

Disruptive reparations?

Tunisia's victim regions and the collective reparations dilemma in transitional societies

Tine Destrooper

Justice Visions, Faculty of Law and Criminology, Ghent University, Belgium

In the past decade an encompassing transitional justice process has been developed in Tunisia, which interacts with various other policy domains, including that of development. This article foregrounds three important interrelated innovations of Tunisia's transitional justice process: the explicit attention for economic crimes and violations of economic, social and cultural rights; the introduction of the notion of victim regions; and the conceptualisation of collective reparation programs. I discuss these innovations in light of the ongoing debate about the collective reparations dilemma in transitional societies, and notably about the ideal relation between (collective) reparation programs and development. The article then introduces the notion of *disruptive reparations* to theorise this relation in a way that foregrounds the need to consider and disrupt the political, socio-economic and epistemic structures that facilitated the initial harm. This exercise acknowledges the specificity of various policy domains, and approaches them in a way that is fundamentally rooted in victims' justice needs.

Keywords: transitional justice; development; economic, social and cultural rights; economic injustice

Funding statement

Part of this research was supported through the European Research Council under Starting Grant VictPart 804151.

Disclosure statement

The author reports there are no competing interests to declare.

Word count

7 949 (excluding title page)

Address for correspondence

Universiteitsstraat 4, 9000 Ghent, Belgium, tine.destrooper@ugent.be, @TineDestrooper, www.justicevisions.org, <https://orcid.org/0000-0002-0781-2971>

Biographical note

Tine Destrooper is the director of Justice Visions and an associate professor of human rights and transitional justice at the Human Rights Centre of the Faculty of Law and Criminology of Ghent University. Her research focuses on victim participation, civil society activism and social change in contexts of (aparadigmatic) transitional justice.

Disruptive reparations?

Tunisia's victim regions and the collective reparations dilemma in transitional societies

Introduction

In the past two decades the ethical and legal principle of repairing victims of gross human rights violations has become cemented in both international law and domestic policy (Uprimny Yepes 2009; de Greiff 2006; Carranza 2009; Falk 2006; United Nations 2005). Under this principle, victims – including those of gross human rights violations – are entitled to integral and prompt reparations in order to attempt to repair the harm they suffered and restore their dignity. In transitional contexts, however, this principle poses several complex dilemmas. Societies emerging from long periods of conflict or authoritarianism are commonly characterised by deep social divisions and extreme poverty and inequality, as well as by scarce economic resource and unstable political constellations. Difficult trade-offs often have to be made between reparation programs, corrective justice, development and welfare policies – all of which are intrinsically related but analytically different from one another. In a context of finite resources, one of the most pressing legal, philosophical and practical tensions the state (and international donor community) has to face is the one between repairing direct victims of massive human rights violations in order to rectify an unjust harm, and adopting measures to ensure access to economic, social and cultural rights for – especially the most impoverished and discriminated – members of society (Hamber 2000). The underlying question is whether the existing paradigm of reparations is responsive to the predicament of poor victims (also see Carranza 2009).

Several elements of the Tunisian transitional justice (TJ) process can be read as an attempt to navigate these challenges. Following the uprisings of December 2010 that led to the ousting of Ben Ali in January 2011, Tunisia developed a comprehensive TJ process that was unique and innovative in several ways. First, it introduced the notion of victim regions, which are those regions that were systematically and deliberately discriminated against by consecutive regimes. Second, these victim regions qualified for collective reparation programs. Third, the process explicitly foregrounded economic injustice and violations of economic, social and cultural rights. These innovative proposals make Tunisia an interesting case for studying the reparations dilemma in transitional societies.

The discussion of the Tunisian case in this article relies on an analysis of primary sources (such as the report by the Truth and Dignity Commission, or *Instance Vérité et Dignité*, hereafter IVD), secondary sources, and conversations held during a workshop organised in Sousse in February 2020. Furthermore, nine expert interviews were carried out with gatekeepers of the TJ process (notably IVD commissioners and lawyers), and members of civil society organisations who mobilised around the issue of reparations and international experts working on this matter. Interviews took place in Tunis and Sousse, and were carried out in English, French, and Arabic, with the help of a local researcher, Safa Belghith. Transcripts and consent forms were translated to English. The research followed the ethical guidelines developed in the context of the broader Justice Visions research project, which were approved by the Faculty of Law and Criminology, as well as by the European Research Council.

In the remainder of this article I first paint the contours of the debate about the reparations dilemma in transitional societies, and then zoom in on the case of Tunisia. In the discussion I propose the notion of disruptive reparations, as opposed to transformative reparations, as a lens to explore the relevance of the Tunisian approach to the reparations dilemma.

The reparations dilemma in transitional societies

While the right to reparations is inscribed in international law (Falk 2006; United Nations 2005), in the context of widespread and gross human rights violations, reparations programs have to navigate a range of challenges and dilemmas, which are discussed below.

TJ and (collective) reparations

In post-conflict and post-authoritarian contexts, reparations are usually seen as part of a more encompassing TJ policy that also encompasses truth initiatives, justice processes, memorialisation and non-recurrence initiatives (Teitel 2014). While TJ programs rely on an international legal framework, their objectives go well beyond the law, and include, amongst other things, political transformation (Andrieu et al. 2015).

Reparations are one of the TJ mechanisms in which this assumed extra-legal and societal impact is most obvious. Reparations can be court-ordered, based on recommendations by a truth commission, emerge from an administrative decision, or respond to the advice of national human rights commissions etc. They can be monetary (including cash payments), material (including education, housing and health provisions) or symbolic (including official apologies, renaming public spaces, creating memorial places, etc). Most importantly for this article, they can attempt to provide benefits directly to victims of certain types of crimes (e.g. through restitution, compensation or rehabilitation) or they can primarily envision societal effects (e.g. through satisfaction and measures of non-recurrence (United Nations 2005)).¹ As such, they can target individuals or collectives. The latter is most appropriate when a whole community has been targeted in the same way or when the number of individuals who suffered is too large (de Greiff 2006, 459). What unites these various understandings is that overall, reparations are meant to serve two goals: recognising the loss and pain suffered by victims and, in doing so, helping them become rights-holders entitled to redress; and providing actual benefits to victims, in whichever of the above-mentioned forms (Uprimny Yepes 2009, 269). Reparations are thus not a stand-alone policy, but are part of a broader policy context, in which limited resources have to be balanced. This is the focus of the next section.

The nature of reparations dilemma in transitional societies

While there is widespread agreement that full restitution is not possible in cases of gross human rights violations (Hamber 2000), all violations of international law entail responsibilities for the state to provide *some* form of repair to victims that is proportional to the gravity of the harm they suffered (United Nations 2005, principle 15 & 18). The crucial question then is what that responsibility should look like, especially in transitional societies where a well-functioning state apparatus and adequate resources are missing, and the number of victims is high (de Greiff 2006, 455; Uprimny Yepes 2009).

One answer to this question proposes a narrow ‘juridical’ interpretation of reparations, arguing that significantly widening the boundaries of TJ in general, and of reparations in specific, might be counterproductive and risks creating a situation where even minimal benefits cannot be guaranteed (for a critique, see Ketelaars 2018). On the other side of the debate are scholars embracing a forward-looking and more ambitious understanding of reparations. This, however, entails various tensions: between backward-looking and forward-looking objectives, between reparative and distributive justice, and between attempts to do justice to particular victims and attempts to build a more just future more broadly (Freeman 2006, 51). These tensions, moreover, often have to be navigated in a context of deep social and economic inequalities, extreme poverty, dysfunctional, overbearing or lacking state institutions, and severe economic constraints. More fundamentally, the strict implementation of victims’ right to full restitution may run counter to the logic of other state policies aimed at non-recurrence,

poverty alleviation or distributive justice.² (Uprimny Yepes 2009, 637). Different models and approaches have been formulated to bridge these different demands placed upon transitional governments.

How the reparations dilemma has been approached in literature

The most influential voice in this debate has been former UN Special Rapporteur on Truth, Justice, Reparations and Guarantees of Non-Recurrence, Pablo de Greiff. His approach to the reparations dilemma in transitional societies revolves around the idea of on internal (referring to different components of reparations programs) and external coherences (referring to other transitional mechanisms) (de Greiff 2006). It is pinned on an understanding of justice that both seeks to redress the particular harms suffered by particular individuals as well as addressing the preconditions of harm through a public and collective dimension. It thus acknowledges the extent to which reparations are political containing a dimension of recognition, civic trust and social solidarity (2006, 454).

Building on this proposal, Rodrigo Uprimny Yepes (2009) develops the concept of *transformative reparations*, which expands the notion of external coherence by interpreting it not only to refer to TJ policies, but government policies more broadly. The concept represents an effort to articulate an alternative understanding of reparations which is not only backward-looking and grounded in corrective justice, but also forward-looking and grounded in distributive justice, taking into consideration current needs of the population (2009, 637). This brings poverty reduction and development policies to the centre of the debate. Yet, while acknowledging that both reparations and development programs can deliver social goods for victims, and that links between them should be established, the notion of transformative reparations analytically distinguish between both, seeking to harmonise various duties of the transitional state by moving beyond the notion of *restoring* victims to their previous state (often of poverty and discrimination), and instead *transforming* this state that was in itself unjust and contributed to further injustice. In doing so, it addresses past but also present and future justice concerns (2009, 637–638) and embeds reparations in a broader program of democratic transformation towards a more inclusive political project and new social order, aligning states' duties to fulfil victims' right to reparation with considerations of distributive justice and the state's duty of guaranteeing economic, social and cultural rights.³ As such, the proposal can be understood as part of a broader trend towards transformative justice scholarship which seeks to recast formal rights and mechanisms in ways that are meaningful to the most disenfranchised victims.

Several elaborations and critiques of this notion of transformative reparations have been proposed. One of the most relevant points for this article concerns the unaddressed institutional bias for only considering gross violations of civil and political rights as causes for reparation while overlooking the predicament of victims whose poverty and marginalisation is attributable to conflict or systematic repression or whose economic, social and cultural rights are systematically violated more generally (Carranza 2009, 2). This critique leads to a deeper engagement with concerns over socio-economic justice and destabilising power hierarchies, to which I return in the last section.⁴

Relation with the domain of development

The reparations dilemma in transitional societies is fundamentally about the ideal relationship between these reparations programs and other policy domains concerned with poverty alleviation, both in terms of domestic policies, as well as in terms of development programs financed (and often implemented) by external funders. The latter is particularly relevant to highlight because of the reality of foreign donors increasingly mainstreaming the notion of reparations in their development programs and reorienting their finances towards reparation

programs, sometimes creating the impression of communicating vessels and interchangeability. This can for example be observed in international development agencies' funding for the Colombian 2007 pilot project of collective reparations (Firchow 2013). Also among international NGOs and international organisations the relation between both kinds of programs is becoming an increasingly important topic of discussion, as can be gathered from the Avocats Sans Frontières' 2017 conference on collective reparations and development, and recent publications by UNDP (e.g. UNDP 2020).

<PULLOUT> Orienting development funds towards programs of collective reparations can be tempting because of the idea that the whole country or region has suffered during a conflict. <PULLOUT> From a conceptual and practical point of view, too, this rapprochement makes sense. In terms of substance, collective reparations programs can encompass development projects and can improve access to economic, social and cultural rights, with additional symbolic and psychosocial elements geared at recognition. Merging the two is also politically attractive because it gives programs the appearance of being directed toward the underlying causes of violence as well as recognising victims, suggesting that it possible to reach goals of justice as well as development within the confines of one program (de Greiff 2006, 467). Yet, introducing development projects as a form of reparations (or in other words, for reparations to take the shape of development programs) in conflict-affected communities is a highly complex endeavour and often has very low reparative capacity because development programs tend to be too inclusive and not directed specifically toward victims, focus on poverty alleviation rather than needs emerging from the victimisation, have long and complex timelines that challenge the perception of direct repair, and easily become the object of party politics (de Greiff 2006).

In this regard, too, the notion of transformative reparations constitutes a promising starting point for theorising the ideal relationship between these various policy domains and for stimulating domestic and international policy-makers to find positive articulations between reparation programmes, poverty reduction policies and development strategies. In the next section, I will explore whether the approaches adopted in the Tunisian TJ process can be understood along these lines of transformative reparations, or if other conceptual lenses are more appropriate.

Innovations in the Tunisian TJ process

Eleven years ago, Tunisia's revolution set in motion a series of events including the ousting of then-dictator Ben Ali, the freezing of his assets, the establishment of various truth initiatives, and the start of a constitution-drafting process. This section presents the most innovative dimensions of that TJ process and the events leading up to it as they relate to the theoretical debate introduced above. Given this article's focus on conceptual innovation, this section focuses on theoretical proposals made during the process, even if the actual implementation thereof has often failed to reflect the ambitious nature thereof.

Rampant socio-economic injustice and corruption leading to uprisings

This section focuses on the economic crimes and injustices that, together with a more generalised economic crisis, rising unemployment, and growing inequality, were primary drivers of the 2010-11 protests that led to the fall of Ben Ali. These crimes and injustices were most present in the interior and South of the country, in governorates such as Gafsa and Sidi Bouzid, which were left increasingly impoverished in spite of mining activities there being a source of the country's wealth to this day (Andrieu 2016; Carranza and Azer Zouari 2020; Lamont and Pannwitz 2016). The Tunisian IVD traces this situation back to colonial France's strategy of impoverishing the peasantry through extreme taxation and 'economic exploitation of the country's mineral and agricultural wealth' (IVD memorandum, cited in Roht-Arriaza

2022), as well as to – past and ongoing – IMF and World Bank policies of conditionality that led to consecutive social crises starting in the 1970s (Truth and Dignity Commission 2019). The regimes of Habib Bourguiba and later Ben Ali furthered this economic injustice by capturing the state's regulatory power to advance neoliberal policies that increased underemployment and vulnerable jobs, privatised state enterprises, and engaged in extensive corruption (Truth and Dignity Commission 2019).

Rampant inequalities, corruption and an unequal distribution of political power have been drivers of long cycles of protests, starting with the bread riots of the 1980s and going on until today in Tunisia's interior (Lamont and Pannwitz 2016, 278). These protests, while also being a direct response to abuses involving physical integrity and civil and political rights, have throughout primarily revolved around the state's economic policy, issues of social and economic justice, and entire sections of the population's lack of adequate employment, food, clothing, housing, living conditions or political power (Zemni 2015; Carranza and Azer Zouari 2020; Ketelaars 2018). In January 2011 protests peaked as various political, economic, and societal transitions intersected, and resulted in the ousting of President Ben Ali and the beginning of a transitional process which responded to the complex and interwoven demands regarding socio-economic justice, historical deprivation and marginalisation, and disrupting existing power structures (Robins and Destrooper 2022). **As such, economic and social injustices were at the basis of the revolution, and inspired demands focused on dignity, economic and social justice, corruption, the dislocation of political power, and the redistribution of wealth.**

A TJ process revolving around social justice demands

The centrality of economic issues and demands for structural change in the revolution, shaped grassroots justice claims as well the formal TJ process that was gradually installed after Ben Ali's ousting. This can be observed, amongst other things, in the creation of three commissions to respond to protesters' demands: a commission of inquiry on human rights violations committed during the demonstrations, a commission for political reform, and a commission of investigation on corruption and embezzlement. The atypical mandate of the latter hints at the centrality of corruption, economic crimes and economic justice in the TJ process. It functioned as a typical truth commission and documented 5.000 cases of corruption, often linked to other human rights violations, such as police beatings (Andrieu 2016).

Later, in 2012 and 2013 respectively, a Ministry of Human Rights and Transitional Justice was created and the Organic Law Establishing and Organising Transitional Justice (hereafter the TJ law) was enacted. While both initiatives have been critiqued for being slow and dysfunctional, they were not consciously counterrevolutionary, and in fact contained several innovative proposals that laid the groundwork for the broader TJ process (Carranza and Azer Zouari 2020). The TJ law was particularly important because it extended the concept of 'victim' by defining regions that suffered from systematic marginalisation or exclusion as potential collective victims. This notion of a collective victim defined spatially as having 'suffered systematic marginalisation or exclusion' for which reparation can be delivered, was also adopted by the Truth and Dignity Commission (IVD), whose mandate also contained other potentially innovative proposals, including its broad two-pronged task of finding the truth about both human rights violations and corruption, and of conceptualising reparations for both kinds of harm (UNDP 2014).⁵ Furthermore, the IVD had a broad temporal mandate, covering the entire period from the year before independence in 1956 until the uprisings of 2011. This made it possible to consider the cyclical and historical roots of structural and socio-economic injustices. These elements are reflected in the final report of the IVD and the reparation scheme it proposed, which both pay significant attention to economic and social rights and justice, as well as to corruption and its effects on economic, social and cultural rights (Truth and Dignity

Commission 2019, pt. 5). This is also the backdrop against which the IVD formulated the abovementioned critiques of the economic development models imposed by actors such as IMF, World Bank and the European Union, insisting that the conditionality inherent in these models contributed to economic injustices and violations of economic, social and cultural rights. In addition to this, the report extensively referenced the concept of the victim region both in terms of the human rights violations that were inflicted as well as with regards to reparations for these (Truth and Dignity Commission 2019, pt. 6.III). While there were no public hearings on these regions' marginalisation, the commission called for collective reparations to these regions, consisting among other things of the modification of regional governance structures and a revision of the neoliberal consensus embraced by Tunisia's political elite. This would arguably constitute a genuine disruption of the system that contributed to the creation of victim regions in the first place. On the one hand, since the IVD report and recommendations were published in the official gazette, these had the status of legal pronouncements (Roht-Arriaza 2022). On the other hand, the recommendations remain rather vague, which raises questions about how much policy impact the IVD report is likely to have in this respect. Moreover, both the ongoing presence and return to power of domestic elites wedded to neoliberal politics, as well as the fact that the technical assistance provided by several international actors implicitly or explicitly promoted a transitional paradigm rooted in the very dynamics of political and economic liberalisation which the IVD report critiqued, further hampered the impact and disruptive potential of these pronouncements (Robins and Destrooper 2022, 260).

Despite the room taken up in the public debate by these various truth initiatives, public debates soon revolved almost exclusively around reparations.⁶ The theoretical innovativeness of the reparations program formulated by the IVD acknowledged that entire communities had become victims of violations, resonated with the concept of marginalised regions as collective victims, and focused on social and economic impacts of policies and how to repair these. Yet, discussions about complex pro-rated reparations orders soon overshadowed these fundamental innovations in practice.

In addition to truth and reparation initiatives, several trials and measures of non-recurrence were installed as part of the Tunisian TJ process, including vetting procedures in the justice and security sectors, albeit in a fragmented and incoherent manner (Andrieu 2016, 274; Lamont and Pannwitz 2016).

While the above discussion points out several ambitious and innovative provisions in the design of the process, it also hints at significant shortcomings, challenges and problems regarding its further development and implementation. These problems were related to the politicisation of the process and old regime members seeking to limit political change. Explicitly counterrevolutionary policies, such as the economic reconciliation law, were adopted under Beji Caid Essebsi, who did not openly oppose TJ, but nevertheless undermined specific TJ and accountability measures that were likely to threaten the Ben Ali-connected elite (Antonakis-Nashif 2018). More recently, Kais Saied started to pursue reconciliation through presidential decrees that formalise amnesties for those engaged in financial corruption and tax evasion, by making these amnesties conditional upon an investment commitment in victim regions. **This shows that also innovative proposals like that of a victim region, can be co-opted into policies that do not fundamentally seek to disrupt the structures upholding the victimisation of these regions.** Problems with the evolution and implementation of innovative provisions can also be attributed to the fact that around 2012, the international donor and expert community attempted to coordinate and expand the work of disparate ad hoc TJ bodies into a national dialogue on TJ, which institutionalised, formalised,

and standardised the process, removing it further from grassroots actors' demands (Lamont and Pannwitz 2016), aligning it instead with the political and economic liberalisation paradigm of those offering technical support to the TJ process. This largely invisibilised the marginalised communities that started the revolutions and generated profound skepticism about the process (Andrieu 2016, 278).

As such, the ambitious and innovative proposals that characterised the initial TJ process, and that centred around social justice, dignity, and inequality, and that betrayed a strong developmental focus, were soon filtered into more traditional legal frameworks that centred around violations of civil and political rights such as police abuses and violations of due process (Andrieu 2016, 279; Andrieu et al. 2015).⁷ Indeed, despite provisions to the contrary, in practice, the economic issues and structural inequities that had prompted the revolution were hardly addressed in the process, and, as Naomi Roht-Arriaza (2022) argues,

in the end, the leaders and supporters of the transition were unable to adequately challenge an exclusionary, oligopolistic economic system that left many aspects of Ben Ali-ism intact without Ben Ali.

These shortcomings, however, are not primarily related to the nature of the innovations themselves, but rather to how they were operationalised in a highly charged political and international context that used the ostensibly apolitical international framework of TJ as a tool in political struggles. In the next section I zoom out from this day-to-day implementation and elaborate on the nature and meaning of the abovementioned innovations.

Innovation in the Tunisian TJ process

Even if the TJ process that eventually materialised side-lined many of the social and economic concerns that sparked the revolution, several theoretical and conceptual innovations deserve further consideration in light of the aforementioned reparations dilemma facing transitional societies.

First, the formal design foregrounded economic crimes and economic injustice, considering the long historical, structural and political roots thereof, as well as the prominence of economic, social and cultural rights violations. This was based on an understanding that corruption and economic crimes were systemic and integral to the predecessor regimes, and were closely connected to human rights violations (Roht-Arriaza 2022). The IVD mandate, for example, explicitly linked tax fraud, corruption and economic injustice to human rights violations under the dictatorship and as such drew these issues into the IVD's orbit, facilitating an explicit critique of neoliberal policies and their contribution to these injustices and crimes (Truth and Dignity Commission 2019). This turned socio-economic injustice and economic, social and cultural rights violations into an integral part of the TJ discourse, both within and beyond formal TJ institutions (Robins and Destrooper 2022).

Second, Tunisia's TJ law extended the concept of victim and defined regions that suffered from systematic marginalisation or exclusion as collective victims. This resonates with the needs articulated by victims from such regions (Andrieu et al. 2015), even if in practice there is evidence that the way in which the process has been organised continues to fail to address exclusion and discrimination along regional dividing lines (e.g. because political decisions of the previous current regimes undermined the very ambition of redistributing political power, or because logistical challenges hampered information from easily travelling from the periphery to the capital), and even if the efforts at collective reparation for these regions in practice did not effectively use structural, (socio)economic, or indirect violence as a qualification in their definitional work (Robins and Destrooper 2022).⁸ Most mechanisms only reference the notion of victim regions in rather generic terms, proposing, for example, to undo

the extreme centralisation of the Tunisian state. This underlines the centrality of ambitions to dislocate both economic and political power, beyond the mere redistribution of goods and services, but does not engaging with the creative space opened through the notion of a victim region to make innovative recommendations that fundamentally start from this idea of collective and spatially defined victimisation. This poor operationalisation of the concept, however says little about the potentially ground-breaking and innovative openings in the TJ law itself, which merit further conceptual exploration, as they theoretically create a space for radically rethinking reparation and redistribution of resources.⁹

Third, the recommendations formulated by the IVD go in the direction of collective reparations for these victim regions to address the historical and structural economic, political, cultural and epistemic injustice. The way in which these recommendations are formulated use the logic of development programming, relying on a logic that development programs have to take reparations into consideration to target marginalised regions and to develop special policies in line with the status of victim region. This, the IVD argues, would be in line with victims' needs who only want for 'these regions to be fairly and equitably treated so that they can feel a sense of belonging to the same national community' (Truth and Dignity Commission 2019, 445). The collective breach of economic, social and cultural rights is seen here as both a cause and a consequence of the regional marginalisation, and as a trigger for regional reparations in the form of regional short-term and long-term *alternative* development programs with a reparative objective and an aim of promoting cohesion within society (Truth and Dignity Commission 2019, 445). The notion alternative is crucial here, as the recommendations formulated under this heading are about disrupting current neo-liberal policies aimed at unqualified growth of the economy. Proposals include, for example, biological and small-scale water-efficient farming programs, allowing for region-specific decentralised development paths and social solidarity economies. They are distinguished between short-term, medium-term and long-term interventions, which could be a response to the concern that the reparative potential of development programs withers because of the long and complex nature thereof with no immediate benefits for victims (see *supra*). While this is valuable, it should be acknowledged that marginalisation and socio-economic deprivation of the regions cannot be remedied through the redistribution of goods and services alone, and that reshaping political, cultural and epistemic power structures is crucial.

In sum, these three innovations can be read as an attempt to address regionalised economic marginalisation and exclusion via collective reparation programs that take the form of regional alternative development programs that seek to challenges economic models that facilitated past and ongoing injustices. This is most explicitly visible in the IVD's approach of identifying victim regions that had 'suffered systematic marginalisation or exclusion' and proposing reparation for structural harm suffered. This reflects an explicit objective of the TJ law with regards to making sure that this marginalisation or exclusion will be treated and will not be repeated. The links between reparations and development programs are thus explicitly made here, as is the need to disrupt cycles of harm. Nevertheless, what remains implicit and is often absent in the operationalisation and implementation of initiatives, is a more fundamental attempt to disrupt political and socio-economic models underpinning harm. In the next section, I will reflect on this in light of the theoretical discussions introduced in the previous section.

Theorising the Tunisian approach through the lens of disruptive reparations

Because of its threefold innovation of (a) foregrounding economic crimes and economic, social and cultural rights, (b) defining and operationalising the notion of victim regions, and (c) formulating collective reparations programs on the basis thereof, the Tunisian reparations approach could be argued to – at least on paper – constitute a case of transformative reparations in the sense that it seeks to bridge reparative and distributive justice, backward-looking and

forward-looking objectives, and reparations programs and development programs. Yet, as I will argue in this section, in some ways it opens a space to move beyond the notion of transformative reparations, and in doing so, lays bare one of the potential pitfalls of the idea of transformative reparations, namely its ongoing embeddedness in a liberal politics of rights which does not fundamentally offer a deeper political critique of TJ.

The notion of victim regions, for example, could adequately be seen as an element of a transformative reparations approach. Yet, it can also be understood more ambitiously as a stepping stone for formulating a more fundamental critique of theories and practices of TJ that are delimited by a liberal politics. It offers a rhetorical device for theorising the notion of collective and spatially defined harm in a more explicit way. Moreover the concept of victim regions acknowledges the complex, collective and cyclical nature of victimisation, the power hierarchies underpinning it, and the need for reparations to disrupt both the actual victimisation and the structures facilitating it. The practical and theoretical openings created by this notion have scarcely been explored. This is partly due to the political and international context discussed above, partly because at a conceptual level, even a transformative reparations paradigm hardly invites for a genuine engagement with the notion of disrupting political and economic structures that contribute to harm. As a consequence, debates about the status of the economic injustice in, and the reparations for the violations of economic, social and cultural rights violations in these victim regions, have in practice mostly followed the tropes of a classic developmental discourse, albeit with attention for alternative development pathways. Much of the innovative potential of the notion thus withered because of flawed and superficial engagement with its conceptual implications.

This suggests that, if we take the conceptual innovations of the Tunisian TJ process seriously and seek to draw conceptual and theoretical lessons from them, it is crucial to acknowledge and theorise the dynamics and politics of *disruption* in ways that seek to explicitly address economic, political, cultural and epistemic structures that contribute to harm. Even a transformative understanding of reparations inevitably requires a disruption of the status quo and, as such, will inevitably have to navigate political pushback. This notion of disruption needs to be better understood, acknowledged, and explicitly factored into reparations programs with a transformative aim. This disruption entails both socio-economic and political disruption, as well as the disruption of those conditions that led to the marginalisation and discrimination of these regions in the first place, including ideological, epistemic and sociological factors that justified the discrimination against these regions and the people inhabiting them (Tarusarira 2019). Failing to factor this notion of disruption into reparations programs with a transformative aim, means that even these transformative approaches are bound to operate strictly within the dominant political and economic liberal paradigm, which challenges their actual transformative potential.

The Tunisian experience underlines the relevance of transformative reparations but also underlines the need to theorise more explicitly the inevitable contestation, politicisation and disruption underlying such an approach. While several scholars have argued that such a far-reaching objective is beyond the remit of TJ interventions with a delimited lifespan and resources (de Greiff 2020), arguments in favour of moving from this notion of transformative reparations towards an understanding of *disruptive reparations* can be found both in the early practice and conceptual history of TJ, which was inherently disruptive in nature. Returning to and foregrounding these disruptive roots of TJ is increasingly uncommon in the current context of institutionalisation, legalisation and professionalisation of the field, but would nonetheless be in line with the expectations of many victims (Robins et al. 2022; Gray 2018; Vathauer and Weipert-Fenner 2017). The notion of *disruptive reparations* also avoids the potential depoliticising of reparations programs that may happen when they move closer to development programs without a clear critical and theoretical underpinning framing their specificities and

normative objectives.¹⁰ The notion of disruptive reparations, in other words, brings together three crucial elements: (a) recognition or acknowledgement, (b) monetary or other direct forms of repair for harms suffered, and (c) disruption of the political, economic, cultural and epistemic structures that facilitated the harm. It is through this last element that they go beyond the notion of transformative reparations, notably in foregrounding the fact that these structures can be economic, social, political as well as epistemic and cultural, and that mere development programs that only target socio-economic factors in a gradual manner are not sufficient to disrupt them. Furthermore, the notion of disruptive reparations aligns with the forward-looking and preventive potential of the reparations pillar and of TJ more generally (Gutierrez 2017; UN Framework Team 2012).

The notion is, moreover, also in line with evolutions in the field of development, and notably with human rights-based approaches to development (HRBAD) and the so-called HRBAD 2.0 (Gready and Vandenhoe 2014; Vandenhoe and Gready 2014). These approaches also bring the needs of victims to the centre of the discussion and foreground fair and inclusive processes. Whether in the domain of development or in the domain of reparations, difficult choices have to be made about what can and needs to be achieved and prioritised. Including victims in decision-making roles in these processes can be empowering and can increase legitimacy and sustainability. The HRBAD 2.0 moreover shares with disruptive reparations the normative objective of social change through a focus on power relations and a questioning of the role of the state.

This notion of disruptive – rather than transformative – reparations, as I develop it here, is particularly relevant to the Tunisian context, where protestors demanded a genuine break with the past (Andrieu 2016). In this context, the notion of gradually transforming socio-economic structures or going back to a pre-harm status quo would fall short of activists' and victims' needs. The Tunisian example thus shows the relevance of a concept like transformative reparations because of the obvious linkages of development and repair, of forward-looking and backward-looking, and of reparative and distributive policies. At the same time, it illustrates the shortcomings thereof, to the extent that these transformative elements are not embedded in a more explicit and radical attempt at disrupting political, economic, cultural and epistemic structures and hierarchies that facilitate harm.

Beyond Tunisia the notion of disruptive reparations allows for the theorisation and mapping exercise that constitutes an interpretative framework to ensure coherence between different policy domains, which respects their specificity but approaches them in the most ambitious way. The necessity of reparations is often undisputed among domestic governments and donors, and given the sense of urgency and momentum that surrounds reparations programs and, it can be tempting for international donors to prioritise these over more long-term or structural development work. The notion of disruptive reparations can help to ensure that the attention to context and structural dimensions of injustice is not lost.

Concluding remarks

Developing transformative reparations programs without explicit attention for the need to disrupt political, economic, cultural and epistemic structures that facilitate harm, risks creating blind spots that challenge the viability of these programs. To substantiate this argument, the article highlighted three distinct innovative proposals of the Tunisian TJ process that talk to the reparations dilemma in transitional societies and notably about the relation between reparation programs and development programs, arguing that the Tunisian experience can be taken as a starting point to flesh out certain conundrums of this discussion. To do this, I introduced the notion of disruptive reparations, not as an entirely novel approach or rejection of pre-existing frameworks, but as a means to build on those in ways that are theoretically consistent and meaningful for victims. The notion holds on to the idea that adequate reparations

programs should link reparative and distributive justice and be simultaneously backward- and forward-looking. It moreover foregrounds the need to also disrupt political, economic, cultural and epistemic structures that facilitate violence and injustice, as well as the need to theorise and be explicit about this inevitable disruptive character of these programs and the politics underlying them. As such, it recenters the discussion about reparations not only on the need to disrupt structures contributing to harm, but also on the power relations characterizing these structures and on the role of domestic and international elites. This allows practitioners in the domain of transitional justice, peacebuilding and development to further explore the nexus between reparation programs and comprehensive alternative development programs in transitional contexts, whereby disrupting the roots of violent conflict and injustice more broadly are prioritised.

References

- Andrieu, Kora. 2016. 'Confronting the Dictatorial Past in Tunisia: Human Rights and the Politics of Victimhood in Transitional Justice Discourses since 2011'. *Human Rights Quarterly* 38 (2): 261–293.
- Andrieu, Kora, Wahid Ferchichi, Simon Robins, Ahmed Aloui, and Hager ben Hamza. 2015. *To Participate Is to Have Hope. Victim Participation in Tunisia's Transitional Justice Process*. Tunis: CADH, Kadem, Impunity Watch.
- Antonakis-Nashif, Anna. 2018. 'Contested Transformation: Mobilized Publics in Tunisia between Compliance and Protest'. In *Dynamics of Transformation, Elite Change and New Social Mobilization. Egypt, Libya, Tunisia and Yemen*, edited by Heiko Wimmen and Muriel Asseburg. London: Routledge.
- Carranza, Ruben. 2009. *The Right to Reparations in Situations of Poverty. ICTJ Briefing*. The Hague: ICTJ.
- Carranza, Ruben, and Mohamed Azer Zouari. 2020. *Work, Freedom, Dignity: For Young Tunisians, the Revolution Was Not Only About Accountability for Corruption. ICTJ Briefing Paper*. New York: International Center for Transitional Justice.
- Davidson, Natalie R. 2017. 'Alien Tort Statute Litigation and Transitional Justice: Bringing the Marcos Case Back to the Philippines'. *International Journal of Transitional Justice* 11 (2): 257–275. doi:10.1093/ijtj/ijx006.
- de Greiff, Pablo. 2006. 'Justice and Reparations'. In *The Handbook of Reparations*, edited by Pablo de Greiff, 451–477. Oxford: Oxford University Press.
- de Greiff, Pablo. 2020. 'The Future of the Past: Reflections on the Present State and Prospects of Transitional Justice'. *International Journal of Transitional Justice* 14 (2): 251–259.
- Destrooper, Tine. 2022. 'Transformative Justice and the Need for a Multi-Dimensional Understanding of Impact'. In *Transitional Justice and Impact*, edited by Susanne Karstedt and Chrisje Brants. London: Routledge.
- Destrooper, Tine, and Safa Belghith. 2022. 'Active Invisibilization or Invisible Activism? Tunisia's Truth and Dignity Commission and the (Non-) Debate over Circular 108 on Banning the Headscarf'. In *Transitional Justice in Tunisia: Innovations, Continuities,*

- Challenges*, edited by Simon Robins, Paul Gready, and Sherif Mohyeldeen. London: Routledge.
- Ela, Nate. 2017. 'Litigation Dilemmas: Lessons from the Marcos Human Rights Class Action'. *Law & Social Inquiry* 42 (2). Cambridge University Press: 479–508. doi:10.1111/lsi.12207.
- Falk, Richard. 2006. 'Reparations, International Law, and Global Justice: A New Frontier'. Edited by Pablo de Greiff. *The Handbook of Reparations*. Oxford: Oxford University Press. doi:10.1093/0199291926.003.0014.
- Firchow, Pamina. 2013. 'Must Our Communities Bleed to Receive Social Services? Development Projects and Collective Reparations Schemes in Colombia'. *Journal of Peacebuilding & Development* 8 (3). Sage Publications, Inc.: 50–63. <https://www.jstor.org/stable/48603465>.
- Freeman, Michael. 2006. 'Back to the Future: The Historical Dimension of Liberal Justice'. In *Repairing the Past? International Perspectives on Reparation for Gross Human Rights Abuses*, edited by Max du Plessis and Stephen Peté, 29–51. Antwerp: Intersentia.
- Gray, Doris H. 2018. *"Who Hears My Voice Today?" Indirect Women Victims in Tunisia*. New York: International Centre for Transitional Justice.
- Gready, Paul, and Wouter Vandenhole. 2014. *Human Rights and Development in the New Millennium : Towards a Theory of Change*. London and New York: Routledge.
- Gready, Simeon. 2022. 'Reparations in Post-Revolution Tunisia. At the Intersection of Innovation and Politicisation'. In *Transitional Justice in Tunisia*, edited by Simon Robins and Paul Gready, 231–249. London: Routledge.
- Gutierrez, António. 2017. 'Secretary-General's Remarks to the Security Council Open Debate on "Maintenance of International Peace and Security: Conflict Prevention and Sustaining Peace"'. United Nations. <https://www.un.org/sg/en/content/sg/statement/2017-01-10/secretary-generals-remarks-security-council-open-debate-maintenance>.
- Hamber, Brandon. 2000. 'Repairing the Irreparable: Dealing with the Double-Binds of Making Reparations for Crimes of the Past'. *Ethnicity & Health* 5 (3–4): 215–226. doi:10.1080/713667456.
- Human Rights Watch. 2012. 'Tunisia: Q&A on the Trial of Ben Ali, Others, for Killing Protesters'. <https://www.hrw.org/news/2012/06/11/tunisia-qa-trial-ben-ali-others-killing-protesters>.
- Ketelaars, Elise. 2018. 'Gendering Tunisia's Transition: Transformative Gender Justice Outcomes in Times of Transitional Justice Turmoil?' *International Journal of Transitional Justice* 12: 407–426.
- Lamchek, Jayson S, and George B Radics. 2021. 'Dealing with the Past or Moving Forward? Transitional Justice, the Bangsamoro Peace Agreement and Federalism in the Philippines'. *International Criminal Law Review* 21 (5): 962–989. doi:<https://doi.org/10.1163/15718123-bja10066>.

- Lamont, Christopher K, and Hannah Pannwitz. 2016. 'Transitional Justice as Elite Justice? Compromise Justice and Transition in Tunisia'. *Global Policy* 7 (2): 278–281.
- Ministry of Human Rights and Transitional Justice. 2014. *Organic Law on Establishing and Organizing Transitional Justice*. Tunis: Ministry of Human Rights and Transitional Justice, Technical Commission Organizing the National Dialogue on Transitional Justice.
- Robins, Simon, and Tine Destrooper. 2022. 'Conclusion'. In *Transitional Justice in Tunisia: Innovations, Continuities, Challenges.*, edited by Simon Robins, Paul Gready, and Sherif Mohyeldeen. London and New York: Routledge.
- Robins, Simon, Paul Gready, Ahmed Aloui, Kora Andrieu, Hajer ben Hamza, and Wahid Ferchichi. 2022. 'Transitional Justice from the Margins: Collective Reparations and Tunisia's Truth and Dignity Commission'. *Political Geography* 94: 102565. doi:<https://doi.org/10.1016/j.polgeo.2021.102565>.
- Roht-Arriaza, Naomi. 2022. 'Tunisia's Democratic Backsliding and Economic Woes Illustrate the Limits of Transition'. Edited by Ryan Goodman. *Just Security*. New York: Center for Human Rights and Global Justice. <https://www.justsecurity.org/81289/tunisiademocratic-backsliding-and-economic-woes-illustrate-the-limits-of-transition/>.
- Salonga, J R. 2000. *Presidential Plunder: The Quest for the Marcos Ill-Gotten Wealth*. U.P. Center for Leadership, Citizenship and Democracy. <https://books.google.be/books?id=41COAAAAMAAJ>.
- Sarkin, Jeremy. 2018. 'Redesigning the Definition of a Truth Commission, but Also Designing a Forward-Looking Non-Prescriptive Definition to Make Them Potentially More Successful'. *Human Rights Review* 19 (3): 349–368.
- Tarusarira, Joram. 2019. 'The Anatomy of Apology and Forgiveness: Towards Transformative Apology and Forgiveness'. *International Journal of Transitional Justice* 13 (1): 206–224.
- Teitel, Ruti. 2014. *Globalizing Transitional Justice*. Oxford: Oxford University Press.
- Truth and Dignity Commission. 2019. *The Final Comprehensive Report - Executive Summary*. Tunis: Truth and Dignity Commission.
- UN Framework Team. 2012. 'The United Nations Interagency Framework Team for Preventive Action'. Edited by United Nations. www.un.org/en/land-natural-resources-conflict/pdfs/FRAMEWORK_TEAM_FLYER-2July12.pdf.
- UNDP. 2014. *Tunisia Launches Truth and Dignity Commission*. New York. <https://www.undp.org/content/undp/en/home/presscenter/articles/2014/06/09/tunisia-launches-truth-and-dignity-commission/>.
- UNDP. 2020. *From Justice for the Past to Peace and Inclusion for the Future: A Development Approach to Transitional Justice. Lessons Learned from UNDP Policy and Practice*. New York: United Nations Development Programme.
- United Nations. 2005. *Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and*

Serious Violations of International Humanitarian Law. New York: United Nations General Assembly.

Uprimny Yepes, Rodrigo. 2009. 'Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice'. *Netherlands Quarterly of Human Rights* 27 (4): 625–647.

Vandenhoe, Wouter, and Paul Gready. 2014. 'Failures and Successes of Human Rights-Based Approaches to Development: Towards a Change Perspective'. *Nordic Journal of Human Rights* 32 (4): 291–311.

Vatthauer, Jan-Philipp, and Irene Weipert-Fenner. 2017. 'The Quest for Social Justice in Tunisia: Socioeconomic Protest and Political Democratization Post 2011'. Hessische Stiftung Friedens- und Konfliktforschung: PRIF reports.

Zaki, Hind Ahmed. 2018. 'Resisting and Redefining State Violence: The Gendered Politics of Transitional Justice in Tunisia'. *The Journal of the Middle East and Africa* 9 (4): 359–377.

Zemni, Sami. 2015. 'Returning to the Tunisian Revolution: Some Reflections on Political Change during the Arab Spring'. In *Nonwestern Encounters with Democratization: Imagining Democracy after the Arab Spring*, edited by Christopher Lamont, Jan van der Harst, and Frank Gaenssmantel, 51–65. Farnham: Ashgate.

¹ It can be observed that some of these categories of reparations overlap with other pillars of transitional justice.

² E.g. the case of the Philippines, where court-ordered reparations for the litigants of a class action against former dictator Marcos' compete for resources with a generalised collective program of land-reform (Ela 2017; Salonga 2000; Davidson 2017).

³ In this context, Uprimny (2009, 640) cites the reparation programmes after World War II in France and Norway, which excluded the loss of 'sumptuary' elements, such as jewelry, from compensation, because the purpose was to assist survivors in the reconstruction of the countries and not to rebuild past fortunes.

⁴ Peru, for example, took the truth commissions identification of those regions most affected by human rights violations as a basis for setting up a conditional cash transfer program in which families received cash payments on the condition that they sent their children to school. Such a program can be seen as an acknowledgment of the harm victims suffered as well as an answer to pressing economic, social and cultural needs. The program was financed through the Special Law confiscating assets from former president Alberto Fujimori.

⁵ While facing a range of challenges from the start (including around the selection of its members, its lack of coherent policies or unified roadmap, its inability - up until the end of 2016 - to publicise its work, its overreliance on Ennahda support, and its inability to navigate political deadlock), the IVD has been applauded internationally as an important step forward for Tunisia (Zaki 2018; Ketelaars 2018)

⁶ Two decrees were promulgated in 2011 before any significant investigations of past crimes had been carried out, which led to significant contestation and politicisation of the debate, partly because this approach was considered to not adequately recognise victims of human rights violations, partly because it meant that the government could insufficiently gauge what the financial impact of its promises would be, making the process slow, uneven, untransparent and unfinished and excluding many victims from recognition (Andrieu 2016; Destrooper and Belghith 2022). Moreover, the way in which the Ennahda-led government organised the process, e.g. giving amnesty and financial reparations to all individuals who were arrested or condemned for political reasons since 1989 (including jihadist members of *Ansar el-Charia*, which classified as a terrorist organisation) led to accusations of it favouring its own islamist backbench rather than supporting victims (Andrieu 2016, 271).

⁷ As Leila Riahi, a Tunisian activist, argued, ‘In order to fight corruption, we need to rethink and restructure Tunisia’s development model’ (cited in Carranza and Azer Zouari 2020). Yet, because Ben Ali was not ousted by a cohesive elite-led mass movement and because there were no shared objectives among protesters beyond Ben Ali’s ousting and demands for social justice, grassroots demands have difficultly found their way into the formal transitional justice process.

⁸ There is for example not even a legal definition of the term ‘regional’ or ‘systematic marginalisation and exclusion’ in the final IVD report (Truth and Dignity Commission 2019)

⁹ One can meaningfully distinguish between innovation in intent (that is where a novel conceptual approach is incorporated in the design of an element of the transitional justice process) and innovation in outcomes. The (formal) Tunisian process has presented a number of genuine innovations in intent that have yet to deliver on their promise in terms of concrete impacts in terms of innovations in outcomes (S. Gready 2022).

¹⁰ See De Greiff (2006) *supra* on the limited reparative potential of development programs