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Written statement* submitted by World Organisation Against Torture, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[01 February 2021]

* Issued as received, in the language(s) of submission only.

OMCT - Written Statement on the state of fundamental rights in Tunisia

Since the opening of the parliamentary session in September 2020, the Assembly of the Representatives of the People (ARP) has seen a number of bills and political declarations reflecting the rise in power of a reactionary political tendency wishing to restore a state of security detriment to the respect of fundamental freedoms and justice for victims of serious human rights violations. 10 years after the revolution, institutional violence remains rampant, in part due to quasi-total impunity.

The obstacles faced by the specialized criminal chambers (transitional justice) are emblematic for the lack of political will to break with decades of impunity. Almost two and a half years after the start of the first trial, no judgment has yet been rendered. Hearings are often postponed due to the absence of the defendants or due to the absence of judges because of the rotating system of magistrates. Excessive time elapses between each hearing because of the large number of cases and the lack of resources available to the chambers. In addition, the continued lack of an appeal process deters trial judges from delivering judgments that currently would be unconstitutional as not subject to appeal. But first and foremost it is the absence of a large number of defendants, who evade justice with the support of a judicial police failing to issue summons and executing arrest warrants, that seriously endangers the success of transitional justice. The speaker of the ARP only recently called publicly for “full reconciliation” requesting to drop the entire transitional justice process. Draft bills to that end are circulating in parliament.

OMCT requests the relevant Tunisian authorities to :

- Provide to the specialized chambers the human and financial resources to implement their mandate in particular by removing their magistrates from the annual rotation movement and by relieving them of more ancillary tasks so that they are available to hold hearings more frequently;
- Expressly allow the double degree of jurisdiction in transitional justice cases;
- Order the judicial police to execute the arrest warrants issued by the specialized chambers in accordance with the criminal law and sanction officers who evade their duty.

Also ordinary justice administration remains a matter of serious concern with access to justice for victims of torture and ill-treatment being hampered by momentous obstacles. Investigations are characterized by extreme slowness and lack of diligence on the part of the magistrates who ignore many investigative acts essential to revealing the truth. Law enforcement agents suspected of violence are rarely placed in pre-trial detention, a leniency that contrasts the almost systematic use of pre-trial detention for other crimes or less serious offenses attributed to ordinary citizens. Victims of torture and ill-treatment, many of whom come from vulnerable communities, are often subject to reprisals in form of threats, arbitrary arrests or prosecution on the basis of fabricated accusations. The facts in the few cases that arrive in court, however severe the violence against the victims may have been, are never characterized as a crime of torture but, at best, as violence which is a misdemeanor. This is due to the fact that violence is frequently carried out for punitive purposes while the Tunisian criminal code limits the definition of torture to severe pain or suffering inflicted for the purpose of obtaining confessions or information or based on racial discrimination. The definition of torture in Tunisian law is not conform with the international definition and remains one of the causes for persistent impunity.

OMCT requests the relevant Tunisian authorities to :

- Amend articles 101 bis and 101-3 of the Criminal Code criminalizing torture in order to bring them in conformity with the Convention against Torture;

- Ensure that all complaints of torture and ill-treatment immediately give rise to a serious, impartial and prompt investigation;
- Ask magistrates to promptly order a physical and psychological expertise when they are seized for allegations of torture or ill-treatment and, if the victim is in detention, make sure that the prison directors transfer the detainee in question to the hospital to carry out the expertise within a maximum of four days;
- Create a judicial police specialized in investigations for torture and ill-treatment which would be attached to the Ministry of Justice;
- Ensure that the alleged perpetrators of acts of torture and ill-treatment are immediately suspended during the investigation, in particular if they are suspected of retaliating against the alleged victim or obstructing the investigation;

The overall climate of impunity maintained by the State fans a hotbed for the persistence of institutional violence. Torture and ill-treatment remain a widespread method of obtaining confessions from common law suspects but also from suspected terrorists. Cases of torture and ill-treatment carried out by law enforcement officials for punitive purposes are even more numerous, may happen to any Tunisian citizen, who has been assaulted following an argument with a state agent performing his duties (during a roadside check, at the end of a sports event or in prison), but also following personal dispute for instance.

Fragile communities and individuals are particularly vulnerable to the use of torture. This is the case for members of the LGBTIQ++ community, who are still subject to anal testing among other abuses. The same goes for migrants exposed to police racketeering, violence and sometimes arbitrary detention (in the center El Ouardia that is used as a place of deprivation of liberty without any legal framework).

OMCT requests the relevant Tunisian authorities to :

- Install video surveillance devices in all interrogation and police custody centers, as well as in prisons, except in cases where this could lead to a violation of the right of these persons to respect for private life or to confidentiality of discussions with their counsel or a doctor;
- Entrust to an independent judicial authority the control over the placement and renewal of police custody and pre-trial detention and establish a referral procedure to this authority for the detainee;
- Guarantee in practice the right to a lawyer and a medical examination during police custody, as provided for in Article 13bis of the Criminal Procedure Code;
- Prohibit intrusive medical examinations such as anal tests, virginity tests and urine tests which have no medical justification and cannot be consented to in a free and informed manner by defendant;
- Repeal article 230 of the Criminal Code criminalizing consensual relations between adults of the same sex;

Institutional violence is all the more difficult to combat when it is carried out in the name of national security. Tens of thousands of Tunisians are now registered and subject to administrative control measures by the Ministry of the Interior because of their alleged links to terrorist activity. These are measures decided by the administration without any judicial authorization, to restrict freedoms by means of house arrest, prohibition to leave the territory, repeated summons to police stations, searches outside any legal proceedings, prolonged immobilizations during road or border checks for information purposes, or even neighborhood inquiries and visits by police officers to homes and places of work. This “fichage” process is opaque and the administrative control measures imposed on the

individual are frequently disproportionate and without legal basis. These measures often constitute police harassment, or even ill-treatment.

OMCT requests the relevant Tunisian authorities to :

- Repeal the 1978 decree regulating the state of emergency or amend it to remove the provisions authorizing the adoption of measures restricting freedoms such as administrative searches, house arrests and the prosecution in the event of a violation of the house arrest, among other measures having no basis in Tunisian law;
- Ensure that any restriction of liberty is provided for by a clear, precise organic law guaranteeing respect for the principles of necessity and proportionality;
- Urgently cease the implementation against individuals of administrative control measures which do not comply with the requirements of legality, necessity and proportionality.

Administrative jurisdiction is supposed to be the first bulwark against abuses by executive forces. However, its appeal periods - in law, as in practice - and its congestion are far too excessive in time for it to be able to effectively assume the role as a guardian of freedoms. In addition, the Ministry of the Interior often disregards these judicial decisions, which are supposed to be binding.

Beyond the inability of the administrative court to enforce these decisions, we generally observe a clear imbalance between an all-powerful security apparatus and a relatively powerless judiciary when it comes to protecting the rights and freedoms of citizens.

OMCT requests the relevant Tunisian authorities to :

- Provide administrative justice with the human and financial resources so that it can exercise serious, prompt and effective control over the restrictions placed by the administration on the freedoms of persons, for exemple migrants in administrative detention or persons suspected of constituting a threat to public order or national security;
- Grant reparation to any individual who has been the victim of an arbitrary deprivation or restriction of their rights and freedoms.
