



# **REQUEST TO DECLARE THE REGION OF KASSERINE AS "VICTIM"**

**(Art. 10, paragraph 3 of the Organic  
Law 2013-53)**

**Applicant: Tunisian Forum on Economic and Social Rights**

*Represented by Mr. Abderrahman HEDHILI, President, and Mrs. Zina MHAMDI,  
President of the Kasserine division, with its main office in Farhat Hached Avenue,  
47 in Tunis and its Kasserine division in Farhat Hached Avenue, 42, Kasserine.*

*With the technical support of Avocats Sans Frontières (Lawyers without Borders).*

\*\*\*

***Truth and Dignity Commission***

## TABLE OF CONTENTS

<b>Summary.....</b>	<b>4</b>
<b>I. Purpose of this request and admissibility.....</b>	<b>7</b>
A. PURPOSE OF THE REQUEST .....	7
B. ADMISSIBILITY .....	7
<b>II. Definition of "victim-region" according to the law.....</b>	<b>9</b>
A. DEFINITION OF THE TERM "REGION" .....	10
B. DEFINITION OF "SUFFERING FROM SYSTEMATIC MARGINALIZATION OR EXCLUSION" .....	12
1. Concept of marginalization.....	12
2. The concept of exclusion .....	14
3. Concept of "systematic" marginalization/exclusion.....	17
4. Systematic marginalization or exclusion do not require a justification of violation of social and economic rights as such .....	17
5. The methodology and indicators allowing to establish systematic marginalization or exclusion.....	19
<b>CONCLUSIONS.....</b>	<b>22</b>
<b>III. Application to the Kasserine region.....</b>	<b>22</b>
A. KASSERINE IS A REGION.....	23
B. KASSERINE SUFFERED FROM SYSTEMATIC MARGINALIZATION OR EXCLUSION.....	23
1. Kasserine suffered from acute and persistent discrimination or disadvantages and/or was denied access to rights and services unlike other regions .....	23
(1) Indicators .....	23
(2) Analysis of Indicators .....	27
2. These disadvantages and/or denials of access to rights and services result from institutionalized processes.....	29
(1) Bad political choices and economic models and bad planning and elaboration of regional development.....	30
(2) Setting up an extremely centralized system.....	32
(3) Deliberate policy of favoritism in private and public investments .....	33
(4) Bad governance, nepotism, cronyism and corruption.....	34
<b>CONCLUSIONS.....</b>	<b>36</b>
<b>IV. Treating marginalization and exclusion.....</b>	<b>37</b>
A. GUIDELINES AND METHODOLOGY .....	38
1. Determine the exact causes and consequences of marginalization or exclusion suffered by the concerned region. ....	39
2. Place the victim-region at the heart of the debate. ....	39
3. Ensure the non-creation of new discriminations or resurgence of conflicts.....	39
B. LINES OF THOUGHT ON MEASURES THAT HELP REDRESS THE SUFFERED MARGINALIZATION OR EXCLUSION: CASE OF KASSERINE .....	39
1. Addressing the causes: developing and implementing a coherent economic policy .....	40
2. Addressing the consequences .....	41
3. Adopt a calendar and determine the applicability of measure .....	42

<b>CONCLUSIONS.....</b>	<b>43</b>
<b>V. Recommendations .....</b>	<b>43</b>
<b>Annex 1 : extracts of Legal and Constitutional texts.....</b>	<b>45</b>
Organic law n°2013-53 of 24 December 2013 on the establishment of the transitional justice and its organization, O.G., 31 December 2013, n°105, pp. 3655-3665.....	45
Constitution dated 1 June 1959 .....	48
<b>Annex 2: Regional Development Indicator.....</b>	<b>49</b>
Table of variables elaborated by the Ministry for Regional Development and Planning relating to 4 thematic indexes .....	49
<b>Annex 3: Bibliography.....</b>	<b>50</b>
Tunisian Sources: Tunisian Ministry for Regional Development and Planning .....	50
International Reports.....	50
Studies .....	51

## SUMMARY

This request aims at providing a key-example of the "victim region" in Tunisia in the sense of the organic law n°2013-53 dated December 24, 2013 relating to the establishment of transitional justice and its organization ("TJ Law").

This law extends the definition of "victim" to **regions being subject to a "systematic marginalization or exclusion"** (article 10, paragraph 3). However, this does not define these terms as such.

In the aftermath of the revolution, many reports and studies concerning Tunisia highlighted the major and persistent disparities between governorates at the level of human and economic development. These studies were simply revealing empirically what was already common knowledge both in Tunisia and at the international level. These same studies also emphasized the need and the urgency to address these situations and to thus put an end to the policies and processes which led to the creation, perpetuation and aggravation of these disparities.

This particular context contributes to an understanding of the legal terms involved.

Following an analysis of Tunisian law, the concept of **"region"** can be equated to the concept of **"governorate"**.

As to the concepts of "marginalization" and "exclusion", they have no equivalent in the Tunisian Law. However, they have been developed by other bodies such as the Truth, Justice and Reconciliation Commission in Kenya and other bodies of the United Nations.

In light of these definitions and in consideration of the particular context of the adoption of the law, marginalization is defined as a form of acute and persistent distinction, discrimination or disadvantage, which compromises the chances of the group to succeed in life and which result from the social, economic and political processes.

As to **exclusion**, it may be understood as a process whereby people are denied access to rights and services, including the access to employment, a decent income, education, or to participation in power and decision-making processes which may affect their daily lives.

According to the law, **marginalization or exclusion** shall be **systematic**. The adjective "systematic" indicates the severity and structural nature of marginalization or exclusion. It is not about addressing marginalization or exclusion which would be occasional or connected to factors such as the global economic context or the climatic or geographic situation of a region.

The **violation of social and economic rights** in itself is not required to establish the

systematic marginalization or exclusion in a region. It may, however, constitute an element of **proof**.

Marginalization or exclusion may be demonstrated by using **socio-economic indicators**. The latter allows for an objective comparison between the situation of a particular region and the national one and that of other regions to conclude that disparities do exist and to determine their extent and persistence.

The analysis of these indicators helps determine disadvantages, discriminations or lack of access to rights and services with a view to establishing a marginalization or exclusion.

On the basis of diverse socio-economic indicators, including the Human Development Index, the Human Poverty Index and the Regional Development Index, **Kasserine** appears as one of the regions which has suffered the most from a substantial and persistent developmental delay on diverse fronts (economic, social, human) when compared to other regions and the national level.

The analysis of these indicators helps identify **discriminations, disadvantages and/or deficiencies** Kasserine is subject to, including on the level of economic development, access to employment and decent standards of living, the poverty scale, access to public services and infrastructures, health and education. These disadvantages and/or deficiencies have persisted or even worsened over time. They are the result of **social, economic or political processes**. They are neither the result of chance nor of an economic downturn.

Thus, the successive **Tunisian economic policies** favoured the exclusive development of littoral regions. The declared rebalancing policies between the regions have never been applied. **Strong centralization of power**, excluding any effective participation of the regions in the decision-making process, **favouritism toward specific regions, bad governance, cronyism** and **corruption** are all intertwined processes that have created an aggravating and systematic effect, leading to systematic marginalization or exclusion in certain regions including Kasserine.

By extending the concept of "victim" to regions subject to systematic marginalization or exclusion in Tunisia, the TJ law has not only mandated the **Truth and Dignity Commission** to find out the truth about these situations, but also to address them and guarantee their non-recurrence.

The establishment of **measures aiming at addressing the causes and consequences of marginalization or exclusion** in some regions in Tunisia must be guided by the objective of national reconciliation. This implies (1) the accurate specification of the causes and consequences of this marginalization or exclusion in an endeavour to adopt relevant, adequate and proportioned measures; (2) the positioning

of the victim-region at the centre of the debate and (3) the avoidance of new discriminations or resurgence of conflicts.

Taking these principles into consideration, the present request suggests ways of elaborating measures aiming at addressing and ending marginalization or exclusion in Kasserine.

It should be emphasized that the present request does not pretend, in any case, that the region of Kasserine was the only victim of systematic marginalization or exclusion. On the contrary, it expresses a willingness towards an objective of national reconciliation, collective memory and a transition toward a democratic regime that would grant the full respect of the human rights to all men and women, in conformity with the 1<sup>st</sup> article of the TJ Law. It therefore invites the TDC to **consider more widely the situations of the other regions in Tunisia.**

## **I. PURPOSE OF THIS REQUEST AND ADMISSIBILITY**

1. This request seeks to acknowledge that the region of Kasserine was a victim of systematic marginalization or exclusion under the organic law n°2013-53 dated December 24, 2013 relating to the establishment of transitional justice and its organization ("TJ law").<sup>1</sup> This request is submitted based on the mandate attributed by this same law to the Truth and Dignity Commission ("TDC").

### **A. PURPOSE OF THE REQUEST**

2. In conformity with the TJ law, this request aims at declaring the marginalization or exclusion suffered by the region of Kasserine, namely its causes and consequences. It aims at taking the adequate measures to ensure that such a situation is never to arise again and to address the marginalization and exclusion suffered by the region.

3. Broadly speaking, this request aims at supporting the TDC in the exercise of its mandate, namely in determining the criteria that establish the marginalization or exclusion of a region. In no case does this request claim that Kasserine was the only victim of systematic marginalization or exclusion.

4. It is first and foremost about providing a sample of a victim-region in Tunisia in order to help the TDC consider the situation of other regions that have at some point in Tunisian history (specifically since July 1<sup>st</sup> 1955) suffered from systematic marginalization or exclusion. This request thus conveys a willingness towards the objective of national reconciliation, collective memory and transition toward a democratic regime that grants the full respect of the human rights for all, men and women, in conformity with the 1<sup>st</sup> article of the TJ law.

### **B. ADMISSIBILITY**

5. This request is submitted by the Tunisian Forum of Social and Economic Rights ("TFSER") in close cooperation with and with the technical support of Lawyers without Borders ("ASF").<sup>2</sup> It is submitted in accordance with the TJ law and, more precisely, with articles 16, 17, 40, 43 and 67.<sup>3</sup>

6. The TDC was created within the framework of the transitional justice process in Tunisia. Its mandate covers the period between July 1<sup>st</sup>, 1955 and December 24<sup>th</sup>, 2013.<sup>4</sup> According to the TJ law, the TDC's mission is essentially to reveal the human rights violations committed during the aforementioned period, to identify the responsible parties and, to a further extent, establish the truth based on the objectives of the TJ law,

---

<sup>1</sup> O.G. December 31, 2013, n°105, p. 3655-3665

<sup>2</sup> Created in 1992, ASF is an international NGO whose main objective is to contribute to the establishment of institutions and mechanisms that allow the access to independent and partial justice, the granting of judicial security and protection, and the effectiveness of fundamental rights. [www.asf.be](http://www.asf.be).

<sup>3</sup> The full text containing these provisions is in Annex 1.

<sup>4</sup> TJ law, art. 16 and 17.

to contribute to national reconciliation, to guarantee non-recurrence and finally to contribute to the establishment of the rule of law.<sup>5</sup>

7. To fulfil its mission, the TDC can receive files, complaints and motions.<sup>6</sup> Broadly speaking, it has recourse to any measure or mechanism likely to help reveal the truth within the framework of the transitional justice objective of the TJ law and, thus, including as to the regions that suffered from systematic marginalization or exclusion.<sup>7</sup>

8. The TFSER is a Tunisian non-governmental organization created in 2011. Its organizational objective is to defend the economic and social rights of populations on international and national levels. TFSER aims specifically at (i) strengthening the role of civil society in the elaboration of points of view in the economic and social domains in order to establish them as national and regional priorities; (ii) calling for a renewed role of the State in the redistribution of income and wealth and ensuring the availability of public services in all regions, while also ensuring the improvement of quality and the reduction of costs; (iii) contributing to the social and economic advance within institutions through the development of professional relations and the promotion of the institutions' social responsibility; (iv) paying particular attention to the social security system in order to improve its services and quality; (v) fighting corruption and protecting public wealth, with a particular emphasis on good management of public and financial resources.<sup>8</sup>

9. The TFSER's mandate is prescribed in line with the objectives laid out by the TJ law to promote national reconciliation and the establishment of the rule of law, particularly on issues related to social and economic development. Furthermore, although it maintains a central office in Tunis it is also composed of local sections, including the one based in Kasserine. The TFSER-Kasserine section is thus able to develop actions as close as possible to the local citizens and identify the needs of the population, notably in the marginalized regions of Tunisia. This request mirrors the exchanges and consultations which TFSER-Kasserine was able to lead with the population, associations, and NGOs in Kasserine. It does not pretend to substitute them. It simply aims at allowing the TDC to examine the issue of the victim status of the region of Kasserine and to address it in line with its mandate and the objectives of the TJ law.

10. In conclusion, this request is admissible as a complaint or a motion under article 40 of the law and article 3 of the TDC procedural rules and, more broadly, as a measure to help the TDC reveal the truth when it comes to establishing a victim-regions in Tunisia as provided for in article 10, paragraph 3 of the TJ law.

---

<sup>5</sup> TJ law, spec. art. 40, 43 and 67; and art. 1 that provides the legal definition of the transitional justice. See also the procedural rules of the TDC, resolution n°2014-1, November 22, 2014 ("Procedural Rules-TDC"), art. 3 and 4.

<sup>6</sup> TJ law, art. 40 and Procedural Rules-TDC, art. 3 and 54.

<sup>7</sup> TJ law, art. 40 (*in fine*) and Procedural Rules-TDC, art. 3 (*in fine*).

<sup>8</sup> O.G., N° 45, April 14, 2011, Ref : 2011T01760APSF1 ; see also <http://ftdes.net>



## II. DEFINITION OF "VICTIM-REGION" ACCORDING TO THE LAW

11. Article 10 of the TJ law defines the term "victim" in reference to the harm suffered by a natural person, a group of people or a legal person due to "a violation committed against them within the meaning of this act". The 3<sup>rd</sup> paragraph of this article specifies: "this definition *includes any region having suffered from systematic marginalization or exclusion*" (emphasis added).

12. The law defines neither the concept of "region", nor those of "systematic marginalization" and "exclusion". Neither does it *explicitly* refer to another legal or regulatory text that defines these concepts. It will thus be necessary to enquire into whether the Tunisian national law contains these concepts and defines them, or, if this is indeed the case, whether these definitions may be applicable in the present case. In the hypothetical case of the absence of the definitions of these specific concepts in the Tunisian law, it will be useful to examine the definitions suggested by other transitional justice organisms or by international organizations, taking into account the objectives of the TJ law and in light of its 1<sup>st</sup> article. In this regard, the national context of the adoption of the TJ law will form an important element of interpretation in understanding the intentions of the legislator when introducing the concept of "victim-region".

13. As numerous studies (notably those published after the revolution) show, Tunisia was marked for many years by major and persistent disparities between some governorates at the level of human, social and economic development. To be sure, these studies have only given definite numbers to a subject already well-known by the Tunisian public.<sup>9</sup> Unlike other countries, the imbalanced growth of Tunisia is not accompanied by inclusive development: "the returns of the economic growth were not invested at the domestic level and did not offer better opportunities to disfavoured areas".<sup>10</sup> The same studies highlight the necessity and urgency of addressing this situation and to thus put an end to the policies and processes that allowed for the creation, perpetuation and aggravation of these disparities. As the World Bank has summarized, one of the

---

<sup>9</sup> Ministry for Regional Development and Planning ("MRDP"), *Measuring Poverty, Inequalities and Polarization in Tunisia (2000-2010)*, (with the support of the African Bank for Development and the World Bank), November 2012, spec. p. 8 (and 14)

[http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Measuring\\_Poverty\\_Inequalities\\_and\\_Polarization\\_in\\_Tunisia\\_2000-2010.PDF](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Measuring_Poverty_Inequalities_and_Polarization_in_Tunisia_2000-2010.PDF):

"In Tunisia, it is publically recognized that poverty is mainly concentrated in rural areas and some other areas of the country, particularly the central-West region" See also the references cited below.

<sup>10</sup> World Bank, "The Unfinished Revolution: Bringing Opportunity, Good Jobs and Greater wealth to All Tunisians", The Development Policy Review. May, 2014, p. 302 <http://www.worldbank.org/en/country/tunisia/publication/unfinished-revolution>

challenges of the Tunisia of tomorrow is to "achieve convergence between all of the standards of living throughout the whole territory".<sup>11</sup>

14. A study conducted by the Tunisian Institute for Competitiveness and Quantitative Studies ("TICQS"), within the Ministry for Regional Development and Planning, emphasizes in a 2012 report:

*"We currently consider that regional disparities are among the issues the country must face.*

*Indeed, the observation seems quite simple. In terms of infrastructure and development, the country is divided into two parts: the seaside regions, endowed with basic social and healthcare facilities (access to water, healthcare, education, etc.), largely exceed the average of the national level while the interior regions to the west are marked by a lack of facilities and activities except for agriculture and small business, and an unemployment rate that almost reaches 29%.*

*This implies a social necessity for post-revolution Tunisia, namely the improvement of the social and economic situation for the western interior regions.*  
*[...].<sup>12</sup>*

15. It is in this context that article 10 par. 3 of the TJ law has been adopted. We should consider that the concepts of "region", "marginalization" and "exclusion" reflect concepts related to development (namely economic and social) and to the disfavoured situation of some areas of the country (the regions of the central west, including Kasserine, particularly cited as the most disfavoured). Thus, it is in light of this particular context and the legislator's objective of initiating a process of Transitional Justice, that the concepts of "region" and "systematic marginalization or exclusion" shall be interpreted.

16. This part provides a definition of the law concerning the concept of the "victim-region". It also determines the criteria that allow the acknowledgement of a region's systematic marginalization or exclusion. These definitions and criteria will then be applied on the region of Kasserine, as an example of a marginalized or excluded region (see below "III. Application to the Situation of the Region of Kasserine").

#### **A. DEFINITION OF THE TERM "REGION"**

17. At the adoption of the TJ law in December 2013, no constitutional or legislative provision had defined the term "region" as such. We find, however, some references within the Constitution and the laws to "regional councils" responsible for managing the "governorates".

---

<sup>11</sup> World Bank, "The Unfinished Revolution: Bringing Opportunity, Good Jobs and Greater wealth to All Tunisians", The Development Policy Review. May, 2014. P.302

<sup>12</sup> Regional Development Indicator, July 2012. p. 17 (emphasis added) <https://www.fichier-pdf.fr/2013/03/23/tunisie-indicateur-developpement-regional/tunisie-indicateur-developpement-regional.pdf>

18. **Article 59 of the Constitution of June 1<sup>st</sup>, 1959** establishes, in addition to the municipal councils, regional councils to manage the local issues, "under the conditions provided for by the law".<sup>13</sup>

19. **The organic law n°89-11 of February 4<sup>th</sup>, 1989, relating to the regional councils**, outlines the responsibilities of these councils in the "**governorate**". The governorates are defined as "territorially-based administrative entities of the State". They are legally and financially autonomous entities. The governorate is thus a territorially and administratively defined entity.<sup>14</sup> According to the same law, the "regional council" manages the "governorate" (see particularly articles 1, 2 and 4 of the organic law). Other provisions refer to the "regional councils" or the "Governor of the region" (the governor being the head of the regional council according to article 6 of the Organic law n°89-11)<sup>15</sup>.

20. In the absence of any amendment of these texts by the National Constituent Assembly, these provisions were applicable at the moment of adoption of the TJ law. Article 21 of the constituent law n° 2011-6 of December 16<sup>th</sup>, 2011 concerning the interim organization of public authorities, also provides that "*the regional councils and structures to which the law confers the status of local collectivises, shall perform their duties under the conditions laid down by the law, until amended by the National Constituent Assembly*" (emphasis added).

21. Failing to find a definition of the "region" in the legal texts in force at the time of adoption of the TJ law, we, however, find some references to a "regional council" which manages a governorate, the latter being a territorially determined entity. We may, thus, conclude that **the concept of "region" can be assimilated to that of "governorate"**.

22. This interpretation is equally supported by the regional development policy adopted in Tunisia at the adoption of the TJ law and the context of its adoption.

23. Until 2013, Tunisia had a Ministry for Regional Development and Planning ("MRDP"). Although the latter could sometimes refer to the economic regions naming Grand Tunis, the North East, the North West, the Central East, the Central West, the South East and the South West<sup>16</sup>, it mainly used the administrative division of the

---

<sup>13</sup> The full list of references and extracts mentioned are provided in Annex 1 below.

<sup>14</sup> In this context A. RALLET, "The liberalization of economy, the issue of regional development and institutional routines: the Tunisian case", Region and Development Review. 1995, n°2, [http://region-developpement.univ-tln.fr/fr/pdf/R2/R2\\_Rallet.pdf](http://region-developpement.univ-tln.fr/fr/pdf/R2/R2_Rallet.pdf)

<sup>15</sup> Law n°94-122 of November 28, 1994 promulgating the physical and town planning; law n°75-33 of May 14, 1975, promulgating the Organization Act on Communes, art. 5. See also art.22 "the head of the municipal council submits, within eight days of the hearing, to the governor of the region a copy of all the deliberations and decrees adopted in implementation thereof. The governor grants its insertion in the register recording their reception" (emphasis added).

<sup>16</sup> MRDP, *Measuring Poverty, Inequalities and Polarization in Tunisia* (2000-2010) (with the support of the African Development Bank and the World Bank), Nov. 2012.

governorates when it referred to the regions, particularly in its reports on the Indicators of Regional Development<sup>17</sup>.

24. As already explained, the context of the TJ Law adoption is directly related to the situations of marginalization or exclusion of some governorates, including primary Kasserine<sup>18</sup>.

25. The Internal Regulations of the TDC also supports the interpretation according to which the concept of "region", as stipulated in the TJ law, covers that of "governorate". In virtue of article 55 of these regulations, it is equally specified that "*a regional office will be established in every governorate of Tunisia*" (emphasis added).

## **B. DEFINITION OF "SUFFERING FROM SYSTEMATIC MARGINALIZATION OR EXCLUSION"**

26. Neither the TJ law nor the Tunisian law defines the terms "systematic marginalization or exclusion". Failing to find a definition in the Tunisian law, it is then useful to refer to concepts of "marginalization" and "exclusion" that were determined by other national or international bodies in the face of situations similar to those faced by TDC. The context of the TJ law adoption will again be relevant in understanding its authors' spirit and in determining the definitions to be allocated to these terms within the framework of the TDC mandate.

### **1. CONCEPT OF MARGINALIZATION**

27. In a report relating to marginalization in education, **UNESCO** defines "marginalization" in general terms as follows:

*"Marginalization is the subject of much debate. There is a voluminous literature on how to measure it and how to differentiate the concept from broader ideas about inequality, poverty and social exclusion. Many important social issues have been raised. However, debate over definitions can sometimes obscure the political and ethical imperative to combat marginalization. [...]"*

*The starting point of this Report is that marginalization in education is a form of acute and persistent disadvantage deeply rooted in underlying social inequalities. [...]"*

*[...]"*

---

<sup>17</sup> MRDP, The White Paper for Regional Development, 2011:

[http://eeas.europa.eu/delegations/tunisia/documents/more\\_info/livreblanc\\_devreg\\_nov11\\_fr.pdf](http://eeas.europa.eu/delegations/tunisia/documents/more_info/livreblanc_devreg_nov11_fr.pdf)

MRDP Report, *Regional Development Indicators*, November 2012, p. 2 : this report calculates the Regional Development Indicator ("RDI") "*at the level of regions (governorates)*" (emphasis added)

[http://www.mdc.gov.tn/fileadmin/Conference\\_presse/Strat%C3%A9gie%20de%20d%C3%A9veloppement/Diagnostic%20tr%C3%A9gique/Indicateurs%20de%20d%C3%A9veloppement%20r%C3%A9gional.pdf](http://www.mdc.gov.tn/fileadmin/Conference_presse/Strat%C3%A9gie%20de%20d%C3%A9veloppement/Diagnostic%20tr%C3%A9gique/Indicateurs%20de%20d%C3%A9veloppement%20r%C3%A9gional.pdf)

MRDP, the Tunisian Institute for Competitiveness and Qualitative Studies, *Regional Development Indicator, comparative study of the regional development in Tunisia*, July 2012 : <https://www.fichier-pdf.fr/2013/03/23/tunisie-indicateur-developpement-regional/tunisie-indicateur-developpement-regional.pdf>

A. RALLET, *op. cit.*, p. 13, note 6 ; F. ZIDI, *Economic Policy and Regional Disparities in Tunisia: A Micro-stimulated General Equilibrium Analysis*, Ph.D. Thesis under the supervision of X. RICHET, Univ. Sorbonne Nouvelle – Paris 3, 2012-2013, p. 23.

<sup>18</sup> See MRDP reports cited below.

*The experience of marginalization in education today is seldom a consequence of formal discrimination. Legal restrictions on opportunity, such as those that characterized apartheid South Africa, are rare. Yet informal discrimination is widespread. It is embedded in social, economic and political processes that restrict life chances for some groups and individuals. Marginalization is not random. It is the product of institutionalized disadvantage – and of policies and processes that perpetuate such disadvantage.*<sup>19</sup>

28. Although this report focuses on "marginalization in education", it provides many elements relevant to the definition of "marginalization" in general. It establishes a link between "marginalization" and "discrimination" and, at the same time, indicates that discrimination may be the product of informal processes. These discriminations are rooted in social, economic and political processes that jeopardize the life chances of some groups and individuals. Marginalization is the product of "institutionalized" processes or disadvantages, even if they do not necessarily seek to create discrimination or disadvantage.

29. The definition of marginalization provided by the **Truth, Justice and Reconciliation Commission-Kenya** ("TJRC-Kenya" or "Commission") is still more relevant in this regard. This Commission has particularly explored the definitions of the concepts of "marginalization", "economic marginalization" and "discrimination" within the framework of its Transitional Justice mandate. The latter was particularly tasked to inquiry and establish both the reality and the perceived feeling of the economic marginalization suffered by some communities and also provides some recommendations on ways to treat this marginalization.<sup>20</sup>

30. In this report, the Commission refers to the theories of many authors to extract the definition to be applied during the exercise of its mandate. It notes that the concept can be analysed from two points of view: one spatial and one societal. The spatial point of view is related to geographic aspects – the fact of living physically distant from the centre. The societal point of view refers to the disadvantage or discrimination suffered by a group or individuals in accessing resources or in fully participating in societal life.<sup>21</sup> Taking into account the Kenyan context, it defines marginalization in general terms as

---

<sup>19</sup> UNESCO, *Reaching the Marginalized*, 2010, p. 135 (emphasis added)  
<http://unesdoc.unesco.org/images/0018/001875/187513F.pdf>

<sup>20</sup> Law establishing the Truth, Justice and Reconciliation Commission in Kenya, *The Truth, Justice and Reconciliation Commission Act, No. 6 of 2008*, in force on March 9<sup>th</sup>, 2009, art. 6: "(p) inquire into and establish the reality or otherwise perceived economic marginalization of communities and make recommendations on how to address the marginalization »; TJRC-Kenya Report, vol. 1, § 107.

<sup>21</sup> TJRC-Kenya Report, vol. 2B, spec. §§ 41 and 42.

being "a process that denies opportunities and outcomes to those 'living on the margin', while enhancing the opportunities and outcomes for those who are 'at the centre' ".<sup>22</sup>

31. The definition of "marginalization" adopted by the TJRC-Kenya is similar to that suggested by UNESCO. It corresponds to the definition generally found in legal opinions.<sup>23</sup> In this case, these elements are sufficiently precise to offer a useful definition to the TDC in exercising its mandate.

32. We shall also note that the TJRC-Kenya considers that marginalization combines discrimination and social exclusion at the same time. According to it, "social exclusion" and "marginalization" are both terms which may be used interchangeably.<sup>24</sup> While these concepts ("marginalization" and "exclusion") are perhaps extremely close, some may maintain that they are not necessarily equivalent (see below "2. The Concept of Exclusion"). In this case, the TDC is not required to conclude this debate or to adopt a universally accepted definition in order to fulfil its mandate. It merely needs to adopt a sufficiently precise definition in conformity with its mandate that shall be inscribed in the transitional justice process, as provided for by the TJ law (mainly in order to reveal the violations, treat them and guarantee their non-recurrence) and in consideration of the particularities of the Tunisian context (the uncontested existence of major disparities between some regions). In fact, this is the approach the TJRC-Kenya has followed: it has adopted a definition founded on general theories applied within the context of its mandate's objective and the Kenyan situation.<sup>25</sup> On the other hand, the following indicators aim at establishing more generally the systematic marginalization or exclusion suffered by some regions (see below "5. Methodology and Indicators Allowing the Establishment of Systematic Marginalization or Exclusion").

## **2. THE CONCEPT OF EXCLUSION**

33. We may encounter some references to the concept of "exclusion" and particularly "social exclusion" in the programmes of diverse international organizations, such as the United Nations ("UN"), the International Labour Organization ("ILO"), the European Union ("EU") and the Council of Europe ("CoE"). These international bodies highlight the multitude of definitions in this regard.

34. In this case, the TDC is not compelled to determine a worldwide recognized definition of the concept of "exclusion" to exercise its mandate. It only needs to adopt a definition in conformity with the object of its mandate within the framework of the

---

<sup>22</sup> TJRC-Kenya Report, vol. 2B, §§42 and 44: "*Marginalization: a process that denies the chances and results to those who 'live at the margins', and strengthens the chances and results of those who live 'in the center'.*"

<sup>23</sup> G. S. GURUNG and KOLLMAIR M., « Marginality : Concepts and their Limitations », IP6 Working Paper No. 4, 2005, p. 11 available on [http://www.nccr-pakistan.org/publications\\_pdf/General/Marginality.pdf](http://www.nccr-pakistan.org/publications_pdf/General/Marginality.pdf)

<sup>24</sup> TJRC-Kenya Report, vol. 2B, §49.

<sup>25</sup> TJRC-Kenya Report, vol. 2B, §§ 41-43 and particularly § 44.

transitional justice process, as provided for in the TJ law and in consideration of the particularities of the Tunisian context.

35. In the Vienna Declaration and Program of Action of 1993 the **United Nations** establishes a link between social exclusion on the one hand, and the participation in decision-making within the community, the enjoyment of the outcome of social progress and of human rights, on the other. Thus, the World Conference on Human Rights

*"affirms that extreme poverty and social exclusion constitute a violation of human dignity and that urgent steps are necessary to achieve better knowledge of extreme poverty and its causes, including those related to the problem of development, in order to promote the human rights of the poorest, and to put an end to extreme poverty and social exclusion and to promote the enjoyment of the fruits of social progress. It is essential for States to foster participation by the poorest people in the decision-making process within the community in which they live, the promotion of human rights and efforts to combat extreme poverty".<sup>26</sup>*

36. This link between social exclusion and the inability to take part in the decision-making process at different levels, or the impossibility to have equal access to some services or rights is also included in the definitions of exclusion provided by other international bodies.

37. Accordingly, the **ILO** defines exclusion as *"the lack of access to full participation in mainstream society in economic, political, social and cultural terms"*. According to ILO, *"[e]xclusion therefore conveys a sense of denial or loss. [...] In an economic sense, exclusion refers to the inability to be engaged in gainful employment which yields enough income to satisfy basic requirements. In political terms, exclusion implies a lack of access to sources of power and the inability to participate meaningfully in decision-making processes from the household level upwards. In a social sense, exclusion is equal to denigration, the loss of respectability and dignity in one's own eyes, as well as those of others"*<sup>27</sup>.

38. Within the **Explanatory Report to the European Social Charter** (reviewed), the term "social exclusion" *"refers to people living in extreme poverty due to an accumulation of handicaps, who suffer from degrading situations or events, exclusions or an access to rights that expired long ago, or for other concurring circumstances. Social*

---

<sup>26</sup> Adopted in the World Conference for Human Rights, June 25, 1993, [http://www.ohchr.org/Documents/Events/OHCHR20/VDPA\\_booklet\\_fr.pdf](http://www.ohchr.org/Documents/Events/OHCHR20/VDPA_booklet_fr.pdf) (emphasis added).

<sup>27</sup> ILO, *Social exclusion in the context of globalization*, Working Paper n°18, May 2004, p.1: *"The point of departure of this paper is the concept of exclusion, defined as the lack of access to full participation in mainstream society in economic, political, social and cultural terms. Exclusion therefore conveys a sense of denial or loss. [...] In an economic sense, exclusion refers to the inability to be engaged in gainful employment which yields enough income to satisfy basic requirements. In political terms, exclusion implies a lack of access to sources of power and the inability to participate meaningfully in decision-making processes from the household level upwards. In a social sense, exclusion is equal to denigration, the loss of respectability and dignity in one's own eyes, as well as those of others"*.



*exclusion also strikes or risks to strike people who, though they may not be economically poor, may have been denied the access to some rights or services due to, for example, prolonged illness, family breakdown, violence, release from prison or marginal behaviour namely alcoholism and drug addiction".<sup>28</sup>*

39. Since 2004, the **EU and the CoE** have adopted a similar joint definition:

*"Social exclusion is a process whereby certain individuals are pushed to the edge of society and prevented from participating fully by virtue of their poverty, or lack of basic competencies and lifelong learning opportunities, or as a result of discrimination. This distances them from job, income and education opportunities as well as social and community networks and activities. They have little access to power and decision-making bodies and thus often feeling powerless and unable to take control over the decisions that affect their day to day lives".<sup>29</sup>*

40. It is important to emphasize that the concepts of exclusion and poverty are not equivalent: a person may be poor but not excluded (the opposite is also true), even if poverty and exclusion do in fact often coincide.<sup>30</sup> In other words, the poverty rate of a region may hint at its exclusion, without automatically demonstrating that it is (or was) actually excluded.<sup>31</sup>

41. Although the previous definitions mainly refer to the concept of "social exclusion", the TFSEER submits that the TDC may resort to the elements of these definitions to determine the concept of "exclusion" as provided for in the TJ law. This use would take into account the aforementioned context of the law's adoption, namely the major disparities between various regions in terms of economic, social, and human development, in order to precisely target situations resulting from the processes by which some groups are denied the possibility to access services or rights.

<sup>28</sup> Commentary on article 30 of the European Social Charter, <http://conventions.coe.int/treaty/fr/Reports/Html/163.htm>. The charter was adopted on May 3rd, 1996. Article 30 grants the right to protection against poverty and social exclusion as follows:

*"With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:*

- a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;*
- b. to review these measures with a view to their adaptation if necessary".*

<sup>29</sup> Joint Report of the Commission and the Council on Social Inclusion, 5<sup>th</sup> March 2004, p. 10 [http://ec.europa.eu/employment\\_social/soc-prot/soc-incl/final\\_joint\\_inclusion\\_report\\_2003\\_fr.pdf](http://ec.europa.eu/employment_social/soc-prot/soc-incl/final_joint_inclusion_report_2003_fr.pdf); This definition is adopted by the Council of Europe: *Social Exclusion—a danger on European democracies*, the report of the Commission for social, health and sustainable development issues on the Council of Europe, 27<sup>th</sup> October, 2014, §6; *Strengthen Social Cohesion*, a report of K.P. O'Kelly and Caroline Corr, approved by the European Committee for Social Cohesion, Ed. Council of Europe. 2010, p.56.

<sup>30</sup> See namely: J. Estivill, *Concepts and Strategies for Combating Social Exclusion – An Overview*, International Labour Organization, 2003, p. 27; as well as the references cited above (namely Vienna Declaration and the European Social Charter, which make a clear distinction).

<sup>31</sup> In that sense, the conclusions of the TJRC-Kenya, which point to the important rate of poverty all over the country, but underline that the latter was, in a more disproportionate way, present in the 5 marginalized regions it has identified (TJRC, vol.1, p. xv).



### 3. CONCEPT OF "SYSTEMATIC" MARGINALIZATION/EXCLUSION

42. With regard to the TJ law, marginalization or exclusion shall be "systematic".<sup>32</sup> The law provides no definition to this term. According to the ordinary meaning of the word, the adjective "systematic" implies that marginalization/exclusion shall be "structured", "ordered", and "methodical".

43. In this case, the adjective "systematic" refers to the severe and structural nature of marginalization or exclusion. The law aims at treating the persistent injustices that have affected and/or affect the social cohesion and create injustices (or the feelings of injustice) in order to contribute to a national reconciliation. It does not therefore concern itself with addressing situations of marginalization or exclusion that would only have a limited impact. Similarly, the law aims at addressing marginalization or exclusion resulting from an overall disadvantaged economic context or a difficult climatic or geographic context of a region. The law's objective is to remediate and terminate the structural processes that have resulted in the marginalization or exclusion of some regions.

### 4. SYSTEMATIC MARGINALIZATION OR EXCLUSION DO NOT REQUIRE A JUSTIFICATION OF VIOLATION OF SOCIAL AND ECONOMIC RIGHTS AS SUCH

44. The aforementioned definitions of "marginalization" and "exclusion" clearly show tight links with social and economic rights. However, in order to demonstrate the systematic marginalization or exclusion of a region, it is not required to establish the social and economic rights violation as such.

45. The concept of "marginalization" as defined *supra*, is closely related to the concept of "discrimination", a process that has the effect of diminishing a group's opportunities, particularly on a social and economic level. This concept of "discrimination" (or rather of non-discrimination) is present in the international texts relating to social and economic rights. Thus, article 2 §2 of the International Covenant on Economic, Social and Cultural rights ("ICESCR") states that:

*"The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".*<sup>33</sup>

---

<sup>32</sup> In the French version of the law published in the Official Gazette, the Arabic word ("systematic") is translated into "organisée".

<sup>33</sup> Adopted by UN General Assembly, AG/RES/2200 A (XXI), 16 December 1996 (in force on January 3<sup>rd</sup>, 1976). Tunisia ratified the ICESCR on March 18, 1969 (emphasis added) ([https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en)) ; See also the Universal Declaration of Human Rights, adopted by the UN General Assembly, AG/RES/217 A(III), article 2 ; The African Charter on Human and People's Rights, adopted on June 28, 1981 (in force on October 21, 1986), ratified by Tunisia on March 16, 1983 (<http://www.achpr.org/en/instruments/achpr/ratification/>)

46. Similarly, "exclusion", as defined above, may be tightly linked to the violation of economic and social rights such as the right to employment, the right to an adequate standard of living, the right to healthcare and the right to education.

47. Finally, similar to economic and social rights, there is interdependence between the fight against marginalization and exclusion and the exercise of civil and political rights. In 1993, the Vienna World Conference on Human Rights stated this interdependence and the indivisibility between economic, social and cultural rights on the one hand, and political and civil rights on the other.<sup>34</sup> Thus if a person does not enjoy his/her right to education, they will have fewer chances to fully benefit from their right to freedom of expression and to participate in civil and political life.<sup>35</sup> Similarly, if a person or a group of people suffers from exclusion, they may feel unable to have control over the decisions that affect their daily life and will consequently be unable to participate in political life and exercise their right of freedom of expression. The participation in public affairs is also "*part of the solution to poverty and social exclusion*".<sup>36</sup>

48. Despite the close links existing between social and economic rights on the one hand and marginalization and exclusion on the other, these concepts shall be legally distinct.<sup>37</sup> Social and economic rights are granted by international treaties (universal or regional) and if necessary by national constitutional or legislative provisions.<sup>38</sup> They shall be protected by the State. Their violation holds the concerned State accountable, both at a national level and at an international level, through international protection mechanisms. The concepts of marginalization and exclusion are not specifically defined in international treaties. Furthermore, as far as the Tunisian law is concerned, these two concepts are related to a transitional justice process linked to the Tunisian context particularities. In fact, the legislator does not refer to economic and social rights

---

<sup>34</sup> Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, June 25, 1993.

<sup>35</sup> Conversely, a tortured person suffers the violation of his/her right to highest attainable standard of health. Look for example at the ASF study, *Economic, Social and Cultural Rights in Burundi : Practical Guide for lawyers, paralegals and other Human Rights Defenders in Burundi*, September 2014, <http://www.asf.be/fr/blog/publications/perspectives-on-preventive-detention-in-burundi-putting-standards-into-practice/>

<sup>36</sup> Report on the human rights approach to participation of persons living in poverty in decisions that affect their lives, June 2013: <http://www.ohchr.org/EN/Issues/Poverty/Pages/ParticipationOfPersonsLivingInPoverty.aspx>

« Participation is an affirmation of the right of every individual and group to take part in the conduct of public affairs, but also a part of the solution to poverty and social exclusion ».

In its report to the UN Human Rights Council on the participation of people living in poverty in the decisions that affect their life, the special Rapporteur establishes a link between poverty and exclusion: "Poverty has many dimensions, extending far beyond a lack of income to include deprivation of choices, capabilities and power. Persons experiencing extreme poverty live in a vicious cycle of powerlessness, stigmatization, discrimination, exclusion, and material deprivation. Lack of participation in decision-making is thus a defining feature and cause of poverty, rather than just its consequence » (Emphasis added).

<sup>37</sup> Under the same token: E. SCHMID and A. NOLAN, "Do No Harm?" Exploring the Scope of Economic and Social Rights in Transitional Justice", *IJTJ*, vol. 8, 2014, p. 37362 et s.

<sup>38</sup> *Supra*, note 33.

violations when he/she extends the definition of 'victim' to the regions. He/she purposefully introduced different concepts, which are marginalization and exclusion.

49. In other words, in order to establish that a region was a 'victim' under article 10 §3 of the TJ law, it is not required to demonstrate that its inhabitants have specifically suffered from violations of their economic and social rights. It need only be established that the region was victim of a process which led to a form of disadvantage or discrimination (marginalization) or, as a consequence of this, that the region was denied access to some services or rights (exclusion). This distinction is particularly important not only in establishing a region's victim status, but also in determining adequate measures with which to ameliorate this state of affairs.

50. While the demonstration of the organized violation of economic and social rights at the level of a given region is *not* required to establish the marginalization or exclusion of the region concerned under the TJ law, it may still be used as evidence towards this assertion. These elements are reflected in the indicators given below, which are used to establish marginalization or exclusion.

#### **5. THE METHODOLOGY AND INDICATORS ALLOWING TO ESTABLISH SYSTEMATIC MARGINALIZATION OR EXCLUSION**

51. While addressing marginalization in some regions in Kenya, the TJRC-Kenya focused on two main aspects:

- The role of the state in marginalization, whether in terms of aggravation or reduction of inequality;
- The inequality between regions (a horizontal analysis, not within different social groups).<sup>39</sup>

52. The Commission used various indicators to systematically analyse the state of the regions concerned and establish their marginalization. In the case of each region, it examines: the unemployment/employment rate; the poverty rate, the standard of healthcare including infant mortality rates, mortality or life expectancy rates; the number of hospitals and healthcare centres per capita; the level of education including the enrolment rate in elementary and secondary schools, the relation between the number of teachers and children; the level of public infrastructure including access to electricity, to telecommunication means, water/ sanitation; and the quality of roads. The analysis also includes a close examination of marginalization from the gender perspective (focusing particularly on the status of women).<sup>40</sup>

53. The TJRC-Kenya's approach is particularly relevant in this case, since the TDC had faced similar issues. The socio-economic indicators actually help objectively establish, based on figures, the existence of possible disparities between the regions (or some

---

<sup>39</sup> TJRC Report, vol. 2B, §§ 52.

<sup>40</sup> TJRC Report, vol. 2B, partic. §§ 53, 213 and s.

regions among them), the levels of these disparities, and their possible persistence. Based on the analysis of these indicators one can thus conclude whether – compared to the national level and/or to other regions – the region under consideration has suffered from (1) a disadvantage/ discrimination which has had an impact on the opportunities of the group formed by the region; and/or (2) a denial of access to some services or rights (namely in terms of employment, healthcare, education, participation in political life, etc.).

54. More particularly, the following indicators may be taken into consideration:

- The unemployment/employment rate, rate of qualified workforce, the concentration of businesses (and their types), the private/public investment rate;
- The poverty rate;
- The rate of infant mortality, average life expectancy, the number of hospitals or healthcare centres per capita, the number of qualified doctors per capita;
- The illiteracy rate, the enrolment rate in elementary and secondary schools, the level of school facilities;
- The level of public infrastructure, including access to electricity, telecommunication, drinking water, sanitation networks, quantity and quality of roadways;
- The scale of equality (or inequality) between men and women.

55. These indicators are usually integrated into broader indicators used at the international and national levels. As a result, the Human Development Indicator ("HDI") calculated since 1990 by the UN Programme for Development ("UNPD") includes three indicators as follows:

- The longevity measured in terms of life expectancy at birth;
- The level of knowledge measured by combining the illiteracy rate of adults and the average length of schooling;
- The standard of living measured by the real GDP per capita in terms of purchasing power parity in US dollar.<sup>41</sup>

56. Similarly, the Human Poverty Indicator ("HPI") developed by UNDP in 1997 integrates three components:

- The deficit in terms of longevity as represented by the percentage of individuals risking death before the age of 40;
- The lack of formal education, measured by the percentage of illiterate adults;
- Deficits in terms of life conditions, based on three elements: access to healthcare services, access to drinking water and the percentage of children under 5 years old who are victims of malnutrition.<sup>42</sup>

---

<sup>41</sup> UNDP, World Report on Human Development, 1991, pp. 100 and s. ([http://hdr.undp.org/sites/default/files/reports/220/hdr\\_1991\\_en\\_complete\\_nostats.pdf](http://hdr.undp.org/sites/default/files/reports/220/hdr_1991_en_complete_nostats.pdf))

57. We will see below that in the case of Tunisia, these data are available and were established by both state bodies and private studies. Moreover, the Tunisian Ministry for Regional Development and Planning had designed a Regional Development Indicator ("RDI") calculated on the governorate level. This indicator is a synthetic index calculated through the compilation of four thematic indexes: knowledge, wealth-employment, health-population and justice-equity and calculated based on the statistical indicators produced by specialized institutions. To be more precise, the RDI is the simple average of 18 variables with reference to the four previously mentioned fields. These variables contain: the pass rate at baccalaureate level, the enrolment rate of population aged between 6 and 14 years, the illiteracy rate, the percentage of households enjoying access to internet, the telephone density, the unemployment rate, the SME concentration, the poverty rate, the drinking water supply rate, the connection to sanitation network rate, the number of cars, the fertility index, the infant mortality rate, the number of doctors, the number of hospital beds, the criminality rate, the difference between the schooling rates of men and women, the difference between the activity rates of men and women (see annex2 – the full table listing these 18 variables in light of the 4 abovementioned dimensions).<sup>43</sup>

58. In the third section of the present request we will make use of this objective data and socio-economic indexes in order to find out whether compared to the national level and/or to other regions the concerned region of Kasserine has suffered from (1) a disadvantage/discrimination which had an impact on the opportunities of the group formed by the region; and/or (2) a denial to have access to specific services or rights (namely in terms of employment, healthcare, education, participation in political life, etc.). From the analysis of the role of the State and/or other actors, we will then be able to determine whether this disadvantage or lack of access to services or rights results from institutionalized processes and whether or not Kasserine suffered from systematic marginalization or exclusion.

---

<sup>42</sup> UNDP, World Report on Human Development, 1997, pp. 19 and s. ([http://hdr.undp.org/sites/default/files/reports/258/hdr\\_1997\\_en\\_complete\\_nostats.pdf](http://hdr.undp.org/sites/default/files/reports/258/hdr_1997_en_complete_nostats.pdf))

<sup>43</sup> MRDP Report, *The Regional Development Indicators*, November 2012, pp. 2-3.

## CONCLUSIONS

The concept of a **region** as provided for in the TJ law includes **the governorates**.

**Marginalization** is:

- A form of acute or persistent distinction, discrimination or disadvantage;
- which compromises the group opportunities in life;
- and derives from social, economic or political processes.

The social, economic and political process or processes do not need to necessarily aim at creating this distinction, discrimination or disadvantage. They may merely produce it, albeit inadvertently. The distinction, discrimination or disadvantage shall show a certain persistence and ability to affect the group's opportunities.

**Exclusion** is:

- A process;
- Which leads to the prevention of some people from having access to services or rights, namely access to employment or a decent income; education; participation in power and decision-making that has an impact on their daily life.

According to the law, **marginalization or exclusion** shall be **systematic**. The adjective "systematic" indicates the severity and structural quality of marginalization or exclusion.

It is not about addressing marginalization or exclusion which is momentary or relating to factors such as the overall economic context or the geographic or climatic situation of a region.

The **violation of social and economic rights** in itself is not required to establish the systematic marginalization or exclusion of a region. It may, however, constitute an item of **proof** that marginalization or exclusion is occurring.

**The use of indicators** helps objectively compare the status of a region to the national situation and to other regions' statuses and determine the existence of disparities, their extent and their persistence. From the analysis of these indicators, it will then possible to determine the existence of disadvantages or discriminations or lack of access to rights or services in order to establish a systematic marginalization or exclusion.

## III. APPLICATION TO THE KASSERINE REGION

59. In this part, the definitions and criteria previously concluded are applied to the situation of Kasserine in order to demonstrate that it is a region subject to systematic marginalization or exclusion, as stated in the TJ law.

## **A. KASSERINE IS A REGION**

60. Kasserine counts among the 24 governorates of Tunisia. Accordingly, as previously demonstrated, it falls within the scope of article 10, paragraph 3 of the TJ law, which extends the concept of "victim" to any *"region suffering from systematic marginalization or exclusion"*.

## **B. KASSERINE SUFFERED FROM SYSTEMATIC MARGINALIZATION OR EXCLUSION**

61. As explained in section II, in order to demonstrate the systematic marginalization or exclusion of a region, it is necessary to establish that:

(1) In comparison to other regions or even at the national level, the concerned region has suffered from:

- Acute or persistent discriminations or disadvantages which have blocked the opportunities of those living the region, and/or
- A denial of access to rights or services; and

(2) These disadvantages or impossible access to rights and services derive from institutionalized processes.

### **1. KASSERINE SUFFERED FROM ACUTE AND PERSISTENT DISCRIMINATION OR DISADVANTAGES AND/OR WAS DENIED ACCESS TO RIGHTS AND SERVICES UNLIKE OTHER REGIONS**

62. The present analysis provides a number of categorized indicators which establish that Kasserine is one of the regions that has suffered from a substantial delay in development at diverse levels (economic, social, human).

63. The analysis of these indicators helps identify the particular discriminations or disadvantages and/or lack of access to rights and services Kasserine is subject to. Furthermore, these disadvantages or deficits have accumulated or even aggravated over time, thus proving their acuteness and persistence. The present analysis does not claim to identify all of the disadvantages or deficits suffered by the region. It aims at broadly identifying them in order to aid the TDC to go deeper in these analyses.

#### *(1) Indicators*

##### Economic development, employment and poverty

64. In its report of July 2012, the Ministry for Regional Development and Planning indicates that Kasserine shows **the lowest regional development index** (0.16, vs. 0.76 in Tunis).<sup>44</sup>

---

<sup>44</sup> MRDP, Regional Development Indicators, November 2012, p. 4; Tunisian Institute for Competitiveness and Quantitative Studies (TICQS) Regional Development Indicator, July 2012, p. 10.

65. The region of Kasserine is marked by a **particularly high unemployment rate** (in 2012: 26.2%, comp. national level: 17.6%).<sup>45</sup> If we pay closer attention to the HDI of 2004, which includes a consideration of the **standard of living**, the central Western area (including Kasserine) shows the lowest HDI rate, compared to seaside regions where the HDI exceeds the national average.<sup>46</sup>

66. In addition, according to the HPI 2004-2011, the Central Western regions are the most affected by poverty (at more than double the rate of Grand Tunis).<sup>47</sup>

67. Kasserine is also marked by a weak concentration of small and medium enterprises<sup>48</sup> (according to the TICQS in July 2012: 0.2 vs. 3.1 in Tunis): 90% of private enterprises are concentrated on the coastline, and manufacturing industries are only prominent in the littoral regions.<sup>49</sup> Generally speaking, the regions of the Central West experience an **absence of important economic activity**. According to the Ministry for Regional Development and Planning, in 2011, the littoral regions held more than 80% of the overall industrial zones' surface area.<sup>50</sup>

68. Among the notable consequences of weak economic development of the region is **the rural exodus of the most skilled workers**, who move to more highly productive economic zones.<sup>51</sup> This phenomenon on its own has deepened the low level of the region's economic development and quite likely the poverty level as well since due to this exodus, this already poor region is left deprived of its most skilled workers.<sup>52</sup> Thus the economic indicators show that Kasserine has **a low rate of skilled workforce**.<sup>53</sup>

---

<sup>45</sup> Deutsche Zusammenarbeit, *Regional Plan for Sustainable Development (REPSD)*, published by the GIZ in collaboration with the Swiss Cooperation and the Office for the Central West Development (Kasserine), February 2015, p. 14 ; see also the data: TICQS, Regional Development Indicator, July 2012, p. 13 ; See also the World Bank, "The Unfinished Revolution: Bringing Opportunity, Good Jobs and Greater wealth to All Tunisians", *Development Policy Review*, May 2014, p. 41 <http://www.banquemonddiale.org/fr/country/tunisia/publication/unfinished-revolution>; Deutsche Zusammenarbeit, *Regional Plan of Sustainable Development (REPSD)*, published by the GIZ in collaboration with the Swiss Cooperation and the Office for the Central West Development (Kasserine), February 2015, p. 14.

<sup>46</sup> F. ZIDI, Ph.D. Thesis, pp. 50-51.

<sup>47</sup> F. ZIDI, Ph.D. Thesis, p. 177 ; See also: Deutsche Zusammenarbeit, *Regional Plan of Sustainable Development (REPSD)*, published by the GIZ in collaboration with the Swiss Cooperation and the Office for the Central West Development (Kasserine), February 2015, p. 14.

<sup>48</sup> TICQS, Regional Development Indicator, July 2012, p. 13; World Bank, "The Unfinished Revolution: Bringing Opportunity, Good Jobs and Greater wealth to All Tunisians", *Development Policy Review*, May 2014, p. 307.

<sup>49</sup> F. ZIDI, Ph.D. Thesis, pp. 3, 39, 172.

<sup>50</sup> MRDP, The White Paper for Regional Development, 2011, p. 39: [http://eeas.europa.eu/delegations/tunisia/documents/more\\_info/livreblanc\\_devreg\\_nov11\\_fr.pdf](http://eeas.europa.eu/delegations/tunisia/documents/more_info/livreblanc_devreg_nov11_fr.pdf); F. ZIDI, Ph.D., p. 39.

<sup>51</sup> MRDP, Regional Development Indicators, November 2012, p. 2; F. ZIDI, Ph.D. Thesis, p. 4.

<sup>52</sup> F. ZIDI, Ph.D. Thesis, p. 45.

<sup>53</sup> F. ZIDI, Ph.D. Thesis, p. 56; Deutsche Zusammenarbeit, *Regional Plan of Sustainable Development (REPSD)*, published by the GIZ in collaboration with the Office for the Central West Development (Kasserine), February 2015, p. 15.



69. Furthermore, the low level of economic development in Kasserine offers **little attraction to productive and creative investors**.<sup>54</sup> The Central Western regions seem ill-equipped in terms of industrial zones.<sup>55</sup>

#### Access to Public Services and Infrastructures

70. The regions of the Central West (and Kasserine in particular), are marked by a **low level of infrastructure** (quantitatively and qualitatively).<sup>56</sup>

71. More specifically, Kasserine shows a **low score in terms of the drinking water supply rate** (50% vs. 90% in Tunis), including in schools, and in terms of **the rate of household connection to the sanitation network**.<sup>57</sup> According to a German cooperation report (Deutsche Gesellschaft für Internationale Zusammenarbeit, "GIZ") of 2015, the rate of rural households' connection to the drinking water network is 27.1% in the region, versus 56% at the national level.<sup>58</sup>

72. Similarly, much of the region of Kasserine suffers from **poor access to the network of classified roads**: the proportion of classified roads is 17% in Kasserine, compared to a national average that exceeds 30%.<sup>59</sup> Kasserine also exhibits a **tiny proportion of households and schools having access to the Internet** (according to a 2011 survey: 3% vs. 15% in Tunis).<sup>60</sup>

#### Health

73. The Central Western regions are marked by a lack of access to healthcare. Kasserine in particular shows a **low medical concentration** (number of doctors per capita) as well as a **low density of hospital beds, clearly below the national level**.<sup>61</sup>

---

<sup>54</sup> MRDP, Regional Development Indicators, November 2012, p. 3; See also: TICQS, Regional Development Indicator, July 2012, p. 17 (insufficient infrastructure) ; World Bank, "The Unfinished Revolution: Bringing Opportunity, Good Jobs and Greater wealth to All Tunisians", *Development Policy Review*, May 2014, p. 307; See also Deutsche Zusammenarbeit, *Regional Plan of Sustainable Development (REPSD)*, published by the GIZ in collaboration with the Office for the Central West Development (Kasserine), February 2015, p. 13.

<sup>55</sup> F. ZIDI, Ph.D. Thesis, p. 57.

<sup>56</sup> MRDP, Regional Development Indicators, November 2012, p. 3; See also: TICQS, Regional Development Indicator, July 2012, p. 17 (insufficient infrastructure); F. ZIDI, Ph.D. Thesis, p. 57.

<sup>57</sup> MRDP, The White Paper for Regional Development, 2011, p. 36; TICQS, Regional Development Indicator, July 2012, p. 13.

<sup>58</sup> Deutsche Zusammenarbeit, *Regional Plan of Sustainable Development (REPSD)*, published by the GIZ in collaboration with the Office for the Central West Development (Kasserine), February 2015, pp. 29 et 30; see also TICQS, Regional Development Indicator, July 2012, p. 13 ; see also : the World Bank, "the Unfinished Revolution: Bringing Opportunity, Good Jobs and Greater wealth to All Tunisians", *Development Policy Review*, May 2014, p. 305 ; Deutsche Zusammenarbeit, *Regional Plan of Sustainable Development (REPSD)*, published by the GIZ in collaboration with the Office for the Central West Development (Kasserine), February 2015, pp. 29 et 30.

<sup>59</sup> Deutsche Zusammenarbeit, *Regional Plan of Sustainable Development (REPSD)*, published by the GIZ in collaboration with the Office for the Central West Development (Kasserine), February 2015, p. 29.

<sup>60</sup> MRDP, The White Paper for Regional Development, 2011, p. 36; TICQS, Regional Development Indicator, July 2012, p. 12.

<sup>61</sup> TICQS, Regional Development Indicator, July 2012, p. 14

74. If we take into account the HDI, which included the longevity (life expectancy at birth), the regions of Central West show the lowest HDI rate (compared to littoral regions: HDI higher than the national average).<sup>62</sup> In 2011, the Ministry for Regional Development and Planning noted that **life expectancy** was estimated 77 years old in the governorates of Tunis and Sfax, while it did not exceed **70 years old** in the governorate of Kasserine.<sup>63</sup> The same report established that the **infant mortality rate** scored "in 2009, 17,8‰ at national level, in the South East 21‰ and that in the Central West **climbed to 23,6‰**".<sup>64</sup>

#### Education

75. The region of Kasserine is also marked by **a very high rate of illiteracy** (according to a 2011 survey: 32% vs. 12% in Tunis).<sup>65</sup> The Central Western regions show **the lowest HDI rate** (compared to littoral regions, with an HDI higher than the national average).<sup>66</sup> In fact, the HDI is also an education level indicator since it takes into consideration the illiteracy rate and the gross enrolment rate. According to the World Bank, the access to education strongly lags in Central Western regions.<sup>67</sup>

76. Some studies also report on the **low development of higher education institutions** in the region of Kasserine compared to the national level, including factors such as educational facilities, student housing, and quality of the teaching staff.<sup>68</sup>

#### Strong Gender Inequality

77. The Central Western regions are also characterized by **a strong exclusion of women from the labour market and higher unemployment rates among women**.<sup>69</sup> According to the 2004 Gender-Related Human Development Index per region, Kasserine comes last in the ranking (0.55% vs. 0.67% in Tunis)<sup>70</sup>. According to the TICQS, the most pronounced disparity between men and women (expressed by the difference between the men's activity rate and the women's activity rate) is found in the governorate of Kairouan (53.9%), Kasserine (51.8%) and Siliana (50%).<sup>71</sup>

78. In its 2014 Report on the Tunisian situation from 1990 to 2010, the World Bank noted that *"perhaps the most concerning feature of the Tunisian labour market is the*

---

<sup>62</sup> F. ZIDI, Ph.D. Thesis, pp. 47 and 50-51.

<sup>63</sup> MRDP, White Paper on Regional Development, 2011, p. 36.

<sup>64</sup> MRDP, White Paper on Regional Development, 2011, p. 37.

<sup>65</sup> TICQS, Regional Development Indicator, July 2012, p. 12.

<sup>66</sup> F. ZIDI, Ph.D. Thesis, pp. 47 and 50-51.

<sup>67</sup> World Bank, "The Unfinished Revolution: Bringing Opportunity, Good Jobs and Greater wealth to All Tunisians", *Development Policy Review*, May 2014, p. 305.

<sup>68</sup> Deutsche Zusammenarbeit, *Regional Plan of Sustainable Development (REPSD)*, published by the GIZ in collaboration with the Office for the Central West Development (Kasserine), February 2015, p. 26.

<sup>69</sup> see also F. ZIDI, *op. cit.*, pp. 53, 173 et 178.

<sup>70</sup> F. ZIDI, *op. cit.*, pp. 53, 173 et 178.

<sup>71</sup> TICQS, Regional Development Indicator, July 2012, p. 15.

*high rate of unemployment among educated youth, and especially women, many of whom have become long-term unemployed".*<sup>72</sup>

## *(2) Analysis of Indicators*

79. These indicators prove the disadvantages suffered by the region of Kasserine or the denial of access to rights and services, compared to other regions and the nation as a whole. Furthermore, these indicators are also interrelated: they may be either evidence of a particular disadvantage or the cause of yet others.

80. The very low economic development of the region is therefore one of the causes behind the high rates of unemployment and poverty, the low standard of living and the exodus of its most skilled workforce. These indicators thus prove a disadvantage facing the region in terms of economic development and of denial of access to employment or decent standards of living when compared to the regions where the economic development is clearly more favoured and supported.

81. The poor economic situation of the region (most notably the high unemployment rate) is a factor in the widening of gender inequalities. In this context the World Bank states:

*"Women may be less motivated to enter the labour force if they feel there are limited employment opportunities (that is, discouragement). For instance, women living in areas where female unemployment rates are higher are less likely to participate in the labour force (an increase of the regional female unemployment rate of 1 percent decreases the probability of a woman participating by almost 1 percent). On the contrary, in regions where unemployment rates among men are higher, women tend to display higher rates of participation. This is explained because women's reserve wages decrease if men in the household are idle, thus making it necessary for the household to get additional sources of income (an increase in the regional male unemployment rate of 1 percent increases the probability of a woman participating by almost 1 percent)".*<sup>73</sup>

82. Similarly, the deficits in road and phone infrastructure (including Internet) have several consequences:

- At the level of economic development: the region is less attractive to investors, with the aforementioned consequences: unemployment, brain drain, poverty...;<sup>74</sup>

---

<sup>72</sup> World Bank, "The Unfinished revolution: Bringing Opportunity, Better Jobs and Greater Wealth to All Tunisians", *Development Policy Review*, May 2014, p. 41 (emphasis added).

<sup>73</sup> World Bank, "The Unfinished revolution: Bringing Opportunity, Better Jobs and Greater Wealth to All Tunisians", *Development Policy Review*, May 2014, p. 43 (emphasis added).

<sup>74</sup> Under the same token, World Bank, "The Unfinished revolution: Bringing Opportunity, Better Jobs and Greater Wealth to All Tunisians", *Development Policy Review*, May 2014, p. 310 ; Deutsche Zusammenarbeit, *Regional Plan of Sustainable Development (REPSD)*, published by the GIZ in collaboration with the Office for the Central West Development (Kasserine), February 2015, p. 29.

- At the level of social relations and intra-regional exchange, and therefore the standard of living: *"vast rural territories remain isolated, namely the peripheral rural areas suffering from the absence of local centres for population and rural economy management"*;<sup>75</sup>
- At the level of access to education (impracticable roads to schools; limited access to Internet compared to other regions).<sup>76</sup>

83. Therefore the World Bank notes that:

*"Overall, differences in access to basic services and human capital endowments persist, notably between leading and lagging areas [namely the south-west and central western regions], and could be a key driver of spatial disparities in labour market outcomes. Physical access to education and health facilities and access to basic amenities and services appear to be fairly uniform across urban areas of the country, but significant gaps persist in lagging rural areas. Observed variations in labour market outcomes across Tunisia could potentially be due to the differences in human capital; however, it seems likely these differences may explain only part of the variation in incomes in remote rural areas, since as discussed below these areas are also hampered by lower connectivity and access to markets".*<sup>77</sup>

84. The important deficits in terms of drinking water supply and connection to sanitation systems may have some impact on the community's health and on the enjoyment of other rights. For example, an illness caused by contaminated water may entail an incapacity or a difficulty for young children to attend school and thus enjoy their right to education.

85. In its White Paper in 2011, the Ministry for Regional Development and Planning astutely analyses the impact of the socio-economic disequilibrium facing some regions on the level of education:

*"These socio-economic disequilibria have disastrous consequences regarding education. Pupils living in an area marked by unemployment, poverty and illiteracy have less chance to succeed and run higher risks of prematurely dropping out of school. The governorates of Kasserine and Kairouan score the highest levels of school dropouts with respectively 4% and 3.5% for the school year 2009/2010. [...] Among families who give up enrolling their children, school dropout expresses resignation and even despair for the future. The success or failure of children in*

<sup>75</sup> Deutsche Zusammenarbeit, *Regional Plan of Sustainable Development (REPSD)*, published by the GIZ in collaboration with the Office for the Central West Development (Kasserine), February 2015, p. 29.

<sup>76</sup> In this context: Deutsche Zusammenarbeit, *Regional Plan of Sustainable Development (REPSD)*, published by the GIZ in collaboration with the Office for the Central West Development (Kasserine), February 2015, p. 26.

<sup>77</sup> World Bank, "The Unfinished Revolution: Bringing Opportunity, Good Jobs and Greater wealth to All Tunisians", *Development Policy Review*, May 2014, p. 306 (emphasis added).

school is closely related to the perception of their capacity to change their environment through effort and work."<sup>78</sup>

86. The Ministry's example perfectly illustrates exclusion, particularly when these people feel unable to have control over the decisions that affect their daily life. The Ministry actually concludes that:

*"the analysis of these indicators identified a strong disparity between governorates in terms of human and economic development and a concentration of national wealth in the littoral area. Marginalization, even exclusion of some interior regions, is a blatant infringement of the Republican Social Pact that shall be remedied as soon as possible."*<sup>79</sup>

87. Furthermore, according to the Report of the Ministry for Regional Development and Planning, the Central Western regions' situation worsened between 2005 and 2010 compared to the other regions: in 2010, the rate of extreme poverty was 13 times higher than that of Grand Tunis, while in 2000, this same rate was only 6 times higher than that of Grand Tunis.<sup>80</sup> Similarly, the number of households receiving the support of the "National Programme for the Support of Families in Need" continued to increase during the last two decades.<sup>81</sup>

88. In conclusion, the analysis of the aforementioned indicators helps illustrate the discriminations, disadvantages and/or lack of access to rights or services Kasserine is facing (and had previously facing) compared to other regions.

89. Under its mandate – including the establishment of truth and the provision of reparations – it will certainly be relevant for the TDC, within the framework of its investigatory powers as enshrined in the law, to establish in more detail the extent of the disadvantages and deficits suffered by the concerned region, as well as those of regions experiencing similar situations.

## **2. THESE DISADVANTAGES AND/OR DENIALS OF ACCESS TO RIGHTS AND SERVICES RESULT FROM INSTITUTIONALIZED PROCESSES**

90. The previously mentioned disadvantages or deficits result from the combination of systematic and institutionalized processes.

91. As emphasized by the World Bank, the concentration of population and economic activity on the coastline may seem natural given the commercial and logistic

---

<sup>78</sup> MRDP, The White Paper for Regional Development, 2011, p. 35 (emphasis added).

<sup>79</sup> [http://eeas.europa.eu/delegations/tunisia/documents/more\\_info/livreblanc\\_devreg\\_nov11\\_fr.pdf](http://eeas.europa.eu/delegations/tunisia/documents/more_info/livreblanc_devreg_nov11_fr.pdf) (emphasis added).

<sup>80</sup> MRDP, *Measuring Poverty, Inequalities and Polarization in Tunisia (2000-2010)*, pp. 14, 18; see also concerning the unemployment rate in Kasserine in 2005 and 2011: World Bank, "The Unfinished Revolution: Bringing Opportunity, Good Jobs and Greater wealth to All Tunisians", *Development Policy Review*, May 2014, p. 41.

<sup>81</sup> Deutsche Zusammenarbeit, *Regional Plan of Sustainable Development (REPSD)*, published by the GIZ in collaboration with the Office for the Central West Development (Kasserine), February 2015, p. 15.

advantages.<sup>82</sup> Such trends exist elsewhere in the world. However, these trends were exacerbated by the Tunisian economic policy over time.<sup>83</sup> Other processes have also played a role in aggravating regional disparities: the extremely centralized State, the investment favouring in selected regions, bad governance, nepotism or "cronyism" and corruption. These interrelated processes create an aggravating and organized effect, resulting in the systematic marginalization or exclusion of some regions, including Kasserine.

92. The present request does not claim that the aforementioned processes are the sole causes of marginalization or exclusion of the regions, specifically of Kasserine. It is all the more relevant to highlight here the main processes that entailed discriminations and/or lack of access to rights. Within the framework of the investigation and truth establishment prerogatives, it is the role of the TDC to determine whether other processes have contributed in the marginalization or exclusion of Kasserine. Such an analysis will shed light on past mistakes and help ensure that they are not repeated.

*(1) Bad political choices and economic models and bad planning and elaboration of regional development*

93. Many studies insist that the disparities between the interior regions and coastal regions have always existed and are the result of development policy choices: *"for a long time, the country's decision-makers have focused their interest more on the economic growth and the macroeconomic stability rather than on regional inequalities issues"*.<sup>84</sup>

94. Therefore, according to the World Bank, the regional disparities have been *"exacerbated by economic policies"*. According to these analyses, *"Industrial policy, and specifically the Investment Incentives Code, labour market regulations, and agricultural policy have all contributed to deepen, rather than mitigate, regional imbalances"*.<sup>85</sup> This industrial policy, being mainly oriented toward the promotion of exports, encouraged enterprises to establish themselves close to the export infrastructures on the coastline.<sup>86</sup>

95. A recent study conducted by the German Cooperation (GIZ) for Regional Development echoes the same ideas. From its analysis, the creation of the first public nucleus of industrialization in Kasserine in the 1960s *"would be progressively marginalized due to the adoption of a new national policy of industrialization in the 1970s"*

---

<sup>82</sup> World Bank, "The Unfinished Revolution: Bringing Opportunity, Good Jobs and Greater wealth to All Tunisians", *Development Policy Review*, May 2014, p. 307.

<sup>83</sup> *Ibid.*

<sup>84</sup> F. ZIDI, op. cit., p. 3, see also particularly. pp. 13 and 69. See also the references hereafter.

<sup>85</sup> World Bank, "The Unfinished Revolution: Bringing Opportunity, Good Jobs and Greater wealth to All Tunisians", *Development Policy Review*, May 2014, p. 303 (emphasis added).

<sup>86</sup> World Bank, "The Unfinished Revolution: Bringing Opportunity, Good Jobs and Greater wealth to All Tunisians", *Development Policy Review*, May 2014, p. 307.

that further privileges private initiative and foreign investment".<sup>87</sup> It states that diverse laws that aim at fostering private industrial investment enforced this new industrialization policy. According to this study, the consequence of these incentives was a favouring of enterprises established in coastal regions at the expense of the other regions of the Central West, particularly Kasserine, where the process of industrialization has come to a standstill.<sup>88</sup> It concludes that: *"since the 1960s the industrialization of the region of Kasserine has witnessed a tumultuous history including a succession of upturns and downturns related to the country's political choices in terms of industrialization and regional development".*<sup>89</sup>

96. In the White Paper of 2011, the Ministry for Regional Development and Planning also criticizes the post-1960s national and regional economic policy, stating that:

*"the first policy, initiated and conducted by the State in the 1960s, focuses on setting "industrial poles" in some regions in order to enhance the value of natural resources. The insufficient results in terms of the anticipated benefits of training for the concerned regional economies proved the ineffectiveness of this approach. The advent of the liberal trend, during the previous decade, entailed the adoption of a new economic policy whose key points were the access to foreign markets, the development of private investment and entrepreneurship, and the support of international competitiveness.*

*This model, which rests on light industry exporting and outsourcing established close to ports, has left behind entire regions that, due to their geographic position, were unable to catch the train of economic development. Since then, the interior regions were confined either to agro-rural development plans, or were forced by the logic of internal migration to benefit the littoral agglomerations.*

*These regions were pushed, by political choice, to the margins of any dynamic of modernization, limited to providing a cheap workforce for jobs of little value.*

*[...]*

*Therefore, the regional development policy that has been conducted for the last decades resulted in a failure in social and economic justice and a breach of the social contract between the State and the citizens. The regional disparities have aggravated the flow of migration toward relatively more developed regions of the coast creating*

---

<sup>87</sup> Deutsche Zusammenarbeit, *Regional Plan of Sustainable Development (REPSD)*, published by the GIZ in collaboration with the Office for the Central West Development (Kasserine), February 2015, p. 21.

<sup>88</sup> Deutsche Zusammenarbeit, *Regional Plan of Sustainable Development (REPSD)*, published by the GIZ in collaboration with the Office for the Central West Development (Kasserine), February 2015, pp. 21-22.

<sup>89</sup> Deutsche Zusammenarbeit, *Regional Plan of Sustainable Development (REPSD)*, published by the GIZ in collaboration with the Office for the Central West Development (Kasserine), February 2015, p. 24.

*around these littoral agglomerations belts of poorly integrated neighbourhoods, crowded with a poor population coming from the interior governorates.*"<sup>90</sup>

97. In addition, despite an official discourse that claimed to be willing to reduce these regional disparities, the efforts undertaken were so inefficient or minimal that it was impossible to think they were actually aiming at ending these disparities. According to highly placed officials in the Tunisian administration, *"despite the fact that the regional disparities were usually mentioned, this was in reality never the priority of the overthrown President Ben Ali"*.<sup>91</sup>

98. It is not the task here to conduct an exhaustive and detailed analysis of all regional development policies in Tunisia since its independence. At this point, it is enough to note that, according to many reports and studies, the economic development policies in Tunisia have long been institutionalized processes that due to genuine political unwillingness to implement them and/or intrinsic defects have caused the disadvantages or lack of access to rights/services in the Central Western regions, including specifically Kasserine.

99. Where appropriate, it will be TDC's responsibility to deeply analyse these policies in order to determine their role in the discriminations and/or deficits Kasserine and other possible regions are facing.

## *(2) Setting up an extremely centralized system*

100. In its final report, the TJRC-Kenya highlighted that extremely centralized power counts among the processes that resulted in the marginalization of some regions.<sup>92</sup> In the case of Tunisia, such factors also existed.

101. The political and economic decisions were exclusively taken at the level of the capital. In practice, and despite the purely theoretical existence of regional councils, there was no real consideration of the specificities, worries and issues of the regions. As the White Paper states:

*"the regional development plans were imposed by the Ministries within the framework of a national strategy that was not adapted to regions. Sometimes some development projects were left as ink on paper while other less important ones were implemented."*<sup>93</sup>

102. Since this system was extremely centralized, the decisions concerning the regions were made on a national level rather than a regional one. This system has moreover

---

<sup>90</sup> MRDP, The White Book, 2011, pp. 42-43 (emphasis added).

<sup>91</sup> World Bank, "The Unfinished Revolution: Bringing Opportunity, Good Jobs and Greater wealth to All Tunisians", *Development Policy Review*, May 2014, p. 319, note 4 (emphasis added); see also F. ZIDI, *op. cit.*, pp. 13 and 34.

<sup>92</sup> TJRC-Kenya Report, vol. 1, vii et vol. 4, nota. § 232.

<sup>93</sup> MRDP, The White Book, 2011, p. 119 (emphasis added).



entailed "a high bureaucracy, a lack of accountability, a lack of communication and dialogue between the political decision-makers and finally a misuse of the public funds to the detriment of the most disadvantaged regions".<sup>94</sup>

103. Coming back to the analyses of the Ministry for Regional Development and Planning:

*"these figures, data, facts [which prove the very low development of the Central Western regions] describe a certain situation. However, this one is not the result of mere chance. Since its independence, Tunisia has maintained the main traits of its spatial organization, namely the primacy of the capital and the coastal development.*

*[...]*

*The ill-planned development was established due to the extremely centralized economic and political decisions in Tunisia, based on a strategy of economic domination over the interior regions, with the interested complicity of the local economic and political milieus, which skimmed the meagre surplus produced by these regions to reinvest in the coastal regions (including the exodus of qualified people from the interior toward the urban area and a policy of investing rural revenue in the touristic field of the littoral)."*<sup>95</sup>

### *(3) Deliberate policy of favoritism in private and public investments*

104. In these conclusions, the TJRC-Kenya considered the policy that favoured the investment in some regions and the exclusion in others as one among the causes of these regions' marginalization.<sup>96</sup> The Tunisian context also witnessed such circumstances.

105. Since independence, the successive public policies have favoured private investments in the coastal regions.<sup>97</sup> Similarly, the State has openly favoured public investments in coastal areas, since the latter received up to 65% of nationwide public investment.<sup>98</sup> As the Tunisian economist F. Zidi notes,

*"Public investment is incontestably a crucial variable in the unequal development of regions, wealth accumulation, and thus, disparate evolution of unemployment and poverty in Tunisia. Since independence, the State has been favouring the public and productive investment in education, health and infrastructure in only two regions: Grand Tunis and the Central East, to the detriment of other interior regions."*<sup>99</sup>

106. Similarly, according to a recent study conducted by the German cooperative GIZ for Regional Development, despite the rich touristic patrimony, "tourist activity in

---

<sup>94</sup> MRDP, The White Book, 2011, pp. 117 and 119.

<sup>95</sup> The White Paper, 2011, p. 44.

<sup>96</sup> TJRC-Kenya Report, vol. 4, §231.

<sup>97</sup> F. ZIDI, *op. cit.*, p. 39.

<sup>98</sup> F. ZIDI, *op. cit.*, p. 177.

<sup>99</sup> F. ZIDI, *op. cit.*, p. 202 (emphasis added).

*Kasserine has witnessed a total abandonment by public authorities whose policy in this field has privileged first and foremost seaside tourism at the expense of the interior regions (aside from the desert).*"<sup>100</sup>

107. This deliberate policy of unequal distribution of private and public investments between the coastal regions and the interior regions is one of the main causes behind regional disparities.<sup>101</sup> In making similar conclusions, the TJRC-Kenya pointed in particular to the policy that favoured investment in some regions and the neglect of others as one of the causes of these regions' marginalization.<sup>102</sup>

#### *(4) Bad governance, nepotism, cronyism and corruption*

108. Throughout Tunisian history, bad governance, cronyism, and corruption are visible as factors in the major regional disparities Tunisia is now experiencing.<sup>103</sup>

109. The Ministry for Regional Development and Planning's White Paper describes the type of bad governance that was prevailing until the revolution: *"the local framework was very weak and the political will for good local governance was absent."*<sup>104</sup> Not only was this governance centralized and vertical (and very insensitive to and unaware of local worries), but it was also tainted with the central authority's patronage. Therefore, as the White Paper highlights,

*"the regional council was composed of the—usually incompetent— mayor and his/her deputies coming from the ranks of the previous party in power. These conditions did not help engage in a regional reflection on the population's issues and worries."*<sup>105</sup>

110. The overall administrative management followed a similar pattern:

*"administrative participation was for political purposes and was subject to political pressure. Each governorate used its own interest group, sometimes even its "local mafia" which controlled economic power. The distribution of public wealth depended on the loyalty to the previous regime. This is why the governor had to collaborate to keep his/her position. However, all of these regional development cells were under his guardianship and worked most often for him. The predominant role of the governor*

---

<sup>100</sup> Deutsche Zusammenarbeit, *Regional Plan of Sustainable Development (REPSD)*, published by the GIZ in collaboration with the Office for the Central West Development (Kasserine), February 2015, p. 25.

<sup>101</sup> F. ZIDI, *op. cit.*, p. 212; see also, MRDP, *The White Book*, 2011, p. 38.

<sup>102</sup> TJRC-Kenya Report, vol. 4, §231.

<sup>103</sup> See: World Bank, "The Unfinished Revolution: Bringing Opportunity, Good Jobs and Greater wealth to All Tunisians", *Development Policy Review*, May 2014, p. 117 : **"Cronyism** is partiality to long-standing friends, especially by appointing them to positions of authority, regardless of their qualifications, or granting privileged access to economic opportunities and/or preferential treatment in dealing with administrative procedures. In the economic sphere, "crony capitalism" is a term describing an economy in which success in business depends on close relationships between business people and government officials. It may be exhibited by favoritism in the distribution of legal permits, government grants, special tax breaks, or other forms of state interventionism".

<sup>104</sup> The White Paper, 2011, p. 117.

<sup>105</sup> The White Paper, 2011, p. 119 (emphasis added).

was inefficient and more of a hindrance than a benefit. His/her intervention was always necessary while he/she him/herself had to wait for the decisions from above."<sup>106</sup>

111. Besides an unrelenting bureaucracy and bad governance influenced by highly centralized power, the Tunisian system was marked with a form of favouritism or cronyism as well as corruption. Thus the World Bank sheds lights on corruption and abuses in the actions of the administration's cronies and the family members of the overthrown president Ben Ali. Nevertheless, it emphasizes that this system of privileges has characterized the economic development throughout the entire post-independence period.<sup>107</sup>

112. Therefore this cronyism or corruption has further aggravated the existent political processes:

*"Even if the interventionist policies were originally introduced to foster the development of the country, in practice they have become captured for rent extraction and privileges by those close to those in political power, thereby resulting in inequities and exclusions of those lacking significant political connections"*<sup>108</sup>.

113. These processes have also contributed in the marginalization or exclusion of some regions, including Kasserine.

---

<sup>106</sup> The White Paper, 2011. p.118 (emphasis added).

<sup>107</sup> World Bank, "The Unfinished Revolution: Bringing Opportunity, Good Jobs and Greater wealth to All Tunisians", *Development Policy Review*, May 2014, pp. 116 and 136 (note 1).

<sup>108</sup> World Bank, "The Unfinished Revolution: Bringing Opportunity, Good Jobs and Greater wealth to All Tunisians", *Development Policy Review*, May 2014, p. 116; See also the critiques on The White Book, 2011, p. 60.

## **CONCLUSIONS**

According to many Tunisian and international reports and studies, Kasserine is the region which has suffered the most from a substantial and persistent delay in development on various levels (economic, social, human), compared to other regions and the national level.

These reports and analyses are founded on objective data and many socio-economic indexes (including the Human Development Index, the Human Poverty Index and the Regional Development Index). The analysis of these indicators helps illuminate the discriminations, disadvantages and/or lack of access to rights or services that Kasserine is subject to. These disadvantages and/or deficits particularly affect economic development, access to jobs and to a decent living standard, poverty levels, access to public services and institutions, to health and to education.

Furthermore, these disadvantages or deficits have been building up and even worsened over time, thus proving to be acute and persistent.

These disadvantages and/or deficits are not the result of a domestic economic downturn or pure chance. Since 1955 and then starting from independence, some regions have known—and are still witnessing—a huge rate of development, as opposed to the Central-Western regions in general and Kasserine in particular. Unlike other countries, Tunisia's growth was not accompanied by inclusive development. Some regions did not benefit from economic growth following the implementation of different processes.

Thus successive Tunisian economic policies have favoured the exclusive development of the coastal regions. The declared policies of rebalancing between regions were left as ink on paper, either due to bad choices or a lack of political will. Acting in concert, the heavily centralized power, the exclusion of any efficient participation of the regions in the decision-making, investment favouring other regions, bad governance, cronyism, and corruption created an aggravating and systematic effect that resulted in the systematic marginalization or exclusion of some regions, including Kasserine.

#### IV. TREATING MARGINALIZATION AND EXCLUSION

114. In Chapter IV, speaking about the definition of the concept of "victim" (including the marginalized or excluded regions), the TJ law enshrines the principle of harm reparation and rehabilitation. By virtue of the law, the TDC is in charge of elaborating a collective programme for reparations,<sup>109</sup> but it shall also:

- "1. Draft recommendations and proposals related to the political, administrative, economic, security, judicial, media, educational and cultural reforms, the vetting of administration, and other recommendations and suggestions it deems appropriate to avoid the return to oppression and tyranny, to human rights violations and to misuse of public funds;*
- 2. Suggest measures which can be taken to encourage national reconciliation and the protection of the rights of individuals, in particular women and children's rights as well as the rights of those with special needs and vulnerable groups; and*
- 3. Draft recommendations, proposals and measures that promote democracy and contribute to the establishment of the rule of law."*<sup>110</sup>

115. By extending the concept of "victim" to the regions suffering from systematic marginalization or exclusion in Tunisia, the TJ law aims at establishing the truth on these situations and at making sure that this marginalization or exclusion will be treated and will be repeated.<sup>111</sup>

116. The previous reports and studies which identify the marginalization or exclusion suffered by some regions in Tunisia highlight the urgent need to adopt adequate measures to reduce these disparities and prevent the aggravation of the existing divisions. Otherwise, this disparity may have a serious social impact.<sup>112</sup> According to the TICQS (attached to the previous Ministry for Regional Development and Planning), *"the economic integration of the Interior-Western regions would also empower the social cohesion and grant the respect of the fundamental rights, particularly the right to work and the right to enjoy a decent life."*<sup>113</sup>

117. Since the TJ law provides very few hints on the reparation of harms suffered by any victim-region, it would be better to determine in advance some fundamental principles in this regard. Having regard to these principles, some lines of thought might be proposed about the measures to be adopted for the victim-region Kasserine. These lines of thought may, further, be extended to other cases of marginalized regions.

---

<sup>109</sup> TJ law, article 39.

<sup>110</sup> TJ law, article 43; see also article 67(2) of the TJ law providing that these suggestions and formulations shall be included in the collective and final report of the TDC.

<sup>111</sup> TJ law, combined reading of articles 1, 10, 39, 43 and 67. See also the Procedural Rules of the TDC, art. 3.

<sup>112</sup> TICQS, Regional Development Indicator, July 2012, p. 17; see also F. ZIDI, Ph.D. Thesis, p. 182.

<sup>113</sup> TICQS, Regional Development Indicator, July 2012, p. 17; see also F. ZIDI, Ph.D. Thesis, p. 67.

## A. GUIDELINES AND METHODOLOGY

118. In its final report, the TJRC-Kenya put forward some recommendations in order to address the marginalization suffered by some regions in Kenya<sup>114</sup>. It did not quite come up with principles to apply in treating this question. However, the commission was guided by the principles applied in the reparations of the human rights violations and international crimes, particularly causality and proportionality. These principles were namely enshrined by the United Nations and the International Criminal Court ("ICC")<sup>115</sup>.

119. Therefore, in order to remedy the human rights violations and international crimes, adequate, effective and prompt reparation is intended to promote justice by redressing the violations suffered. Reconciliation shall be its objective<sup>116</sup>. The reparation shall prevent the creation, or recreation, of stigmatizations, discriminations or injustices<sup>117</sup>. The reparation shall also be proportionate and in line with the human rights violations and/or the crimes and the damage suffered. The reparation may take various forms among which is the guarantee of non-repetition. The State shall grant the victim the adequate reparation of acts or omissions, which can be attributed to it<sup>118</sup>. The victim shall, furthermore, be involved in the process of reparation and shall be at the centre of this process<sup>119</sup>.

120. These principles are relevant to "victim-region" cases as provided for in the TJ law. To determine and implement these measures that shall redress the marginalization or exclusion suffered by a region, it would be appropriate to adopt a methodology that consists in:

---

<sup>114</sup> TJRC-Kenya Report, vol. 4, pp. 53 et s.

<sup>115</sup> The UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 16 December 2005, RES./60/147 (hereafter "UN Principles"); ICC, Case of Prosecutor C. T. Lubanga, Judgment on the appeals against the "Decision establishing the principles and procedures to be applied for reparations" of 7 August 2012 with Amended order for reparations (Annex A) and public annexes 1 and 2 », 3 mars 2015, ICC-01/04-01/06-3129 (hereafter, "Lubanga Case").

<sup>116</sup> In this regard, the UN Principles, principle n°21; *Lubanga Case*, particularly Annex A, §§ 44-46; See also The Commission for the Reception, Truth and Reconciliation in Timor-Leste ("Commission for Reception, Truth and Reconciliation"), Final Report ("Chega!"), 31 October 2005, vol. 11, pp. 36 et 38 : <http://www.cavr-timorleste.org/chegaFiles/finalReportEng/11-Recommendations.pdf>

<sup>117</sup> *Lubanga Case*, particularly Annex A, § 17.

<sup>118</sup> In this sense, the United Nations Principles, principle n°21; also: Commission for the Reception, Truth and Reconciliation in Timor-Leste ("Commission for Reception, Truth and Reconciliation"), Final Report ("Chega!"), 31 October 2005, vol. 11, p. 39.

<sup>119</sup> Guidance Note of the Secretary-General, United Nations Approach to Transitional Justice, mars 2010: "Successful transitional justice programmes recognize the centrality of victims and their special status in the design and implementation of such processes"; in this sense, *Lubanga Case*, particularly Annex A, §§ 29-32.

**1. DETERMINE THE EXACT CAUSES AND CONSEQUENCES OF MARGINALIZATION OR EXCLUSION SUFFERED BY THE CONCERNED REGION.**

121. This approach shall provide adequate and proportionate measures in line with the suffered marginalization or exclusion. It will also help provide the necessary and appropriate measures to address the suffered marginalization or exclusion. This approach deems also necessary to guarantee the non-recurrence of such situations.

**2. PLACE THE VICTIM-REGION AT THE HEART OF THE DEBATE.**

122. The region is the victim with regard to the law. It is the region that has suffered from systematic marginalization or exclusion. It is the beneficiary of the proposed measures. Therefore, it shall be a full participant in any action aiming at redressing this marginalization or exclusion.

123. Accordingly, it would be relevant to conduct broad consultations that involve the inhabitants of the region, local civil society representatives, and also the local authority representatives. These consultations shall be conducted to determine marginalization or exclusion (causes and consequences) and measures to redress it.

**3. ENSURE THE NON-CREATION OF NEW DISCRIMINATIONS OR RESURGENCE OF CONFLICTS.**

124. The proposed measures shall be subject to an "impact assessment" to determine the impact at the local level and compared to other regions, and even to the national level. For example, a policy that would redistribute the investments from the favoured regions to the least favoured regions may deteriorate the situation of other regions<sup>120</sup>.

125. This implies that the corrective measures that have already been proposed or implemented within other frameworks shall be considered. Otherwise, the implementation of measures that copy the existing ones may have a negative impact.

**B. LINES OF THOUGHT ON MEASURES THAT HELP REDRESS THE SUFFERED MARGINALIZATION OR EXCLUSION: CASE OF KASSERINE**

126. The previous chapters established the disadvantages and deficits of access to rights or services in the region of Kasserine or, at least, part of these disadvantages and deficits. They also identified the processes, or the main processes, that initiated these disadvantages and deficits. Based on these elements, hereafter some lines of thought are suggested on measures that redress the suffered marginalization or exclusion.

127. It shall be noted that in no case shall these lines of thought proposed hereafter disengage the State from its responsibility to implement its obligations, including those relating to development. It goes without saying that, with regard to the Tunisian law and

---

<sup>120</sup> F. ZIDI, *op. cit.*, p. 229.

the conventions to which the Tunisian State is a party, the latter has obligations in implementing and progressively fulfilling certain rights<sup>121</sup>.

## **1. ADDRESSING THE CAUSES: DEVELOPING AND IMPLEMENTING A COHERENT ECONOMIC POLICY**

128. The analysis of the marginalization and exclusion processes helped shed light on the role of the successive economic policies in Tunisia, the discrepancy between the official discourse and the efficient measures taken to combat the regional disparities, the highly centralized power, the favouritism of investment in specific regions, the bad governance, the cronyism as well as corruption. As previously noted, the present request does not claim a detailed identification of all the processes that led to the systematic marginalization or exclusion of Kasserine. It is the responsibility of the TDC, within the framework of its investigatory powers, to proceed to a methodical recognition of the processes causing marginalization and exclusion.

129. The initial results from the present request help to already prove the need to adopt and implement, following **a strict calendar**, an **economic policy** that may efficiently redress suffered marginalization and exclusion, taking into account the situation of other regions and all the effects on the national level. For comparison purposes, in its final report, the TJRC-Kenya identified similar causes to those identified in the present study, namely inadequate economic policies and excessively centralized power. Therefore, it recommended the formulation, adoption and implementation, within 12 months, of a policy deliberately aiming at the socio-economic development of the marginalized regions identified by the Commission<sup>122</sup>.

130. Such an approach may be adopted for the Tunisian case. The effective involvement and participation of the regions in the decision-making process and in determining all economic policy will be essential to prevent the repetition of past mistakes due to inadequate economic policy. Such an approach will also offer stronger guarantees the non-recurrence of marginalization or exclusion.

131. In addition to the economic policy incorporating the situation of the regions, measures shall be taken to change the mode of governance and, if necessary, fight corruption. Bad governance, cronyism and corruption are other processes that led to marginalization or exclusion (see *supra*).

---

<sup>121</sup> See namely concerning the socio-economic rights: ASF, *Economic, Social and Cultural Rights in Burundi: A Handbook for jurists and other Human Rights Defenders in Burundi*, September 2014, <http://www.asf.be/fr/blog/publications/perspectives-on-preventive-detention-in-burundi-putting-standards-into-practice/>

<sup>122</sup> TJRC-Kenya Report, vol. 4, p. 53: « *The Commission recommends that, within 12 months of the submission of this Report, the government formulate, adopt and implement a policy that deliberately targets the socio-economic development of historically marginalized regions identified by the Commission. The policy must include strategic development plans and budgetary allocations aimed at the economic and social development of marginalized communities* ».



## 2. ADDRESSING THE CONSEQUENCES

132. The analysis of the socio-economic indicators has highlighted the acute and persistent disadvantages suffered by Kasserine as well as the denial of access to services and rights. To redress the marginalization and exclusion suffered by Kasserine, not only does it take to formulate a coherent economic policy, but also *"to improve the quality of life, access to basic services, and connectivity of interior regions"*<sup>123</sup>. It is also the same approach adopted by the TJRC-Kenya with regard to the Kenyan context peculiarities<sup>124</sup>.

133. In its White Paper, the Ministry for Regional Development and Planning suggests a number of relevant measures to answer the disadvantages and deficits identified in Kasserine<sup>125</sup> including:

- **In economic development:**

- Adopt measures of economic incentives, namely in investments;
- Connect the underdeveloped areas to the developed areas;
- Enhance the archaeological and natural sites of in the interior regions and organize tours based on the diversification of hosting inns.

- **In infrastructures:**

- Develop an efficient (road and rail) transport network, particularly for economic opening-up;
- Improve and push the services of drinking water supply and sanitation system;
- Improve the Internet network (particularly to improve the access in key-locations such as schools, public areas...).

- **In healthcare:**

- Equal redistribution of public expenditure on healthcare;
- Increase the hospitals' capacities (number of beds and doctors) and grant the healthcare equipment upgrading;
- Consider ambulatory healthcare delivery to remote areas;
- Consider all the measures that shall improve the healthcare service quality, namely the incentives aiming at favouring the establishment of doctors in the most disfavoured areas;
- Design indicators to measure the healthcare service quality.

- **In education:**

- Consider measures that offer educational support to disadvantaged families;
- Create methods to facilitate the access to schools (ex : school transport)

---

<sup>123</sup> World Bank, "The Unfinished Revolution: Bringing Opportunity, Good Jobs and Greater wealth to All Tunisians", *Development Policy Review*, May 2014, p. 317.

<sup>124</sup> TJRC-Kenya Report, vol. 4, pp.53 and 67.

<sup>125</sup> MRDP, the White Paper, pp. 50 and s., pp. 77 et s. and pp. 119 and s.

134. These suggestions are lines of thought about the measures that may redress suffered marginalization and exclusion, that is to say the discrimination or disadvantage suffered by the region as well as the denied access to services and rights. Other measures may also be considered. For example, in education, we may consider measures that increase the number of schools/ number of teachers, design the trainings and the higher education institutions; promote research and development<sup>126</sup>.

135. Similarly, some **specific measures of gender perspective integration**, particularly to address the disadvantaged status of women, shall be considered and adopted (including in terms of access to jobs). The reports and studies have highlighted the close link between regional disparities and gender disparities (supra §§ 77 et 78). This perspective shall specifically be included in determining the measures aimed at redressing systematic marginalization or exclusion.

### **3. ADOPT A CALENDAR AND DETERMINE THE APPLICABILITY OF MEASURE**

136. It is primordial that the elaboration of measures to redress suffered marginalization or exclusion be accompanied by the elaboration of **a calendar**. The adoption of measures within reasonable deadlines translates the effective fulfilment of the law's objective of reconciliation. It is also relevant to determine the **authority (or authorities) and other stakeholders in charge of implementing** the proposed measures. Therefore, in its final report, the TJRC-Kenya has systematically indicated the proposed measures, the authority in charge of applying them and the deadline of their application.

137. The elaboration of a calendar and of the application mechanism is necessary to effectively address the suffered marginalization or exclusion.

---

<sup>126</sup> Deutsche Zusammenarbeit, *Regional Plan of Sustainable Development (REPSD)*, published by the GIZ in collaboration with the Office for the Central West Development (Kasserine), February 2015, p. 39.

## CONCLUSIONS

By extending the concept of "victim" to regions suffering from systematic marginalization or exclusion in Tunisia, the TJ law mandates the TDC not only to establish the truth on these situations, but also to ensure the treatment and non-recurrence of this marginalization or exclusion.

The elaboration of measures aiming at **addressing the causes and consequences of marginalization or exclusion suffered** by some regions in Tunisia shall follow an objective of reconciliation and non-recurrence. This includes (1) the exact establishment of this marginalization or exclusion's causes and consequences in order to adopt relevant, adequate and proportionate measures; (2) setting the victim-region at the heart of the debate and (3) guaranteeing the non-creation of new discriminations or resurgence of conflicts.

Taking into account these principles, some **measures** may be considered to redress the marginalization or exclusion suffered by Kasserine, including:

- 1) The adoption of a coherent economic policy and a change of the mode of governance;
- 2) The improvement of the road system, healthcare services, measures of academic support, development of (quantitative and qualitative) training programmes;
- 3) The integration of the gender perspective.

The design of these measures shall include the elaboration of a calendar and the nomination of the authorities and/or stakeholders in charge of their implementation.

## V. RECOMMENDATIONS

Given all of the aforementioned elements, the TFESR recommends the TDC to adopt the following measures:

- (1) Recognize that the region of Kasserine is "a region having suffered from systematic marginalization or exclusion", within the meaning of article 10, paragraph 3 of the TJ law;
- (2) Establish the truth on the suffered marginalization or exclusion;
- (3) For this purpose, conduct all the investigations and necessary studies to exactly determine:
  - 1) The causes of this systematic marginalization or exclusion;
  - 2) Their consequences including the disadvantages or discriminations suffered by Kasserine as well as the denied access to some services and rights;

- (4) **Beyond the particular situation in Kasserine,** establish the truth on marginalization or exclusion suffered by other regions;
- (5) For this purpose, conduct all the investigations and necessary studies to exactly determine:
  - 1) The causes of this systematic marginalization or exclusion;
  - 2) Their consequences including the disadvantages or discriminations suffered by the concerned regions as well as the denied access to some services and rights;
- (6) If necessary, pursuant to article 40 of the TJ law, extend the deadline for filing complaints and requests;
- (7) Recommend, as mandated, any measure:
  - 1) supporting the non-recurrence of marginalization or exclusion suffered by Kasserine and any other region;
  - 2) addressing the causes and consequences of marginalization or exclusion suffered by Kasserine and any other region;
- (8) Resort to the necessary expertise;
- (9) Declare admissible and recognize any further information relating to the region of Kasserine later submitted by the TFESR, including in terms of the measures to address the suffered marginalization or exclusion;
- (10) Within the framework of the proposed measures, take into consideration the constitutional principles relating to decentralization, positive discrimination and participatory democracy, as promulgated by the Constitution.

## **ANNEX 1 : EXTRACTS OF LEGAL AND CONSTITUTIONAL TEXTS**

Organic law n°2013-53 of 24 December 2013 on the establishment of the transitional justice and its organization, O.G., 31 December 2013, n°105, pp. 3655-3665

**Article 1:** In this law, Transitional Justice shall mean an integrated process of mechanisms and methods used to understand and deal with past human rights violations by revealing their truths, and holding those responsible accountable, providing reparations for the victims and restituting them in order to achieve national reconciliation, preserve and document the collective memory, guarantee the non-recurrence of such violations and transition from an authoritarian state to a democratic system which contributes to consolidating the system of human rights.

**Article 16:** An independent commission shall be established and shall be called the "Truth and Dignity Commission". It shall constitute a legal entity with financial and administrative independence, headquartered in the capital Tunis. Its sessions may be held anywhere in the territory of the Republic. The "Truth and Dignity Commission" shall be referred to hereunder as the "Commission."

It may also, if need be, transfer its headquarters to any other region in the territory of the Republic.

**Article 17:** The Commission's work shall cover the period extending from 1 July 1955 up to the issuance of this law.

**Article 40:** The Commission shall enjoy the following powers which shall enable it to complete its tasks:

- Have access to public and private archives, regardless of all restrictions contained in the applicable legislation;
- Receiving complaints and petitions related to the violations which may be accepted for one year as of the beginning of the Commission's activity, renewable for a period of six months maximum;
- Investigate all the violations stipulated herein using all the means and mechanisms it deems necessary while ensuring the defence's rights;
- Summoning every person whose examination or testimony it deems useful, and immunity shall not apply in this case;
- Taking all the necessary measures in collaboration with the competent services and

structures to protect the witnesses, victims and experts as well as all those it hears regardless of their position in relation to the violations stipulated herein in order to guarantee their security and protect them from incrimination and from attacks as well as to maintain confidentiality;

- Resorting to the public authority staff to execute its tasks related to inspection, investigation and protection;
- Requesting the administrative and judicial authorities, the public commissions as well as any other natural person or legal entity to provide it with the documents or information they have in their possession;
- Examining the lawsuits brought before judiciary committees as well as the judgments or decisions issued by them;
- Requesting information from official foreign authorities and non-governmental organizations in accordance with the relevant international conventions and treaties and gathering any information from the victims, witnesses, civil servants and other parties from other countries in coordination with the concerned authorities;
- Carrying out inspections in private and public places as well as searches and confiscating documents, movables and tools used in relation to the violations subject of its investigations, and construct a record for its activities. The Commission is empowered with the powers of judicial police taking into account the necessary procedural safeguards in this regards;
- Resorting to any procedure or mechanism which may contribute to revealing the truth.

**Article 43:** The Commission shall undertake the following tasks:

- 1- Draft recommendations and proposals related to the political, administrative, economic, security, judicial, media, educational and cultural reforms and the administration vetting and other recommendations and suggestions it deems appropriate to avoid the return to oppression and tyranny, to human rights violations and to misuse of public funds.
- 2- Suggest measures which can be taken to encourage national reconciliation and the protection of the rights of individuals, in particular women and children's rights as well as the rights of those with special needs and vulnerable groups.
- 3- Draft recommendations, proposals and measures that promote democracy and contribute to the establishment of the rule of law.
- 4- Establish a committee to be called "the Committee for Vetting Public Servants and Institutional Reform", whose composition and functioning is to be set by the commission's bylaws. The Committee undertakes the following tasks:
  - Propose practical suggestions to reform institutions that participated in corruption

and violations.

- Propose practical suggestions for vetting public administration and all sectors that require vetting.

The committee issues recommendations to the competent authorities, for exemption or dismissal or obligatory retirement of any individual that occupies one of the senior posts of the state, including judiciary posts, if it was proven that he/she:

- a) Submitted reports or information to the dissolved Constitutional Democratic Rally, or the political police, which led to harm or violation as prescribed hereof.
- b) Performed an intentional act resulted in a support or assistance to persons subject to the provisions of Decree number 2011-13 in looting public money.
- c) Proven to be responsible of committing violations as prescribed hereof.

**Article 67:** The Commission shall prepare the following reports on its activities:

1- Annual reports.

2- A comprehensive report covering the period from the Commission's establishment until the end of its tasks. This report shall include:

- The Commission's findings after verification and investigation,
- The identification of responsibilities,
- The reasons underlying the violations stipulated herein and the recommendations to ensure the non-recurrence of such violations in the future,
- The measures to be taken to encourage national reconciliation and the protection of the rights of individuals, in particular women, children, those with special needs, and vulnerable groups,
- The recommendations, proposals and measures that promote democracy and contribute to the establishment of the rule of law,
- The recommendations and proposals related to the political, administrative, economic, security, judicial, media, educational, cultural and other reforms it deems appropriate to avoid the return to oppression and tyranny, to human rights violations and to misuse of public funds,

The Commission's reports shall be submitted to the president of the Republic, the president of the legislative council, and the prime minister.

The reports submitted by the Commission shall be made public through its publishing in the Official Gazette of the Republic of Tunisia. The Commission should disseminate and distribute the result as widely as possible, and before it ends its work.

Constitution dated 1 June 1959

Chapter VIII. Local Authorities.

Article 59.

Municipal councils and regional councils manage local affairs according to the terms set by the law.

Organic Law n°89-11 dated 4 February 1989, relating to regional councils

**CHAPTER 1 – Definition and powers of the regional council**

**Article 1 – The governorate** is a **territorially-based administrative entity of the State**. It is a legal financially autonomous public authority, **managed by a regional council** and under the supervision of the Ministry for Interior.

[...]

**Art. 2** – the regional council shall address all the economic, social and cultural issues of interest to the governorate

**Art. 4** – the regional council shall manage the patrimony of the governorate in so far it is a public authority.

[...]

**Art. 6 – the regional council is composed of:**

**1- The governor: the president.**

2- Deputies elected in the divisions of the governorate: members.

3- The presidents of the governorate's municipalities: members.

4- The presidents of the rural councils as set out in article 49 of this law: members

[...]



## ANNEX 2: REGIONAL DEVELOPMENT INDICATOR

Table of variables elaborated by the Ministry for Regional Development and Planning relating to 4 thematic indexes

(Source: MRDP Report, *Regional Development Indicators*, Nov. 2012).

Dimensions	Sub- dimensions	Variables
<b>Knowledge Index</b>	Education	Pass rate in the Baccalaureate (year 2010).
		Enrolment Rate of the population aged between 6 and 14 years old (2010).
		Illiteracy Rate (year 2010).
	Communication	Rate of households enjoying Internet access (year 2007).
		Teledensity (landline and GSM) per governorate (year 2004).
<b>Employment Wealth Index</b>	Employment	Unemployment rate per governorate (year 2008).
		SME concentration (number of SME per 1 000 capita) (2009).
	Wealth	Poverty Rate (year 2005).
		Drinking water supply Rate (year 2010).
		Rate of household connection to sanitation network (2010)
		Number of cars per 1000 capita (year 2010).
<b>Health and Population Index</b>	Population	T.F.I (Total Fertility Index) (year 2009).
		Child mortality per 1000 births (year 2009).
	Health	Number of Doctors per 1000 capita (year 2008).
		Number of hospital beds per 100000 capita (year 2008).
<b>Justice and Equality Index</b>	Justice	Criminality Rate per 1000 capita (year 2009).
	Gender Equality	Difference between men and women's enrolment rate (2005).
		Difference between men/women activity rate (year 2010).

### ANNEX 3: BIBLIOGRAPHY

#### Tunisian Sources: Tunisian Ministry for Regional Development and Planning

MRDP, *The White Paper for Regional Development*, 2011:

[http://eeas.europa.eu/delegations/tunisia/documents/more\\_info/livreblanc\\_devreg\\_nov11\\_fr.pdf](http://eeas.europa.eu/delegations/tunisia/documents/more_info/livreblanc_devreg_nov11_fr.pdf)

MRDP Report, *Regional Development Indicators*, Nov. 2012:

[http://www.mdc.gov.tn/fileadmin/Conference\\_presse/Strat%C3%A9gie%20de%20d%C3%A9veloppement/Diagnostic%20strat%C3%A9gique/Indicateurs%20de%20d%C3%A9veloppement%20r%C3%A9gional.pdf](http://www.mdc.gov.tn/fileadmin/Conference_presse/Strat%C3%A9gie%20de%20d%C3%A9veloppement/Diagnostic%20strat%C3%A9gique/Indicateurs%20de%20d%C3%A9veloppement%20r%C3%A9gional.pdf)

MRDP, Tunisian Institute for Competitiveness and Quantitative Studies, *Regional Development Indicator, Comparative Study on the regional development in Tunisia July 2012* :

<https://www.fichier-pdf.fr/2013/03/23/tunisie-indicateur-developpement-regional/tunisie-indicateur-developpement-regional.pdf>

MRDP, *Measuring Poverty, Inequalities and Polarization in Tunisia (2000-2010)* (with the support of the African Development Bank and the World Bank), Nov. 2012

#### International Reports

World Bank, *"the Unfinished Revolution: "Bringing Opportunity, Better Jobs and Greater Wealth to All Tunisians"*, Development Policy Review, May. 2014.

<http://www.worldbank.org/en/country/tunisia/publication/unfinished-revolution>

Truth, Justice and Reconciliation Commission in Kenya, Final Report, 2013.

<http://digitalcommons.law.seattleu.edu/tjrc>

Reception, Truth and Reconciliation Commission in Timor, *Final Report*

<http://www.cavr-timorleste.org/chegaFiles/finalReportEng/11-Recommendations.pdf>

The European Union Council, *Joint Report of the Commission and the Council on Social Inclusion*, mars 2004,

[http://ec.europa.eu/employment\\_social/soc-prot/soc-incl/final\\_joint\\_inclusion\\_report\\_2003\\_en.pdf](http://ec.europa.eu/employment_social/soc-prot/soc-incl/final_joint_inclusion_report_2003_en.pdf)

GIZ, in collaboration with the Swiss Cooperation and the Central-West Development Office, *Regional Plan for Sustainable Development (RPSD)*, Feb. 2015

UNDP, *World Report on Human Development*, 1997

[http://hdr.undp.org/sites/default/files/reports/258/hdr\\_1997\\_en\\_complete\\_nostats.pdf](http://hdr.undp.org/sites/default/files/reports/258/hdr_1997_en_complete_nostats.pdf)

High Commissioner on Human Rights, *Report on the human rights approach to participation of persons living in poverty in decisions that affect their lives*, June 2013

<http://www.ohchr.org/EN/Issues/Poverty/Pages/ParticipationOfPersonsLivingInPoverty.aspx>

UNDP, World Report on Human Development, 1991,

[http://hdr.undp.org/sites/default/files/reports/220/hdr\\_1991\\_en\\_complete\\_nostats.pdf](http://hdr.undp.org/sites/default/files/reports/220/hdr_1991_en_complete_nostats.pdf)

UNESCO, *Reaching the Marginalized*, 2010,

<http://unesdoc.unesco.org/images/0018/001866/186606E.pdf>

## Studies

ASF, *Handbook for Lawyers, Jurists and other Human Rights Defenders in Burundi*, September 2014

<http://www.asf.be/fr/blog/publications/perspectives-on-preventive-detention-in-burundi-putting-standards-into-practice/>

G. S. GURUNG et M. KOLLMAIR, "*Marginality: Concepts and their Limitations*", IP6 Working Paper No. 4, 2005.

[http://www.nccr-pakistan.org/publications\\_pdf/General/Marginality.pdf](http://www.nccr-pakistan.org/publications_pdf/General/Marginality.pdf)

E. SCHMID and A. NOLAN, "'Do No Harm?' Exploring the Scope of Economic and Social Rights in Transitional Justice", *IJTJ*, vol. 8, 2014

A. RALLET, "*Economic Liberalization, Regional Development Issue and Institutional Routines: the Case of Tunisia*", *Region and Development Review* n°2 "*Economic Liberalization, Regional Development Issue and Institutional Routines: the Case of Tunisia*", 1995, [http://region-developpement.univ-tln.fr/fr/pdf/R2/R2\\_Rallet.pdf](http://region-developpement.univ-tln.fr/fr/pdf/R2/R2_Rallet.pdf)

F. ZIDI *Economic Policies and Regional Disparities in Tunisia: micro simulated General Equilibrium Analysis*, Ph.D. Thesis supervised by. X. RICHET, Univ. Sorbonne Nouvelle – Paris 3, 2012-2013.

<https://halshs.archives-ouvertes.fr/tel-00965133/document>