CASUALTY RECORDING IN TUNISIA
Responses to the 2010-2011 Uprising
About Every Casualty Worldwide

Every Casualty Worldwide (ECW, or Every Casualty for short: http://www.everycasualty.org) is an independent, non-governmental, not-for-profit organisation based in London in the UK. Among its objects are to advance education and research in the practice of and procedures for recording the casualties of armed violence, in support of the principle that every life lost to armed violence should be promptly recorded, correctly identified and publicly acknowledged.

To bring this about, Every Casualty is developing an improved understanding of the range of available casualty recording practices, along with guidance for their implementation. This has included original research into existing casualty recording work, which is contributing towards the identification and development of standards and good practice able to be implemented by a range of actors, including non-governmental organisations, states, and intergovernmental organisations.

In addition to its research, ECW facilitates an international network of practitioners, the Casualty Recorders Network, and is at the forefront of integrating policy goals into existing policy frameworks at the national and international level.

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Tunisians commemorate the third anniversary of the revolution on Avenue Bourguiba, 14 January 2014, © Magharebia, http://flic.kr/p/jF8gC

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Executive summary

Following the overthrow of former president Zine El Abidine Ben Ali on 14 January 2011, Tunisia embarked on a process of transitional justice designed to support and ensure a peaceful transition to democracy. A fundamental part of this process was to uncover the truth about the events that unfolded as a result of Mohamed Bouazizi’s self-immolation on 17 December 2010. In the immediate aftermath of Zine El Abidine Ben Ali’s removal, the transitional government set up three national commissions with the purpose to address different aspects of the transitional justice process: one tasked with looking into reforming the institutions; one with looking into issues of corruption under the toppled regime; and one – which is the object of this report – with looking into the events that caused the death and injury of many Tunisians participating in the protests, including who was killed, under which circumstances, and by whom: these being, in essence, the key elements of casualty recording.

The current report is the first detailed case study of state casualty recording practice that Every Casualty has published. We have chosen Tunisia because the efforts made by a state-mandated commission broadly reflect the essential aspects of the call of the Every Casualty Campaign,1 in that largely successful efforts were made to ensure that every casualty of the revolution was “promptly recorded, correctly identified, and publicly acknowledged.” Although Tunisia is not unique in this respect, it is one of a relatively small number of recent cases where the state-led process was initiated within weeks of the events that caused the casualties. Furthermore, Tunisia is the only state within the Middle East and North Africa region to have undertaken such an initiative in connection with the casualties of the revolulontary processes in the so-called “Arab Spring.” Tunisia’s efforts are thus of particular regional significance, in addition to their wider normative interest.

Transitional justice efforts typically consist of both judicial and non-judicial mechanisms addressing the issues of reparations, truth-seeking, individual prosecutions and institutional reform. The National Fact-Finding Commission on Abuses Committed from December 17, 2010 to the End of its Mandate (the Bourdabala Commission) contributed to the truth-seeking aspect of the Tunisian transitional justice process and was an important example of how casualty recording can contribute to national efforts for justice and accountability.

The Bourdabala Commission was mandated to investigate abuses committed during the uprising and the responsibility of State actors in such abuses. This included the task of establishing a first list of all those who died as a result of the protests. To come up with this list, the Bourdabala Commission engaged in casualty recording: it sought to systematically record all deaths linked to the protests during the period considered through a methodologically-consistent data collection and analysis.

The importance of this list of “martyrs” in the Tunisian transitional justice process contributes to showing how casualty recording can support justice and accountability efforts, as well as efforts of memorialisation, processes which are central to reconciliation and stabilisation.

The main conclusions of this paper examining the Bourdabala Commission are that:

1. **The Bourdabala Commission implemented a number of principles of good practice in its casualty recording.**

   The Bourdabala Commission was set up and guided by three principles that are fundamental to casualty recording as identified by Every Casualty: inclusivity – in theory the work of the Commission was inclusive of all members of society, providing the opportunity for all to contribute information by availing a free telephone line, by holding consultation hours in Tunis, and by visiting each province of the country to meet those who could not travel to Tunis; confidentiality – all commissioners were bound by a clause of confidentiality, to guarantee the safety of those who contributed information or were the subject of such information; and transparency – the rough methodology adopted by the Commission was published in the Decree-law creating it, the composition of the Commission was made public, and a full methodology was eventually published in the official report of the Commission.

2. The data collection method adopted by the Bourdabala Commission corresponded to identified good practice, as data was collected from a broad range of sources which facilitated corroborations at the analytical stage.

   Members of the Commission collected data from multiple sources, combining documentary sources (official documents, medical records, statement transcripts recorded in trials...) with information obtained directly from individuals (through interviewing victims or relatives of those who died).

Finally, all the data collected by the Bourdabala Commission was compiled into a national archive which has been made available to other commissions and institutions working on documenting deaths and injuries after the Bourdabala Commission reached the end of its mandate. This corresponds to the advised casualty recording practice of keeping the records open to review and revision in light of any new information becoming available.

**Identifying, documenting and acknowledging those who died is a fundamental constituent of Tunisia’s peaceful transition.**

The decision to set up a fact-finding mission was taken very rapidly after Zine El Abidine Ben Ali was removed from power, partly as a means to appease the continuing protests and assert the will of the interim government to recognise the victims of the revolution and hold those responsible for deaths and injuries to account. The parallel setting up of military trials were also undertaken with these intentions.

Beyond the immediate aftermath of the revolution, the creation of additional commissions on the “martyrs” and the injured by the newly elected National Constituent Assembly in October 2011 indicates that among other documentation efforts, establishing a final list of those who died during the uprisings was of crucial importance.

**Knowing who or how many died has been at the centre of national and international discussions of the Tunisian uprisings and the subsequent transitional justice process.**

From the outset of the uprisings, Tunisia commanded international attention. However it is significant that in the direct aftermath of the regime’s fall several international organisations from civil society and the United Nations got directly involved in the discussion surrounding the number of those who died as a direct result of the protests: Amnesty International sent a fact-finding mission to Tunisia at the end of January 2011 while the UN Office of the High Commissioner for Human Rights (OHCHR) sent an assessment mission and, later on in the year, its Special Rapporteur on Torture, and Other Cruel, Inhuman and Degrading Treatment and Punishment. All these missions led to the publication of numbers or estimates, some of them erroneous, which were widely circulated in the international press.

The wide interest in casualty information warrants systematic and methodologically sound casualty recording prior to the communication of any figure, as erroneous figures can be put to political ends including fuelling further conflict, or cast doubt upon the whole enterprise of casualty recording, including when its findings are sound.

The cooperation between the Bourdabala Commission and the OHCHR in terms of training and methodology also demonstrates the commitment of the UN to support States in their truth-seeking efforts and provides for further cooperation in the production of detailed casualty data.

**Casualty recording has benefits for other justice and accountability efforts and can be the basis of cooperation between actors.**

Casualty recording can be used for compensation efforts for the relatives of the victims. The victim of documentation attached to the persons recorded through casualty recording provides an important basis on which to make a claim or justify entitlement to such compensation. In the Tunisian case, the compensation process started before the Bourdabala Commission could finish its work and this has been an important source of challenges both in terms of truth seeking and reparations. Compensation was awarded to more
people than are accounted for in the Bouderbala report, inviting criticism that people have obtained money on the ground of false claims, fuelling arguments about victimhood and causing friction between different parts of society. Equally, the lack of influence of the Bouderbala Commission on the compensation process likely hindered its efforts to record all those who died or were injured, as this removed at least one motivation from many of those whose participation it sought.

The work of the Bouderbala Commission was substantiated whenever possible with court statements given as part of the trials being judged in the military tribunals which benefited from subpoena powers lacking by the Commission. Although in this instance the findings of the Bouderbala Commission have not provided the basis for additional judicial investigations, an argument can be made for fact-finding commissions to increase their levels of interoperability with the judiciary. This argument is already being made at the international level, calling for more cooperation between Monitoring, Reporting and Fact-finding missions and International Criminal Courts and International Criminal Tribunals.

Symbolic reparations were provided for in legislation subsequent to the completion of the Bouderbala Commission’s mandate (see section 4.3), which include the provision for the erection of a memorial and the building of a museum dedicated to the revolution. Such efforts of memorialisation are also part of the transitional justice process, aiming at preventing the repetition of similar events by remembering and educating future generations. Casualty recording and the documentation efforts of bodies similar to the Bouderbala Commission are central to the achievement of these goals.

There is a will, within Tunisian civil society, and recognised by the State of Tunisia, to further the casualty recording process beyond the uprisings. The creation of the Bouderbala Commission – the work of which is the object of this Every Casualty report – has become only the first step in a continuing and larger effort to uncover the truth and hold the responsible parties to account. New commissions have been created which will have the powers to overrule the Bouderbala Commission’s findings (see section 4). Additionally, truth-seeking – and with it casualty recording – have been extended beyond the restricted period of the 2011 uprisings, with a commission having been created to investigate past abuses covering the full period since independence (see section 5).

Although these initiatives have sometimes proved confusing in Tunisia because of the multiplication of commissions with overlapping mandates, their very existence points to the need and the demand by civil society to establish truth as the basis from which to foster reconciliation within the country.

### Recommendations

Every Casualty’s interest in the Tunisia case is primarily practical. We present this report in the context of a growing international awareness of the value of casualty recording as an increasingly rigorous professional practice with multiple benefits for humanitarian, human rights, and justice outcomes. This awareness has increasingly brought States, the UN and civil society into constructive dialogue, as they seek clarity on the ways in which casualty recording may best be promoted and implemented. In order to maximally assist this process, we see our responsibility as drawing on the lessons of the experience of Tunisia to lay out broader recommendations for all actors who may collaboratively play a part in improving our knowledge of the casualties of armed violence.

Our recommendations in this case focus on promoting more cooperation between actors – namely States, the UN, and civil society – to provide for the recording of every casualty in periods of transition or post-conflict. Such recording will support all aspects of the process from justice to accountability to memorialisation to reconciliation. The harmonisation of practice throughout all levels, nationally and internationally, will provide more accurate data and records on which to base fair processes and discussions.

Specifically states, in collaboration with the UN and civil society, should:

1. **Acknowledge and understand the important role casualty recording can play in transition and post-conflict settings and ensure that casualty recording is consistently implemented in these circumstances.**

   It is clear from this study that knowing exactly who died and in which circumstances during the 2011 uprisings in Tunisia has been a central concern of the Tunisian population and has fuelled vibrant discussions around victimhood. Because of the importance casualty figures take in public discourse, a rigorous record of such casualties is necessary.

   Additionally, casualty records provide documentation that can be used in further judicial proceedings, form part of fair and legitimate compensation mechanisms, and contribute to efforts to face and deal with the past.

   As the primary actor in transition periods, States should set up an independent mechanism to undertake casualty recording in the view of fulfilling these goals, or find ways to integrate casualty recording in other existing mechanisms.

   The UN and civil society should support these efforts as well as monitor them in order to make sure that good practice principles in casualty recording such as inclusivity, transparency, and do-no-harm are upheld and permit the creation of legitimate casualty data.

   Cooperation between multiple actors, in particular the sharing of their casualty data, is key to achieving comprehensive investigations and the creation of robust records able to be put to the purposes mentioned above, and more.

2. **Support the creation and implementation of standards for casualty recording.**

   Every Casualty is leading a process to develop globally-recognised standards for casualty recording, working in partnership with practitioners and end users of casualty data as well as other key stakeholders. Once these standards are produced and accepted by all key stakeholders, all relevant actors will be able to take appropriate steps to ensure their implementation in practice. These standards will help establish a baseline for producing casualty data that is recognised by all as legitimate and sound, and enable increased levels of cooperation and data sharing between actors.

   Civil society organisations should strive to implement these standards, as this will increase possibilities for the sharing of their data and its uptake by others, contribute to the creation of more complete records, and strengthen the impact of their work.

   States and UN agencies should familiarise themselves with and where possible adapt these standards to their own work. This will greatly enhance their ability to cooperate productively with independent investigators.

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working to these standards, as well as allow them to better assess such work by others.

Efforts towards a greater harmonisation of practice across the board will improve the accuracy of casualty records, feed into other aspects of transitional justice and other protection and peace-building issues, while maximising their benefit to the affected populations.

3. Make casualty recording an integral part of transitional justice efforts.

To date, truth-seeking efforts, which are a component of any transitional justice effort, do not always entail the systematic recording and documentation of those who died despite the demonstrated value casualty data provides both directly as part of truth discovery and for other aspects of the transitional justice process.

OHCHR – as the designated agency within the UN system4 which is responsible for policy development, standard-setting, substantive guidance, capacity-building, and coordination with actors within and outside the UN on transitional justice issues – should consider making casualty recording a requirement of truth-seeking as part of transitional justice processes.

The UN should lead at the Secretary General level to make casualty recording an integral part of truth-seeking efforts as required in a transitional justice process.

The State of Tunisia in particular should:

4. Share experience and promote good practice of casualty recording in similar transitional justice contexts.

The prompt setting up of the Bouderra Bala Commission to look into abuses that occurred during the protests and investigation of the circumstances in which people died is already an important example of the way to account for such violations in a timely manner. The challenges that the Tunisian interim – and then elected – government faced in this effort will prove a valuable source of information for States in similar transition situations.

Building on lessons learned from its own process, Tunisia should share its experience with other States and push for an active group of States to reflect on challenges and successes to casualty recording in order to construct a body of good practice applicable to transitional justice efforts. More widely, Tunisia could play an important role in promoting international cooperation with other states on the broader implementation of casualty recording, including beyond the scope of its role within transitional justice.

Tunisia should also continue to sustain its casualty recording effort by finalising its findings and showing full transparency regarding the work of the Truth and Dignity Commission which will be looking into violations over a longer period of time, sustain its collaboration with the OHCHR and ensure that all parts of civil society are involved in this process.

Research method

This report is based on a comprehensive review of reports and analysis on Tunisia’s casualty recording process with respect to the 2011 uprisings and a set of semi-structured interviews conducted with stakeholders in the casualty recording process in mid-2014.

The research methodology included thematic and methodological analysis of the Bouderra Bala Commission report as the primary source of information on casualty recording relating to the revolutionary period. The author also reviewed a number of reports and commentary from human rights organisations and media sources relating to civilian casualties and the investigative/recording process, which are listed in the notes of this report.

Interviews were held in person in Tunis in September 2014. Snowball sampling was employed to select interviews: the researcher identified an initial set of casualty recording stakeholders, including institutional figures and human rights actors, and requested that they recommend other prospective interviewees. Four key interviews were relied upon for this report: Taoufik Bouderra Bala (president of the fact-finding commission known as the Bouderra Bala Commission); prominent human rights lawyer Leila Haddad; Faouzi Sadkaoui, formerly of the Ministry of Human Rights and Transitional Justice; and president of the National Constituent Assembly’s Commission of the Martyrs and Injured of the Revolution, Yamina Zoghlami. Individuals were selected for interview based on their specialised knowledge and involvement in the casualty recording process. Interviews were recorded and transcribed for analysis with respondents’ consent. Interviewees were given an opportunity to state that they would prefer to remain anonymous, however none of the interviewees stated this preference.

In interview, respondents were asked to describe the details of their role in the process; their objectives and requirements for a comprehensive casualty recording process; the methodologies deployed in collecting information, sources relied upon (including reliance on other national or international fact-finding mechanisms) and any challenges faced in this regard; the means of analysis applied to this information and how their institutions or organisations have acted on available information; and the possibilities for ongoing casualty recording in Tunisia.

The content of this report, including all analysis and conclusions, as well as any errors in fact or interpretation, are the responsibility of the author and Every Casualty, and not of any of the interviewees in this study.

Introduction: the Tunisian Revolution and the need for casualty recording

On December 17, 2010, a twenty-six-year-old Tunisian named Mohamed Bouazizi, a street vendor, set himself on fire in despair at his circumstances and in protest of his treatment at the hands of a local policewoman. Mohamed Bouazizi’s self-immolation sparked protests in his home city of Sidi Bouzid. The protests quickly spread to other areas and to the capital, Tunis. With remarkable speed, the spirit of protest spread to other parts of the Middle East and North Africa, including Libya, Morocco, Egypt, Syria, Yemen, Bahrain, and Sudan.

In Tunisia, the government responded with repressive state violence, unleashing state security forces on the demonstrators, arresting activists, and shutting down the internet. Eventually, Zine El Abidine Ben Ali shuffled his cabinet and offered to create 300,000 jobs, but it was too little too late. The protests and violence continued, and by January 14, the president and his family were on an airplane to Saudi Arabia. The police opened fire on demonstrators with live ammunition.


Within days of Zine El Abidine Ben Ali’s flight and exile to Saudi Arabia on January 14, an interim government was formed, largely of the dictator’s former appointees. On 14 January 2011, the same day Zine El Abidine Ben Ali flew to Saudi Arabia, Mohammed Ghannouchi, Zine El Abidine Ben Ali’s prime minister, appeared on state television to announce that he was assuming the role of interim president under chapter 56 of the Tunisian constitution. This was an attempt by the elite within Zine El Abidine Ben Ali’s former party to form an interim authority. Its immediate aim was to hand over the presidency to Mohamed Ghannouchi, a senior figure within Zine El Abidine Ben Ali’s former party who served as prime minister from 1999 until 2011. Prime Minister Mohamed Ghannouchi appointed himself acting President; within hours he was replaced by Fouad Mbezaa and reverted to his position as Prime Minister. He declared a state of emergency on 15 January (renewed in August, November and again in December until the end of March 2012) and appointed an interim government.

On 9 February 2011, the Tunisian Senate passed a bill authorising Interim President, Fouad Mbezaa, to legislate by decree. A sustained period of protest continued into February 2011, with protestors declaring that the interim government was politically unaccountable, most obviously because Mohamed Ghannouchi had served as Ben Ali’s Prime Minister since 1999. Protests outside Mohamed Ghannouchi’s office, demanding a change in government and popular participation in decision-making, led to Mohamed Ghannouchi’s resignation on 27 February 2011.

An unelected Beji Caid Essebsi held office as Prime Minister from 27 February 2011. Beji Caid Essebsi guided Tunisia’s interim government until National Constituent Assembly elections were held. Elections (widely received as “free and fair”) of a National Constituent Assembly were held on 23 October 2011. Moncef Marzouki was appointed President and Hamadi Jebali became Prime Minister in December.

Before his resignation, on 18 February 2011, Mohamed Ghannouchi ordered the National Fact-Finding Commission on Abuses Committed from December 17, 2010 to the End of its Mandate (Decree-law 2011-8).

The idea for a commission of inquiry had first been publicly offered by Zine El Abidine Ben Ali as an attempt to appease protestors before his ouster. This decree is at the centre of the casualty recording process since it established a national commission to investigate abuses committed during the 2010 protests. Another decree on 2 March 2011 named Taoufik Bouderbala as the president of the National Fact-Finding Commission. From this point onwards, the National Fact-Finding Commission was often referred to as the Bouderbala Commission.

The Bouderbala Commission was one of three investigative bodies created by decree at the initiative of the interim government; commissions were also established to facilitate political reform and to investigate corruption. All three were designed to appease the revolutionary public amid continued protests. Though inappropriately facilitating the transitional justice process, the establishment of these commissions, which had been originally proposed by Zine El Abidine Ben Ali himself, were criticised as reinforcing illiberal practices of the former regime, in the sense that they were decided by decree and without broad civil society consultation.

International initiatives and reactions in the immediate post-revolutionary phase

In the immediate aftermath of the revolution, and during the period of the interim governments of 2011, there was much symbolic and immediate practical need for a clear response to the deaths of protestors. Zine El Abidine Ben Ali had fled the country and could not be held directly accountable for past crimes, except through in absentia trials. At a symbolic level, account-ability for the most recent state violence would provide, at least an emblem of justice and accountability for the decades-long authoritarianism of the former regime. At the level of immediate transitional politics, a clear and accountable response to the deaths of protestors was vital to the legitimacy of the interim government. As Eric Goldstein, deputy Middle East and North Africa director of Human Rights Watch, commented at the time: “Why legal accountability matters so much at the current moment is the importance of legitimacy for the transitional government”. International media and human rights bodies participated in and monitored efforts to establish who was killed or injured during protests, by whom, and under which circumstances.

2.1 Amnesty International Delegation (January 2011)

International organisations attempted to record the numbers of killed and injured during the protests them-selves and in their immediate aftermath. Amnesty International reported on casualty figures during the uprising itself, claiming for example that at least 23 people were killed during the ‘deadly weekend’ of 8-9 January.

Later that month, from 14 to 23 January 2011, an Amnesty International fact-finding team was deployed to Tunisia. During the visit, Amnesty International delegates went to several cities affected by the unrest, including Bizerte, Hammamet, Kasserine, Regueb, Thala and Tunis. Amnesty International interviewed families of individuals killed in the unrest, people injured during protests, other witnesses, former detainees, lawyers, human rights defenders and trade unionists. Delegates visited hospitals in Kasserine, Regueb, Thala and Tunis and interviewed medical professionals and patients receiving treatment for injuries sustained during the unrest. An Amnesty International delegate also met representatives of the Interior Ministry and “briefly” spoke to Taoufiq Bouderbala in his capacity as chairperson of the National Fact-Finding Commission.

Amnesty International’s report describes how security forces used force disproportionately, did not exercise restraint or seek to minimise injury and resorted to firearms when it was not strictly necessary, demonstrat-ing a “flagrant disregard for human life”. Security forces fired live ammunition at protesters who did not pose a threat to the lives of the security forces or others, in some cases bystanders and protesters who were fleeing

Amnesty International did not undertake ‘casualty recording’ as such. It is clear from their report that their goal was to “highlight the pattern of human rights violations committed by security forces […] through documentation of cases in cities across Tunisia […]”.

Casualty recording aims for a comprehensive and systematic documentation of all deaths in a set location (e.g. Tunisia) and period of time (e.g. during the unrest that started in December 2010 until order was restored); for this reason, the Amnesty report provided no casualty figures of its own, but instead cited the discrepancies between figures advanced by the interim government, Tunisian civil society and the United Nations:

“The current caretaker government says that 78 people died during the protests, with a further 100 injured. Tunisian human rights NGOs say the real death toll was greater and the Office of the UN High Commissioner for Human Rights (OHCHR) has put it at 147 in addition to 72 people who died in prison in incidents linked to the unrest”.

2.2 United Nations report (January – February 2011)

The Office of the United Nations High Commissioner for Human Rights (OHCHR) sent an Assessment Mission to Tunisia from 26 January to 2 February 2011. The mission was composed of four senior OHCHR staff, aided by the UN Resident Coordinator in Tunisia. The purpose of the mission was to explore possibilities for the advance-ment of human rights in Tunisia and to better understand how this could be done in the new context. The UN delegation enjoyed the “full cooperation of the Transitional Government”. They met with several Ministers (Foreign Affairs, Defence, Justice, Regional and Local Development, and Education), the Secretary of State for Youth and Sport, and representatives of the Ministry of the Interior. They also met with the chairpersons of the three national commissions, including Taoufiq Bouderbala.

The head of the mission, Bacre Waly Ndiaye, was wide-ly quoted by Associated Press on 2 February 2011, stat-ing that “his team had counted 147 deaths beside the 72 deaths in prison fias and violence linked to the unrest”. Thus during February 2011 Bacre Waly Ndiaye’s overall figures of 219 people killed and 510 injured were commonly cited by international media. The UN figures, the members made clear in their report, relied on the Ministry of Justice.

The UN report welcomed the upcoming creation of the Bouderbala Commission which was yet to be officially announced and it also highlighted some obstacles the Commission would have to face in its recording process:

“Judicial investigations into all credible allegations of violations must be opened immediately, those responsi-ble prosecuted, and remedy and reparations, including compensation, awarded to victims. For effective judicial investigations, evidence must be collected and preserved. The delegation noted, for example, that forensic exami-nations of those killed during the recent events have not been systematically carried out. Such examinations are essential for the process of accountability as they help to determine criminal responsibility, by identifying the kind and degree of force used, the type of bullets used, and the location of the wound, among other things”.

2.3 International reactions to the formation of the National Fact-Finding Commission

The creation of the Bouderbala Commission was generally welcomed by all the international actors who engaged in efforts to document deaths and injuries during the period of unrest. The OHCHR Assessment Mission saw the creation of the Commission as “a positive step in the direction of accountability”.

Amnesty International similarly praised the decision to create the Commission in its February 2011 report; and Juan Mendez, the UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment – following a visit to Tunisia upon invitation by the interim Government in May 2011 – stated that he “welcomes[d] the establishment of the fact-finding Commission, while recognising that its function is complementary to judiciary and should be clarified”, already highlighting the complementarity between fact-finding and justice.

While Amnesty International welcomed the Commission, it also made some recommendations (broadly consis-tent with Every Casualty’s research and findings regard-ing best practice). The report recommended that the Bouderbala Commission apply principles of transpar-ency, impartiality, confidentiality and independence throughout its process (from its methodology, to data
collection, to findings publication). It suggested that the Commission’s methodology be at least partly based on eyewitness interviews, to be conducted through-out the country. It also recommended “the Commission’s findings, including a full list of those killed in the unrest, and its recommendations [be] officially published and widely disseminated without undue delay, including by means of a written report describing its findings in detail”⁶⁶. In many ways, the Bouderbala Commission implemented these recommendations, publishing a succinct methodology within Decree-law 2011-8 as well as the terms of reference of the president of the commission and his responsibilities, travelling throughout the country to meet with family members of those killed and the injured, and finally publishing a long report in Arabic to which has been annexed a list of those killed over the period covered by the Commission’s mandate.

Not all recommendations were implemented, however, at the expense of a higher level of detail in the document. The Amnesty International report highlighted the importance for the Commission to be given the necessary powers and authority to access all relevant documents in its fact-finding work. Although only offi-cially appointed to be the President of the Commission, Taoufik Bouderbala was already informally in charge of the project on January, 22 2011 when he told Amnesty International in a phone call that he “confirmed that the Commission (would) be empowered to compel law enforcement officials to collaborate with the work of the Commission”⁶⁷. This however was not enshrined in law and the Bouderbala Commission did not eventually have this power (see details below).

Later on, following his May visit, Juan Mendez highlighted how the findings of the Bouderbala Commission should serve the larger and on-going judicial effort to bring perpetrators to account. This comment took into account the nature of a fact-finding mission, which can only provide the basis for further investigation to gather evidence that can adequately be used in a trial. For this reason he called for the work of the Commission to be completed as soon as possible.

The Fact-finding Commission should complete its work as soon as possible; its findings should be followed by investigations and prosecutions when warranted; and victims should receive reparations”⁶⁸.

Beyond the restrictions on its powers to fully and freely investigate all allegations, the Bouderbala Commission also suffered from a lack of legitimacy – expressed both nationally and internationally – from its inception. The announcement of the three investigative commissions on 18 February 2011, including the Bouderbala Commission, gave rise to many misgivings and doubts, with international observers fearing the interim meas-ures were not meaningful or legitimate acts of redress. A Reuters report observed that the Commission was enacted by Mohamed Ghannouchi himself without cabinet consultation: “Many Tunisians ... are sceptical the three commissions would be allowed to work independently”.⁶⁹

As of today, the Bouderbala Commission represents the most authoritative source on the deaths and injuries that occurred during the 2010-2011 Tunisian uprising⁷⁰. The final report of the Commission, which totalled 1041 pages, including annexes (with a list of injured and killed), was submitted (in Arabic only) to the President, Moncef Marzouki, on 2 May 2012.

The chair of the 14-member Commission, Taoufik Bouderbala, is a lawyer and former president of the Tunisian League for Human Rights. Taoufik Bouderbala was contacted about the need to investigate the cir-cumstances of deaths and injuries during the uprising by the president’s office in early February. The decision to create a commission, he said in interview, “was taken by the interim government as soon as Ben Ali escaped”⁷¹. Upon the creation of the three national commissions, Taoufik Bouderbala, alongside the heads of the two other commissions, visited the President, Fouad Mbaneza, on 18 January. They agreed to head the commissions on a condition that “the members of all three commissions would be chosen by the president of the respective commission with no interference from the government”. A Decree on 2 March 2011 formally announced that Taoufik Bouderbala was to be presi-dent of the National Fact-Finding Commission. The Decree did not stipulate a precise time period for investigation but defined the Commission as “an enquiry on the abuses recorded from 17 December 2010 till the achievement of [the Commission’s] object”. Taoufik Bouderbala and his team were thus not given a precise investigative structure and eventually chose to end their investigations on 23 October 2011, the day of the first general elections in Tunisia since the revolution. The Commission principally investigated deaths and injuries during the period of the uprising itself (usually identified as 17 December 2010 to 14 January 2011), including the deaths of state officials and deaths and injuries that were not the result of state violence or were considered unrelated to the uprising. The Commission also considered deaths recorded after this period if the circumstances of death appeared related to revolutionary protest.

Taoufik Bouderbala began his work by consulting “all sectors of civil society”, including judges and lawyers known to him, and organisations like the Association of Tunisian Democrat Women (AFED), the Tunisian League of Human Rights (LTDH), the Tunisian General Labour Union (UGTT), and the Association against Torture (IDCTT). From these consultations Taoufik Bouderbala chose members to work on the Commission, using criteria formulated by the UN High Commission on Human Rights. The principles were based around independence, neutrality, competence, and lack of political affiliations with political parties. Apart from travel remunerations and expenses, all members worked for free throughout the Commission’s work⁷².

The Commission was given an office in central Tunis, staffed by 12 clerks. In early 2011 the commissioners were visited by European ambassadors from several countries and also by Catherine Ashton (EU Foreign Ministre) and Guido Westerwelle Minister of Foreign Affairs from Germany. In interview, Taoufik Bouderbala remarked that “we told them that we did not require help from any government”. The commissioners did however attend OHCHR workshops on themes of transitional justice and also travelled to Egypt and Morocco to attend further workshops. In Morocco the commissioners heard from those who had orchestrated the Equity and Reconciliation Commission, which began in 2004.

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⁶⁶ See above note 9, Amnesty International “Tunisia in Revolt”, 37.
⁶⁷ See above note 9, Amnesty International “Tunisia in Revolt”, 35.
⁶⁹ Reuters Africa “Tunisia to investigate security forces over killings”, 22 January 2011, available at: https://af.reuters.com/article%2520tunisianews/idAFLE70104620110112?pageNumber=2&virtaulBrand=Channel=0

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⁷⁰ As part of a complex transitional justice process, other state initiatives have been instigated to draw a list of those who died, which could overwite the findings of the Bouderbala Commission (see section 4 and 5 for more details).
⁷¹ Interview with Taoufik Bouderbala, 2014.
⁷² The full list of appointees is as follows: Zouheir Jerbi (doctor, member of the Medical Ethics Committee), Anel Ouachi (magistrate), Bochra Bel Hadj Hamida (lawyer), Mona Ben Jermi (university lecturer), Hela Ammar (university lecturer), Mony Khaddas (journalist), Youcef Felegue (lawyer in the Supreme Court and former president of the Association of Young Lawyers) Hayet Guetman (psychologist), Chorif Tili (psychologist), Sarah Baitaqi (physician), Hagen Ben-Chirif Ahmed (university lecturer), Nesma Madeni (university lecturer), Naceur Kefi (communications specialist), Chokri Gaddes (university lecturer) Saheddine Jourchi (journalist), Abdellatif Fouati (journalist), and Abdelkrim Allagui (historian).
Despite requests to the government to have its investigative powers increased, and despite Amnesty International’s recommendations, the Commission conducted its work without subpoena powers. Despite this, the Commission was charged not simply with identifying the victims of violence during the 2010-2011 uprising but with “reconstructing the facts” and seeking to “establish the truth” about events. While the Commission would identify the organs of state responsible for casualties, such as the Anti-Riot Police (BTP), it was not charged with naming individual perpetrators.

Because the Commission could not induce security or ministry officials to speak about their role in what occurred (by subpoena), the Commission relied on eyewitness testimony and the testimony of family members whose relatives had been killed during the violence. Despite lacking subpoena powers, the Commission was able to interview policemen and -women and, in those cases that had been taken forward by administrative and military courts proceedings, court officers and investigating judges in charge of relevant records. While it received cooperation from the Ministry of Health (in May 2011, the Ministry of Health sent 618 case files to the Commission that had been collected from hospitals), it did not receive cooperation from the Ministries of Justice or Interior.

3.1 Methodology
At the beginning of its work, in order to maximise public participation, the Commission advertised its work in national newspapers, encouraging those who had been injured or who had lost a family member during the violence to visit the Commission’s office or to call its free telephone line. Upon receiving a member of the public, the commissioners took down certain information from which they created an individual case-file. These details included what Every Casualty has identified in its research and standards development work as elements of best practice: the person’s name, date of birth, the time and place of the injuries or death, the cause of injury/death, occupation, and the state organ responsible for the injury/death. The Commission set a deadline for victims to present files for October 20, 2011. As part of this “hearings process” in the Commission’s office, statements were taken from particular individuals who were “influential” throughout the events, for example directors of companies, ministers, directors in ministries, and ministry employees. These statements, the Commission’s report states, were received to explore specific incidents on certain dates. Invitations were sent to a number of national security officers who were named as perpetrators by the aggrieved parties and the families of victims to give statements. Some presented themselves but others did not, despite repeated invitations in most cases.

While at least three commissioners remained in the main Tunis office at any one time to receive members of the public, much of the Commission’s work consisted of delegation work throughout the country. The commissioners conducted a “Geographical Survey of the Events” - separate visits to all 24 governorates of Tunisia in order to collect information. In their advertisements they informed the public that they were welcome to visit the main Tunis office or to wait for the Commission’s visit to their region.

The commissioners made 57 regional visits over 41 days, accompanied by photographers. Delegations consisted of four to six people, of whom groups of two or three would make visits to the families of those who had been killed. The minutes of oral statements were recorded from “the father, the mother or of both together or of the widow, widower, or one of the children of the victim if they were of legal age or one of the victim’s siblings”25. They recorded information about the victim and his/her family and a description of the circumstances of the incident, its location and date, the names of witnesses and the name of the assailant where identifiable. Files were put together for all persons, including:

- a copy of the national identity card of the victim or his representative;
- health-related documents such as a certificate or a medical report (including where possible certificates of death and autopsy records);
- and documents supplying information about the incident, such as a record of a legal inquiry or minutes of a written testimony.

The commissioners also visited those who had been seriously injured in their homes. They recorded their statements and, where available, the statements of their witnesses. They visited injured persons who were still in hospitals and obtained their statements “where appropriate”. The commissioners also visited hospitals in order to gain access to medical files related to those who had needed treatment. Commissioners interviewed doctors as witnesses, Taoufik Bouderra explained, in order “to better understand the autopsy reports provided”. Some members of the Commission viewed a video showing the autopsies of some of the corpses of the deceased. Since during the revolution hospitals were often surrounded by police, some injured citizens sought out private medical practices for treatment. For this reason the commissioners also made visits to many local private medical practices. As for the rest of the injured, meetings with them took place in public places, such as municipality headquarters, labour unions, local cultural centres or schools.

The commissioners were not only concerned with recording casualty information, but also promoting legal action: in interview, they ascertainment whether the victim had filed a complaint to the state prosecutor and offered guidance in this regard. Where no complaint was filed, the commissioners offered guidance on the need to accelerate a petition to the state prosecutor to arouse public action in order to safeguard their legitimate rights”26.

In interview, Taoufik Bouderra said that the Commission’s regional visits were facilitated by lawyers, activists, labour unionsists, and magistrates local to the regions who had existing information on those local residents who had been either killed or injured. Sometimes families themselves told commissioners about other cases in the local area which they then followed up. The commissioners and their photographers visited known sites of violence in order to rebuild an empirical and visual record of events.

In addition to regional field visits to the injured and the families of the deceased, members of the Commission arranged visits to a number of administrative and judicial departments and institutions in order to further its inquiry and investigations into the events that occurred in different governorates.

The commissioners visited prisons in order to record the circumstances that led to the deaths of prisoners during the revolutionary period. They listened to the directors of prisons, officers who were on duty during the events, and prisoners, including both the injured and witnesses. The commissioners and photographers also visited prisoners’ quarters in order to see the living conditions and the damage caused to facilities.

The commissioners made contact with representatives of the courts, such as the General State Prosecutor to the Court of Appeal, state prosecutors, the chiefs of First Instance Courts, and magistrates engaged by relevant cases within their jurisdictions in the governorates of Tunis, Kasserine and Sidi Bouzid. The commissioners had meetings with the Director-General of Justice at the permanent military court in Tunis and with examining magistrates and representatives of the public prosecution of the three permanent military courts in Tunis and the military court in Sfax. The report’s methodology does not disclose the particular questions posed to these representatives of the country’s various jurisdictions, or what information was required, though it does state that the Commission relied on completed reports by investigative judges from civil and military courts arising from investigations that came before them in relation to this period.

The commissioners also made visits to many governors, provincial chiefs (moutamadden) and heads of munici-

26 See above note 25.
palities in order to inquire about the “events,” their effects and the process of material compensation authorised by the transitional government. The commissioners received the addresses and phone numbers of victims whom it had not been possible to contact from these administrative representatives.

The Commission also visited administrations or ministries in order to listen to individuals who played an important role in the events that the country witnessed, such as officials from the Interior Ministry and the Defense Ministry. Further investigations included a number of visits to listen to detainees in custody in relation to the “events” including: eight visits to the military base in Aouina to listen to accused detainees awaiting justice, including ministers and councillors to the former president, chiefs “who held responsibility” in the Interior Ministry, the Secretary-General of the ruling party and the Director-General of Presidential Security; one visit to the Sfax military court to listen to some detainees; and one visit to the riot police barracks in Bouchoucha in Tunis to listen to some detainees.

Other sources considered by the commissioners included criminal investigations carried out by judicial police officers (officers that draft reports of criminal investigations) resulting in reports or judicial warrants and information, articles and interviews related to the events that were produced by the media, particularly the written press. The Commission engaged in administrative correspondence with different administrative departments, courts, hospitals and ministries “seeking explanation for some issues, verifying necessary information, getting some documents and confirmations.”

The Commission subsequently depended heavily on audio-visual recordings of visits to families, witnesses, and medical, administrative and judicial bodies in analysing the files. The Bouderbala report’s methodological section refers to the “extreme importance” of this documentation, particularly for members of the Commission who could not participate in these visits. Audio-visual recording, the report states, “demonstrates the psychological state that was caused by experiencing the events.”

In interview, Taoufiq Bouderbala was confident that every death is accounted for, since each family affected came forward immediately and their medical certification and circumstantial testimony were easy to corroborate. There were a huge number of protests – by families of those killed and by the revolutionary public – throughout the country following the revolution, identifying the need to recognise “the martyrs of the revolution” as intrinsic to the revolutionary process. The Ministry of Interior released a series of updated casualty figures throughout 2011 (in 2012 it realised its final figure as 320 killed and 3727 injured persons). The process of identifying the families of those who were killed was facilitated for Taoufiq Bouderbala’s commissioners by several factors: the advocacy around the plight of “the martyrs of the revolution”, the fact that the number of casualties was relatively low, and the fact that the provisional figures appeared consistently to total circa 300. However, despite Taoufiq Bouderbala’s confidence about the accuracy of the figure of those killed, he admits that the figure of injuries cited in the Commission’s report is “provisional”. The number of injuries was far higher and subject to revision following the interim government’s compensation process. Most importantly, the Bouderbala Commission was not empowered to award reparations, which diminished its ability to attract public concern with its recording process.

3.2 Analysis and archiving

The Commission’s account of its methodology describes how a “gradation process” was relied upon when examining sources and material, and how the Commission’s sought what is termed “Intersectionality” in the report’s methodology (taken here to mean over-lapping, complementary accounts). The Commission’s report explains that “the commission is more convinced when the information is reiterated across multiple sources” when considering the “veracity of the events and its attribution of responsibility”. The “multiple source investigation” approach adopted by the commission, where they sought confirmation of details and accounts of incidents from a range of sources, is considered good practice in casualty recording2. An important limitation was the Commission’s lack of subpoena powers, which meant that alleged perpetrators could not be compelled to give an account of their role in the violence.

On completion of the Commission’s “fieldwork”, and the compilation of files, the subsequent work of analysis and writing was divided between members of the Commission according to governorates. Each member was responsible for a certain number of files, though they necessarily considered other related files in order to verify “the extent to which the file was related to the events that occurred” during the uprising. Because the Commission had not excluded any deaths in this period from its investigation, it “became clear in many of the cases that the incident happened outside of the context of the revolution” and were subsequently “considered outside of the scope of the Commission”3. The Commission’s report does not expand on the decision-making process leading to the exclusion of files.

Each commissioner completed his or her analysis of allocated files and drafted a “partial report” relating to each governorate. This report included accounts of the most important events that occurred in that governorate and provided charts of the victims who died and the victims who were injured. On completion of regional and some issue-specific reports (which the report’s methodology does not name), the commissioners decided upon a general outline for the final report and a drafting committee was established to coordinate between the writing allocated to each member of the Commission. The term “victim” was adopted in the report to cover all kinds of violations, in order to avoid the “material, moral and religious symbols” of the commonly used term “martyr” and in order to adhere to the Commission’s founding principles of objectivity and neutrality. “Victim” is the technical term adopted in the reports of fact-finding commissions in other similar experiences, and the Commission sought to follow this precedent4.

By the end of its work the Commission devised a data archiving system (not publicly available) to store all the information it had recorded on state officials, individual victims and events (including testimonies, personal data, photographs and video recordings, judicial and medical reports and minutes). As held by Decree 2011-8, the work of the Commission, the testimonies of the persons heard by the commission, as well as its deliberations were confidential while the process was underway. But Taoufiq Bouderbala observed in interview that the commission is intended to serve as an archive, which has already been made available to investigative judges and to the members of Tunisia’s on-going Truth and Dignity Commission, which started its work in 2015. Another important principle of casualty recording is to integrate new information into casualty records as it arises5. Records should never be closed. Though the Bouderbala Commission is no longer accepting submissions, section 4 below describes how casualty recording has continued in different forms in Tunisia, which has kept it open-ended but has also caused confusion among the affected population.

3.3 The Commission’s findings

Upon publication the report divided its findings into five sections: 1) Facts and violations of human rights in general; 2) presentation of special events, places concerned and establishing the truth on the issue of snipers; 3) establishment of responsibilities; 4) recommendations to ensure non-repetition of the violations; 5) tables and graphs and list of victims identified by the Commission.

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2 The Commission recorded almost 150 hours of audio-digital recordings of testimony from the injured, the families of the victims and some officials who consented to being recorded.

3 See above note 25.

4 See above note 25.

5 See above note 25.
Casualty recording and other mechanisms

4.1 Casualty recording and justice

Because the Boudraba Commission lacked subpoena powers and a mandate to award reparations, many have looked to Tunisia’s judiciary to provide both accountability and an accurate record of events.

Injured persons and relatives of those who were killed during the uprising were quick to seek legal remedies, both in order to establish legal accountability and material reparations. A group of lawyers, some of whom were based in Thala and Kasserine, began legal proceedings as early as 25 February 2011 in order to bring cases to court.12 However, before the 2010-2011 uprising, Tunisia’s judiciary had been wholly incorporat- ed into Ben Ali’s authoritarian police state, and was yet to undergo reconstruction following his ouster. As lawyer Leila Haddad observed in interview, “when we filed these cases there was no cooperation from the judiciary or investigating judges.” In a press conference in 2014, Leila Haddad told reporters that “80% of the cases of the martyrs and injured [of the revolution] were dropped by investigating judges because of a lack of a perpetrator.”

In the months following the uprising, among a host of revolutionary demands, there were mounting calls for legal accountability for the regime’s abuses during the uprising. Civilian investigative judges from Kasserine, Le Kef, and Kairouan courts transferred the cases to the military justice system based on Article 22 of Law 70 (1982) regulating the Basic Status of Internal Security Forces. Law 70 assigns to military courts cases involving internal security forces personnel for their conduct during the exercise of their duty. This caused shock and consternation among the population, who saw this as a blow to accountability.

Three military tribunals that took place, beginning on November 28, 2011 – in Le Kef, Tunis, and Sfax – were multi-defendant trials of alleged crimes of state security personnel (including Zine El Abidine Ben Ali) that corres- ponded to over 600 cases of injuries and deaths, according to Colonel-Major Marouane Bouguerra, the military prosecutor-general.13 The defendants were security officials and former Ministers of Interior, alleged to be responsible for acts of state violence between 17 December 2010 and 14 January 2011. Following the reform of military justice under Decree 2011-69, the military courts were afforded jurisdiction to determine appropriate material reparations for use of force. This development meant that many of the expectations around casualty recording, accountability, and reparations became bound up with the process and outcome of these tribunals.

Verdicts issued on 12 April 2014 by the Military Court of Appeal of Tunis in relation to former regime abuses provoked widespread consternation and protests from the families of those who were killed or injured during protests. These particular verdicts concerned high-profile individuals including the Former Interior Minister, Rafik Haj Kacem, the former director of Zine El Abidine Ben Ali’s Presidential Guard, Ali Seriati, and the former Director General of Public Security, Lotfi Zouaoui. All defendants were sentenced to three years in prison in relation to deaths and injuries to protesters during the 2010-2011 uprising. The verdicts meant that each was released for time-served within two months of the sentence.14

While military tribunals possessed more powers to investigate events than the Boudraba Commission, co- operation between the two proved important in seek- ing to establish the truth. As Leila Haddad remarked in interview:

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Details are missing from the Commission report that have since been revealed by court cases. Court cases help reveal things that cannot be discovered through fact-finding. Because of the powers of subpoena in the courts, we were able to determine for example in the city of Thala, which like other cities was surrounded, who ordered which police squads to go there and when.

However the Bouderbala Commission took advantage of the judicial proceedings underway by accessing and documenting statements in order to maximise the evidence available for its own investigations.

When we issued our request for subpoena power we were told by the interim government that such powers belonged to the court’s jurisdiction only. We tried to compensate for this lack by cooperating with the military court tribunals. So if somebody who didn’t talk to us was compelled to speak to the military tribunal we were able to read their statements and incorporate that material into our report. Because of this we were able to read the statements of Ben Ali’s former ministers. There was a meeting between the judges of the military tribunals and the members of our Commission in May 2011 and then again in early 2012. Our final report quotes from the military tribunal statements made by investigating judges.

Tunisians rally in Tunis on April 9th, 2013 to demand justice for victims of the 2011 revolution ©Naganeibia, April 2013, http://flickrjp/olaKgT

4.2 Casualty recording and reparation mechanisms

A number of legislative measures and procedures related to the casualty recording process followed the Decree that created the Bouderbala Commission. However reparations were awarded before the work of the Commission even began, making the issue of establishing the truth and obtaining compensation confused and complicated. In February 2011, the interim government allocated 20,000 dinars (US $12,624) to families of those killed and 3,000 dinars (51,900) to the injured, regardless of the severity of the harm. In December, the newly elected National Constituent Assembly distributed a second installment of the same amount to the injured and families of those killed. This decision to separate the award of financial reparations from the casualty recording process – regardless of public pressure for quick compensation – is problematic. It complicated the process by which the concept of casualty/victim was defined, divorcing the definition itself from the attribution of status that would subsequently allow a person to receive compensation.

In interviews, lawyer Leila Haddad and Faouzi Sadkaoui, formerly of the Ministry of Human Rights and Transitional Justice, both raised concerns about this compensation process. Despite the fact that the Ministry of Interior was responsible for many of the casualties, it was the Ministry of Interior itself that dispensed the compensation (via local governorate offices) and kept records of who had claimed. Both Leila Haddad and Faouzi Sadkaoui suggested that the compensation process served two functions; first, to appease a revolutionary public that continued to hold demonstrations against the interim government; and, second, to cause confusion as to the true figure of those who were killed or injured during protests.

Authorities paid lump-sum compensation to 2,749 of those claiming to have been injured and to the 347 families claiming relationship to those killed, according to official numbers obtained by Human Rights Watch. These figures are higher (in terms of both deaths and injuries) than the Bouderbala commission’s figures, released in 2012. It is now considered easy to claim compensation, and to make false claims. By awarding financial reparations before the fact-finding mission could accomplish its work, the interim government (seemingly at the behest of the unreconstructed Ministry of Interior and the former ruling regime) has effectively politicised and confounded the casualty recording process. Calls for accurate casualty figures and reparations have now become conflated with public suspicion that injured persons and families of those who had been killed were falsely pursuing material gain.

On October 23, 2011, the same day as Tunisia’s first general election since the uprising, the second interim government declared Decree 2011-97. A response to continued protest for recognition and reparations for those who were killed and injured during protests, this legislation took a more comprehensive approach to state recognition and redress, and aimed at reconciling the casualty recording and compensation processes. It defines “the martyrs and the wounded persons” as being “the persons who risked their lives for the revolution, and who died or were victims of physical harm causing them an infinity, during the period (extend)ing from December 17th, 2010 till February 19th, 2011” (This time period was later modified in Law 2012-26 to extend to 28 February 2011, the day of the so-called Kasbah Two protest in Tunis). The Decree provides for symbolic and material compensation to “the martyrs and to the wounded”. It calls for symbolic reparations (public monuments and memorials) as well as material and financial compensation.

Tying compensation back to the casualty recording process, article 6 of the Decree stipulates that a “Commission of the Martyrs of the Revolution” will be entrusted with compiling “the final list” of “the martyrs and the wounded people of the revolution”. The final list of the dead and injured of the uprising, it goes on to state, will be determined by drawing on but superseding “the final report prepared by the National Fact-Finding Commission”. According to the Decree, the Commission of the Martyrs of the Revolution was to be

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* Interview with Taoufik Bouderbala, 2014.

See above note 33.

As emerged from interviews.
housed within the Higher Committee on Fundamental Rights and Freedoms, an organ of the Tunisian president’s office since 1992, led by Noridine Hachat, who would also act as president of the new commission.

The newly elected National Constituent Assembly (NCA) inherited Decree 97 from the unelected interim government. Instead of implementing the reparations stipulated in Decree 97, the National Constituent Assembly created its own Commission of the Martyrs and Injured of the Revolution. According to the president of the NCA Commission, Yamina Zoghliami, in an interview in Tunis, this new commission was not designed to replace the Commission of the Martyrs of the Revolution created by Decree 97. Rather, the NCA Commission was “a monitoring commission” designed to review the progress of both the Bouderbala Commission and the Commission of the Martyrs of the Revolution.

However, members of the public, confused by the process and hopeful of reparations, visited the NCA offices in their hundreds, adding new cases of injured persons that had decided not to take part in the Bouderbala Commission. As Yamina Zoghliami remembers, “people were under the impression that the NCA commission had executive power to grant reparations and give them state recognition. But despite people’s high expectations it was a monitoring commission with no subpoena powers to determine the validity of a person’s claim.” To make matters even more confusing, the newly created Ministry of Human Rights and Transitional Justice also opened a commission to receive members of the public who wished to file claims for compensation.

In February 2012, mindful that there were “too many commissions,” Yamina Zoghliami organised a meeting between members of the three commissions, including Bouderbala. In the meeting the three bodies committed to working together and Bouderbala assured the other participants that his team would soon publish their report and allow the other commissions to make use of his archive in the meantime.

In July 2013 the Commission of the Martyrs of the Revolution, housed within the Higher Committee on Fundamental Rights and Freedoms, began its work under a new president – Hashmi Jouram.

At the time of writing, the Commission of the Martyrs of the Revolution has not released its “final list” of dead and injured persons who are to receive financial reparations under Decree 97.

4.3 Casualty recording and memorialisation

Decree 97 not only provided for material compensation to “the martyrs and to the wounded”, it also recognised the importance of symbolic reparations to those who died in the course of the revolution.

As such, Articles 1 to 5 of the decree provide for the creation of a memorial which would list the names of the “martyrs of the revolution”; the creation of a museum dedicated to the revolution in order to “draw its lessons and safeguard its memory”; the attribution of martyrs’ names to streets and public squares throughout the country, the naming of 14 January as a commemorative day which should be celebrated every year, and the addition of the revolution as a topic on school history curricula.

This aspect of the decree was not revisited in further legislation after the election of the new constituent assembly and it is unclear whether the content of these articles will be implemented. At the time of writing the only aspect of these symbolic reparations that has been implemented is the renaming of some streets with the names of “martyrs”. It is possible that other aspects – and in particular the erection of a memorial – will be acted upon once the Commission has released the final list of those who died in the uprising.
The future of casualty recording in Tunisia

The most comprehensive figures of deaths and injuries during the 2010-2011 uprising to date are found in the Bouderbala Commission report. However, the ‘final list’ of the Commission of the Martyrs of the Revolution may revise the figures of the Bouderbala Commission. The figures from both these sources are in turn likely to be revisited in Tunisia’s on-going Truth and Dignity Commission. The National Constituent Assembly eventually passed an Organic Law on “Establishing and Organising Transitional Justice” on 15 December 2013. Enacting Article 17 of the legislation, a 15-member “Truth and Dignity Commission” was launched in June 2014 (operative over a four-year term) to enact victim reparations and state recognition from human rights violations as far back as independence (1 July 1955).

These various commissions, as well as court cases taken up by the victims of state violence during the uprisings, have resulted in an archive of information on deaths and injuries which continues to grow as commissions remain open to receive information and public expectations of reparations multiply. The Bouderbala Commission report is currently the primary source of information. Though the limitations of the Commission have been discussed in this report, the wide range of information gathered and archived is now complemented by a reparations mechanism and by on-going court cases seeking accountability for violations of human rights.

Final thought

What is clear from the foregoing is that rigorous casualty recording and the uncovering of the truth with regard to those who died as a result of the 2011 uprisings has been a social necessity in post-revolution Tunisia. The recording process undertaken by the Bouderbala Commission has included many elements identified as good practice in casualty recording. The state adopted a multi-source methodology that seeks information from both documentary and oral sources, accessing witnesses, statements from military courts, medical certifications and reports, and interviewing those affected, families, witnesses, and representatives of various state institutions. Although its analysis sometimes lacks transparency and its limited timeframe made complete accuracy in establishing the facts more difficult, the Bouderbala report creates a sound basis on which further recording efforts are being developed. As discussed, the court cases underway have revealed information that is available to complement the information gathered by the Bouderbala commission, and the Commission archive has been expanded by further submissions made by families to subsequent commissions established for the purpose of fact-finding and granting reparations. The structures established by the state, with their confusing, overlapping functions, have made it difficult for the population to always understand how to participate and there is a lack of transparency in their data analysis methodology. Overall, however, the post-uprising fact-finding has been comprehensive and inclusive.

Acknowledgements

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