

TUNISIA

Alternative follow-up report

Submitted to the Committee against Torture (CAT)

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Association Tunisienne pour la justice et l'égalité (DAMJ)
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Introduction

In accordance with article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Committee against Torture (CAT) considered the third periodic report of Tunisia and the supplementary report containing updated data at its 1398th and 1401st meetings, on 19 and 21 April 2016 and adopted the concluding observations concerning the report at its 1420th and 1421st meetings on 6 May 2016.

The procedure for the follow-up of concluding observations is for the Committee to identify, “among the recommendations in the concluding observations, those for which implementation is a priority and requesting additional information from the States parties, as established under rule 72, paragraphs 1 and 2, of the Committee’s rules of procedure. That follow-up procedure has become an important means of assessing the degree to which compliance with the Committee’s recommendations has had an impact. It has also become an integral part of the reporting cycle”¹.

The Committee selects a maximum of four recommendations for follow-up, and these recommendations are explicitly mentioned in a paragraph at the end of the Committee's concluding observations. The State party is invited to submit to the Committee, within one year, a follow-up report containing information on the measures it has taken to implement the recommendations. In addition to the report, States parties are encouraged to provide the Committee with an indicative implementation plan for some or all of the other recommendations contained in the concluding observations.²

The recommendations selected for follow-up by the Committee in its Concluding Observations concerning Tunisia's third periodic report of 2016³ and referred to in paragraph 45 of the Observations are those "in paragraph 16, on allegations of torture and ill-treatment, in paragraph 28 on conditions of detention and in paragraph 38 on transitional justice, in particular under item (a) on the mandate of the Truth and Dignity Forum."

On 13 May 2017, Tunisia submitted its follow-up report⁴ accompanied by a plan to implement the recommendations⁵.

According to the CAT's "Guidelines for Follow-up to Concluding Observations", non-governmental organizations may submit written information to the Committee at any time after the adoption of the concluding observations in the follow-up procedure. However, the Committee suggests that they do so within three months of the deadline for submission of the State party's follow-up report, allowing for comments to the State party's report. The alternative follow-up report submitted in this context should focus only on the implementation by the State party of recommendations identified for follow-up, be concise and not exceed 3,500 words.⁶

On this basis, the above-mentioned Tunisian and Tunisia-based civil society organizations have jointly submitted this report.

¹Committee against Torture, Guidelines for follow-up to concluding observations, adopted by the Committee at its fifty-fifth session (27 July-14 August 2015), 17 September 2015, CAT/C/55/3, para.1

²Ibid., para. 9, 10 and 11.

³Committee against Torture, Concluding observations on the third periodic report of Tunisia, CAT/C/TUN/CO/3

⁴http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTUN%2fCO%2f3%2fAdd.1&Lang=en

⁵http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fFCO%2fTUN%2f27570&Lang=en

⁶Committee against Torture, Guidelines for follow-up to concluding observations, para. 14 and 15.

Allegations of torture and ill-treatment

16. *“The Committee urges the State party to:”*

a. *“Ensure that public prosecutors properly monitor the measures taken by the officers of the security services in charge of investigations;”*

Although the law, and in particular the Code of Criminal Procedure, gives the Public Ministry the power to control the actions of the criminal police, in practice this control is only exercised in a superficial way. It is often limited to a summary examination of written records established by the criminal police.

The reform to the Code of Criminal Procedure introduced under law n° 2016-5 of 16 February 2016, has put into place new guarantees, in particular by revising the police custody procedure. In practice, the difficulties arising from inaccuracies in the text of the law and most importantly the lack of the necessary human, material and logistical resources have considerably reduced the impact of this reform in real terms.

To comply with recommendation 16.a, we suggest:

- Encouraging public prosecutors and their substitutes to fully exercise their faculties as established under the law to ensure effective and thorough control over the actions of the criminal police.
- Providing the courts and the structures of the criminal police with adequate human, material and logistical resources.
- Providing the necessary clarification for the inaccuracies in the texts of legislation.
- Ensuring that any irregular proceedings are declared null and void.
- Placing the criminal police under the supervision of the Ministry of Justice.

b. *“Install video surveillance equipment in all interrogation centres and places of custody, including the centres in Gorjani, El Aouina and Bouchocha, except where doing so might give rise to violations of detainees’ right to privacy or the confidentiality of their conversations with their counsel or doctor. The State party should also ensure supervision of the use of such recordings during trials;”*

The number of video surveillance devices deployed to date continues to be minimal, as only six police and national guard stations have been equipped as part of a community policing project entitled *“police de proximité”*. Even in these police stations, the cameras only partially cover the station, and the areas where there is greater risk of violations are not subject to surveillance (jail cells, interview rooms, areas inaccessible to the public, etc.).

No information has been provided regarding the technical supervision and control of these devices or who has the right to watch, copy or erase the recordings, putting the authenticity, safeguarding and accessibility of the recordings into question on the one hand, and the protection of the private life of individuals appearing in the recordings on the other hand.

To comply with recommendation 16.b, we suggest:

- Mainstreaming the deployment of video surveillance devices throughout all security establishments where persons could access services or be detained.
- Placing the supervision of these devices under the authority of the Public Prosecutor.
- Covering all areas of such premises, in particular areas used for detention and interrogations.
- Restricting access to and control of these devices to authorised persons and preventing others from gaining access and control, in particular officers working in the areas under surveillance. Establish sanctions for any kind of abuse.

c. “Unambiguously reaffirm the absolute prohibition of torture and publicly warn that anyone committing such acts or otherwise complicit or acquiescent in torture will be held personally responsible before the law for such acts;”

The official discourse on the absolute prohibition of torture continues to be highly vague and ambiguous. State representatives have a habit of fudging their discourse regarding torture by avoiding explicit recognition of its persistence as a phenomenon and talking about “isolated cases” and “individual abuses”. In this way, their discourse has little impact on either the behaviour of those who are responsible for implementing the law, or on public opinion. Worse still, representatives from the police, journalists and columnists, politicians and MPs have – through popular and influential media – repeatedly and explicitly called for the principles of human rights not to be respected in the framework of the fight against terrorism.

To comply with recommendation 16.c, we suggest:

- Issuing solemn public declarations in the name of the State and putting these statements into practice by reaffirming the respect of the absolute prohibition of torture, which cannot be altered in any circumstance and ensuring that, whoever commits such acts, is complicit in them, or tacitly authorises them, will face justice and receive punishment. These declarations should be made by the President of the Republic, the Head of Government, the Minister of Justice and representatives of the judiciary.
- Punishing all persons and most notably, any responsible authorities, who make public statements lauding or tolerating torture and attacks against human rights in general through judicial and administrative measures.

d. “Ensure that article 67 of the new counter-terrorism law (Act No. 2015-26) is not misinterpreted with the aim of guaranteeing impunity for officers of the security services suspected of committing acts of torture or ill-treatment;”

It is likely that this recommendation refers to article 72 (and not article 67) of Law n° 2015-26 concerning the fight against terrorism and the prevention of money laundering. Indeed, this article can be used to guarantee the impunity of officers suspected of having committed acts

of torture and ill-treatment. This Law includes other provisions which may facilitate infringements of fundamental rights and freedoms.

To comply with recommendation 16.d, we suggest:

- Modifying Law n° 2015-26, and in particular article 72 of said Law, so that its provisions are in harmony with the Constitution and international standards and so that it cannot be interpreted in any way to facilitate impunity for acts of torture or ill treatment.
- Ensuring that an impartial and diligent investigation is immediately being carried out by independent judges, every time there is an allegation or complaint of torture, including in the context of the fight against terrorism, so that the alleged perpetrators of these acts are brought to justice and that, if they are found guilty, they are given penalties in proportion to the gravity of their acts and that the victims obtain reparation and are fairly compensated.

e. “Pursue efforts to reorganize and reform the security services so that they are in conformity with the standards of a State based on the rule of law and of the Convention.”

To date, efforts to reform the security sector continue to be very limited. There has not been a thorough restructuring that would introduce greater transparency and control of the organisation, working methodology and working practices of security forces. The climate of fear and the lack of security fostered by terrorist acts have pushed this reform further away from being realised and have weakened achievements to date. The legal framework organising the security sector has remained largely unchanged and is inconsistent with international standards and with the new Constitution of 2014, in particular articles 24, 31, 32, 36 and 37.

Within the framework of the current state of emergency that was proclaimed in 2015, recourse to decree n° 78-50 of 26 January 1978 regulating the state of emergency and justifying the use of restrictive measures on civil liberties (in particular the procedure known as “S17”) has caused severe violations of fundamental rights.

To comply with recommendation 16.e, we suggest:

- Reforming the security sector in order to restructuring it, introducing more transparency and control over the organisation, methods of work and practices of the security forces.
- Accelerating the adoption of new legal texts in line with international standards and the Constitution, replacing old texts.
- Ensuring that any measure restricting freedoms is justified by a genuine necessity and is founded on a legal basis and that any person subject to such a measure may practice his or her right to oppose it unhindered.
- Permanently withdrawing the draft law on the repression of attacks against armed forces, which contains provisions that infringe rights and freedoms and institute impunity.

Conditions of detention

28. “The State party should increase its efforts to improve conditions of detention, including by:”

a. “Significantly reducing overcrowding in prisons by making more use of alternatives to incarceration such as suspended sentences for first offenders or for certain minor offences and of alternatives to pretrial detention;”

Overcrowding in prisons is compounded by a repressive penal policy, the widespread recourse to preventive detention, the absence of the use of alternative sanctions, and the recourse to custodial sentencing for minor offences.

Although alternative sanctions to prison have been established in the Penal Code since 2009, in particular community service work, recourse to these sanctions is minimal in comparison to the number of custodial sentences. This is mainly due to the lack of options for such community work.

To comply with recommendation 28.a, we suggest:

- Encouraging judges to offer alternative sanctions to imprisonment, in particular community service.
- Creating a body responsible for promoting and compiling opportunities for community service and placing these at the disposal of legal jurisdictions.
- Reinforcing the work of penalty enforcement judges in terms of increasing their numbers, powers and means.
- Putting in place legal instruments and logistical, material and human resources for the introduction of new alternative sentences and new modes of supervised freedom for those awaiting trial and those who have been convicted (electronic bracelets, open prisons ...etc.)

b. “Ensuring absolute compliance with the maximum length of pretrial detention and ensuring that persons in detention are brought to trial without excessive delay;”

Although article 85 of the Code of Criminal Procedure limits preventive detention to no longer than a total of 9 months for minor offences and 14 months for crimes, however, this limit is not observed in many cases. The slowness of procedures and the almost systematic recourse to preventive detention, even though this is considered to be an “exceptional measure” in the Code of Criminal Procedures, means that the number of people in preventive detention often exceeds the number of people serving custodial sentences in prison establishments.

To comply with recommendation 28.b, we suggest:

- Requiring judges, in particular investigating judges, to strictly respect the period of preventive detention provided for by law.

- Asking magistrates to respect the exceptional nature of preventive detention and to resort to it only in cases which fully comply with the conditions laid down by law.
- Encouraging magistrates to apply provisional release, with or without a caution, using where possible the measures provided for in Section VI, Chapter II, Book I, of the Code of Criminal Procedure.
- Undertaking the necessary reforms to reduce the slowness of procedures.

c. “Continuing its efforts to improve and expand prison facilities in order to remodel those facilities that do not meet international standards, and allocating the resources required to improve conditions of detention and strengthen reintegration and rehabilitation activities;”

In recent years, several projects have been undertaken to extend prison establishments and to create new units. These efforts must be continued and accelerated to harmonise all establishments with international standards and to end overcrowding.

Prison establishments suffer from a severe lack of activities for detainees; cultural, sporting, academic or other activities are rare. Moreover, activities for reintegration into society continue to be extremely limited. The lack of means, the scarcity of programs and the absence of prisoners’ motivation weaken the role of rehabilitation in prison establishments.

To comply with recommendation 28.c, we suggest:

- Continuing and accelerating projects to improve prison infrastructure to ensure that this conforms to international standards.
- Ensuring that detainees can enjoy a variety of leisure activities, this will contribute significantly to the improvement of conditions of detention and facilitate rehabilitation and reintegration.
- Strengthening and multiplying education, rehabilitation and reintegration programs and providing incentives for prisoners to follow these programs.

d. “Putting in place the measures required to ensure the strict separation of accused persons from convicts and adults from minors, and appropriate treatment for them;”

In practice there is almost no separation between those awaiting trial and those who have been convicted, either in specialised prisons, or in existing establishments. Moreover, conditions for those awaiting trial are usually worse than those of convicted prisoners.

Although minors are held in specialist institutions, prison units for adults do not generally separate prisoners according to their age categories or offences committed; it is very common for very young adults to be incarcerated with much older adults, for those convicted of minor offences to be mixed with those convicted of serious crimes, including terrorist offences, or for first-time offenders to be mixed with recidivists. In addition to the problems and aggression that this lack of separation can cause, it also makes rehabilitation and

reintegration difficult and can contribute to convicted individuals falling into delinquency or radicalisation.

To comply with recommendation 28.d, we suggest:

- Putting in place, as far as is possible, separate establishments for preventive detention and for custodial sentences.
- Systematically separating prisoners according to age, offense committed and degrees of delinquency.

e. *“Increasing the number of qualified staff working with prisoners;”*

Although efforts are being made to increase numbers of and reinforce training for prison staff, rates continue to fall below international standards. In particular there is a lack of qualified staff specialised in rehabilitation, professional trainers, cultural and sports facilitators, as well as medical and paramedic staff. Indeed, prison guards without the specialised training may be requested to perform tasks, which require specific skills.

The lack of qualified staff has obvious repercussions on conditions of detention, on the quality of monitoring and supervision of prisoners and the effectiveness of rehabilitation programs. This can also lead to the use of ill-treatment, when poorly-trained and inexperienced staff lack the necessary skills and resources to adequately manage overcrowded units and to control difficult and unruly prisoners.

To comply with recommendation 28.e, we suggest:

- Recruiting more prison staff and increasing their level of supervision to comply with international standards.
- Strengthening preliminary and continuous training for prison guards and officers, in particular training on human rights.
- Putting in place specialised training courses (rehabilitation, professional training, facilitation, medical and paramedic staff...etc.)
- Putting in place prisoner mentoring programs in partnership with civil society organisations.

f. *“Ensuring the availability of medical services in all prison facilities;”*

Medical services present a tremendously weak point in the Tunisian prison system. Although theoretically all establishments are equipped with medical centres, these are generally limited to a simple infirmary with only the most rudimentary equipment. Very few establishments have full-time doctors. Often, in the absence of qualified paramedic staff, ordinary prison staff are responsible for running these infirmaries and their role is therefore limited to providing prisoners with painkillers while they await a doctor’s visit. In emergency cases, or when specialised examinations or interventions are required, prisoners are usually transferred to a public hospital. In practice, prisoners face significant difficulties in obtaining

medicines or being transferred to hospital with the frequent result that their situation worsens. In several cases, it has been reported that prisoners have been refused access to medical care as a form of punishment or reprisal.

To comply with recommendation 28.f, we suggest:

- Increasing medical and paramedic staff to reach a pro ratio in line with international standards.
- Increasing the budget allocated to medical services and strengthening the medical infrastructure in prison institutions.
- Ensuring that medical care is provided to all inmates in need and that the provision of this care is never used to put pressure on or punish them.
- Training medical and paramedical staff on the identification and documentation of cases of torture and ill-treatment, in particular on the Istanbul Protocol.

g. “Ensuring that solitary confinement is used only as a last resort, for as short a time as possible, under strict supervision and with the possibility of judicial review, in accordance with international standards.”

Solitary confinement is frequently used as a means to punish prisoners. Isolation cells, commonly known as “*cachot*” (the dungeon), usually lack the minimum necessary conditions to preserve the wellbeing and dignity of prisoners.

In several cases, it has been reported that solitary confinement has been used to cover traces of violence against prisoners or has been accompanied by aggression or ill-treatment.

For some prisoners, in particular those detained during events linked to terrorism, isolation is the rule. Several have spent very long periods of time in solitary confinement without being able to challenge their conditions and without adequate monitoring of psychological after-effects.

To comply with recommendation 28.g, we suggest:

- Reforming the law on the organisation of prisons to vary punitive measures in compliance with human rights standards, both in text and in practice.
- Re-equipping areas used for solitary confinement so that they fulfil the necessary conditions for safeguarding the wellbeing and dignity of prisoners.
- Strictly respecting the maximum duration of punitive isolation and ensuring that prisoners in isolation benefit from adequate medical and psychological accompaniment.

Transitional justice

38. “The State party should:”

a. “Continue to provide the Truth and Dignity Commission with sufficient resources to allow it to carry out its mission effectively and to ensure that complaints of torture and ill-treatment are forwarded to an independent investigation authority once its mandate lapses;”

Although the 2017 budget of the Truth and Dignity Commission (*Instance Verité et Dignité – IVD*) was voted in – after a heated debate in which several MPs questioned the role of the Commission –, the latter has not been allocated the necessary resources and freedoms to fulfil its mission. Indeed, support from the executive powers is very weak. Worse still, members of the Commission have repeatedly complained of governmental and administrative barriers. The lack of support from the authorities became particularly apparent during public hearings, which neither the President of the Republic nor the Head of Government attended, also bearing in mind that the IVD had struggled to find a room in which to organise these hearings.

It remains unclear what will happen to complaints alleging torture and ill-treatment lodged with the IVD after the Commission’s mandate comes to an end. Indeed, the progress of these complaints is minimal and they are unlikely to lead anywhere before the end of the Commission’s mandate. The specialised chambers provided for by the Transitional Justice Law are still not functioning and the “ordinary” courts are unable to deal with these complaints.

To comply with recommendation 38.a, we suggest:

- Allocating the necessary resources and freedoms to the IVD so that it can fulfil its mandate and removing any obstacle to the full exercise of its functions.
- Taking all the necessary measures to make the specialised chambers functional as soon as possible.
- Accelerating the process for the election of new members to fill vacancies within the IVD.
- Withdrawing definitively the draft law on reconciliation which undermines the process of transitional justice and the IVD.

b. “Ensure that all the perpetrators of acts of torture committed during the period covered by the transitional justice law are brought to justice and ensure the highest level of protection for the victims, witnesses and their families;”

The IVD’s mandate covers the period from 1 July 1955 until 24 December 2013. The IVD has received hundreds of complaints regarding torture and ill-treatment dating from different eras throughout this period. Beyond the objective obstacles to the prosecution of these complaints, the principle of the non-retroactivity of laws is a legal obstacle. Indeed, torture

was not criminalised under Tunisian law until 1999 and the principle of imprescriptibility of the crime of torture was not adopted until 2013.

Moreover, the victims, witnesses and their families do not enjoy any special protection. They are rather exposed to reprisals, which remain widespread.

To comply with recommendation 38.d, we suggest:

- Ensuring that the alleged perpetrators of acts of torture and ill-treatment are brought before justice and if found guilty, that they are subject to punishment proportional to the seriousness of their acts and that the victims access reparation and are fairly compensated.
- Calling upon the courts to apply the principle of imprescriptibility for the crime of torture.
- Providing adequate protection to victims, witnesses and their families and punishing any form of reprisal against them.

c. “Adopt a reparation policy with clear, non-discriminatory criteria, as recommended by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (A/HRC/24/42/Add.1, para. 86);”

Although the law on the establishment of transitional justice provides for reparation of victims and determines its conditions and means, the implementation of this reparation continues to falter. The State on the one hand and the IVD on the other, have provided partial and provisional compensation, yet it is not clear what criteria this compensation is based on.

The policy for comprehensive reparation is yet to be defined, as are its conditions, means and resources. The State must fully assume its responsibility to apply and finance this policy.

To comply with recommendation 38.c, we suggest:

- Defining without further delay a comprehensive and precise policy for collective and individual reparation.
- Allocating the necessary funding for reparation, in particular by supplying the Dignity and Rehabilitation Fund for victims of the dictatorship.
- Ensuring the cooperation of various state authorities and state entities in order to implement this policy.

d. “Ensure the right of victims to seek judicial remedies irrespective of the remedies available in the framework of the Truth and Dignity Commission, in accordance with the Committee’s general comment No. 3 (2012) on the implementation of article 14 by States parties (para. 30).”

Although the law permits victims to pursue legal recourse independently of the recourse available under the IVD, in practice, the prosecution of crimes of torture and ill-treatment is

generally characterised by slowness and a lack of diligence at all stages of prosecution. There is no specific mechanism for legal aid for victims of torture and ill-treatment. The authorities, in particular the security forces, rarely collaborate with victims, their lawyers and judges, to make available evidence concerning the violations suffered. The obstacles faced by victims prevent them from obtaining justice and reparation.

To comply with recommendation 38.d, we suggest:

- Putting in place mechanisms for legal aid for victims of torture or ill-treatment.
- Establishing severe criminal and administrative sanctions to all those who hamper the prosecution of acts of torture and ill-treatment or who conceal evidence.
- Putting in place mechanisms for the rehabilitation of victims of torture and ill-treatment.