling of the case.

It should be noted that the principle of reasonable time is clearly enshrined in the framework of the emergency judiciary that has been enshrined in the judicial judiciary and the administrative judiciary, which aims in the form of verification to authorize the taking of permissions and urgent measures in a preventive manner and without prejudice to the substantive aspects. But except for urgent measures, the judicial judiciary, especially the administrative judiciary, remains slow. the rate of issuance of first instance judgments is approximately five years, the same goes for appeals. It is an unreasonably long period.

Despite the relative development witnessed by the structural organization of the Administrative Court, represented in the creation of the Regional First Instance Courts in the direction of reducing the length of adjudication of cases before the Administrative Court pending the creation of the Administrative Courts of First Instance, the application of the principle of reasonable time before the Administrative Court is still limited.

E- The right to execute judicial decisions

For access to justice to be effective, the judicial ruling must be executed. In the absence of the right to execute judicial decisions, the right to access to justice is a mere formality. Therefore, Article 11 of the Constitution states that: "Judgments are issued in the name of the people and executed in the name of the President of the Republic, and it is forbidden to refrain from executing them or to obstruct their execution without legal justification."

If the execution of judgments in civil or criminal disputes does not pose a problem, the issue is characterized by some privacy in matters of administrative disputes. Decisions issued by the Administrative Court against private persons are not subject to the normal enforcement procedures stipulated in the Code of Civil and Commercial Procedures. It is not possible to resort to public force to implement a ruling against the administration. The right for those harmed by the non-execution of an administrative judicial ruling remains to file a claim for compensation to compel the administration to compensate the damage resulting from the administration's failure to implement the administrative court's ruling in accordance with the requirements of Article 10 of the June 1, 1972 Law.

The right to access to justice is not limited to resorting to the judiciary to exercise the right to litigation, but may include the right to access economic, social and cultural justice within the

Part Three:

Access to jvstice in the economic and fiscal field.

framework of an expanded vision of access to justice.

In the context of the focus of this study on the right of young people with economic initiatives and vulnerable groups to access not only the judiciary, but also their right to access to economic and fiscal justice, it will be limited to some examples only because economic and social rights are much broader (the right to education, the right to work, the right to health, the right to an adequate standard of living, the rights of the child, resistance to violence against women, the rights of minorities...)

Emphasis will also be placed on the elements that facilitate access to economic and fiscal justice through exposure to legislation related to investment, taxation and real estate affairs, without overlooking the problems and obstacles that often limit the right to access to economic justice.

1.Access to justice under the current economic legislation.

The legal framework for investment is not considered novel in Tunisia but rather as old as the 1950's. 52

Indeed, the successive legal texts incorporated distinct economic perceptions. Despite the consciousness of the necessity of developing a legal framework for investment, a suffocating bureaucracy was created. The latter has been an impediment in the way of economic initiative and has made investing in developing one's company a risky and not necessarily pleasant adventure jeopardizing investors' funds and rights. Under the current regime, the investor does not possess enough guarantees which results in questioning access to justice under the Tunisian economic system.

The evolution of the investment legal framework

Anterior to the promulgation of the novel legal framework for investment in 2017 and since independence, legislation investment-wise went through 3 main stages that shaped it.

The first stage: from 1959 to 1986. That is the period during which emphasis was put on encouraging investments in the different fields and which the state, back them, counted on to build itself after the independence.

The second stage: from 1987 to 1933. It is known for expanding the sphere of investment fields. During this stage, a new investment policy was sat that relied majorly on fiscal and financial privileges for a wider number of sectors.

The third stage: knew the promulgation of Act n°12-1993 dated on the 27th of December 1993 that abrogated all previous sectorial legal texts and incorporated the rest in a sole code for the purpose of facilitating. Yet, that didn't last as the code was amended 43 times in the last two decades.

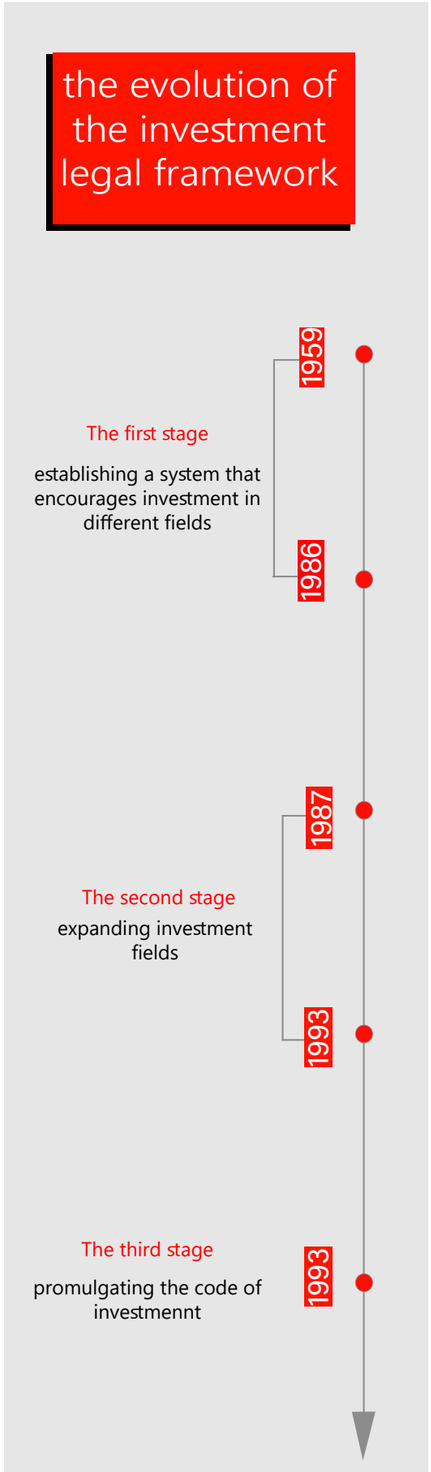
52 [1] AYADI kamel, the new in the legal framework for investment, maison sagesse edition et diffusion, 1st edition, April 2017, p.3.

The huge number of amendments was accompanied by a huge number of applicative texts that reached 33 decrees without mentioning the decisions that implement the decrees. This legislative inflation caused a confusion that surpassed the simple investor to reach legal experts as the latter became overwhelmed by the enormous number of texts regulating investment matters..

This inflation covered as well privileges and the relative texts. However, it seems noteworthy to highlight the fact that the enormous variety of privileges did not mean eventual success for local development nor did it lead to better employment due to a good functioning of the wanted investment strategy. That results directly from the complications encountered because of the created bureaucracy that made benefiting from the consecrated legal privileges a cumbersome operation. The situation gets more complicated when consideration includes the interfering administrations that supervise the investment operation. These institutions surpass the number of 20. This led to issues as far as the well-functioning of the investment operation and the difficulty of coordinating between the different interfering administrations.

Moreover, the heavy centralization of the relative offices and administrations ensuring the privileges accorded to investors (by virtue of law) became grounds for lack of equality before investment opportunities and access to privileges (also by virtue of the law) and had a particularly negative impact on the ability of investors to keep track of their requests and burdening them additionally by implicitly compelling them to constantly move between cities. This eventually has additional costs that the investor alone will have to pay.

In the context of encouraging investment and access to economic justice, several legal texts supporting investment were issued, which are Law No. 2007-



69 dated December 27, 2007 related to stimulating economic initiative, as amended by Law No. 2009-71 dated December 21, 2009, as well as Law No. 20 For the year 2018 dated April 17, 2018 related to startups, which aims to: "Develop a stimulating framework for the creation and development of emerging institutions based in particular on innovation, adoption of modern technologies, and achieving high added value and competitive ability at the national and international levels." A number of decrees were also issued in support of these laws, including decree n°93-982 dated May 3, 1993, fixing the general framework of the relationship between the administration and its clients, and all texts that revised or supplemented it, notably decree n° 2010-1882 dated July 26, 2010, and government decree No. 2018-1067 dated December 25, 2018, Ordinance No. 93-1880 dated September 13, 1993, relating to the system of communication and administrative guidance, Ordinance No. 94-68 dated September 26, 1994 fixing the list of official documents approved for the identification of signatures, Ordinance No. 2007-1260 dated On May 21, 2007 relating to the control of cases in which the administration's silence is considered tacit approval, and government decree No. 417 of 2018 dated May 11, 2018 related to the issuance of the exclusive list of economic activities subject to a license and the list of administrative licenses for the implementation of a project and the control and simplification of the relevant provisions, which aims to simplify the procedures Many licenses were deleted to encourage entrepreneurs to invest. However, this has left a long list of licenses that must be obtained to carry out many economic activities, which would discourage young people from initiating economic projects. However, access to economic justice has not developed in view of the dominance of administrative bureaucracy and the weakness of digitization at the level of administrative services, in addition to the extension of the phenomenon of financial and administrative corruption.

● Absence of legal guarantees

Even though the legal texts are multiple and even inflated this did not have a positive impact as far as the consecration of additional guarantees for investors in obtaining their rights and needs. For instance, deadlines for deciding on according privileges for the investor were not included in a legal provision.

One of the most prominent repercussions of the absence of guarantees is the lack of funding and burdensome procedures for obtaining privileges. This led to drowning investors in administrative predicaments with major financial issues that eventually discouraged them from proceeding with their investment. This has been detected through statistics made between 2005 and 2015 that demonstrate that 7548 projects were abandoned pursuant to the office of

industry promotion. 53

2. access to justice in the Tunisian fiscal system

The Tunisian constitution approved a set of rules to guarantee fiscal justice, as it was stated

53 See Tunisian industry portal available at: https://bit.ly/3cIETiD ; businesses' constitution cases and sustainability, June/July bill, 2017, available at: https://bit.ly/3cMrVke .

in its 10th Article: “Paying the tax and bearing public costs is a duty according to a just and equitable system.

The state puts in place the mechanisms that guarantee the collection of the tax and the resistance to tax evasion and fraud.

The state is keen on the good management of public money and takes the necessary measures to spend it according to the priorities of the national economy and works to prevent corruption and everything that might prejudice national sovereignty”.

In order to protect the taxpayer from the arbitrariness of the executive authority, and specifically the regulatory authority to control the base of payments and contributions, their percentages and the procedures for drawing them out, the constitution assigned this authority exclusively to the legislative authority and made it a legislative article in accordance with Article 65 of the constitution.

Article 66 of the constitution also approved the principle of legality of performance, which is represented in “the law authorizes the state’s resources and costs according to the conditions stipulated in the organic Law of the Budget…”

As for the texts issued in the taxation matters, we mention the code of Income Tax of Natural Persons and Corporate Tax, the code of Local Collection, the code of Registration Fees and Tax Stamp, and the code of Value Added Performance...

However, the tax system in Tunisia was not stable at the level of legislation, but was completed with continuous change and amendment without this having a positive impact on alleviating the fiscal pressure on the demands for performance.

The Tunisian fiscal system is considered to be an accumulation of the years of dictatorship in the country. It is important to note that this system was a tool in the hands of the old regime to punish, terrorize and guarantee alliances with political and economic rivals with close businessmen and in-laws.

The efficiency of such a system relied, on one hand, majorly on the discretionary power and the vast prerogatives that the offices of taxes were endowed with as far as the fiscal monitoring and taxes payments were concerned. On the other hand, it relied on the limited legal and judicial guarantees demanded from investors (physical persons or companies). This abnormality in administrative authority and guarantees led to increased corruption and embezzlement which prospered even more thanks to the lack of accountability and the compromised right of access to justice in the fiscal sector.

The fiscal legislation:

one might hope that some changes have been made in taxation in Tunisia posterior to the enormous efforts to alter and reform after 2011. One might also long to find the purposes of the revolution like more fiscal justice and transparency implemented in the novel system as well.

However, reality proves that the finance ministry offices[54] still control legislative initiatives in taxation throughout the annual finance bill that is voted on by the parliament yearly.

This explains the orientation of the expanding of the prerogatives of fiscal control with mobilizing state resources since 2011. Moreover, wage deductions and creating circumstantial taxes became increasingly frequent. In return, fiscal guarantees shrank and were often handed to fiscal control offices which augmented the conflict-of-interest situation that taxation lives in Tunisia.

Under the control of the ministry of finance in finance billing, in a confusingly conflicted attitude, the latter aligns with the administration whenever the matter regards obligating taxpayers and bails on its own offices whenever the matter concerns providing tax payers taxpayers with their lawfully consecrated privileges and rights. This biased attitude was supported by the consideration of the administrative court that jus cogens are public policy matters and leads to nullified decisions and procedures whenever they are breached.

Additionally, fiscal statutes have a reputation of being ambiguous and sophisticated which makes it subject to misunderstandings and misinterpretations. This ambiguity contributed in increasing cases of fiscal conflicts and inflated doctrine. Indeed, fiscal doctrine is composed of public notes that are published on the official website of the ministry of finance and of internal notes that are issued by the general administration of fiscal control through which its external offices are informed of specific info. Moreover, fiscal doctrine is also forged from responses and decisions (that resemble no-action letters in their concept) that are issued by the general administration of studies and fiscal legislation in attempts to explain regulation. Nevertheless, one of the shortages of such letters is its non-publication despite its essential nature to persons’ legal stands and financial situations. Access is often denied for such info.

In addition, some legal fiscal texts are dispersed in different codes and others are even incorporated in the finance bill. Obviously, this profound ambiguity and makes it harder to gain enough knowledge about it to protect persons and institutions.

Fiscal management and services

The offices of fiscal control are both service providers and law enforcers. This is ensured through inspections and penal and financial offenses recordings.

These vast prerogatives contributed to several illegal acts such as benefiting from investors

54 General administration of studies and fiscal legislation, Artocle 18 of the decree n°556-1991 dated on the 23rd f April 1991 relative to organizing the ministry of finance as amended by the decree n°950-1992 dated on the 18th pf May 1992.

to get sensitive services especially with the lack of oversight mechanisms that would ideally surveil its work55.

Because of that, a number of organizations and activists called for separation between fiscal control and service providing as a pioneer step to limit corruption in this field and support taxpayers in receiving transparent treatment in accessing their rights.[56]

Creation of projects and permission to exist

The Creation of projects subjects, pursuant to Article 56 of the fiscal code on the income of persons and businesses, subjects the company to possess a "permission to exist".

Through this "permission" the founder enables the offices of fiscal control to have access to information regarding the founder and the project. In contrast, it enables the founder to obtain a fiscal identity card carrying a fiscal identifying number for the business.

However, fiscal legislation stays silent when it comes to consecrating the necessity of proving the founder with the necessary info as regards the obligations facing him. In this sense, the "permission to exist'' condition subjects the young founder to a series of obligations of possibly heavy financial repercussions (tax-paying, percentages, the obligation to declare, the obligation to notify the offices of fiscal control about several info regularly or arbitrarily, holding specific papers, preparing others in respect of procedural and formal specificities *etc*). the obligations differ from one economic activity to another and from one form of business to the other. Non-respect of formal or procedural or substantive obligations may expose the tax-paying entity/person to sanctions that vary according to the type of activity or the volume of transactions. The The breaching party could be exposed to exorbitant penalties that could even go as severe as penalties deriving freedom, monetary penalties or even seizures on production units and bank accounts (of the company and its owner).

This shortage in access to primordial information led to investors making completely avoidable breaches and therefore fined and often prosecuted.

The importance of creating a document dedicated to investors to prevent avoidable repercussions is a part of access to justice as it allows them to defend themselves and affront the authorities that keep altering law application by altering arbitrarily its interpretation. Added to that the non-existence of the authority's obligation to notify taxpayers of the alteration of the interpretation worsens their situation.

Fiscal privileges

55-Act n°69-2007 dated on the 27th of December 2007 relative to encouraging economic initiative and its applicative texts.

56- Fiscal reform, the committee of taxpayers guarantees, 2014.

Privileges are one of the most important tools for encouraging investment and attracting novel founders. It takes the form of exonerations or suspensions of payment in addition to the state's contribution in social security and a part of salaries. Monetary privileges can also take the form of grants of investment through which the state contributes a percentage of investment or grants of exploitation that are basically amounts of cash provided by the state as soon as production kicks in.

Yet, the procedures for obtaining these privileges are complex as a number of committees and offices interfere in granting it separately. The path towards obtaining these (lawfully consecrated rights) is not necessarily the most transparent as the conditions are often ambiguous and the documents necessary for demand treatment lack clarity. Furthermore, the administration tends to exceed legal deadlines for response.

The wide discretionary power for fiscal texts interpretation by the administration caused the need for additional conditions that the investor only becomes aware of posterior to contact with the relative governmental institution. Of course the lack of digitalization in this sense hurdles the investor more in his quest for his rightful privileges. The totality of these reasons pushes more and more investors to give up their privileges or simply their projects as a whole.

Fiscal control

fiscal legislation grants fiscal offices the discretionary power to control the good implementation of fiscal legislation through reviewing the fiscal status of taxpayers and executing decisions and payments.

The regulatory oversight of fiscal offices was enhanced since 2011 after the banking confidentiality(secrecy) was suspended, restraints on bank accounts access lightened and judicial oversight abrogated. These changes were made progressively in contrast to expanding field prerogatives. For instance, the right to have access on sight and inspecting penalties with the possibility of seizing documents. In fact, hurdling the latter constitutes an infraction.

The aforedescribed evolution caused an imbalance in the relation between taxpayers and the administration since these prerogatives came empty of additional guarantees for justice and transparency in treatment. In fact, resorting to the administration does not find its genesis in objective and formal conditions or promulgating procedures that impede abuse of power.

One of the forms of enhancing administrative power for fiscal office control is expanding the fiscal legislation to englobe presumptions enabling them to rely on it during the primary fiscal revision57

The latter used to be resorted to during the in-depth fiscal revision that is concerned safer

57 [6] The primary fiscal revision is not subject to anterior notification and in many cases its procedures lack the possibility of challenging its outcomes(except for the case where the challenge is sought before the competent court).

as it provides for the possibility of subjecting the acts of the administration of fiscal control to the principle of confrontation and enables taxpayers to defend themselves through challenging its outcomes and commenting the decisions of the offices of fiscal control. This made expanding the use of presumptions a biased and unequal method as far as its use in altering the situations of taxpayers by contesting payment, additional costs and penalties. It seems noteworthy in this sense that the presumption is rejected by the administration itself whenever the outcome guarantees benefit for the taxpayer.

The path of fiscal revision was catered by numerous procedures and formalities yet with poor efficiency in guaranteeing just and transparent treatment and limiting abuse of power. In fact, it consecrated absolute power for the administration and joined conflicted roles that led to conflicts of interest cases.

The conflict-of-interest limbo aggravated posterior to the creation of committees for fiscal conciliation and abrogation of judicial conciliation that was supervised by a judge of the court of first instance. Nowadays the offices of fiscal control review the situation of taxpayers and preside over the conciliation committees too.

Access to the right of tax-recovering

After 2011, tax strategy has been characterized by an expansion in deductions to meet the increasing budget needs which deprived institutions from having the necessary liquidity resulting from their activities. As a result, institutions are suffering an inflation in deductions that surpass normal taxes.

Even though the code of fiscal rights and procedures regulated the question of recovering taxes (surpluses), the access to this right is still not sufficiently guaranteed. The difficulty stems from numerous factors including the non-obligatory nature of legal texts regulating this right which led to the eventual non-respect of the rule of law by the offices of fiscal control especially in deadlines to decide in the institutions' demands of recovering taxes.

Despite the fact that the code of fiscal rights and procedures consecrated persons' rights (individuals and businesses) to resort to court by filing a claim of tax recovery that is conditioned by the 60 days' maximum delay from the day of non-response to the request of recovery from the offices of fiscal control. Yet, de facto, taxpayers are reluctant towards benefiting from this right. This reluctance finds its origins in the inefficiency of the procedure vis à vis the plaintiff as the latter will only receive the amount of money he's proclaiming after a final decision is issued which takes statistically about 4 years in court.

The recovery disputes

The relative legal framework is constituted of the code of public accounting and provisions incorporated in the code of fiscal rights and procedures. The general administration for public accounting and recovery supervises the recovery operation as regards the administrative, judicial and executory aspects. The code endows the recovery offices with vast prerogatives involving the proceeding with the recovery procedures and notifications through its agents without the need to resort to bailiffs.

The recovery field is suffering from a lack of balance between the vast prerogatives of the ministry of finance's offices from one hand and from the litigants on the other hand which hinders proper access to justice and limits abuse of power by the administration's prevention.

This is manifested through the limitation of the stay of procedures' as a legal tool in the context of compulsory state-allocations and warrants issued by the offices of fiscal control as they become executable 60 days after the date of its notification. After that period, the finance cashier initiates the recovery procedures.

The code of fiscal rights and procedures enables taxpayers to request a stay of procedures as far as the compulsory state allocations are concerned by depositing a specific amount of money at a financial institution or by paying a percentage of the interest directly to the finance cashier.

Nevertheless, this guarantee remains limited for a number of reasons including its limited scope as it doesn't include deductions and their penalties58. The latter generally result from conflicts over interpretation of transactions or legal or material mistakes committed by the administration in the reasoning of its decisions which makes taxpayers devoid of legal protection since the law does not provide them with the possibility of issuing a stay of execution. This exception, even though the right to challenge the decision is consecrated, makes regulation incoherent and inconsistent.

Additionally, the procedures of stay of compulsory allocations through delimiting its existence through the court of first instance, makes its efficiency limited. Moreover, the finance cashier has the power to recover the bank guarantee after a year from the date of notification of the decision of compulsory allocations.

Limiting the efficiency of stay of procedures of recovery to recovering the banking guarantee before the courts of first instance issue their decision constitutes a challenge of the decisions of the offices of fiscal control. The difficulty of regaining the amount of guarantee for businesses and individuals (who win the case) is important because it is linked to the issuing of the final judgment that could take years.

Recovery is done through a warrant issued by the finance cashier pursuant to the provisions of the code of public accounting that regulates its issuing, execution and challenge. Despite the constitutional consecration is article 104 of the generalization of the right to appeal to a higher court, warrant challenging is solely done before the court of appeal.

58 Article 52 of the fiscal code of rights and procedures posterior to its amendment by article 43-3 of the Act n°54-2013 dated on the 30th of December 2013 relative to the 2014 finance bill

The code of public accounting excepted warrants from stay of execution through the provisions of article 35 that stipulates that "courts cannot stop or extend the deadlines for payment of state debts or those of public institutions or public groups."

Under this exception, the efficiency and reasons behind resorting to court remain in question especially with regards to the provisions catering warrants.

● Recommendations:

The fact that the ministry of finance keeps singling out the legislative side of taxation is one of the major obstacles in the way of access to justice in taxation in Tunisia. Moreover, the non-interference of deputies and civil society and their weak involvement in taxation worsens the outcomes.

To treat the aforementioned shortages properly, the diagnosis of the sicknesses that taxation is suffering from must be taken over by a neutral unbiased party that directs a collective dialogue concerning the fiscal system. This may impose a reformulation and re-perceiving of the fiscal pioneers and base them on rightful and legal foundations guaranteeing justice that is coherent with constitutional rules, conventions and international standards that Tunisia is compelled to respect and fit its legislations with.

3. Access to economic justice through the real estate judiciary

Tunisia knew the real estate registration with its new system after the establishment of the French protectorate in it, so the mixed real estate council was created according to the decree dated on 19 Ramadan 1302 corresponding to the first of July 1885, then the real estate court created by the beylical decree dated on February 19, 1957. In addition to the optional real estate registration procedures, the real estate survey procedures, which did not become compulsory until the issuance of Decree No. 3 for the year 1964, dated February 20, 1964, related to the compulsory and revised real estate registration, dated May 28, 1979. The court played a major role in real estate registration, fees and ridding them of stagnation by using the office of the land measurer and mapping, whose role is limited to the completion of works, the preparation of engineering examples, and the Technical Department related to determining the real estate requiring to be registered voluntarily or compulsorily, and the real estate property that is concerned with the establishment and preservation of real estate fees generated by the provisions of the registration and the demarcation of rights subsequent to the registration judgment and other things that are required to deal with registered real estate.

The establishing of the real estate judiciary in the regions

4. Facilities for administrative services

- Development of electronic and digital services: Government decree No. 3 of 2021 dated January 6, 2021 related to public data.

Article one - This governmental decree aims to regulate the process of publishing public data in accordance with the principle of conquest, for the purpose of:

- strengthening the principles of transparency and accountability,

- support the participation of the public in the preparation of public policies, follow-up and evaluation of their implementation,

- modernizing the administration and improving the quality and efficiency of public services,
- contributing to the setting up of the appropriate framework for promoting economic development and creating additional employment opportunities, in particular by stimulating the creation of start-ups that work to develop new and innovative uses based on public data.

5.The right to access information

Economic justice can only be achieved by enabling anyone who wants to obtain information of interest to him or even just for knowledge to access information, especially information related to the economic field. This is what the Tunisian legislative system aimed to achieve after 2011, whether through the issuance of Decree No. 2011-41 dated May 26, 2011 regarding access to administrative documents for public structures. In a subsequent phase, through the promulgation of Organic Law No. 2016-24 dated March 22, 2016 relating to the right to access information, which repealed Decree No. 41 of 2011.

The first chapter of the 2016 law is devoted to the right of access to information by stating the purpose of the law. This law aims to guarantee the right of every natural or legal person to have access to information for the purpose of:

- Getting- information,
- Strengthening the principles of transparency and accountability, especially with regards to the management of the public utility, - Improving the quality of the public utility and strengthening confidence in the structures subject to the provisions of this law
- Support the participation of the public in the formulation of public policies, follow-up and evaluation of their implementation,

- Supporting scientific research

As for the second chapter, the legislator assigned it to "the duty to disseminate information on the initiative of the concerned structure."

Article 6 states that "the structures subject to the provisions of this law shall publish, update and make available to the public on a regular basis and in a usable form the following information:

- Policies and programs of public interest,
- A detailed list of the services he renders to the public, the certificates he delivers to citizens, the documents necessary to obtain them, the conditions, deadlines, procedures, parties and stages related to their delivery,
- The legal, regulatory and explanatory texts regulating its activity,
- The tasks assigned to him, his structural organization, the address of his headquarters and subsidiary headquarters, how to reach and contact them, and the budget allocated in detail.
- Information related to its programs, especially its achievements related to its activity,
- A nominal list of those charged with access to information, including the data provided for in the first paragraph of article 32 of this law, in addition to their professional e-mail addresses,
- A list of documents available to it (relevant structure) electronically or on paper, related to the services he provides and the resources allocated to them,
- The conditions for granting licenses allocated by the structure,
- The public procurements programmed, the budget of which is approved and which the structure intends to conclude and the results of their implementation,
- The reports of the control bodies in accordance with international professional standards,
- The agreements that the state intends to accede to or ratify,
- Statistical, economic and social information including the results and reports of detailed statistical surveys in accordance with the provisions of the Statistics Law,
- All information relating to public finances, including detailed data relating to the budget at the central, regional and local level, data relating to the public indebtedness and national accounts, the method of distributing public expenditures and the most important indicators of public finance,
- Information available to him about social programs and services."

On the other hand, in order to clarify the mechanisms of access to information, the legislator clarified in Chapter 9 that:

"Any natural or legal person may submit a written request for access to information according

to a pre-prepared written request form that the concerned structure places on the public's disposal on the website or on plain paper that includes the obligatory stipulations contained in articles 10 and 12 of this law. The enforcement officer shall provide the necessary assistance. For the applicant to have access to information in case of disability or inability to read and write, or also when the access requester has lost the sense of hearing and vision. The request for access is deposited either directly with the concerned structure against a receipt that is obligatory for the purpose or by registered mail or fax. Or e-mail with acknowledgment of receipt."

In the event that the request for access to information has been rejected, the person concerned can appeal the refusal decision before the Access to Information Authority, according to what was stated in Article 38 of Organic Law No. 22 of 2016 which states: "The authority undertakes in particular:

- Deciding on the lawsuits filed with it in the field of access to information. For this purpose, it may, when necessary, carry out the necessary investigations on the spot at the concerned structure, conduct all investigation procedures and hear every person whom it deems useful in hearing

- informing each of the concerned structures and the person requesting access in person of their decisions,

- publish its decisions on its own website,

- follow up the commitment to make the information available on the initiative of the concerned structure regarding the information provided for in articles 6, 7 and 8 of this law, either automatically by the authority or following complaints from third parties,

6- Independent constitutional bodies:

The Constitution of 2014, in its sixth chapter, assigned a number of competencies mainly related to human rights and fundamental freedoms to independent bodies, which the constituent authority included in the constitution, and they are five:

- elections Authority (article 126).
- Audiovisual Communication Authority (Article 127).
- Human Rights Authority (Article 128).
- Authority for Sustainable Development and the Rights of Future Generations (Article 129).
- Good Governance and Anti-Corruption Authority (Article 130).

The main purpose of the creation of these bodies is that they represent guarantees of non-

transgression by the executive authority on the one hand, as well as monitoring breaches and problems at the level of achieving the system of rights and freedoms and ensuring the right of citizens to community participation. Chapter 125 of the Constitution sums up this role by affirming that the role of the constitutional bodies is to support democracy.

There is no doubt, then, about the role of the constitutional bodies in focusing and strengthening the citizen's right to access to justice on more than one level that we can discern through the following examples:

1- Article 128 of the Constitution considers that the Human Rights authority monitors respect for freedoms and human rights, works to promote them, proposes what it deems to develop the human rights system, and is obligatorily consulted on draft laws related to its field of competence.

The Commission investigates cases of human rights violations to be settled or referred to the concerned authorities.

This body has not yet seen the light of day, and its organic law has not yet been enacted, despite the important role entrusted to it in upholding the right to access to justice. Perhaps one of the most important reasons behind freezing its formation and allowing it to play its role is the fear prevailing among successive governments of the supervisory tasks of this body over prison conditions and detention conditions, as well as its role in enacting laws related to individual and public rights.

2- Article 130 considers that the Good Governance and Anti-Corruption Commission, in turn, monitors cases of corruption in the public and private sectors, investigates and verifies them, and refers them to the concerned authorities.

This body, despite the enactment of the law regulating it (Law N° 38 of 2017), which was unfortunately disappointing and much less than what was guaranteed by the text of Decree No. 120 that preceded it, has not yet been formed and has remained the subject of political bidding and bartering due to the seriousness of the role assigned to it.

The role of this body is closely related to the right of access to justice, as long as all citizens are strongly called upon to report cases of corruption that affect their capabilities of public funds, and those who reported them are supposed to be assigned protection guarantees and evidence of efficiency in preserving public money.

Case studies

This work wouldn't be complete without looking at the practical difficulties and obstacles that prevent the practices of the right to access to justice. Therefore, the work team at DAAM center moved between a number of states of the Republic of Tunisia to monitor some of the issues related to the subject.

The team monitored the cases of the people of Ain Dhokara, a city in northwestern Tunisia which suffers from the depletion and pollution of the water source in the region, Austria Tunisia and the problems it suffered in the establishment phase, which negatively affected the position of the company during its constitution, and the case of the young engineer Hichem Bouguerra, who suffered from the administrative bureaucracy, especially since his field of work is not regulated by law. The Center also monitored a case of severe punishment of two young men for the accusation of sodomy and persecution, the application of Article 230 of the Penal Code, and the case of Mrs. Latifa Hosni, a Tunisian journalist who decided to launch a tourist-agricultural project represented in a guest house in the area El Qena is from the province of Ben Arous, and the case of Mr. Maher Abdel Rahman is a Tunisian producer who was initially a journalist in the public media and then established his company SPECTRUM, which specializes in film, audiovisual and theater productions in Tunisia, and finally the case of intigo.

Despite the complete difference between the cases' subjects to monitoring and the study, what is common is the difficulty of accessing justice and exercising the right unconditionally and in a way that preserves the rights guaranteed by the constitution. This is demonstrated through the following summary of these cases.

1. Ain Dhokkara

The suffering of the people of Ain Dhokkara from the northwest of Tunisia, mainly represented by the depletion of the water table in the area and its pollution by carrying out extractive operations on the part of the owner of a section, which led to the destruction of some housing and business damage, and the pollution of the water source, which is the lifeblood of the people of the region. This pollution resulted in the land drying out and contamination of the fauna and flora.

Difficulties and obstacles:

The residents of the area filed a complaint that was manipulated by the security authorities and stalled in favor of the owner of the extraction section, and despite the residents being satisfied with their simple self-resources and not asking the state for any of its development rights, they were nonetheless restricted by the major businessmen, with clear disregard from the state, and even support for these abuses at the judicial and administrative level.

DAAM Center Notes:

Ensuring access to economic justice does not necessarily mean crushing the right to life, nor should it deprive citizens of their right to resort to an independent judiciary that allows them to implement their right to a fair trial including their right to defense and confrontation.

2. SIS:

SIS is a leading brand in the field of conformity assessment and safety assessment of equipment, facilities and structures located in the governorate of Tataouine.

SIS is centered around two activities:

First: technical expertise and control

Second, the technical examination

Difficulties and obstacles:

Among the most prominent administrative problems, we find that the company is prevented from enjoying the privileges enshrined in the investment law. This problem is due to the lack of a unified interpretation of the laws between the various departments. Regionalization also appeared in dealing with the investor, as he was unable to benefit from the support of the National Social Security Fund because he and the workers are not from the region of Tataouine.

The problems largely surpassed the administrative hurdles to extend to judicial ones, as the company owner was accused of not paying the resource deduction and was threatened with imprisonment, although he had paid.

DAAM Center Notes:

The weakness of the administrative services that deal with files in a personal and subjective manner leads to the rooting of the principle of regionalism originally enshrined in people's

minds. This personal approach taken to evaluate files confirms the weakness of the digital services of the administration, as the latter is, ab initio, characterized by its objectivity. In addition to this, such dealing with the investor is a deprivation of justice economic, fiscal and financial, as the administration has distinguished and excluded wherever the law neither discriminated nor excluded. The fact that the economic institution is robbed of the incentives and privileges provided to it by virtue of the law, leads to it eventually abandoning the economic initiative.

3. Step:

Hichem Bouguerra is a Tunisian engineer who developed during his career to become an investor in the industrial field and an owner of projects around the country.

STEP is one of his companies that specializes in telecommunications and one of the largest exporting companies in Africa.

Difficulties and obstacles:

The company was exposed to administrative and judicial obstacles:

-Administrative Obstacles: the inflation in the laws that constrain the Tunisian legal system and the difficulty of implementation, because the administration is still subject to old texts that are not in tandem with today's economic reality.

-Judicial obstacles: the length of the litigation period, which does not correspond to the dates of the establishment of the institutions, in addition to the large number of cases and the small number of judges. As a result, the possibilities of access to the judiciary and courts are weakened.

DAAM center notes:

The current situation of the judiciary, in relation to the experience lived by this company, posed many challenges regarding the procedures for filing the lawsuit, its establishment and its conduct. The judicial procedures are characterized by their slowness, which contradicts with the constant need for speed in the economic field despite the presence of specialized commercial circuits and thus, a competent judiciary.

Finally, the realistic combination of judicial slowness and administrative complexity is an obstacle to economic initiative. The company faced problems regarded as obstacles in accessing the judiciary and economic justice.

4. Sexual Minorities Article 230:

The problem is the harsh punishment of two young men for the accusation of sodomy, and the application of Article 230 of the Penal Code relating to the crime of sodomy.

Difficulties and obstacles:

In light of the defendants' denials and relying only on their appearance and on confessions violently extracted from them, the case was diverted, and the formal procedures were violated

by the investigative judge and neglected by the court. As usual, the issue of anal examination was raised. It is considered an international method of torture, especially in light of the refusal of the accused to take it. It also raises the issue of stretching legal criminal legislation, especially the vague provisions and articles, and tailoring their interpretation according to the public prosecution's needs.

DAAM centre notes:

These legal and judicial abuses essentially limit the right to effective access to justice, which is devoted to the rights and freedoms enshrined in the constitution and ratified treaties, which led to a severe punishment for the accused. These abuses represent a danger to the principle of fair trial, especially if the confession of the accused was the result of coercion and violence, as it is in this. The stretching of penal texts, which are normally governed by the principle of narrow interpretation of the law and are a sub-category of the principle of legality of crimes and penalties enshrined in texts of a higher degree than Article 230 of the Penal Code.

5. Dar El habeyeb

Latifa Hosni is a Tunisian journalist who decided to launch a touristic/agricultural project represented in a guest house in the Qena area, adjacent to the Mornag and Outhna regions, which she called "Dar Al Habayeb".

Difficulties and obstacles:

-Administrative problems: the most prominent were the large number of demands and the

length of time of obtaining response. For example, the administration rejected the project file on the pretext that Mrs. Latifa failed to include a paper proving that the used land was classified as a non-irrigated one. The problem is that extracting that paper required the submission of many demands in several departments. Also, the time to obtain the response to a request ranged between two and four months, especially since the administrations close their doors completely and without exceptions, during holidays, but it was finally clear, after her discussion with the Minister of Agriculture, that the land was essentially no longer irrigated for at least five and that the system was simply not updated.

DAAM centre notes:

It's not just about lengthy procedures and heavy paperwork in this case. but also to their feasibility. In this example, the administrative data was not updated, and it took unnecessary money and effort to discover and solve the problem. These obstacles are one of the factors behind the reluctance to invest and lack of economic initiative.

6. SPECTRUM:

Maher Abdel Rahman is a Tunisian producer who was initially a journalist in the public media in Tunisia. He also studied at the Institute of Journalism and information science (IPSI) in addition to his post-graduate studies of political science. He worked in one of the most renowned production companies in the world and produced important referential art-work. He started his company SPECTRUM which specializes in film, audio-visual and theater

productions in Tunisia.

Difficulties and obstacles:

The company suffered immediately after its contact with the administration as a result of the illegal invasion of the Tunisian market by foreign companies, especially the Turkish ones. All the usual administrative complications were imposed upon Tunisian companies, while foreign companies operate in exemption of all heavy procedures without even having a legal presence in Tunisia. As such, they do not pay taxes and provide production services, while Tunisian companies pay large taxes.

Production companies in general are also faced with an arsenal of strange laws such as the demand to put value-added tax on invoices, even those dealing with projects intended for export, which is not an obligation enshrined in law, in addition to the intensive control and inflated taxes on work equipment that have led and still are leading to the bankruptcy of many institutions.

As for problems of a judicial nature, the video raises the issue of conflict of jurisdiction between the judiciary and the HAICA regulatory body, as both deny their jurisdiction in many cases, which contributes to deepening the gap between the economic actors, in this case the production companies, and the relevant authorities.

DAAM Center Notes:

The fiscal discrimination imposed on Tunisian companies, and the taxes on equipment raise questions about the administration and organization of the tax-collection authorities. Especially that the economic initiative is difficult in light of these laws.

Also, access to the judiciary for the first time, when it exists and when it has jurisdiction, is burdened with the issue of conflict of jurisdiction.

7. Intigo:

Is a transportation company that provides two types of services:

- First: transporting people. the difference between intigo and other companies is that the means are motorcycles.

-Second: Transporting goods, through using modern technologies which allow the tracking of the driver and a transparency as for the price.

Difficulties and obstacles:

Difficulties and obstacles that Intigo has suffered from during the project:

Administrative problems which developed afterwards to judicial ones. Among the problems faced, is the opposition if faces from taxis, which escalated violence, dragging and harassment. Also, the issue of bureaucracy and the complexity of administrative procedures. The biggest hurdle is the lack of knowledge of the structure responsible for solving these problems not only by the investor but also by the relevant administrations.

DAAM Center Notes:

This administrative interference and the inability of the administration itself to choose creates an atrophy in the will of the investor, as well as the absence of the state in relation to achieving economic justice leads to unions monopolizing the market, in complete contradiction with the normal and natural role of unions, and a rejection to the principle of free competition and suppressing it with violence.

- The necessity of expediting the establishment of the Constitutional Court
- The need to establish the four independent constitutional bodies, given that there is only one body that has been established, which is the Independent High Authority for Elections
- Supporting the independence of the judiciary by expediting the issuance of the law related to the statute for judges

Recommendations

- Developing the structure of the judicial judiciary by digitizing it in order to reduce the load of cases and the slow decision-making.
- Developing the administrative judiciary in the direction of completing the restructuring of the administrative judiciary as stated in Article 116 of the Constitution
- Speeding up the issuance of the Administrative Judiciary Code so that the shortcomings related to access to the administrative judiciary are overcome
- To ensure that the public structures implement the judgments issued by the administrative judiciary
- Adopting and activating justice that is close to the citizen and has more access to the justice system.
- Ensuring the vulnerable justice and financial assistance appropriate to their needs.
- Knowledge of the law is provided and available to all users of the justice facility and to litigants.
- Improving the quality of administrative services
- Supporting the Access to Information Authority so that it can carry out the tasks entrusted to it efficiently
- Expedite the establishment of the constitutional body related to good governance and the fight against corruption
- Issuing legal texts that stimulate investment, such as the exchange law
- Establishing a tax system that supports young economic initiatives
- Transparency of the procedures followed with the owners of economic initiatives

- Strengthening the rights of the claimant to perform to encourage him to take economic initiatives
- The necessity to stop the rapidly changing the tax system (every year) with us that would threaten the legal security of the investor

DAAM Center July 2021