

Equality and Justice in Employment: A Case Study from Post-Revolution Tunisia

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Abstract

In 2013, women working in textile factories in Tunisia discovered that their employer had declared bankruptcy and left the country, owing them three months salary and social security payments. While they won their case against their former employer in court, these women remain in a precarious situation. Based on this case study, this article argues that efforts to support marginalised stakeholders to become proactive in seeking justice to ensure their enjoyment of employment and other basic human rights, requires challenging the entrenched structural causes at the root of their marginalisation and vulnerability. The article outlines how Avocats Sans Frontières works in fragile contexts to support people in vulnerable situations to become proactive justice seekers, and then analyses and explains the importance of the multiple vulnerabilities relevant to the case study. Finally, the article offers some ideas for supporting marginalised stakeholders to become proactive justice seekers.

Introduction

In post-conflict and fragile settings, laws, rules and standards may be partially or wholly ineffective in the face of the power dynamics that influence justice processes. Laws are regularly instrumentalised to the benefit of more powerful actors, and unenforceable official standards lead to power struggles and fear. When these unequal power relations are not counteracted by, or within, the justice system, that is, when laws are largely unenforced in practice, accessing justice by depending purely on a legal strategy will not address the inequalities that led to the problem. This is true even when a legal victory is achieved in an isolated case. Incorporating an understanding of the structural inequalities at the root of the problem into strategies to access justice can produce an effect that addresses the variety of problems stemming from structural inequality.

This article argues that efforts to support marginalised stakeholders to become proactive in seeking justice to ensure their enjoyment of employment and other basic human rights

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require challenging the entrenched structural causes at the root of their marginalisation and vulnerability. Section 1 defines access to justice and explains how *Avocats Sans Frontières* (ASF), an international non-governmental organisation, works in fragile settings to support traditionally marginalised people to become proactive justice seekers. This is illustrated in section 2 by the case of Tunisian women employed in textile factories who sought justice for labour rights violations. They won their case in court, but the root causes of their increased vulnerability have not been solved. Section 3 discusses the fluid nature of vulnerability and its association with specific contexts, in this case primarily to do with geographic and gender disparities in post-revolution Tunisia. Section 4 offers some ideas, based on current work within the Tunisian justice and labour sectors, for supporting marginalised stakeholders to become proactive justice seekers. The article ends by drawing some conclusions from the case illustration for improving access to justice.

1. Access to Justice Is the Right to Realise All Other Human Rights

Access to justice is a basic human right, comprising both the processes and the mechanisms that provide for a legal-based response to a problem.² Access to justice is required for the realisation of all other human rights. The normative framework for access to justice provides possibilities for the law to protect people who have few social, customary, political or financial means at their disposal. This is based on the Universal Declaration of Human Rights, Article 8, which states, “[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law,” and on the International Covenant on Civil and Political Rights and regional human rights treaties, such as the African Charter on Human and People’s Rights. Without access to justice, other basic human rights, such as the rights to work, to fair working conditions, and to an adequate standard of living, are rights without meaningful guarantees.

In transitional contexts, there are often serious failings in the effectiveness of the rule of law and consequently, in the guarantees for human rights. This can be due to a lack of state willingness and/or capacity to guarantee the provision of basic public services, including justice. In this environment, social tensions can run high and economic development can be challenging. Justice institutions are regularly used by powerful actors to advance their own interests at the expense of the general public (although this is not unique to countries in transition). This abuse perpetuates a culture of impunity, as the justice system is used as, and seen to be, a tool to exacerbate the oppression and marginalisation of people in vulnerable situations, increasing the social, political and economic inequalities in the country. In such situations, marginalised people are unlikely to seek justice to solve their problems or protect their rights. When laws, rules and standards are ineffective, overpowered by the social dynamics that guide the justice processes, justice is arbitrary and the power relations that rule the street are pervasive in the courtroom.

2 Stanton, S. and Paras, J., *The Obstacles People Living in Extreme Poverty Face in Accessing Justice*, ASF, 2012.

Transforming power dynamics requires transforming rules, standards and laws into a regulatory system that influences people regardless of their positions in society. Working to improve access to justice in a situation of extreme imbalances of power requires addressing the structural causes leading to these inequalities. This transformation can only happen if the people seeking justice see themselves as active stakeholders in this process. The key to the transformation is in their actions, both in the message those actions sends to others, and in the way they enable them to see themselves and their capacity to make and act on their decisions. If a justice seeker sees that she can meaningfully participate in the processes and systems that affect how she lives her life, she is more likely to trust these processes and systems, and more likely to make use of them in the future.

ASF has been working in post-conflict and fragile settings for over 20 years, developing an approach across all its activities, regardless of project objectives, to support people to become legally empowered to claim and realise their human rights. ASF's condition for implementing projects is that the people engaging with these initiatives become active stakeholders in the activities. There are two different ways to be stakeholders: reactive stakeholders depend on the will of others, doing what others ask or suggest; proactive stakeholders shape the actions, and see themselves as being in control of the process, anticipating and making their own requests. ASF's goal is to develop a situation in which people in vulnerable situations demand and participate, without discrimination, in justice mechanisms consistent with human rights standards:

Through meaningful and effective participation, people can exercise their agency, autonomy and self-determination (...) Conceived as a right, participation (...) gives people living in poverty power over the decisions that affect their lives, transforming power structures in society and creating a greater and more widely shared enjoyment of human rights.³

To achieve this, ASF works in partnership with national and international stakeholders, such as bar associations, civil society organisations and justice ministries, so that they can develop the justice mechanisms needed to challenge the structural causes of marginalisation and vulnerability of different groups and people in society.

2. The Case of Women Textile Factory Workers in Tunisia

In 2012, ASF started working with the *Forum Tunisien pour les Droits Économiques et Sociaux*⁴ on a project to apply a human rights framework to their work, including in Monastir with textile factory workers. With picturesque souks and hotel restaurants dotting the shoreline, Monastir is better known as the textile industry capital of Tunisia. The textile industry is one-third of Tunisia's industry sector and accounts for around one-quarter of exports. Twenty-six

3 Human Rights Council, *Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepulveda Carmona*, March 2013, UN Doc. A/HRC/23/36, Para 16.

4 In English: Tunisian Forum for Economic and Social Rights.

percent of all textile factories in Tunisia are found in Monastir, making up over three-fourths of factories in the region. These textile factories employ 27% of all people working in the Tunisian textile industry, and 84% of all factory workers in Monastir. Most of these factories are subcontractors manufacturing clothing for export.⁵ Subcontractors are near the bottom of the supply chain, perched precariously on the backs of their employees.

The textile industry has had numerous adverse effects on the region's people, including pollution from untreated chemicals draining into the water supply and coastal waters, impacting their health and living environment.⁶ With few opportunities for work outside the textile factories, people dependent on work from the textile industry are faced with the constant fear of losing their jobs, and feel unable to challenge their deplorable working conditions. The end of the Multi-Fibre Arrangement in 2005⁷ led to a decline in employment in the sector, from approximately 250,000 workers to around 179,000 in the period between 2007 and 2012.⁸ In addition to pushing so many people into unemployment, the loss of jobs pushed the remaining workers into an increasingly insecure position.

One day in early 2013, approximately 300 women who showed up for work at five factories owned by a Belgian textile group found the factory gates closed. They had not received salaries for more than three months, but kept coming to work with the hope that they would eventually be paid. They felt they had little choice, as many of them were the sole gainfully employed person in their families. Many were young women from the interior of the country where unemployment can reach up to 26%;⁹ they came to Monastir alone, lodging in dormitories provided by their employer, and sending money home to their families. Older women, who were worried that their child-rearing responsibilities and illnesses caused by years of factory work made them unappealing candidates for employment, did what they could to keep the jobs they had. They quickly learned that their employer had filed for bankruptcy, effectively and unlawfully terminating their employment, and had then left the country.

In June 2014, the lower court of Monastir¹⁰ convicted five Tunisian member companies of the Belgian textile group Jacques Bruynooghe Global (JBG) of fraudulent bankruptcy and

5 Hassine, M., "Violations des droits économiques et sociaux des femmes travailleuses dans le secteur du textile, étude de cas : la région de Monastir", FTDES, 2013, pp. 5–9.

6 FTDES, *Le désastre écologique de la Baie de Monastir*, May 2013, p. 11.

7 An international trade agreement under which smaller and poorer countries were guaranteed access to the world clothing market through a quota system, enabling them to develop textile industries.

8 See above, note 5, p. 5 ; and Agence de Promotion de l'Industrie et de l'Innovation, *Les Industries du Textile et d'Habillement en Tunisie, Année 2014*, 2014, p. 4.

9 Compared to 17.6% nationally, according to latest reliable data from 2012. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) with the Office de Développement du Centre-Ouest (Kasserine), *Plan régional de développement durable (PREDD) du Gouvernorat de Kasserine, document synthétique*, February 2015, p. 14.

10 *Tribunal de première instance de Monastir*. This was not a collective action, and there are over 300 individual cases, and thus no single case reference.

non-compliance with social legislation. Three hundred and eleven former employees of this association won their cases¹¹ and were awarded almost all of the indemnities they had sought: back pay, bonuses, and compensation for unfair dismissal, for a total of four million Tunisian dinars (approximately US\$2.032 million). This was the first time in Tunisia that a foreign company had been found guilty of fraudulent bankruptcy or had even lost a court case, resulting in widespread coverage in the national press.¹²

Now, over a year after the judgment was rendered, the affected workers have yet to see one dinar of the payment awarded them. JBG left Tunisia, and the justice seekers must go through further legal processes in an attempt to claim what the company owes them. For the former employees of JBG, access to the legal processes that provide a response to the problem has not meant that they have accessed an effective remedy. While the court provided a legal ruling saying that they were to be awarded back pay and damages, the limitations in administering justice mean the former employees have no effective remedy for the injustice they have faced. Effective remedy includes not only the necessary access to justice processes and mechanisms, but also ensuring that remedies are effective and legal with just and equitable outcomes. The end goal of access to justice is a positive change in the lives of the marginalised justice seekers via a reduction in the inequalities that caused their marginalisation, not a favourable court decision, and there is still work to be done. Continued efforts on the part of the justice seekers must be supported; but this support will only be effective if the support strategies recognise and address the root causes of their marginalisation and vulnerability.

3. Equal Access to Justice for Various Forms of Vulnerability

Not everyone is vulnerable at all times and in all situations. Vulnerability is tied to the context and there is no one-size-fits-all strategy for supporting marginalised people to access justice. The post-revolution Tunisian context in which these former employees are acting should be taken into account when working to effectively support proactive justice seekers.

Tunisians changed the course of their history when they told their corrupt leader to “*degage*” in 2010–2011. They did this by leveraging what they had: sheer numbers and the possibility to galvanise public opinion through their mass protests across the country. Their actions overpowered the ruling clique, who became unable to draw on their traditional sources of

11 Their lawyer was mandated by ASF, in the framework of a project funded by the European Union and in partnership with the FTDES.

12 For example, see: “After being arbitrarily dismissed, the latest development in the case of textile workers in Monastir”, *Almindhar* (in Arabic), available at: <http://almindhar.tn/%D8%A8%D8%B9%D8%AF-%D8%B7%D8%B1%D8%AF%D9%87%D9%85-%D8%A7%D9%84%D8%AA%D8%B9%D8%B3%D9%81%D9%8A-%D8%A3%D8%AE%D8%B1-%D8%AA%D8%B7%D9%88%D8%B1%D8%A7-%D8%AA-%D9%82%D8%B6%D9%8A%D8%A9-%D8%B9%D8%A7%D9%85%D9%84>. The court’s decision would not have been possible without the support of the members and employees of the Monastir section of the FTDES, who transcribed each of the 311 judgments so that they would be valid for enforcement proceedings. It took two FTDES members working full-time for three months in close cooperation with the court and the plaintiffs’ lawyer to complete the task.

power. Opaque, corrupt and undemocratic ways of running the institutions that rule society can be useful for asserting power over daily interactions, but may be less effective in dealing with mass unplanned demonstrations. But increased agency, or capacity to act, is not always sufficient to change power dynamics, especially abusive ones, when one side has more access to economic, social or political resources than the other. The sources of power Tunisians drew upon to get rid of a dictator are not necessarily those they need to reconstruct their country and build institutions capable of guaranteeing the rule of law. Mass protests can be effective in tearing down an institution, but less so in constructing one.

Since Tunisia's 2010–2011 revolution, the transition to democracy has been marked by democratic elections and a new Constitution, as well as by terrorist attacks, political assassinations of human rights and democracy advocates that have yet to be adequately investigated and prosecuted, and socio-economic living standards that have not improved and are widely perceived to have worsened.¹³ Post-revolution Tunisia finds itself in a situation in which institutions, justice and others, are experiencing cognitive dissonance. For example, Tunisia's previous government had ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) with reservations. Soon after the revolution, the transitional government lifted reservations to Articles 9, 15, 16 and 29 of CEDAW. The changes entered into force in 2014, after the UN was formally notified.¹⁴ These changes relate to guaranteeing women's rights to nationality, and women's rights in marriage and family relations, including property ownership. However, this unprecedented step in the Middle East and North Africa region was diluted by the government's declaration that Chapter I of its new Constitution (Tunisia's official religion is Islam) takes precedence over CEDAW, a problematic declaration under international human rights law. Lifting the reservations is only a first step toward ensuring that the law protects everyone, including women, in Tunisia, as proactive participation can only happen if women know their rights, know how to claim them, and feel confident in doing so.

Further, although official rules have gone through changes, many individuals in positions of power, even and maybe especially at the local levels, have not. For example, law-decree n° 2011–120 from November 2011¹⁵ was meant to fight public and private sector corruption by creating a national commission to fight corruption, and guaranteeing improved administrative procedures, as well as codes of conduct and precise instructions and conditions for public servants, among other initiatives. But corruption remains a part of daily life in Tunisia, as justice institutions and actors have not prioritised fighting impunity for corruption. The

13 Verdier, M., "Les ouvrières de Ksar Hellal, en pleine désillusion après la révolution tunisienne", *La Croix*, 23 October 2014, available at: <http://www.la-croix.com/Actualite/Monde/Les-ouvrieres-de-Ksar-Hellal-en-pleine-desillusion-apres-la-revolution-tunisienne-2014-10-23-1225977>.

14 United Nations Depository Notification, *Tunisia: Withdrawal of the Declaration with Regard to Article 15(4) and of the Reservations to Articles 9(12), 16(C), (D), (F), (G), (H) and 29(1) made upon ratification*, April 2014, available at: <https://treaties.un.org/doc/Publication/CN/2014/CN.220.2014-Eng.pdf>.

15 Interim President of the Republic, *Décret-loi cadre n° 2011–120 du 14 novembre, relatif à la lutte contre la corruption*, available at: www.legislation-securite.tn.

penal code regarding private sector corruption has yet to be changed. Even if the justice institutions officially support those who are trying to prevent fraudulent bankruptcy resulting in unpaid wages and social security contributions, these crimes can continue, and are generally perceived to have worsened,¹⁶ so long as other political-economic actors overrule the decisions *de facto*,¹⁷ if not *de jure*. This problem can also be examined in terms of issues of inequality; people who are illiterate or have just a primary formal education are more than twice as likely as those with a secondary or higher level of formal education to have experienced an act of corruption in the past year. Those who earn less than 800 dinar per month (approximately US\$405 per month) are around two and a half times more likely than those earning more than 800 dinar per month to have experienced an act of corruption (the former employees of JBG earned an average of 400 dinar per month).¹⁸

There is also political-economic confusion, with direct tension between so-called economic development and labour rights protection. High unemployment in post-revolution Tunisia has also led to a situation in which people working in textile factories feel unable to stand up for their labour rights. Since 2007, eight out of ten women working in the textile industry in Monastir have become unemployed.¹⁹ The end of the Multi-Fibre Arrangement is only one reason factories are leaving; since the revolution, companies have left Tunisia citing a lack of security. In some cases, the employees were not given any warning about these closures.²⁰ On other occasions, strikes and sit-ins by workers in factories were used as reasons to close factory doors, although labour representatives dispute this as a reason for closing, arguing that the decision to close had already been taken for other reasons and that the strikes were a useful excuse. Instead of addressing the reasons that compelled the workers to demand their rights, the local and national authorities have urged the workers to stop striking for the sake of the national economy.²¹

16 Association Tunisienne des Contrôleurs Publics, *La petite corruption: le danger banalisé. Etude exploratoire sur la perception de la petite corruption en Tunisie*, 2015, p. 13.

17 *Ibid.*, pp. 92–94. Sixty-seven percent of people surveyed felt that the judicial powers did not do enough to combat corruption, although 74% felt that the justice system has an important role to play in fighting corruption. Ninety-eight percent of respondents believe that strictly enforcing the law is necessary to fight corruption.

18 *Ibid.*, pp. 62–63. Forty-one percent of those who earn less than 400 dinar per month experienced an act of corruption in the past year, compared with 38% of those earning between 401–800, 16% earning 801–1200, 3% earning 1201–1600, and 2% earning over 1600.

19 Losson, C., “Ouvrières du textile en Tunisie : ‘la seule façon d’améliorer leur sort, c’est d’informer’”, *Liberation*, 28 March 2015.

20 For example, Tuniscope, “DRÄXLMAIER ferme son usine à Siliana, 3800 ouvriers se retrouvent au chômage”, 9 December 2014, available at: <http://www.tuniscope.com/article/58481/actualites/tunisie/draxlmaier-siliana-240416>.

21 Le Monde with AFP, “En Tunisie, une grande usine ferme en raison de ‘sit-in anarchiques’”, *Le Monde*, 10 February 2012.

While the workers are in the most vulnerable situation in this context, the state is also at a disadvantage when dealing with investors, who increasingly threaten to take their factories to Morocco or Asia, where they are able to pay workers even less. There are many laws that support investors in Tunisia, especially international investors, including no taxes for the first 10 years of activity in Tunisia.²² While laws to encourage investment are implemented consistently, the laws protecting workers and residents near the factories are not so carefully enforced. Textile factories dump water containing untreated chemicals into the water supply and into the sea, even though there is a clear legal framework that requires textile factories to treat their used water.²³ Within the factories, the workers are not provided with gloves or face masks when handling hazardous chemicals.²⁴ Challenging the structural causes leading to workers' marginalisation should take the legal framework and political-economic factors into account.

The employees who worked for the JBG factories were not just at a disadvantage in relation to their employer because of international political economic factors and the decisions taken on the national level, but also because of historical injustices that put people from the interior regions of Tunisia at a disadvantage in relation to Tunis and the coastal areas. This is especially the case for Monastir, birthplace of Habib Bourghiba, Tunisia's first president, and Sousse, birthplace of Zine El Abidine Ben Ali, Tunisia's second president and dictator who was ousted in the revolution. It is not by chance that more than half of the textile factory workers in Monastir come from the interior of the country, from the central-west, south-west and south-east regions of Tunisia.²⁵

The inequalities among Tunisia's regions are so entrenched that the 2013 law guiding the country's transitional justice process expands the definition of a "victim" to regions that have suffered systematic marginalisation or exclusion.²⁶ The need for this definition and the recognition it affords, to be included in transitional justice processes, stems from political-economic policies over the decades in Tunisia that favoured the coastal regions, even as official acknowledgements,²⁷ both before and after the revolution, were made that these inequalities should be addressed. Basic infrastructure, such as access to water, health and educational services that are provided in the coastal regions are largely insufficient in the interior and

22 Invest in Tunisia, "Législation incitative", available at: www.investintunisia.tn/Fr/legislation-incitative_11_24.

23 See above, note 6, p. 11.

24 See above, note 5, p. 29.

25 *Ibid.*, p. 22.

26 *Loi organique* n° 2013-53 from 24 December 2013, which mandated the Truth and Dignity Commission of Tunisia to establish the truth about the human rights violations committed between 1955 and 2013, contribute to national reconciliation, provide guarantees of non-recurrence and contribute to building the rule of law in Tunisia.

27 For example, Ministry of Regional Development and Planning, "Measuring Poverty, Inequalities and Polarization in Tunisia (2000-2010)", 2010.

west of the country.²⁸ In this case, concepts of marginalised or excluded regions are strongly related to social and economic development.²⁹ This marginalisation was not necessarily caused by formal discrimination, but rather was:

[E]mbedded in social, economic and political processes that restrict life chances for some groups and individuals. Marginalisation is not random. It is the product of institutionalised disadvantage – and of policies and processes that perpetuate such disadvantage.³⁰

The situation in the governorate of Kasserine illustrates the consequences of structurally excluding Tunisia's interior regions;³¹ its regional development index is 0.16 compared to 0.76 in the capital, Tunis;³² and in 2012, its unemployment rate was 26.2% compared with the national average of 17.6%.³³ The infrastructure distribution rate for potable water and connections to improved sanitation facilities in the houses and schools of Kasserine stands at 50%, compared to 90% in Tunis.³⁴ There are similar disparities for health services, education, and internet access.³⁵ This is strongly correlated with the rates of people living in poverty, which is 27% in Kasserine compared with 4.6% in Monastir and 7.6% for Tunisia as a whole.³⁶ These inequalities have been exacerbated over the years. In 2010, the regions in the centre-west (interior) had a rate of people living in extreme poverty that was 13 times higher than the rate in Greater Tunis, up from six times higher in 2000.³⁷

The extreme centralisation of power in Tunisia prior to the revolution, compounded by systemic corruption, contributed to the exacerbation of these inequalities among regions.³⁸ Decisions were taken exclusively in Tunis, and regional development plans were imposed without adaptation to the realities of the regions. The people and institutions responsible for decisions could

28 Ministry of Regional Development and Planning, *Indicateur de développement régional: Étude comparative en terme de développement régional de la Tunisie*, Institut Tunisien de la Compétitivité et des Études Quantitatives, 2012, p. 17.

29 FTDES, *Demande Relative à l'établissement du Statut de 'région-victime'*, with technical assistance from ASF, 2015, Para 15.

30 UNESCO, *Reaching the Marginalized*, 2010, p. 135.

31 See above, note 29, Para 15.

32 See above, note 28, p. 4.

33 See above, note 9, p. 14.

34 See above, note 28, p. 36.

35 See above, note 29, Paras 70–76.

36 See above, note 9, p. 14.

37 *Ibid.*

38 See above, note 29, Paras 109–113.

not be held to account by the people most affected by those decisions.³⁹ The effects of these policies were not unintended; the development plans promoted internal migration from the interior regions to benefit businesses on the coast. Rather than being modernised along with the coastal regions, the interior regions' main function was to provide cheap labour for low-status and low-paid occupations. Purposefully marginalising people within their regions of origin led to an influx of internal migrants to the coastal areas, and created new types of exclusion in the form of separated neighbourhoods, in which residents from the interior were unable to fully benefit from the services and infrastructure the coastal regions offered to others.⁴⁰

In addition to the horizontal inequalities across regions, the interior regions are also marked by a marginalisation of women that is more common than in other areas, largely excluding women from the formal labour market and leading to a higher rate of unemployment than men. While the average unemployment rate for women nationally was 25.6% in 2012, it reached 50% in the south and east interior regions.⁴¹ In the centre-east region, in which Monastir is located, the unemployment rate among labour force participants for women was 16%, compared to 11% for men; in the south-west interior, the rate of women's unemployment reached 44%, compared to 20% for men.⁴² The interior regions represent the worst of an already difficult situation, as only 26% of women actively participated in the labour force in 2012, compared to 70% of men.⁴³ This rate does not include unremunerated domestic workloads, which are 40% greater for women than men, accounting for an estimated 47% of GDP in 2006.⁴⁴ The high rate of women's unemployment and exclusion from remunerated work correlates with the marginalisation of the interior regions on the whole, as "women's ability to take advantage of labour market opportunities may be enhanced to a greater extent than that of men by expansion of public infrastructure in rural locations."⁴⁵ The multiple forms of marginalisation that adversely affected women from the interior regions meant that they were at a disadvantage in society and in the economy, and especially in relation to their employer, even before they arrived in Monastir. Any strategy for challenging structural issues should therefore address the geographic and gender inequalities that put many textile factory workers in a vulnerable situation.

It was not by chance that the factory jobs at JBG were largely occupied by women, the most geographically, socially and economically marginalised segment of the workforce. In this

39 *Ibid.*, Paras 100–102.

40 Ministry of Regional Development and Planning, *Livre blanc pour le développement régional*, 2001, pp. 42–43.

41 Triki, S. and Touiti, H., *Réglementation du travail et participation des femmes au marché du travail en Tunisie*, 2013, GIZ, p. 6.

42 *Ibid.*

43 *Ibid.*

44 Gribaa, B. and Depaoli, G., *Profil Genre de la Tunisie*, European Union and Tunisian Government, 2014.

45 Kabeer, N., *Women's economic empowerment and inclusive growth: labour markets and enterprise development*, SIG Working Paper 2012/1, 2012, p. 45.

sense, the former employees of JBG are emblematic of over half of the women in the world who work for their incomes in vulnerable employment.⁴⁶ “Gender segregation of the labour market reflects a variety of gender-related inequalities in women’s capacity for choice and agency”, including the constraints they face domestically, socially, professionally and legally.⁴⁷ This reflects, for example, women’s lower levels of literacy and formal education, as well as lower levels of professional training, compared to men. In industries where women are the majority of workers, the average monthly salary is half that of men in the sector.⁴⁸ The structure of the labour market helped to create a situation that allowed the management of JBG to think they could act abusively with impunity, and caused the workers in the factories to feel that they could not speak out or defend their rights.

Although the former employees of JBG were technically not informal or temporary workers, common practices in the industry are to dismiss workers just before they reach four years in the same position, or to eliminate their positions; the ones who are considered lucky get rehired by a sister company for a similar job.⁴⁹ This is done to avoid having to provide the benefits associated with permanent contracts.⁵⁰ Because these workers are not considered to have permanent employment status under Tunisian law, they have less access to state-sponsored safety nets such as unemployment benefits.

A person’s situational vulnerability depends on political-economic contexts, geographic origin and/or gender, and should be taken into account when working to support marginalised people seeking justice. They are not vulnerable in all places or all the time, nor is every issue a priority. Their willingness and ability to act on the issues that most concern them is what will make the difference in achieving justice that affects the entirety of the problem.

4. From Theory to Practice: Actively Seeking Justice

Post-revolution Tunisia provides various examples of how its vibrant civil society is taking action to transform power dynamics, informing ASF’s work, and creating possibilities for a more responsive justice system that provides equal access to justice. This section identifies and analyses some activities relevant to the case of the JBG workers that may be undertaken in an attempt to transform rules, standards and laws into a regulatory system by taking into account inequalities and structural causes of marginalisation. The section also draws some conclusions about how to use such a regulatory system to transform power dynamics.

46 Desai, R., *Women’s Work Counts: Feminist Arguments for Human Rights at Work*, Programme on Women’s Economic, Social and Cultural Rights, 2015, p. 5.

47 See above, note 45, pp. 51–52.

48 See above, note 41, p. 8.

49 See above, note 5, p. 13.

50 These practices are not unique to Tunisia.

Transitional justice activities carry lessons for the justice system as a whole. Women were underrepresented in the transitional justice national consultations and there were complaints of an overrepresentation of participants who supported the political party in power.⁵¹ The UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence:

*[L]earned that consultations had been unable to bridge the gap between the urban coast and the interior of the country. As such, they seem to have tracked the status quo ante that the very transitional justice process is intended to address.*⁵²

These shortcomings were recognised, and during the technical committee’s regional dialogue with victim representatives, these representatives recommended that the approach adopted should be participative, including representatives from all segments of civil society, and prioritising equality between men and women throughout all process stages. The same recommendations were made by representatives from civil and political society, professional associations, and political parties.⁵³ This process seems encouraging, as both participants and organisers actively and formally recognise the importance of carrying out transitional justice activities using a human rights-based approach, and have noted precisely where and how improvements can be made. The proactive participation of marginalised rights-holders in shaping these transitional justice processes can inform other types of justice processes.

One way would be to provide spaces for the former employees to explain how they got into a position in which they felt it necessary to work for unpaid wages; this can contribute to understanding how the formal equality provided for in Tunisian law does not translate into substantive equality for many, enabling abuse. Substantive equality is about ensuring that laws, policies and practices alleviate the disadvantages of certain groups,⁵⁴ and can be used as a guideline for formulating legal and other advocacy strategies, as it “requires decision-makers to hear and respond to the voice of women, rather than imposing top-down decisions.”⁵⁵

One such space could be within Tunisia’s largest labour union, the Union generale des travailleurs tunisiens (UGTT). Only in 2000 did the UGTT’s commission on women workers become a formal body. Even in the last central congress in 2011, women union representatives made

51 Human Rights Council, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff*, UN Doc. A/HRC/24/42/Add.1, July 2013, Paras 30–33.

52 *Ibid.*, Para 33.

53 Ministry of Human Rights and Transitional Justice, Republic of Tunisia, *Le dialogue national sur la justice transitionnelle en Tunisie*, October 2013, pp. 15 and 21.

54 Committee on Economic, Social and Cultural Rights, *General Comment 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights*, UN Doc. E/C.12/2005/3, 2005, Para 7.

55 Fredman, S., “Engendering Socio-Economic Rights”, Legal Research Paper Series, Paper No. 54/2010, University of Oxford, 2010, p. 16.

up only 4% of the over 500 *congressistes*,⁵⁶ even though women comprise approximately 40% of labour union members.⁵⁷ The biggest voice representing the rights of workers in Tunisia does not currently provide sufficient space or means for its members in extremely vulnerable situations to advocate for their specific needs. Part of substantive equality is about pushing social institutions to change, “rather than expecting the individual to conform”.⁵⁸ If the power relationships that led to this situation are to be changed through better access to justice, there is also work to be done within and with the structure of one of Tunisia’s largest and most central labour rights advocate.

Scholars have found that progressive social policies on violence against women were primarily driven by autonomous feminist movements “because they articulate social group perspectives, disseminate new ideas and frames to the broader public, and demand institutional changes that recognise these meanings.”⁵⁹ Improving the former JBG employees’ opportunities to realise their full range of human rights through improved access to justice can take inspiration from this analysis on how feminist mobilisation helped bring about social change (in this case, in relation to violence against women). The scholars pointed to the movement’s ability to raise public awareness about the position and experience in society of women as a group. Unlike issues such as maternity leave or childcare, ending violence against women requires challenging gender roles rather than accepting them. In addition, autonomous women’s groups do not need to fight within broader institutions (labour unions and political parties, for example) to get their concerns recognised as a priority.

There are also alliances to be made among civil society actors, with women’s organisations well placed to work with the UGTT’s women’s commission to push women’s employment rights to the fore. These alliances can help ensure that the priorities of the women’s commission are not pushed aside by other UGTT priorities, so that the UGTT can advocate effectively for progressive social policies that address the specific and different needs of women, including women from marginalised regions, working in the textile factories. A recent analysis of court cases related to sex discrimination across nine countries found that workers were likely to win their cases if they could afford the time, money and stress that the lengthy legal proceedings entailed.⁶⁰ While the contexts analysed in that study present different sorts of challenges to those in transitional Tunisia,⁶¹ improving access to justice for former JBG employees requires more than just a good legal strategy; it also requires the accompanying

56 See above, note 44, p. 9.

57 See above, note 41, p. 8.

58 See above, note 55, p. 13.

59 Htun, M. and Weldon, S.L., “The Civic Origins of Progressive Policy Change: Combating Violence against Women in Global Perspective, 1975–2005”, *American Political Science Review*, Vol. 106, 2012, p. 552.

60 Hodges, J., “Eliminating Sex Discrimination at Work: Recent Court Decisions since Beijing+20”, *UNRISD Think Piece*, 26 May 2015, available at: <http://www.unrisd.org/beijing+20-hodges>.

61 The countries considered were Australia, Canada, Finland, France, Japan, Kenya, Spain, the UK and the US.

psychosocial and economic support. While donors consider the direct costs related to taking a case to court to be acceptable, it is rare that complementary psychosocial and economic support services for justice seekers are funded as an integral part of supporting access to justice. It is also infrequent that funding for legal aid providers covers expenses of the execution phase. The trend of favourable decisions in sex discrimination cases “raises the need to develop new measures or make better use of existing procedures that empower third parties to bring suit for justice against workplace discrimination.”⁶²

As the justice sector is being reformed, Tunisian civil society is in a unique position to contribute to the decisions that are being taken. For example, the *Reseau d’Observation de la Justice* (ROJ, or Justice Observation Network) is working to promote and ensure constructive, inclusive and proactive engagement with key stakeholders in the justice sector throughout the reform process.⁶³ Because this network provides an independent and apolitical space within which to examine issues and exchange ideas among multiple actors, the resulting recommendations garner support from diverse sectors of the justice system. The ROJ is an excellent example of how civil society can address multiple and complicated dysfunctions, and draw attention to disparities among those using justice mechanisms. It could be useful to implement a similar mechanism to closely examine how laws are enforced differently in the industrial sector, and the impact this has on workers’ rights and the environment.

Conclusion

The argument has been made here that efforts to support marginalised people to become proactive stakeholders seeking justice, in order to ensure their enjoyment of employment and other basic human rights, requires challenging the entrenched structural conditions at the root of their marginalisation and vulnerability. Ensuring that justice seekers are proactive stakeholders in efforts to improve access to justice requires a focus on meaningful participation that takes into account an understanding of the situation that put the justice seekers in a vulnerable position. The case of the JBG workers is a useful illustrative example, as more than a year after the former JBG employees won their case, they are still living in poverty, many without new jobs or social safety net benefits on which they can rely. Some have become labour rights activists and have not given up on pursuing avenues for compensation.⁶⁴ This is an encouraging sign for the transformation of laws into a regulatory system, as this transformation can only happen if the justice seekers become active stakeholders in the justice process, feeling comfortable making appropriate demands, and taking action. One social

62 See above, note 60.

63 This network is made up of the National Order of Tunisian Lawyers (*ONAT* in its French acronym, the national bar association), the Tunisian Human Rights League and ASF. The network’s activities are funded by the Open Society Foundations.

64 For example, see Merminod, I. and Baster, T., “The women fighting for Justice and Against Violence in Tunisia”, *Equal Times*, 8 March 2015, available at: <http://www.equaltimes.org/the-women-fighting-for-justice-and?lang=en#.VfBOy5caPiI>.

media video shows some of the former employees demanding local authority intervention to ensure that they get back the salaries and indemnities they are owed.⁶⁵ These justice seekers may be in a situation of vulnerability, but they send a strong message that they are working to change the existing unequal power relations.

The ability to challenge the inequalities they face as women, many of whom are from the interior of the country and dependent on the textile industry for their livelihoods, is sometimes called “legal empowerment”, although there is no universal agreement as to its definition or what it entails.⁶⁶ Legal empowerment can refer to the results of the legal process, but its relevance to ASF is how these results are achieved. ASF understands legal empowerment to be the process of supporting justice seekers to acquire the ability to make choices by using the law, and legal mechanisms and services. ASF’s goal is to challenge abusive power relationships so that people can realise the full range of their human rights. This is based on a useful definition of empowerment by Naila Kabeer. Kabeer’s definition of empowerment:

[R]efers to the processes by which those who have been denied the ability to make choices acquire such an ability. In other words, empowerment entails a process of change. People who exercise a great deal of choice in their lives may be very powerful, but they are not empowered in the sense in which I am using the word, because they were never disempowered in the first place.⁶⁷

While there are many different approaches to facilitating the active participation of justice seekers, ASF bases its actions on a human rights approach, both in terms of formulating goals and in terms of how to reach those goals. Through its experience, ASF has found that any effective approach must be based in human rights principles, and any support given should be done with the understanding that access to justice is meant to enable people to have control over their lives, rather than deciding for them how their lives should be improved. Instead of approaching a problem with a toolkit,⁶⁸ a more empowering approach is to ask the justice seeker what the problem is and what her ideal solution would be. Strategies, both legal and otherwise, are based on the goals of the justice seeker. Providing both legal and other types of support enables her to understand the possibilities and advantages of one strategy over another, and decide which strategy she will apply, if any. This approach is especially important for legal NGOs, as a positive legal response may not actually achieve the justice seeker’s goal. Confusing a positive legal decision with achievement of the justice seeker’s goal may be

65 “The national front in Monastir follows and supports the movement of workers in JB, 4 July 2013, (video in Arabic), available at: <https://www.facebook.com/video.php?v=10200619258782345>.

66 See the *International Journal of Human Rights*, Vol.19, No. 3, 2015, for various discussions on legal empowerment in transitional settings.

67 Kabeer, N., “Resources, Agency, Achievements: Reflections on the Measurement of Women’s Empowerment”, *Development and Change*, Vol. 30, 1999, p. 381.

68 See, for example, Sépulveda Carmona, M. and Donald, K., “Beyond legal empowerment: improving access to justice from the human rights perspective”, *The International Journal of Human Rights*, Vol. 19, 2015, p. 244.

well-intended, but it is problematic, both in terms of human rights and in terms of a lawyer's obligations to her client.

The process for the workers in JBG factories to become legally empowered, using the law and legal mechanisms and services to acquire the ability to make choices, is the process needed to address the power imbalances between them and their former employer. The ideas put forward in this article share the potential to create a situation in which the ability of traditionally marginalised rights-holders to make choices is strengthened, deriving from their active participation in the process.