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“Droits de l’homme, bien sûr”: human rights and transitional justice in Tunisia¹

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The so-called Arab Spring, in Tunisia and elsewhere in the Arab world, was an expression of discontent with social injustice, unemployment, and corruption.² But the people also rose up against authoritarian regimes marked by repression and human rights violations, against self-declared “republics” that did not fulfil the promises of democracy and the rule of law.³

Tunisia had been under the authoritarian rule of two presidents since its independence in 1956 until 2011. Habib Bourguiba (1956–1986) spearheaded the fight for independence, and Zine el-Abidine Ben Ali (1986–2011) came to power through a bloodless coup when Bourguiba’s health was declining. Both men strongly curtailed civil and political liberties and systematically marginalised the stronghold regions of their challengers, particularly the more Islamic-oriented regions in the country’s south and centre. Though Bourguiba’s rule was focused on the institutionalisation of personal power and he was ruthless with his competitors, he had the reputation of being an honest ruler who was not interested in personal enrichment,⁴ but genuinely wanted to make “Tunisia one of the most socially progressive countries in the Middle East and North Africa”⁵ by focusing on education, gender equality, and secularism. Ben Ali’s rule was based on a strong secret police, which spread a “net of fear”⁶ over the country. In contrast to Bourguiba, Ben Ali was not perceived as a leader who

had the country's best interest in mind. A predatory "quasi-mafia state" developed, in which basically all economic activities were controlled by Ben Ali and his wider family.⁷ Thus, while uneven development and high youth unemployment (the "socio-territorial and generational double cleavage"⁸) may have laid the ground for protests in the interior regions, the excessiveness of the clan's personal enrichment alienated even previous supporters and paved the way for a spillover of the uprisings—triggered by the self-immolation of street vendor Mohamed Bouazizi in December 2010—to the coastal regions and the capital.⁹

After the fall of the Ben Ali regime in January 2011, Tunisia began to develop a "new political architecture,"¹⁰ nourishing hopes for democratic developments that go beyond lip service. The country held elections in 2011 and 2014, which have generally been seen as free and fair,¹¹ and adopted a new constitution in between. It has furthermore started dealing with its authoritarian past by introducing transitional justice measures, usually aimed at paving a sustainable way to democracy, stability, and political rule based on respect for human rights and the rule of law.

The main purpose of this chapter is to explore the contestedness of two interrelated normative concepts: *human rights* and *transitional justice*. It will demonstrate that both are prone to producing friction but on different levels. While transitional justice has been frictional regarding the content it should entail, human rights provoke friction regarding the credibility and sincerity of those actors who invoke them.

I commence this chapter with a short introduction of Tunisian transitional justice efforts in the context of the political reconfigurations post-2011. This is followed by examining the concept of transitional justice, in particular a stream of debate dealing with transitional justice as a mainstreamed transnational professional project and the transfer of corresponding normative concepts. I then continue by analysing the usage and different interpretations of the normative concepts *human rights* and *transitional justice*. This part,

which introduces my empirical observations, is illustrated with selected quotes from my interview partners because this allows the reader to delve deeper into the Tunisian case, getting a closer insight into the nature of debates.

Here, I draw on two frameworks from different academic strands of debate to explain the varying dynamics in the interpretation processes of the normative concepts at play: sedimentation and vernacularisation. On the one hand, *human rights* correspond to a normative concept which has already “sedimented” in Tunisia. It has developed a taken-for-granted quality and thus can serve as a discursive resource (or floating signifier¹²) during the transitional political reconfigurations in general and the transitional justice process in particular. On the other hand, the usage of *transitional justice*, a concept relatively novel to the Tunisian political context, is more about the content the concept entails and hence, about influencing its vernacularisation process, the “appropriation and local adoption of globally generated ideas and strategies.”¹³

This chapter is mainly based on data collected during field research on the Tunisian transitional justice process conducted between April 2014 and September 2016. I have interviewed around¹⁴ seventy-five individuals from among domestic politicians, state officials, truth commission members and staff, civil society representatives, as well as representatives of international organisations and NGOs.¹⁵ These interviews are complemented with participant observation (for example, at events of the truth commission), background talks with local and international journalists in Tunisia, as well as meetings with international representatives in New York in 2015. While all of this data has informed the overall impression of this chapter, the empirical analysis is mainly built on interviews from the first and second field research phases in spring 2014 and spring 2015, respectively. During the first timeframe, the transitional justice law had already been passed in parliament, the truth commissioners were just being nominated, but the commission had not started its

work yet. During the second timeframe, the commission had just finished its consolidation phase and taken up its work. Thus, particularly during the first but to a lesser extent also during the second phase, there was still room for (re)negotiating the envisaged content of transitional justice in Tunisia and the concrete configuration of the transitional justice project.

Transitional justice in Tunisia: from ad hoc measures to transitional justice project

Broadly defined, transitional justice efforts in Tunisia can be distinguished in ad hoc measures and a carefully planned transitional justice project. The first justice measures related to the Tunisian transition were undertaken in 2011. In the year of Ben Ali's ouster, a commission investigated corruption and embezzlement,¹⁶ and trials took place before permanent military tribunals in order to hold accountable those who were responsible for killing or wounding protesters during the uprisings. Among those who have been judged are former President Ben Ali and other important figures of his regime. In an initial judgment, those considered responsible received long prison sentences; Ben Ali was sentenced to life in prison. The appeals' court judgments were given in 2014, significantly reducing the punishment for many of the accused (but not Ben Ali) by requalifying the crimes they had committed. As a consequence, prominent figures from the old regime were released because they had already served their prison sentences.¹⁷ Moreover, the troika government¹⁸ introduced reparation measures, offering compensation either in the form of payments or in the form of (re)instatement into public service jobs, for example, for former political prisoners. These compensation measures were strongly contested and have been executed in a rather non-transparent manner.¹⁹

In 2012, however, a "National Dialogue on Transitional Justice" (hereafter transitional justice dialogue, to avoid confusion with the "National Dialogue" to overcome a deadlock in

the constitutional process, for which Tunisian actors won the Nobel Peace Prize in 2015) started and hence, the official, carefully designed transitional justice project began. In Tunisia, the onset of this official transitional justice project has been highly professionalised. A consortium of international experts, mainly from the International Center for Transitional Justice, the United Nations Development Program, and the Office of the High Commissioner for Human Rights has accompanied the project. This dialogue process was led by a technical committee composed of members from among civil society organisations and one representative of the Ministry for Human Rights and Transitional Justice.²⁰ The technical committee was charged with overseeing the transitional justice dialogue and drafting a transitional justice law. The law was drafted in broad consultation, on the national level with representatives of political parties, civil society organisations, trade unions, and the national archives. On the regional level, consultations with victims and stakeholders took place in all twenty-four governorates. This carefully planned and conducted transitional justice dialogue was also accompanied by workshops and trainings for the participants. Hence, they were equipped with knowledge about the concept of transitional justice and about framing claims in transitional justice language, situating them within the discourse.

The draft law developed in this participatory process was then passed over to the National Constituent Assembly, which passed an amended version of the law in late 2013. The Organic Law on Establishing and Organizing Transitional Justice²¹ allows, among others, for the establishment of a Truth and Dignity Commission (hereafter abbreviated as truth commission or with the French acronym IVD) and Specialized Chambers within the Tunisian justice system, as well as a reparation fund. It furthermore includes a broad definition of victimhood (accounting for both political and economic rights violations) and gives the transitional justice institution a mandate that reaches back to 1955 and until the issuance of the law in 2013. Therefore, the law aims at being inclusive by addressing a broad

audience of possible victims, since it covers both dictatorships and the transition periods of the fight for independence and after the fall of the Ben Ali regime.²² While the Specialized Chambers are not operational yet,²³ the truth commission has already started its work. Members of the IVD were nominated in May 2014 by a parliamentary commission staffed proportionately according to political strength. As the Islamist party Ennahda was the strongest force in parliament at that point in time, it also had the most political influence in nominating commissioners. At this point, it may be important to note that Ennahda, although it was the leading partner of a government coalition with two secular parties and eventually showed willingness to compromise on religious matters and references in the constitution,²⁴ has still been perceived as a faith-based organisation, an Islamist entity, pursuing religious goals, and not just a political entity trying to please its constituency.²⁵ Thus, the decision of parliament to keep the prerogative of nominating truth commissioners to itself has been met with discontent, especially from (secular) civil society representatives.²⁶ Moreover, even members of the parliamentary selection commission have described the nomination procedure as cumbersome, mainly because there was a tendency of some politicians to try and nominate partisan candidates.²⁷

In the first half year of its existence, the IVD was occupied with preparatory measures such as establishing internal rules, finding office space, and recruiting staff. In December 2014, the commission started collecting files of potential victims in its main seat in Tunis. In 2015, regional offices opened, which were also collecting files, and the commission has started hearings of the potential victims. At the end of the collection period in June 2016, over 60,000 files had been submitted to the institution. Since the law was passed and the truth commission started its work, the Tunisian transitional justice process has been continuously supported by professional international expertise. One example would be workshops to determine or specify interpretations of the transitional law, which in some areas is not very

precise in, for example, providing rules of procedure. For the developmental phase of the official Tunisian transitional justice project, Habib Nassar (2014) contends that domestic actors barely had agency in the dynamics, which were dominated by international consultants. However, as transitional justice in Tunisia has proceeded, this has changed: domestic actors, reported to have participated actively and willingly, pushed for a transitional justice project to move forward and shape its directions. Domestic policymakers in some regards diverted from the recommendations of international experts—for example, by not including civil society in the selection process of truth commissioners.²⁸ Though there has been some friction between different actors, including between domestic and international ones, and also critiques voiced towards the international consultants,²⁹ the professionalisation of the transitional justice efforts has mostly been perceived positively among my interview partners,³⁰ while the delay of the process due to political circumstances has been widely criticised.³¹

“Professionalised” transitional justice, domestic interpretations, and friction

Transitional justice, in academic literature and in practise, is mostly defined as dealing with a repressive and/or violent past with the help of one or several of a variety of measures, usually including trials, truth commissions, reparations or compensation measures, lustration and institutional reforms, as well as memorials and public apologies. The great variety of these measures already indicates that the concept’s disciplinary roots are eclectic and its boundaries are blurry. The frictions evolving from the diversity of actors involved in transitional justice efforts and debates, and their different understandings of what transitional justice should do and achieve, may have had an influence on the concept’s development, in theory and in practise. For example, they may be the very reason why the scope of

transitional justice has broadened over time from focusing mainly on political human rights violations to also including social, economic, and cultural rights and economic crimes.

However, the fact alone that an array of transitional justice measures is introduced to tackle several justice problems is no guarantee that these measures will cooperate and automatically function complementarily.³² By pointing to the contradictions inherent in tackling issues simultaneously through law and politics and in trying to initiate change and maintain order at the same time, Bronwyn Anne Leebaw suggests that aspirations of transitional justice may not always be coherent but actually be conflicting and irreconcilable.³³

Globalised³⁴ transitional justice or transitional justice as a global project³⁵ is often marked by what a (critical) strand of literature identifies as professionalisation or “bureaucratisation”³⁶ of transitional justice. This means that transitional justice efforts have become the “norm or standard practice for state behavior after conflict”³⁷ and that the same toolbox or template of transitional justice measures is applied to different contexts.³⁸ This toolbox is brought to different societies by the so-called justice industry—highly skilled human rights and transitional justice professionals:³⁹ “The question today is not whether something should be done after atrocity, but how it should be done. And a professional body of international donors, practitioners and researchers assists or directs in figuring this out and implementing it.”⁴⁰

These professionals are supposedly not paying attention to local contexts and specific needs of different societies, either because of a lack of knowledge or because of a lack of interest in doing so. Critical voices also often assume that domestic actors do not have a say in these standardised transitional justice processes and that there is a mismatch between these standardised models and local ideas of justice.⁴¹ However, the professionalisation may produce structural incentives, in particular for civil society actors, to engage in transitional

justice, or at least to label activities accordingly⁴² because doing so may go along with access to material resources or with influence on certain activities and/or processes.

Thus, as mainstreamed international norms of transitional justice are introduced to various contexts, so is a particular set of terms and knowledge transferred. Framing issues in a way that makes them resonate with certain prominent ideas and concepts may allow actors to pursue their goals in a more effective manner. It makes global networking easier and, maybe even more important, may facilitate fundraising.⁴³ Therefore, to oppose injustice, to participate in and be able to shape a transitional justice project, there is a need for discursive resources and interpretive schemes,⁴⁴ which can be acquired through transferred language and knowledge. This knowledge transfer often takes place through trainings provided by transitional justice professionals. However, while it is certainly true that being equipped with knowledge and a set of technical terms provides actors with the initial possibility to take part in discourses and debates, it also limits options of participation. First, those who did not receive the respective resources (the dominant knowledge base and technical vocabulary) are excluded from partaking in concrete activities and in the discursive field in general. Second, content and direction of debate are already predetermined, as various topics or lines of argumentation may not be among the options of discursive resources with which the actors are equipped. Hence, even if domestic actors are consulted in general,⁴⁵ voices outside the mainstream may be sidelined, depriving the transitional justice project of valuable input. Therefore, these discursive resources are enabling and limiting at the same time. To pay attention to this factor, the analytical starting point for this chapter has been the usage of certain *terms* within the Tunisian transitional justice context. These include, on the one hand, *human rights*, as a concept particularly important in transitional justice discourses and, on the other hand, the term *transitional justice* itself.

Normative concepts, even if conveyed through a limited set of interpretive schemes and discursive resources, can entail varying interpretations. While there are differing opinions on whether this helps or harms a norm/normative concept,⁴⁶ these differing interpretations surely can create friction, “signifying moments of discord, contention, and conflict in the encounter of different actors pursuing different ideas.”⁴⁷ Friction thereby can be productive, destructive, or both.⁴⁸ And while the term *friction*, as it is used in social sciences, often describes dynamics developing in “process[es] of engagement” of global and local,⁴⁹ the conceptualisation of vertical and horizontal friction⁵⁰ allows for an analysis going beyond the global-local dimension. Thus it is possible to capture friction not only between but also among global and local actors. This is especially important in vernacularisation processes, when there has not yet evolved a dominant narrative or interpretation from processes of “appropriation and local adoption”⁵¹ of normative concepts since “[t]he process of vernacularisation contains more friction than flows.”⁵² In this chapter, thus, the focus is not only on vertical friction in global-local encounters but even more so on horizontal friction in the encounter of different domestic interpretations.

As noted above, this chapter is concerned with interpretation, meaning-making, and instrumentalisation of certain normative concepts. Within this framework, it concentrates on situations in which also the corresponding *terms* are used. Though vernacularisation often describes processes of framing issues in local terms, the concept is still suitable here, because it does not only look at how normative concepts are adopted and adapted but also at how local actors “add it to their ‘political vernacular’ by taking ownership and claiming authority.”⁵³ For ideas to gain ground and get rooted in different contexts, it is important that they resonate with and are communicable in the vernacular.⁵⁴ The political vernacular, then, can be made of the social and historical context,⁵⁵ but also depends on “the vernacularizer’s ideological commitments and political self-positioning.”⁵⁶ This means, on the one hand, that

points of resonance and communication strategies may differ among domestic actors, potentially leading to friction, which may be conflictive, but also “catalyst[s] for change.”⁵⁷ On the other hand, these points of resonance may be manifold, including not only long-standing traditions and historical normative concepts but also those that have been introduced more recently into the sociocultural context. The latter may have already “sedimented” and hence are more established than those just in the vernacularising process.

Empirical observations

Human rights and transitional justice are normative concepts that are connected but distinct. Transitional justice is a younger concept than human rights and has its origins within the human rights community in the late 1980s and early 1990s.⁵⁸ Often, better respect for human rights is one of the stated aims of transitional justice projects; one example would be the Tunisian case, where this is stated in the transitional justice law.⁵⁹ Hence, tackling both human rights and transitional justice in this chapter, I look at one normative concept that has been present in Tunisia for a longer time (human rights) and another one that is relatively new to the Tunisian context (transitional justice). Both normative concepts are contested and frictional, albeit on different levels. The concept of human rights as such is recognised and not questioned in its basic meaning. Friction evolves rather around the credibility of actors who invoke it. Transitional justice, however, is contested regarding the content it entails.

Do they really mean it? Human rights as a discursive resource

“[I]nternational principles of human rights, citizenship, equality, justice and democracy”⁶⁰ have served as reference frameworks during the uprising. However, before and especially after the fall of the authoritarian regimes, when Islamist political organisations came into power in Tunisia and Egypt, there has been significant debate about whether

Islamist political values are compatible with liberal democracy and, essentially, with human rights. Lina Khatib investigates this question in the context of transitional justice after the so-called Arab Spring. She takes a sceptical stance and concludes that “[...] there seems to be a tension between the Islamists and the goals of transitional justice,”⁶¹ particularly because Ennahda would not be committed to the *rights* at the heart of transitional justice.⁶²

However, notions of human rights have been present in Tunisian political and social discourses long before the uprisings. Though the respect for human rights was not a given under dictatorship (and still is not), the normative concept had been well established in the country. Tunisia has ratified various international human rights declarations and treaties,⁶³ including the International Covenant on Civil and Political as well the International Covenant on Economic, Social and Cultural Rights (both signed in 1968 and ratified in 1969). There have been non-governmental organisations like the Tunisian Human Rights League (founded in 1976)⁶⁴ and the Tunisian Chapter of Amnesty International (founded in 1981), which explicitly had human rights as their field of activity. Loosely following Marie-Laure Djelic and Sigrid Quack,⁶⁵ I propose that there has been a “sedimentation” of human rights in Tunisia. Sedimentation, in its original meaning in geoscience, describes the process of particulate matter settling at “the surface of land or the seabed, and may in time become consolidated into rock.”⁶⁶ Hence, it is about a steadying process, implying that something remains or sticks. As this is not an immediate result, there are also “unconsolidated” deposits, loose sediments, which are still subject to change before they eventually reach their rock-solid stage. To complete this analogy, solidified sediments are not unchangeable, as there may be erosion which may again alter their respective locations. This may also be true for sedimented normative concepts.

Djelic and Quack emphasise the “quality of exteriority,” which can be reached by sedimentation, meaning that an institution (in the context of this chapter, a normative

concept) can eventually “become taken-for-granted and develop a reality of [its] own.”⁶⁷ This notion of consolidation or taken-for-granted quality of human rights was evident in my research: the concept as such is not questioned. However, there are differing perceptions about their function in the transitional context, and essentially about the sincerity of those who invoke them, as I will outline below.

A member of the parliamentary selection committee for truth commissioners describes universal rights as an integral part of Tunisian culture. In the original French quote, she uses the term “lapalissade,” transporting the notion of “utterly obvious truth” in universal rights, but also of a platitude. She then points to a more complex notion of the term by referring to the assemblage Tunisian identity is built on:

Of course we believe in them. We believe in universal rights. There is an article in our constitution. [...] so to say, universal rights, that’s a truism. For us, that’s something we believe in, freedom, cultural exchange, [...], international organizations. We are Tunisia, that’s a country. [...] We are a Tunisian entity, we are an African entity, we are a global entity, we are also an Arab-Muslim entity. That means we belong to all these imbricated relationships. This is a global complexity, which we of course recognize.⁶⁸

However, reference to these complex identities may also lead to impressions of limiting universality. In particular, the (moderate) Islamist discourse on human rights is perceived by liberal/secular actors with ambivalence, and the Islamists’ sincerity is questioned. Their discourse and the perception thereof are of particular importance, because of their political strength in the early phase of transitional (justice) politics. One of the founders of Al Bawsala, a Tunisian NGO that, among others, monitors parliamentary activities, takes a more sceptical stance towards Islamists invoking human rights. In his view, they lack credibility in doing so, because they limit universality with reference to Tunisian

specificities: “Because the Islamists, they say finally, universality of rights is not contradictory with religion. Them, it’s their theory, you see? On the contrary, the Islamists tend to say, ‘Yes, but.’ ‘Yes’ for universal rights, ‘but’ for Tunisian specificities.”⁶⁹

But also other actors involved in transitional politics opportunistically discover human rights language as a resource or an instrument for participating in and shaping certain debates:

“That’s fashionable because we are looking for new points of reference. That’s normal.

Quickly written. Civil society and some political parties. Above all, in the leftist parties, one uses universal vocabulary, universality of rights. That was a big discussion around the voting of the constitution...”⁷⁰

Human rights offer powerful framing in transitional politics and in particular in transitional justice processes. A member of parliament in the NCA, representing the Tunisian diaspora in France, identifies a “pick and choose” mentality when it comes to the application of notions of universality and international standards of justice: they will only be invoked when it serves an actor’s (or a group’s) own interests. Ennahda, for example, would invoke universal rights with regard to issues of bodily integrity, but would be reluctant to also embrace other notions of human rights like freedom of expression:

I say that, well, we reached some real progress in this constitution, but after a big fight for some points. It wasn't evident at all in the beginning because we say that, for example, Ennahda... We only see it in the conflict between Ennahda, the Islamic side and the democratic side. Ennahda was very preoccupied by all that was related to torture because they were victims of torture, but they weren't really progressive on all that deals with freedom of expression, for example, freedom of speech. [...]

Regarding international justice, people have an interest to defend their own ideas, their own options, so they will tell you, we have to respect international principles when they're compatible to what we defend.⁷¹

Therefore, one can see a reconstruction of the liberal human rights package to “fit [the] cognitive preconceptions” of Islamic actors,⁷² as well as the importance of the religious attribution for the classification of the political stances of Ennahda.

Human rights language is also used by stakeholders to label certain issues, even when other issues are more central. A member of the technical committee coordinating the transitional justice dialogue uses the example of victimisation. Here, the violation of rights is made central, rather than other aspects (more personal, psychological, physical) that come along with being a victim: “Exactly, we speak of human rights, but in fact, when we are stakeholders, when one becomes a victim himself or a parent of a victim, we have the tendency to forget or neglect this and put a right first.”⁷³

In accordance with research on norm dynamics, this contributes to the normative concept gaining ground and getting rooted in a certain context because it “exposes” the concept and makes it more public. The ubiquity of human rights discourse points to their sedimentation and consolidation, in other words being a normative concept which is taken for granted. Though varying interpretations and functions may also prevail once a normative concept has sedimented, the “standard of appropriateness”⁷⁴ requires that this concept is taken into account. To give an example, a member of the technical committee points to the necessity of “talking human rights,” but he also points out that there are different understandings of human rights among the different actors involved. However, he does not take for granted the sincerity of all actors in invoking human rights, and expresses the concern that actors involved in the process could instrumentalise the notion of human rights to accuse others of failures.

Well, it is good that the discourse is based on human rights. Probably it's being instrumentalised. Everyone tries to accuse the other according to this. But even this is good. It means ... like ... we have reached a level of conscience that [...] we need to talk human rights. According to [my] assessment, the law does not, at no point, go below the international standards of human rights, which is quite good. The thing is, human rights are probably not understood the same way by everyone. So that's why it's being used by everyone to accuse the other. Well, let's hope that throughout the process we'll keep the standards of human rights ... at least for the fifteen members of the commission ... none of them has a minimal understanding of human rights ... let's hope that all have a maximal understanding of human rights so they apply to the maximum to find ourselves in their regular average.⁷⁵

Human rights is a sedimented normative concept, which has a taken-for-granted quality, at least in its discursive presence, though not necessarily in the actual respect for human rights. The aforementioned life of its own means that it may serve as a discursive resource and fulfil political functions. It is deployed in various situations and can be galvanised in different directions. In the Tunisian transitional context the ambition to discursively position certain issues or actors within the liberal human rights discourse⁷⁶ may serve various functions: especially for the Islamist actors, for example, human rights may be particularly important to position themselves among democratic political actors and to stress their democratic capabilities. For others, it may be an opportunity to put issues on the agenda or to discredit political competitors. Friction, therefore, evolves not around the normative concept of human rights as such, but rather around the question of sincerity of those who invoke it. Human rights, exactly because of their sedimented nature,

provide a discursive resource in the transitional justice process, which is accessible to many, and in turn reinforces its “quality of exteriority.”

Transitional justice: between technical vernacularisation and struggle over content

The research this chapter is based upon aimed at identifying different understandings of justice and injustice, how these interplay in Tunisian transitional justice efforts, and potential friction evolving from them.⁷⁷ One way to investigate this aspect is by looking at different interpretations of what transitional justice actually means in the Tunisian context.

Vernacularising transitional justice “involves friction, as [...] idioms are mediated, appropriated, translated, modified, misunderstood, ignored, or even rejected [...]”⁷⁸ As mentioned above, to have influence on these processes, one needs to be equipped with interpretive schemes and discursive resources. In Tunisia, thus, there have been trainings on offer to provide actors with the respective resources. One of the members of the technical committee reports that those citizens involved in the participatory part of the transitional justice dialogue received the same trainings, provided by international transitional justice professionals.⁷⁹ This was leading to a harmonisation of rhetoric and thus, on the surface, transitional justice has been vernacularised in a rather technical manner, with a literal translation often being used.⁸⁰ The committee member points out differences in the actual knowledge of and experience in transitional justice matters:

. . . and they all went through the same training on transitional justice, on moderation of debate, on writing reports, on all of this. So, at some point of time, yes, some of them got the same training and they get the same rhetoric but some of them are probably better than others in terms of transitional justice. Some of them are much better than others. Some of them are very new to the subject.⁸¹

Thus, understandings of what transitional justice should entail may still have differed. As a member of the technical committee observed, “We asked for transitional justice without knowing what it is.”⁸²

Both terms, in the fashion of floating signifiers, mean different things to different people and fulfil political functions. *Human rights* language serves as a discursive resource or instrument deployed to better reach certain goals or to position the actors within a particular discursive field. Regarding *transitional justice*, however, the purpose is more about appropriating the term, filling the concept with meaning, influencing the process of vernacularisation, and steering the latter in the preferred direction. Hence, there is the question of prerogative of interpretation over the content of the concept, over what can actually be subsumed under transitional justice in Tunisia. For example, it is questioned whether the abovementioned ad hoc measures form part of the transitional justice process at all. Some would argue, “That’s not transitional justice. That’s ordinary justice.”⁸³ Therefore, it is also questioned whether transitional justice has actually started in Tunisia. To give an example, a representative of the victims’ organisation Al Karama (which has the reputation of being close to the moderate Islamist party Ennahda) clearly differentiates between “normal” and transitional justice. In his opinion, those justice measures that had been introduced before (the quoted interview took place after the law had been adopted but before the truth commission had started its work) were not part of transitional justice: “You know that transitional justice hasn’t completely started. All the processes that have been [introduced] were in the general framework. Justice in a general manner.”⁸⁴

In the same vein, a representative of the Lawyers’ Order also assumed the transitional justice process to not have “really” commenced in mid-2014, apart from previous measures. Yet his assumption of transitional justice’s “failure” before its proper start implies that he has a

different understanding of what transitional justice should have entailed and which direction the process should have taken:

Failed. You see. Before starting. [...] No, there are initiatives ... but one cannot speak of transitional justice. One speaks of laws or some procedures or some directives or some decisions that have been taken by the government after the revolution. [...] But one cannot speak in an academic sense⁸⁵ of a process that has started. The process has not started.⁸⁶

However, actors actively involved in justice activities during the ad hoc phase do not necessarily agree with this stance and also frame their actions in transitional justice terms. For example, the activities of the Groupe 25, a group of advocates, in this early phase are described as follows by one of its members: “We lodged cases against former officials, therefore embraced one of the axes of transitional justice, namely prosecutions.”⁸⁷

Moreover, there are also different understandings of the priorities in content that should be tackled by transitional justice. During the time I conducted my research and in line with the abovementioned outward technical vernacularisation, a strong reference point for the interpretation of transitional justice was Pablo de Greiff, whose professional title is the UN Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence.⁸⁸ He is one of the most prominent advocates for an integrated or holistic approach of transitional justice,⁸⁹ encompassing the four aspects included in his job title, and he issued a report on his mission to Tunisia.⁹⁰ As one can see in the quote above, these four aspects in Tunisia are often referred to as the four axes or pillars on which transitional justice is based. Different actors hold others of the four pillars to be of particular importance. A member of the technical committee emphasises the particular importance of truth (pillar one) in transitional justice: “That’s why in a transitional justice process, you can have a lot of kind of

plans with different elements of transitional justice but in any case, truth remains the number one element that cannot be, let's say, put to the side.”⁹¹

He continues by criticising the setting of priorities during the ad hoc process, particularly the early introduction of reparation measures rather than starting with truth-seeking initiatives: “We should have started with unveiling the truth before getting to the reparations.”⁹² This importance attributed to the truth pillar goes well with the observation that the truth commission is supposed to have extraordinary powers in the Tunisian transitional justice process: “There are several... it's a comprehensive mechanism for transitional justice with several pillars but one of the pillars would be truth commission, truth and dignity commission which will have quite strong powers and really it's like another power inside.”⁹³

Others perceive the “guarantees of non-recurrence” (pillar four) to be the decisive aspect of transitional justice. While reconciliation is commonly seen as a consequence of transitional justice and not as part of the process,⁹⁴ this rather blurry fourth pillar is often interpreted to include the reform of state institutions. “We hope that transitional justice ... there are four pillars of transitional justice, truth, justice, reparation and the guarantee of non-recurrence. That means the reform of all institutions, all sectors. To achieve reconciliation, real reconciliation.”⁹⁵ Thus, in line with the argument outlined above that truth-seeking should have taken place before repairing, a representative of the government authority for relations with civil society and constitutional institutions describes the four pillars of transitional justice as steps to be followed in a chronological order and which consequently do not work in parallel.⁹⁶ Opposing retroactive legal justice measures as well as reparations, and prioritising the different pillars, he advocates for going directly from finding the truth to the guarantees of non-recurrence, which he equates with administrative reforms that do not include any vetting of state officials:

[...] there is a chronological approach. Okay? Nothing works in parallel.

[...] Step number four, which is really the distinctive element, that's the right, how to say ... the right to the guarantee of non-repetition. That's state reform! I have to guarantee that it does not happen again. I will guarantee that it will not happen again. [...] you can skip step two and three and you go from step one, the right to know to the right to the guarantee of non-repetition [...].⁹⁷

As one can see in the examples above, in contrast to the taken-for-granted nature of human rights, it is clear that the very question of what transitional justice actually *is* is contested (which parallels contestation, noted in Mills's chapter, over what was deemed most important or the endpoint of transitional processes in northern Uganda—punishment, reconciliation, or peace, the latter being similar to the guarantee of non-recurrence). For transitional justice as a normative concept relatively new to the Tunisian context, the main focus of the actors engaged was to appropriate the corresponding terms and influence the vernacularisation of the concept, to steer it in their intended direction. The concept is thus sometimes reduced to an essence, sometimes it is inflated to a catch-all measure. Following Atalay,⁹⁸ the former process can be called pruning, which in her conceptualisation would then be followed by rediscovering and claiming original ownership of the vernacularised normative concept. To account for the latter process, I would add to this typology the possibility of enriching the concept with further connotations. Strategies available to vernacularisers depend on contextual, ideational, and institutional factors.⁹⁹ Thus, one could see that the normative concept of transitional justice is contested and frictional on a different level than human rights: it is more about the actual content the concept should entail than about the sincerity of invoking.

Conclusion

This chapter deals with the usage of two normative concepts in post–Arab Spring Tunisia: human rights and transitional justice. Against the backdrop of professionalised and mainstreamed transnational transitional justice projects, the chapter shows the equipping of domestic actors with technical knowledge and language that may be necessary to participate in debates and influence the process. The two examples introduced in this chapter show the contested nature of normative concepts and the frictional process of their (re)interpretation. The chapter, however, reveals a difference in the usage of a concept that has already been further institutionalised or “sedimented” (human rights) and one that is newer to the context (transitional justice). Human rights have developed a taken-for-granted quality and correspond to the discursive “standard of appropriateness.”¹⁰⁰ They are used as a resource to claim a position within the liberal human rights field and to show “democratic qualities” – or to deny them for others. Essentially making this a question of identity, the sincerity and credibility of different actors in invoking human rights is questioned. Transitional justice has not yet developed this taken-for-granted quality and hence, interpretations of the normative concept deal more with the question of what transitional justice actually entails in terms of measures and content, and what it should be and do. Thus, friction evolves more around appropriating the term as such, as well as steering the deeper vernacularisation of the concept in the respective intended direction. Hence, the eclectic and frictional nature of transitional justice itself is not dissolved through applying a “holistic approach,” but mirrored in the expansiveness of the carefully designed transitional justice process and in the vernacularisation process. The meaning of transitional justice in Tunisia evolves in the interplay of global, standardised interpretations and the appropriation by domestic actors, for example, through pruning and inflating, depending on the political functions the concept should fulfil.

¹ This chapter is based on research funded by the German Federal Ministry of Education and Research. The quote in the title is slightly adapted in word order from a personal interview with an NCA member (Tunis, 2014).

² Domenica Preysing, “Tunesien: Vorreiter des Aufbruchs, Vorbild des Wandels?” in *Arabellions, Zur Vielfalt von Protest und Revolte im Nahen Osten und Nordafrika*, ed. Annette Jünemann and Anja Zorob (Wiesbaden, DE: Springer VS, 2013), 43–65.

³ Irene Weipert-Fenner, “Neue Akteure, neue Prozesse – alles beim Alten? Über den schwierigen Umgang mit der Ambivalenz der arabischen Transformationsprozesse,” *Politische Vierteljahresschrift* 55, no. 1 (2014): 145–167.

⁴ Michael Willis, *Politics and Power in the Maghreb: Algeria, Tunisia and Morocco from Independence to the Arab Spring* (Oxford: Oxford University Press, 2014).

⁵ Ibrahim Fraihait, *Unfinished Revolutions: Yemen, Libya, and Tunisia after the Arab Spring* (New Haven, CT, and London: Yale University Press, 2016), 58.

⁶ Béatrice Hibou, *The Force of Obedience: The Political Economy of Repression in Tunisia* (Cambridge, UK: Polity, 2011).

⁷ Habib Ayeb, “Social and Political Geography of the Tunisian Revolution: The Alfra Grass Revolution,” *Review of African Political Economy* 38, no. 3 (2011): 467–479; Francesco Cavatorta and Rikke Hostrup Haugbølle, “The End of Authoritarian Rule and the Mythology of Tunisia under Ben Ali,” *Mediterranean Politics* 17, no. 2 (2012): 179–195.

⁸ Amin Allal, “Trajectoires ‘révolutionnaires’ en Tunisie,” *Revue Française de Science Politique* 62, no. 5 (2012): 821–841 (own translation).

⁹ Ibid.

¹⁰ “[W]e have a new political architecture in Tunisia. Everything has to be reinvented.”

Personal interview with an advisor to the government representative for relations with constitutional institutions and civil society. Tunis, March 2015.

¹¹ Freedom House, *Freedom in the World 2015: Tunisia*,
<https://freedomhouse.org/report/freedom-world/2015/tunisia>.

¹² A symbol or concept loose enough to mean many things to many people, which has mobilizing potential when the meaning is steered towards a certain direction and can therefore fulfil various political functions.

¹³ Peggy Levitt and Sally Merry, “Vernacularization on the Ground: Local Uses of Global Women’s Rights in Peru, China, India and the United States,” *Global Networks* 9, no. 4 (2009): 441–461.

¹⁴ Sometimes interview situations were joined by additional persons who contributed thoughts to the discussion.

¹⁵ Interviews were usually conducted in French or English and occasionally with impromptu (non-professional) translation from/into Arabic.

¹⁶ La Commission nationale d’investigation sur les affaires de corruption et de malversation, in Tunisia often referred to as the “Amor Commission” after its head, Abdelfattah Amor.

¹⁷ In 2015, the Court of Cassation annulled the appeals judgments and returned the cases to the first instance. Moreover, the publication of a “definitive list” of “martyrs and wounded of the revolution” has so far allegedly been blocked by the president. Hence, victims and their families until now lack recognition of the crimes committed against them.

¹⁸ The first government following the 2011 elections led by the Ennahda party, in coalition with Ettakatol and CPR (Congress for the Republic), is commonly referred to as “troika.”

¹⁹ Several personal interviews, Tunisia, 2014–15.

²⁰ The ministry was dissolved after the “troika” stepped down and a technocratic caretaker government took over in early 2014. The transitional justice portfolio was integrated into the ministry of justice, but remained under the responsibility of the same *chargé de mission* (Mohsen Sahbani of Ennahda). His service was ended by governmental decree in June 2015.

²¹ The terms used in referring to the law are drawn from the unofficial English language translation provided by the International Center for Transitional Justice.

²² Hereby, it also creates an elusive perpetrator, “the system,” leaving “no enemy to reconcile with.” Personal interview with a civil society representative, Tunis, May 2014 (own translation).

²³ They have been established by law and judges have been nominated, but they have not taken on any cases yet (September 2016).

²⁴ Abdelwahab Ben Hafaiedh, and I. William Zartman, “Tunisia: Beyond the Ideological Cleavage: Something Else,” in *Arab Spring: Negotiating in the Shadow of the Intifadat*, ed. I. William Zartman (Athens, GA, and London: University of Georgia Press, 2015), 50–79; see also quote from NCA member referenced in footnote 68.

²⁵ In 2016, Ennahda changed its official position on the relationship of politics and religion endorsing the separation of “politics from preaching.” Monica Marks, “How Big Were the Changes Tunisia’s Ennahda Party Just Made at Its National Congress?” *Washington Post*, 25 May 2016, <https://www.washingtonpost.com/news/monkey-cage/wp/2016/05/25/how-big-were-the-changes-made-at-tunisias-ennahda-just-made-at-its-national-congress/>. The exact practical implications of this move remain unclear. Several personal conversations, Tunis, September 2016.

²⁶ Several personal interviews, Tunis, 2014–15. See also Han’s chapter in this volume for a discussion of the asymmetric abilities of state and non-state actors to instrumentalise transitional justice processes.

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- ²⁷ Personal interviews with members of the parliamentary selection commission, Tunis, spring 2014.
- ²⁸ Personal conversations, Tunis, spring 2014.
- ²⁹ Points of critique include the lack of pressure international actors have put on the government to include civil society in the selection of truth commissioners.
- ³⁰ Several personal interviews, for example, with representatives of the Ministry for Human Rights and Transitional Justice and of the National Coordination for Transitional Justice, Tunis, April/May 2014.
- ³¹ Several personal interviews, Tunis, 2014–15.
- ³² Rebekka Friedman and Andrew Jillions, “The Pitfalls and Politics of Holistic Justice,” *Global Policy* 6, no. 2 (2015): 141–150.
- ³³ Bronwyn Ann Leebaw, “The Irreconcilable Goals of Transitional Justice,” *Human Rights Quarterly* 30, no. 1 (2008): 95–118.
- ³⁴ Ruti G. Teitel, “Transitional Justice Globalized,” *International Journal of Transitional Justice* 2, no. 1 (2008): 1–4.
- ³⁵ Rosemary Nagy, “Transitional Justice as Global Project: Critical Reflections,” *Third World Quarterly* 29, no. 1 (2008): 275–289.
- ³⁶ Sandra Rubli, “Transitional Justice: Justice by Bureaucratic Means?” Working Paper, *swisspeace* (2012).
- ³⁷ Jelena Subotic, “The Transformation of International Transitional Justice Advocacy,” *International Journal of Transitional Justice* 6, no. 1 (2012): 106.
- ³⁸ Rubli, “Transitional Justice”; referring to Kieran McEvoy, “Beyond Legalism: Towards a Thicker Understanding of Transitional Justice,” *Journal of Law and Society* 34 no. 4 (2007): 411–440.
- ³⁹ Subotic, “The Transformation of International Transitional Justice Advocacy,” 117

⁴⁰ Nagy, “Transitional Justice as Global Project.”

⁴¹ Rosalind Shaw and Lars Waldorf, *Localizing Transitional Justice: Interventions and Priorities After Mass Violence* (Stanford: Stanford University Press, 2010); Dustin N. Sharp, “Addressing Dilemmas of the Global and the Local in Transitional Justice,” *Emory International Law Review* 29, no. 1 (2014): 71–117.

⁴² Subotic, “The Transformation of International Transitional Justice Advocacy,” 121.

⁴³ Levitt and Merry, “Vernacularization on the Ground,” 443.

⁴⁴ Nancy Fraser, “On Justice: Lessons from Plato, Rawls and Ishiguro,” *New Left Review* 74 (March–April 2012): 51.

⁴⁵ Suzanne Katzenstein, “Hybrid Tribunals: Searching for Justice in East Timor,” *Harvard Human Rights Journal* 16 (2003): 245–278. Describes the sidelining of East Timorese actors by United Nations staff, who did not consult them on institutional design and just took over tasks themselves instead of mentoring the domestic actors. The East Timorese, then, became “sick of internationals coming in and conducting ‘workshops’” (quoted in Nagy, “Transitional Justice as Global Project”).

⁴⁶ See, for example, Jelena Subotic, “Truth, Justice, and Reconciliation on the Ground: Normative Divergence in the Western Balkans,” *Journal of International Relations and Development* 18, no. 3 (2012): 361–382; Michael Goodhart, “Human Rights and the Politics of Contestation,” in *Human Rights at the Crossroads*, ed. Mark Goodale (Oxford and New York: Oxford University Press, 2013), 31–44; Peggy Levitt and Sally Engle Merry, “Women’s Human Rights in the Vernacular: Navigating the Culture/Rights Divide,” in *Gender and Culture at the Limit of Rights*, ed. Dorothy Hodgson (Philadelphia: University of Pennsylvania Press, 2011), 81–100.

⁴⁷ Susanne Buckley-Zistel, “Frictional Spaces: Transitional Justice between the Global and the Local,” in *Peacebuilding and Friction: Global and Local Encounters in Post-Conflict*

Societies, ed. Annika Björkdahl, Kristine Höglund, Gearoid Millar, Jair van der Lijn, and Willemijn Verkoren (Abingdon, UK: Routledge, 2016), 17.

⁴⁸ Anna Lowenhaupt Tsing, *Friction: An Ethnography of Global Connections* (Princeton, NJ: Princeton University Press, 2005).

⁴⁹Buckley-Zistel, "Frictional Spaces"; see also Annika Björkdahl and Kristine Höglund, "Precarious Peacebuilding. Friction in Global-Local Encounters," *Peacebuilding* 1, no. 3 (2013): 289–299; Gearoid Millar, Jair van der Lijn, and Willem Verkoren, "Peacebuilding Plans and Local Reconfigurations: Frictions between Imported Processes and Indigenous Practices," *International Peacekeeping* 20, no. 2 (2013): 137–143; Rosalind Shaw, "Memory Frictions: Localizing the Truth and Reconciliation Commission in Sierra Leone," *International Journal of Transitional Justice* 1, no. 2 (2007): 183–207; Dustin Sharp, "Addressing Dilemmas of the Global and the Local in Transitional Justice," *Emory International Law Review* 29, no. 1 (2013): 71–117; Levitt and Merry, "Vernacularization on the Ground."

⁵⁰ Stefanie Kappler, "Peacebuilding and Lines of Friction between Imagined Communities in Bosnia-Herzegovina and South Africa," *Peacebuilding* 1, no. 3 (2013): 349–364.

⁵¹ Levitt and Merry, "Vernacularization on the Ground."

⁵² *Ibid.*, 448.

⁵³ Zeynep Atalay, "Vernacularization of Liberal Civil Society by Transnational Islamist NGO Networks," *Global Networks* 16, no. 3 (2016): 396.

⁵⁴ Levitt and Merry, "Vernacularization on the Ground."

⁵⁵ *Ibid.*, 443.

⁵⁶ Atalay, "Vernacularization of Liberal Civil Society."

⁵⁷ Björkdahl and Höglund, "Precarious Peacebuilding," 290.

⁵⁸ Paige Arthur, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly* 31, no. 2 (2009): 321.

⁵⁹ Article 1, 42f, 67.

⁶⁰ Lina Khatib, “Challenges of Representation and Inclusion: A Case Study of Islamist Groups in Transitional Justice,” in *Transitional Justice and the Arab Spring*, ed. Kirsten J. Fisher and Robert Stewart (Abingdon, UK: Routledge, 2014): 131–150.

⁶¹ Khatib, “Challenges of Representation and Inclusion.”

⁶² In the meanwhile, Tunisia’s Ennahda party has officially abandoned political Islam. However, this had not yet been the case at the time of initial research.

⁶³ For a list of human rights institutions ratified by Tunisia, see Claiming Human Rights, <http://www.claiminghumanrights.org/tunisia.html>.

⁶⁴ Mostly referred to by the French acronym LTDH (Ligue Tunisienne pour la défense de droits de l’homme) or just La Ligue.

⁶⁵ Marie-Laure Djelic and Sigrid Quack, “Theoretical Building Blocks for a Research Agenda Linking Globalization and Institutions,” in *Globalization and Institutions: Redefining the Rules of the Economic Game*, ed. Marie-Laure Djelic and Sigrid Quack (Cheltenham, UK: Edward Elgar, 2003): 22.

⁶⁶ Oxford Dictionaries, <https://en.oxforddictionaries.com/definition/sediment>.

⁶⁷ Djelic and Quack, “Theoretical Building Blocks.” I thank Andrea Birdsall for asking what the difference of a “sedimented” normative concept would be to the last stage of Finnemore and Sikkink’s “norm life cycle” (Martha Finnemore and Kathryn Sikkink, “International Norm Dynamics and Political Change,” *International Organization* 52, no. 4 [1998]): 888) The decision to use “sedimentation” and not the “norm life cycle,” however, has less to do with the results they imply, which indeed are pretty similar, but more with the *processual*

picture the terms display. In this regard, I find “sedimentation” (something settles and sticks at the surface) more suitable for this chapter than a cycle with clearly defined stages.

⁶⁸ Personal interview with an NCA member, Ettakatol, Tunis, 2014 (own translation).

⁶⁹ Personal interview, Sidi Bou Said, May 2015 (own translation).

⁷⁰ Ibid.

⁷¹ Personal interview with an NCA member, Sidi Bou Said, spring 2014.

⁷² Atalay, “Vernacularization of Liberal Civil Society.”

⁷³ Personal interview with member of the technical committee, Tunis, spring 2014 (own translation).

⁷⁴ Finnemore and Sikkink, “International Norm Dynamics.”

⁷⁵ Personal interview, Tunis, May 2014.

⁷⁶ Atalay, “Vernacularization of Liberal Civil Society.”

⁷⁷ Mills’s chapter in this volume also finds that there is not necessarily an agreement among local groups/actors about what constitutes justice and that justice measures (the ICC in the case of Uganda) are deployed for political purposes.

⁷⁸ Alexander Laban Hinton, “Introduction: Toward an Anthropology of Transitional Justice,” in *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*, ed. Alexander Laban Hinton (New Brunswick, NJ, and London: Rutgers University Press, 2010): 12.

⁷⁹ Personal interview, Tunis, May 2014.

⁸⁰ “Al-adala al-intikalia” in (simply transliterated) Arabic or “justice transitionnelle” in French.

⁸¹ Personal interview, Tunis, May 2014.

⁸² Member of the technical committee, personal conversation, Tunis, September 2016.

⁸³ Personal interview with an NCA member, Sidi Bou Said, May 2014.

⁸⁴ Personal interview, Tunis, April 2014 (own translation).

⁸⁵ Contrary to his opinion, in my academic work as outlined in the second part of this chapter, I usually subsume these ad hoc measures under transitional justice, differentiating between ad hoc measures and the planned transitional justice project.

⁸⁶ Personal interview, Tunis, May 2015 (own translation).

⁸⁷ Personal interview, Tunis, May 2014 (partly own translation).

⁸⁸ Several personal interviews, Tunis, spring 2014–15.

⁸⁹ See, for example, Pablo De Greiff, “Theorizing Transitional Justice,” in *Transitional Justice*, ed. Melissa S. Williams, Rosemary Nagy, and Jon Elster (New York and London: Routledge, 2012).

⁹⁰ *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non recurrence, Pablo de Greiff, Addendum, Mission to Tunisia* (11–16 November 2012) (A/HRC/24/42/Add.1), 30 July 2013. De Greiff was also the research director of the International Center for Transitional Justice before he became Special Rapporteur. And though these four aspects distilled from normative assumptions (De Greiff, “Theorizing Transitional Justice”), ICTJ’s standard definition of transitional justice is very much in line with these four aspects or four pillars, as they are often called in my interviews.

⁹¹ Personal interview, Tunis, May 2014.

⁹² *Ibid.*

⁹³ Personal interview with a representative of a human rights NGO, Tunis, May 2014.

⁹⁴ For example, personal interview with a member of the technical committee, Tunis, May 2014.

⁹⁵ Personal interview, Tunis, April 2014 (own translation).

⁹⁶ A former staff member of the Special Representative's team ensured me that this was not the intention Pablo de Greiff had when choosing his job title and introducing this concept.

⁹⁷ Personal interview, Tunis, March 2015 (partly own translation).

⁹⁸ Atalay, "Vernacularization of Liberal Civil Society."

⁹⁹ Ibid.

¹⁰⁰ Finnemore and Sikkink, "International Norm Dynamics."