



The Kasserine "Region as a Victim" Petition: A first in transitional justice in Tunisia



Presentation

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ABSTRACT

With the aim of supporting the implementation of the transitional justice process and providing effective support to victims from the authoritarian regime, the Tunisian Forum for Economic and Social Rights (FTDES, *Forum Tunisien pour les Droits Economiques et Sociaux*), with the support of Avocats Sans Frontières (ASF), is bringing the symbolic case of the Kasserine Governorate, as “region as a victim”, before the Truth and Dignity Commission (IVD, *Instance Vérité et Dignité*). The petition was submitted on 16 June 2015 to the Commission’s Tunis office.

State development policies implemented in Tunisia since its independence, combined with governance deficiencies specific to Tunisia, have had the effect and goal of strengthening some regions at the expense of others.

Fundamentally based on tourism and exports, this policy was aimed at coastal regions. Several regions, referred to as interior regions, have not benefitted from the economic growth from the coastal regions. On the contrary, they have declined and been stymied as a result of these policies.

Consequently, they have been severely marginalised and excluded at the economic, social and human levels, thereby reinforcing the rupture between the regions and the feeling of injustice that gave birth to the first popular movements in the mining basin in 2008, which ignited the first sparks of revolt in 2010 in the Centre-West region. The aftermath of the events that led to the Revolution of 14 January 2011 are now an integral part of the country’s history.

As of today, the new Tunisian Constitution (art. 13) establishes the principle of positive discrimination, which allows the legislator to grant more rights

to regions that have long been marginalised, in order to correct a de facto inequality recognised by the Constituent Assembly.

The process of transitional justice, initiated in 2013, is the best route for achieving this redress and appeasement. It aims to seek and establish the truth in light of a difficult legacy marked by corruption and nepotism, and adopt measures intended to redress damages suffered and guarantee that such violations and discrimination are not repeated, thereby addressing the structural factors that led to the Revolution.

By filing the petition relating to the establishment of the status of “region as a victim” of Kasserine to the IVD, FTDES and ASF wish to place the regional disparities created in the past back at the heart of the debate by calling for them to be fully integrated into the framework of the transitional justice process.

This initiative in no way claims that the region of Kasserine has been the only victim of systematic marginalisation or exclusion by the authorities.

Rather, it builds on willingness for national reconciliation, collective memory and transition towards a democratic regime ensuring full respect for human rights for all, in accordance with the law on transitional justice¹.

This petition invites the IVD to consider more broadly the situations of other regions in Tunisia so that transitional justice may also play a driving role in the development of those regions.

¹ <http://www.legislation-securite.tn/fr/node/32961> (in French).

THE STAKEHOLDERS

The Tunisian Forum for Economic and Social Rights:

The FTDES is a Tunisian non-governmental organisation created in 2011. Its purpose is to defend the economic and social rights of groups of people at the national and international levels. The FTDES aims, in particular, to: reinforce the role of civil society in the development of perspectives in the economic and social domains in order that they may be anchored in national and regional priorities; call for a review of the role of the State in the redistribution of revenue and goods and looking after public services so that they are made available to all regions. Moreover, it works to combat corruption and protect public assets by monitoring the good management of public financial resources. The FTDES has a central office and local branches in the towns of Kairouan, Kasserine, Monastir and Gafsa.

Avocats Sans Frontières:

Avocats Sans Frontières (ASF) is an international NGO based in Brussels, whose main objective is to contribute to the achievement of a just and equitable society in which the law is at the service of the most vulnerable groups. ASF has been active in Tunisia since February 2012 and aims at building the capacity of civil society actors working in the sectors of legal aid, transitional justice, economic and social rights, in order to help them improve the quality of their services and the effectiveness of their action, and to participate in the justice reforms underway in Tunisia.

Truth and Dignity Commission:

The IVD was created as part of the process of transitional justice in Tunisia. Its work covers the period from 1 July 1955 to 24 December 2013. According to the law on transitional justice, it is essentially tasked with identifying human rights violations committed during the aforementioned period, determining those responsible and establishing the truth within the framework of the objectives of transitional justice legislation, contributing to national reconciliation, offering assurances of non-repetition of past acts and assisting with establishment of the rule of law.

I. THE CHALLENGE: TO PROMOTE TRANSITIONAL JUSTICE IN TUNISIA

The law on transitional justice has given form to the political will to re-establish balance between the regions through the introduction of the concept of “region as a victim”, by mandating the IVD to shed light on the past, draw out the truth and propose reparation actions and recommendations with a view to ensuring that the abuses and injustice revealed are not repeated.

Thus, the processing of the Kasserine region petition is entirely legitimate in the context of transitional justice. The transitional justice process, with its mission of national reconciliation, must give the necessary attention to the analysis of violations suffered and

provide victims, in the broad sense that the law defines, with truth about the past, recognition of the status of victim and therefore the injustice suffered, but also adequate reparation with a view to bringing about social peace.

Transitional justice plays a decisive role in the establishment of a democracy that respects the rights of all its citizens and guarantees them a life where social justice and dignity translate into concrete development plans adapted to both their resources and their needs. By processing this case, the IVD is putting the social and economic issues that were at the origin of the Revolution back on the political agenda.



Mandate of the IVD

The petition submitted to the IVD is intended to provide a key-example of a “region as a victim” in Tunisia, within the meaning of Organic Law No. 2013-53 of 24 December 2013, namely “any region having suffered systematic marginalisation or exclusion”. The Commission is being asked to recognise that the region of Kasserine qualifies as a “victim” as defined in the law.

The IVD, in accordance with its mandate, should therefore look for the causes and consequences of the marginalisation or exclusion suffered by Kasserine. Taking into account the Tunisian context, it should suggest appropriate measures to redress this situation and ensure that it will not happen again.

II. WHAT IS A “REGION AS A VICTIM”?

Article 10 of the transitional justice law defines “the victim” by reference to damage suffered by a natural person, a group of persons or a legal entity following a “violation committed against him/her/it within the meaning of the [...] law”. Paragraph 3 of this same article specifies that “this definition includes any region having suffered systematic marginalisation or exclusion.”

However, the law does not define the concept of “region” nor those of “systematic marginalisation or exclusion”. Neither does it explicitly refer to any other legislative or regulatory text defining these concepts.

ASF has conducted research to clarify the meaning of these two concepts, “region” and “victim”. Following an analysis of Tunisian legislation, jurisprudence in similar trials in other countries and definitions given by international organisations, such as the United Nations, and an analysis of the national context at the time when the Tunisian process of transitional justice was set up, it has been possible to define the legal meaning of the “region as a victim”.

1. ■ What is a region?

Although, at the time when the transitional justice law was adopted, no constitutional or legislative provision defined the term “region”, references to this concept can be found in the Constitution of 2013 and in the following laws². ASF’s analysis concludes that the concept of “region” is therefore akin to that of “Governorate”.

This interpretation is confirmed by the regional development policy adopted in Tunisia at time where the transitional justice law was adopted. In this respect, the Ministry of Regional Development and Planning mainly uses the administrative division of Governorates when referring to regions, notably in its reports on Regional Development Indicators.

Finally, the internal rules of procedure of the IVD also support the interpretation according to which the concept of “region” within the meaning of the transitional justice law covers that of “Governorate”. Indeed, Article 55 of these rules states that “a regional office will be established in each governorate of the Governorates of Tunisia”.

2. ■ What is a systematic marginalisation or exclusion?

Since Tunisian law does not offer a definition, it has been necessary to refer to the concepts of “marginalisation” and “exclusion” as employed by other international bodies or other countries faced with situations similar to those with which the IVD is dealing³.

Marginalisation consists of:

- a form of acute and persistent distinction, discrimination or disadvantage;
- which undermines the life chances of the group;
- and which is derived from social, economic or political processes.

Exclusion consists of:

- a process;
- the consequence of which is to eliminate access for persons to certain rights or services, notably in terms of access to employment or reasonable income, to education, to participation in power and decision-making process that affects day-to-day lives.

² By way of example, the establishment of “regional councils” mandated with managing the “Governorate”.

³ Report by the Kenya Truth, Justice and Reconciliation Commission, UNESCO, “Reaching the marginalized”, 2010, G. S. GURUNG and M. KOLLMAIR, “Marginality: Concepts and their Limitations”, IP6 Working Paper No. 4, 2005.

In addition, according to the terms of the transitional justice law, the marginalisation or exclusion must be “systematic”. However, the law does not include a definition of this term. According to the ordinary meaning of the word, the adjective “systematic” implies that the marginalisation/exclusion is “structured” or “methodical”. In this particular case, the adjective “systematic” refers to an idea of gravity and structuring of the marginalisation or exclusion.

It is therefore not a matter of addressing marginalisation or exclusion that is occasional or associated with external factors, such as the global economic context or the climatic or geographical situation of a region, but rather the disadvantages and shortcomings that are the result of a combination of institutionalised and organised processes.

III. HOW TO ESTABLISH MARGINALISATION OR EXCLUSION?

In order to establish that a region has been a “victim” within the meaning of the law on transitional justice, it is not necessary to demonstrate that its inhabitants have specifically suffered violations of their economic and social rights. Rather, it must be demonstrated that the region has been subjected to a process that has given rise to a form of disadvantage or discrimination (marginalisation) and has resulted in limiting the access for its residents to certain rights or services.

In order to determine whether a region has been subjected to a systematic marginalisation, two key aspects should be assessed:

- the inequality between the region in question and other regions and between that region and the national level of development;
- the role of the State in this marginalisation, whether in terms of exacerbating or minimising the inequality.

An objective basis: the indicators

The use of indicators allows us to objectively compare the situation of one region against the national situation and that of other regions, and to identify possible disparities, their extent and their persistence.

Indicators such as unemployment rate, the level of skilled labour, the level of private/public investments, poverty rate, child mortality rate, life expectancy, the number of hospitals or clinics per resident, illiteracy rate, the level of public infrastructure and equality between men and women are particularly used and are often combined in broader indicators used at the national or international levels.

At international level, the United Nations Development Programme (UNDP) established the Human Development Index (HDI) in 1990 and the Human Poverty Index (HPI) in 1997.

Moreover, the Tunisian Ministry of Regional Development and Planning has developed a Regional Development Indicator (RDI) calculated at the level of Governorates. This is a composite index calculated by compiling four thematic indices: knowledge, wealth/employment, health/population and justice/equity. It is calculated on the basis of statistical indicators produced by specialised institutions. More specifically, the RDI is the simple average of 18 variables referring to the four areas listed above.

IV. A VICTIM REGION: THE CASE OF KASSERINE

1.1 Damning indicators

The analysis of socio-economic indicators for the various regions in Tunisia has allowed the identification of discrimination and disadvantages that have accumulated and, in some cases, been exacerbated over time, in terms of access to rights or services in the Kasserine Governorate, demonstrating their acute and persistent nature.

These indicators are the index of disadvantages suffered by the Kasserine region or of the denial of access to rights or services, compared with other regions or with the national level.

These indicators are also interlinked: they can be both an index of a disadvantage and the cause of other disadvantages.

Table of indicators for the Kasserine region ⁴	
Categories	Indicators
Economic development, employment and poverty	Lowest regional development index in Tunisia: 0.16 vs. 0.76 in Tunis ⁵
	Particularly high unemployment rate: 26.2% vs. 17.6% nationally ⁶
	Lowest human development index in Tunisia vs. coastal regions where it is greater than the national average ⁷
	Human poverty index: regions of the Centre-West emerge as being most affected by poverty (more than double that of Greater Tunis), where it is higher than the national average ⁸
	Low density of small and medium-sized business: 0.2 compared with 3.1 in Tunis. According to the Ministry of Regional Development and Planning, in 2011, the coastal region accounted for more than 80% of industrial facilities in terms of surface area ⁹
	Low level of skilled labour, as a consequence of low economic development in the region: exodus of skilled workers to high productivity economic areas ¹⁰
	Low attractiveness for productive and creative investments. The regions of the Centre-West are underequipped in terms of industrial zones ¹¹
Access to public services and infrastructure	Very low level of provision of potable water: 50% vs. 90% in Tunis, including in schools
	Number of households connected to sewerage system low. Number of rural households connected to potable water network: 27.1% vs. 56% nationally ¹²
	Poor access by the classified road network. Proportion of classified roads: 17% vs. 30% nationally ¹³

⁴ The list of indicators aims to provide a set of indicators relating to the marginalisation of Kasserine and is therefore not exhaustive.

⁵ Ministry of Regional Planning and Development (MDRP) and ITCEQ, "indicateur de développement régional", July 2012, <http://melimelek.com/rapport/devreg/indicateur-developpement-regional.pdf>

⁶ Data from 2012. Regional Sustainable Development Plan (PREDD), by the Centre-West Development Office (Kasserine), the GIZ and Coopération Suisse, February 2015.

⁷ Data relating to the Centre-West zone including Kasserine. F. ZIDI, Doctoral thesis "Politiques économiques et disparités régionales en Tunisie : une analyse en équilibre général micro-stimulé" : <https://tel.archives-ouvertes.fr/tel-00965133/document>

⁸ Data from 2004-2011 for the Centre-West zone. PREDD.

⁹ White paper for regional development:

http://eeas.europa.eu/delegations/tunisia/documents/more_info/livreblanc_devreg_nov11_fr.pdf; MDRP, 2011.

¹⁰ MDRP and ITCEQ. PREDD.

¹¹ Ibid.

¹² PREDD; White paper.

¹³ Ibid.

	Very low proportion of households and schools with internet access: 3% vs. 15% in Tunis ¹⁴
Health	Low density of doctors (0.4 doctors per 1,000 residents) and low density of hospitals, well below the national average. Life expectancy -70 years vs. 77 in Tunis and Sfax ¹⁵ The national child mortality rate is 17.8 ‰ compared with 23.6 ‰ in the Centre-West ¹⁶
Education	Very high illiteracy rates: 32% vs. 12% in Tunis ¹⁷ School dropout rates are 4% in Kasserine compared with 0.1% and 0.3% in Ben Arous and Ariana ¹⁸
Gender equality	Considerable exclusion of women from the labour market and a higher unemployment rate among women. Lowest ranking for the gender-specific human development index: 0.55% vs. 0.67% in Tunis ¹⁹

2. Institutionalised marginalisation

In the case of Kasserine Governorate, the disadvantages and deficits in terms of development revealed in various studies and reports, which have impeded the full enjoyment of economic and social rights for the population, are the result of a combination of institutionalised and organised processes.

As the World Bank highlights, a concentration of economic activity and the population along the coast may appear natural given the commercial and logistical advantages²⁰. However, these trends have been exacerbated by Tunisian economic policy over time²¹ as well as by other processes that have also contributed to exacerbating regional disparities such as the extremely centralised nature of the State, favouritism for investments in certain regions,

poor governance, nepotism or “cronyism” and corruption. These processes, interlinked as they are, have created an exacerbating and organised effect, causing systematic marginalisation and exclusion of certain regions, including Kasserine.



¹⁴ Data from 2011. White paper; MDRP and ITCEQ.

¹⁵ Data from 2011. MDRP and ITCEQ; White paper.

¹⁶ Data from 2009. White paper, p. 37.

¹⁷ Data from 2011. Ibid.

¹⁸ School year 2009/2010. White paper p. 35.

¹⁹ Data from 2004. F. ZIDI.

²⁰ World Bank. “The Unfinished Revolution: bringing opportunity, good jobs and greater wealth to all Tunisians”, Development Policy Review, May 2014, p. 307.

²¹ Ibid.

The marginalisation process

Poor political choices of economic models and poor planning and scheduling in terms of regional development

Since industrial policy is essentially aimed at promoting exports, companies have preferred to set up base near export infrastructure along the coast.

The policy introduced and carried out by the State in the 1960s hinged on the establishment of "industrial hubs" in certain regions of the country with the aim of extracting value from natural resources. The advent of the trend of economic liberalisation, during the last decade, has led to the adoption of a new economic policy centered on opening up to foreign trade, fostering private investment and entrepreneurship, and supporting international competitiveness. This model, which is based on a light exporting industry of sub-contracting, established near to ports, has excluded entire regions which, owing to their geographical distance, could not jump onto the economic development train²².

Creation of an extremely centralised system

Economic and political decisions were all taken in the capital city. In practical terms, and despite the (purely theoretical) existence of regional councils, no effective consideration was given to the specific characteristics, concerns and problems of the regions. "Regional development plans were imposed by ministers as part of a national strategy which was not adapted to the regions. Some development projects were sometimes announced but never came to fruition, whereas other, less important ones, were carried out²³."

Deliberate policy of favouritism in terms of public and private investment

Since independence, successive public policies have exclusively favoured private investment in the coastal regions. Similarly, the State has openly favoured public investment in coastal zones, which received up to 65% of the national value of public investments²⁴.

In the area of tourism, public authorities have primarily favoured seaside tourism to the detriment of regions of the interior (with the exception of Saharan regions), all while virtually abandoning the region of Kasserine and its potential in terms of thermal spa and cultural tourism²⁵.

Poor governance, nepotism, cronyism and corruption

Poor governance prevailed until the Revolution. Not only was governance centralised and directing, it was also tainted by cronyism in the central authorities. "The regional council was composed of mayors and MPs, generally incompetent, from the single list of the former party in power. These conditions did not make it possible to enter into a regional consideration of the problems and concerns of the population²⁶."

"Administrative participation was adopted for political purposes and was subject to political pressure. Each Governorate had its own interest group, sometimes even its 'local mafia', which controlled the economic power.

Public funds were distributed according to loyalty to the former regime. In this context, the Governor had to collaborate to retain his position. Thus, the predominance of the role of Governor was a source of paralysis and inefficiency. His intervention was always necessary, even though he himself had to wait for decisions from above²⁷."

²² MDRP, White paper, 2011, pp. 42-43.

²³ MDRP, White paper, 2011, p. 119.

²⁴ F. ZIDI, op. cit., p. 177.

²⁵ Deutsche Zusammenarbeit, Regional Sustainable Development Plan (PREDD), published by GIZ in collaboration with the Centre-West Development Office (Kasserine), February 2015, p. 25.

²⁶ White paper, 2011, p. 119.

²⁷ White paper, 2011, p. 118.

V. MEASURES: TREAT THE CAUSES IN ORDER TO ENSURE NON-REPETITION AND TREAT THE CONSEQUENCES OF MARGINALISATION AND EXCLUSION TO ACHIEVE REDRESS

The law on transitional justice guarantees the principle of reparation of damages and mandates the IVD to define the corresponding programme. More generally, it entrusts the IVD with the “formulation of recommendations and proposals regarding political, administrative, economic, security, judicial, media, educational and cultural administration screening reforms, and any other appropriate recommendations and proposals, with a view to preventing a return to repression, dictatorship, the violation of human rights and mismanagement of the public monies”.

By expanding the concept of “victim” to regions that have suffered systematic marginalisation or exclusion in Tunisia, the transitional justice law allows the IVD to investigate to establish the truth and responsibilities for such a situation and to propose specific measures and recommendations.

Those measures must aim to address the causes of marginalisation and exclusion, as well as their consequences.

They must ensure reconciliation, include the victim regions in question at the heart of the debate and be sure not to create further discrimination or conflict.

They must identify the authorities responsible for implementing these measures and the timetable for their application.

With regard to Kasserine, the IVD could suggest the implementation, according to a strict timetable, of an economic, social and environmental policy able to effectively redress the situation arising from the marginalisation and exclusion suffered by the region.

The petition submitted by the FTDES does not aim to provide an accurate or exhaustive list of these measures because, before deciding on them, the IVD should conduct an in-depth analysis and assess the causes and consequences of systematic marginalisation and exclusion. It should then take into account the current situation, by consulting the population, civil society organisations and the authorities of Kasserine.

Moreover, in exercising its mandate, the IVD should ensure respect for and the implementation of certain constitutional rights such as the “decentralisation²⁸” and the “financial and administrative autonomy of local authorities” (municipalities, regions, greater regions)²⁹.

The Constituent Assembly also institutionalised the role that civil society must be able to play in local governance in order to increase the accountability of local elected officials through its effective participation in decisions relating to socio-economic development. Indeed, the IVD should promote the letter and the spirit of Article 139 of the Constitution on the adoption, by local authorities, of “mechanisms of participatory democracy and [of] principles of open governance in order to ensure greater participation by citizens and civil society in the preparation of the region’s development and planning projects and overseeing their execution³⁰”.

On the basis of these principles, the petition submitted to the IVD by FTDES, with the support of ASF, therefore presents a series of avenues for reflection on appropriate measures to address the

²⁸ Article 14 of the Tunisian Constitution.

²⁹ Article 131 of the Tunisian Constitution.

³⁰ Article 139 of the Tunisian Constitution.

systematic marginalisation and exclusion suffered by Kasserine.

These avenues are largely inspired by measures presented in the White Paper of the Ministry of Regional Planning and Development, as well as the Regional Sustainable Development Plan (PREDD, Plan régional de développement durable) drafted by the Centre-West Development Office (Kasserine), in collaboration with GIZ and Coopération Suisse.

The measures presented in these documents are based on an analysis of the local situation, taking into account the perspectives of the people affected. As a result, they are particularly pertinent.



[Image caption] "We feel as though Tunisia is rejecting us."

Examples of measures³¹

Economic development	Adopt economic incentives (notably in terms of investment) and measures aimed at changing the method of governance
	Connect zones that are lagging behind with more advanced zones
	Develop archaeological and natural sites of interior regions and organise tourist routes based on diversification of tourist destinations
	Promote agriculture by supporting the integration of agriculture with other economic sectors (multi-functionality of agriculture), by improving governance and the institutional framework of the agricultural sector and the preservation of natural resources
Infrastructure	Develop an effective transport network (road and rail), especially with a view to allowing an economic opening up of rural regions
	Develop and improve services to supply potable water and sewerage systems
	Develop the internet network (especially with the aim of providing better access to key points such as schools, public places, etc.)
Health	Equally distribute government spending on healthcare
	Increase the capacity of hospitals (number of beds and doctors) and ensure that hospital equipment is upgraded
	Consider mobile healthcare services for remote regions
	Consider any measures to improve the quality of healthcare services, particularly incentives intended to attract doctors to the most disadvantaged regions
	Develop indicators to measure the quality of healthcare services
Education	Consider measures to provide education support to disadvantaged families
	Make arrangements to build closer ties between school and the family (e.g. school transport)
	Increase the number of schools and teachers
	Develop training schemes and higher education institutions
	Promote research and development

³¹ For an exhaustive view of the measures, refer to the "Regional Sustainable Development Plan (PREDD)" published by the GIZ in collaboration with the Centre-West Development Office (Kasserine) and Coopération Suisse, February 2015, and to the "White paper for regional development of the Ministry of Regional Development and Planning 2011".

VI. RECOMMENDATIONS TO THE IVD

In light of the aforementioned considerations, the FTDES recommends the adoption by the IVD of the following measures:

- 1.** Recognise the Kasserine region as being a "region having suffered systematic marginalisation or exclusion", within the meaning of Article 10(3) of the law on transitional justice;
- 2.** Establish the truth about the marginalisation or exclusion suffered by the Kasserine region;
- 3.** To this end, undertake all the necessary investigations and researches in order to accurately determine:
 - a.** the causes of this systematic marginalisation or exclusion;
 - b.** their consequences, including the disadvantages or discrimination suffered by Kasserine and its impossibility of accessing certain services and rights;
- 4.** Beyond the specific situation of Kasserine, establish the truth about marginalisation or exclusion suffered by other regions in Tunisia;
- 5.** To this end, undertake all the necessary investigations and researches in order to accurately determine:
 - a.** the causes of this systematic marginalisation or exclusion;
 - b.** their consequences, including the disadvantages or discrimination

suffered by the regions affected and their impossibility of accessing certain services and rights;

- 6.** If need be, in application of Article 40 of the law on transitional justice, extend the deadline for the receipt of complaints and petitions;
- 7.** In accordance with its mandate, recommend any measures that would make it possible to:
 - a.** ensure that the marginalisation or exclusion suffered by Kasserine and any other region is not repeated;
 - b.** redress the situation caused by the marginalisation or exclusion suffered by Kasserine and any other region;
- 8.** Call on the services of any necessary experts;
- 9.** Declare admissible and admit any additional information that may be submitted at a later date by the FTDES in relation to the Kasserine region, especially as regards measures that would make it possible to redress the marginalisation or exclusion suffered;
- 10.** In the context of the proposed measures, take into consideration the constitutional principles relating to decentralisation, positive discrimination and participatory democracy, as provided for in Articles 12, 14, 131 and 139 of the Constitution.

Those submitting the petition wish, by their actions, to collaborate with the IVD in exercising its mandate, notably in determining the criteria making it possible to establish the marginalisation or exclusion of a region as well as the avenues for redress in terms of regional development, understood as factors aimed at remedying the damage suffered by the region of Kasserine.

The full file is available in English, French and Arabic.
Should you wish to read it, please contact us:

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