



# **No Reconciliation Without Justice**

**An Assessment of the Prospects of the  
Specialized Criminal Chambers in Tunisia**

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Specialized Criminal Chambers in Tunisia



With the support of \_\_\_\_\_



members of the Civil Coalition for the Defense of Transitional Justice \_\_\_\_\_

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# Introduction

As the Tunisian people celebrate the tenth anniversary the revolution that ended decades of authoritarian rule, the rule of law has yet to be fully realized. The country's transformation towards a truly democratic state is conditioned on the success of the transitional justice process that started in the wake of the revolution. This process aims to bear witness to the willingness and ability of the Tunisian State to address the legacy of gross human rights violations and the underlying impunity.

The transitional justice process, however, remains fragile and under threat. Since its establishment in June 2014, the Truth and Dignity Commission (Instance Verité et Dignité, IVD) has been consistently targeted by hostile media coverage and undermined by the lack of political will and mobilization of the resources necessary for its work. On 24 June 2020, a year and a half after its finalization, the IVD's report was published in the Official Journal of the Republic of Tunisia (JORT). This constitutes a first step in the long process of transitional justice, which has yet to see the delivery of reparations, the rehabilitation of victims, and justice through the legal proceedings currently underway before the Specialized Criminal Chambers (SCC), established in 2018.

At the end of its mandate in 2018, the IVD investigated and subsequently referred a total of 200 cases to the 13 SCC<sup>1</sup>. Trial observations, however, have revealed that the actual number of cases currently pending before the SCC is 205<sup>2</sup>. The discrepancy in numbers is attributable to the fact that some cases were split, and others merged following the

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1. IVD, Final report, Executive Summary, pp. 84-68 (Arabic version) and pp. 107-85 (English version).

2. Mapping of trial observations conducted by ASF.

judges' assessment. Referred cases concern gross human rights violations, as well as financial crimes committed between 1955 and 2013. Most accused persons did not respond to the IVD's summons in the pre-trial phase.

The cases that were investigated and transferred to the SCC reflect a wide range of landmark events in Tunisia's past and the gross human rights violations that were committed within these contexts: the fight against the colonial regime; the violations committed against the former royal family; the Bourguiba-Youssefist Conflict; the Battle of Bizerte in 1961; the attempted coup d'état in 1962; the repression of left-wing and pan-Arab militants; the Black Thursday of 1978; the Bread Riots of 1984; the repression of Islamist militants; the Gafsa Mining Basin Affair; the Revolution of 2011; the events of the Siliana Chevrotine in 2012; and 49 cases of corruption.

In adjudicating these cases, the SCC contribute to implementing the work on truth-seeking and memorialization that was initiated by the IVD. The SCC's mandate also involves delivering justice to victims and, where applicable, sanctioning the perpetrators of gross human rights violations in order to ensure that such atrocities are not repeated.

The first hearing before the SCC took place on 29 May 2018, in the case of «Kamel Matmati», a victim of enforced disappearance in 1991<sup>3</sup>. Ever since, nearly all trials have commenced before the SCC, though advancing at different speeds.

Two years after the start of the first hearing, the outcome of the SCC's work features a mixed portrait. Trials are progressing slowly, and the truth is gradually being revealed in the course of the hearings. While some figures from the old regime have been called to testify, many other accused persons remain absent from proceedings.

**To date, the SCC has not rendered judgments in any of the cases over which they are presiding.**



# I. Volume of cases

The IVD has transferred the following to the SCC:

## 131

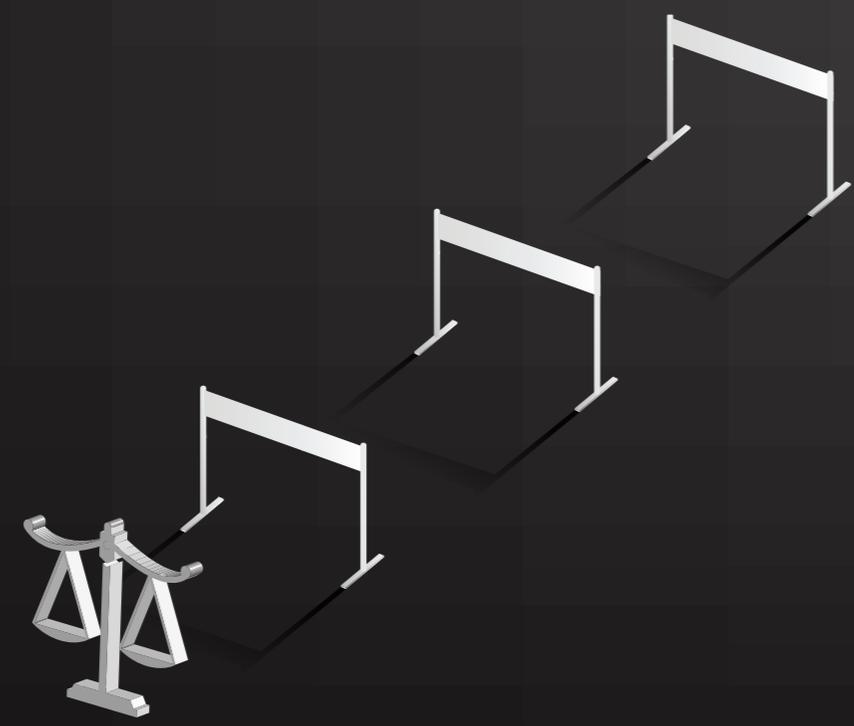
referral decisions in cases where the IVD did not have sufficient time to complete the investigation, gather all evidence, and to identify all perpetrators. These cases will have to be investigated further in accordance with a procedure that has yet to be defined.

## 69

indictments citing the names of the accused, the evidence, the testimony of victims, witnesses and potential suspects. These indictments resulted in criminal proceedings, with the SCC combining certain trials and separating others ;

3. ASF, Observation of the first hearing before the SCC, 29 Mai 2018, available at: <https://www.asf.be/fr/blog/observation/-18-05-29premiere-audience/>

# II. Obstacles encountered by the Specialized Criminal Chambers

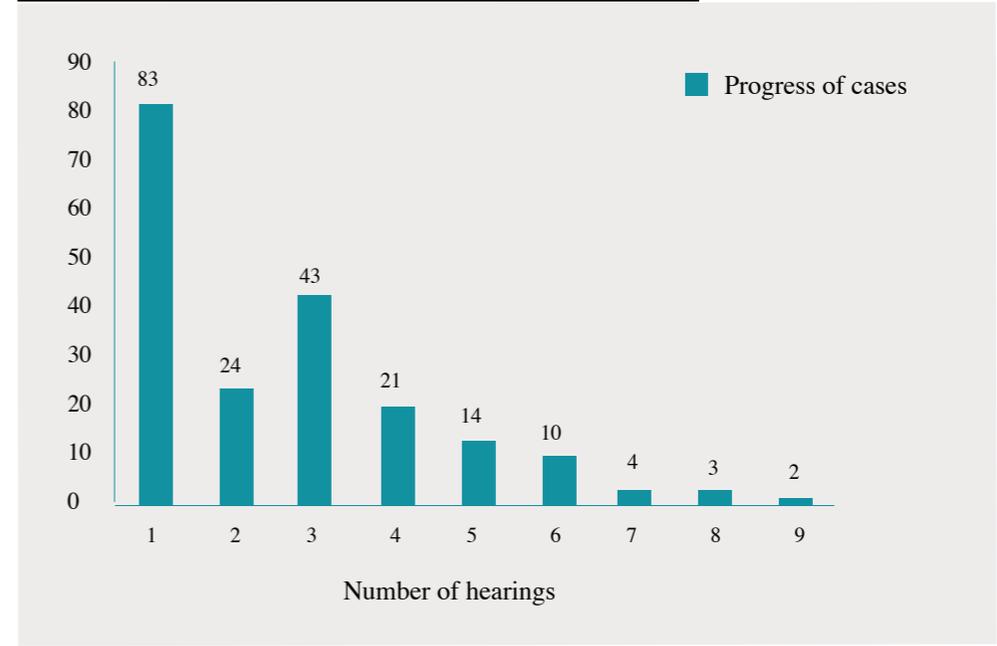


## A. The length of the proceedings

Over the past two years, hearings have been held consecutively but no judgment or verdict has been pronounced or has even reached the pleading phase. On 18 October 2019, during the seventh hearing in the Nabil Barakati case, judges decided that the case file was complete and ready for pleading. Over a year later, however, the plea hearing has yet to take place.

Based on our observations, out of the 205 cases before the SCC, 43 have availed of three hearings, and 83 of one hearing, as illustrated in the chart below :

Chart 1 – Progress of cases before the SCC<sup>4</sup>

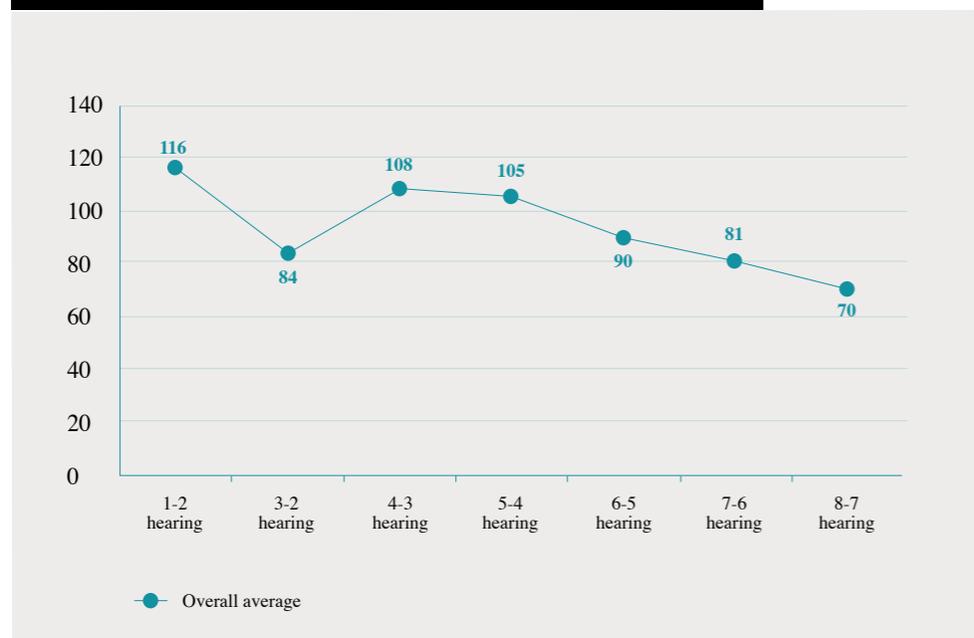


4. Chart developed on the basis of trial observations carried out by ASF.

In the two most advanced cases, one concerning the murder of Nabil Barakati and the other «Events of the Revolution – Thala and Kasserine», nine hearings have already been held<sup>5</sup>.

The postponement of SCC hearings has resulted in proceedings progressing at a slow pace, likely owing to the absence of an accused or their lawyers, or even judges given the lack of quorum in the SCC as a consequence of the annual judicial rotation. Delayed trials may also be attributable to long delays between hearings, with an average of 116 days between the first and second hearings, and 70 days between the seventh and eighth hearings.

**Chart 2 – Average days between hearings<sup>6</sup>**



5. ASF, Trial observation of the ninth hearing of the Nabil Barakati case, 3 July 2020, available at <https://www.asf.be/fr/blog/trialobservation/barakati-nabil/>.

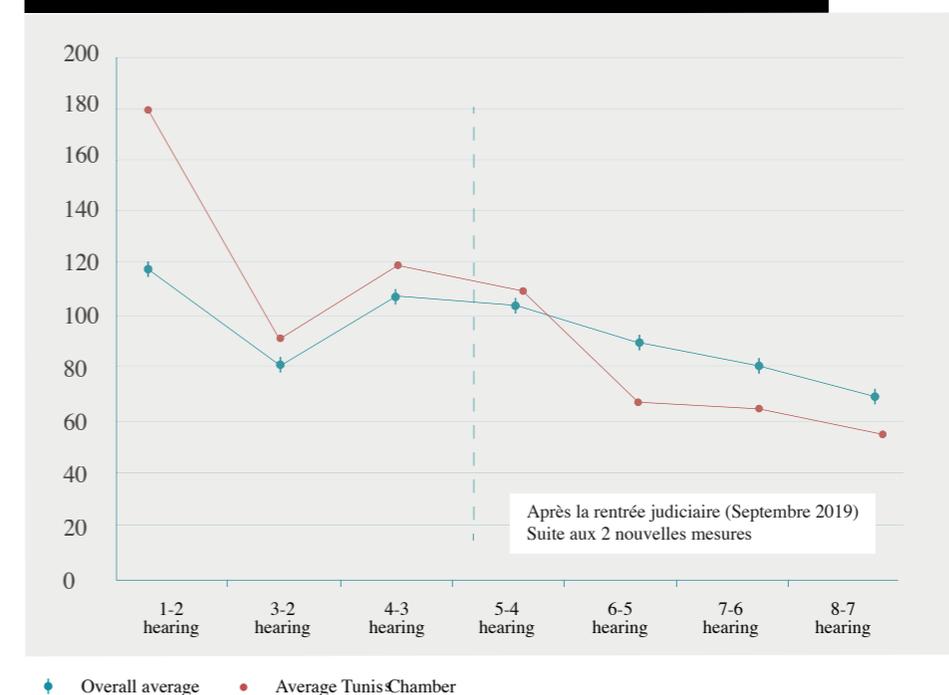
Trial observation of the ninth hearing of the Thala Kasserine case, available at <https://www.asf.be/fr/blog/trialobservation/martyrs-et-blesses-de-la-revolution-thala-kasserine/>.

6. Chart developed on the basis of trial observations carried out by ASF.

Some cases can be distinguished by excessively long deferrals. For example, in the «Events of the Revolution in the Cité Ettadhamen Majdi Mansri» case, there was a total of 336 days between the first and the second hearings. Similarly the case of «Sahnoun Jouhry» was postponed of 308 days following the second hearing.

Among the 13 SCC, the Tunis Chamber (situated at the Tribunal of first instance in Tunis) alone examines more than half (61.5%) of all cases transferred by the IVD. This, combined with the fact that SCC judges continue to perform their ordinary duties, has led to hearings being postponed continuously and above average delays. (see chart below).

**Chart 3 – Frequency of hearings at Tunis Chamber versus other SCC<sup>7</sup>**



◆ Overall average    ● Average Tunis Chamber

7. Chart developed on the basis of trial observations carried out by ASF.

The continuous adjournment of hearings and delays between hearings have a negative impact on the smooth running of proceedings and the rights of victims, many of whom continue to arrive in courtrooms, disheartened by the pursuit of justice. It also negatively impacts the rights of the accused, particularly their right to be tried without undue delay and within a reasonable time, a right that is guaranteed by article 108 of the Constitution and article 14 of the International Covenant on Civil and Political Rights, to which Tunisia is a party.

With a view to rectifying this problem, the Tunis SCC introduced the following new measures during its second year of operation, i.e. after the start of the 2019 judicial year:

#### Mesure 1

Secondment of the SCC President exclusively to transitional justice cases;

#### Mesure 2

Doubling the frequency of hearings, which now take place twice a week (Monday and Thursday) instead of once.

As illustrated in the chart above, these measures have expedited the frequency of SCC hearings, drastically decreasing the delays observed from the fourth and fifth hearings onwards. This frequency remains below the average of all other SCC, which have yet to adopt these measures.



**Judicial authorities, in particular the High Judicial Council (HJC) and the Presidents of the SCC, must adopt effective measures aimed at ensuring that trials before the SCC take place and be completed within a reasonable time, and that the necessary means be allocated to achieve this objective, in particular by ensuring that their presidents and members are exclusively seconded to work on cases that the IVD referred to the SCC.**



## B. Changes in the composition of the Specialized Criminal Chambers

Since their establishment by way of Law Decree No. 2887-2014, the SCC have encountered various structural obstacles due to the nature of their organization and composition.

It is worth recalling that the HJC is the body responsible for the appointment, transfer and structural organization of the judiciary, in accordance with article 48 of Organic Law No. 34 of 28 April 2016 on the Organization of the High Judicial Council.

In some cases, the HJC appoints SCC members or presidents unilaterally without express requests from the judges. Moreover, the speed of trials is often jeopardized by the annual judicial rotation of SCC judges, which, thus far, has already happened four times. During the last annual rotation in July 2020, 29 of the 91 judges of the SCC, one third of them, were transferred. The SCC of Nabeul, Medenine and Tunis were particularly affected by this rotation.

This change is a structural problem that delays and ultimately impairs the work of the SCC. Pursuant to Organic Law No. 53 of 24 December 2013<sup>8</sup>, all SCC judges must receive formal training in transitional justice before assuming their duties. Newly appointed SCC judges must be given time to familiarize themselves with the cases.

<sup>8</sup> Hereinafter Organic Law No. 53.

Accordingly, the regular rotation of judges will inevitably lead to adjourned hearings, which, in turn, negatively impacts the length of the trial; already excessive as discussed elsewhere in this report<sup>9</sup>.

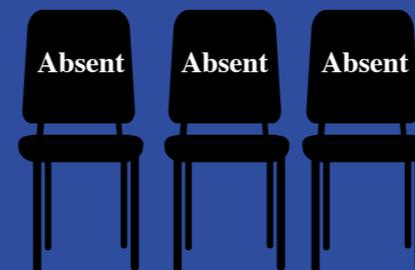


**The HJC should ensure the irremovability of SCC judges, while providing them with the necessary guarantees for their promotion and advancement of their career, and that annual rotations do not affect the ability of SCC to operate and deliver justice to victims ;**



**The HJC should also ensure that newly appointed judges receive appropriate and timely training on transitional justice, as required by Organic Law No. 53 of 24 December 2013. In addition, safeguards must be put in place to ensure that any change in the composition of the SCC mid-way through trials does not affect the fairness of the proceedings, and to ensure that all judges hearing these cases have the appropriate understanding of the evidence and arguments presented by all parties during the trial..**

9. ICJ, Submission to the United Nations Human Rights Committee in advance of the Committee's examination of Tunisia's sixth periodic report under article 40 of the International Covenant on Civil and Political Rights (2020), pp. 10-12, available at <https://www.icj.org/icj-submission-to-the-un-human-rights-committee-on-tunisia/>.



## C. The absence of the accused

One of the key objectives of transitional justice is truth revelation, which aspires to ensure the collective acknowledgment, memory and legacy of past abuses. The revelation of truth, the duty to ensure accountability for past crimes and human rights violations, guarantees of non-repetition, and prospective reconciliation, necessitate the participation of all stakeholders in the transitional justice process, including perpetrators and victims.

While the trials before the SCC constitute an appropriate framework for realizing these objectives, in practice, they are undermined by the absence of the accused. At each hearing victims are present, but the benches of the accused are either sparsely occupied or empty. Under Tunisian criminal law, the participation of the accused in criminal proceedings is not mandatory. Before each hearing, the court orders summons. Where accused persons decide not to appear in court, the court may issue a warrant ordering the Judicial Police to arrest them and to bring them to court, including through coercion if necessary.

Some accused persons on trial before the SCC have admittedly consented to attending one or more hearing and, accordingly, judges were able to question known figures associated with the former regime, including : (i) the former Interior Minister, Abdullah Kallel, in the cases of «Rached Jaidane» and «Kamel Matmati;» (ii) the former head of the Presidential Guard, Ali Seriaty, in the cases of «Fathi Khiari», «Abdelaziz Mehouchi» and in the «Events of the Tala Kasserine Revolution; « and the former director of Military Security, Mohamed Farza, in the case of the military coup «Barraket Sahel».

The participation of the accused in SCC trials remains limited and continues to depend in practice on their cooperation. In the «Faisal Barraket» case, for example, only 12 of the 33 defendants appeared in at least one hearing. In the «Sohnoun Jouhri» case, four out of 10 defendants appeared. The accused were completely absent from two out of seven hearings of this trial which has already taken place<sup>10</sup>.

The absence of accused persons from trial proceedings and the inability of the judiciary to effectively enforce the law stems from the close relationship between the accused and those who are supposed to guarantee their presence at trial. The former refers to members or former members of the security forces, including prison administration; the latter to Judicial Police officers, including members of the security forces. The relationship between Judicial Police officers and the accused seems to be marked by a profound “esprit de corps” (corporatism) and shared values.

The prioritization of this corporatism over respect for the law was clear from the very outset. On 25 June 2018, when the Union of Civil Servants of the General Directorate of Intervention Units issued a statement calling on police officers accused in cases of torture not to respond to the IVD’ summons. On 8 October 2018, the National Front of Police Unions outbid the IVD in a communiqué calling transitional justice a justice of «retaliation» that overwhelms the morale of law enforcement officers. The union called on all officers, active and retired, to remain united and to oppose any attempt to undermine the institution<sup>11</sup>.

The repercussions of these calls for corporatism and defiance of the law continue to be felt today and represent one of the main barriers to the transitional justice process.

To date, with a view to addressing the issue of absenteeism, judges have compelled the attendance of the accused persons at hearings by issuing warrants. This approach, however, has proved ineffective. According to Judicial Police, the addresses of the accused were either incorrect or they were unable to locate the accused. This explanation is highly unlikely given the fact that many accused persons are former members of the security apparatus, can be located easily, and have been seen in public by victims.

The apparent inaction of the Judicial Police to comply with summons compelling the attendance of the accused in trial proceedings remains a source of disappointment and anger for victims, their families and other actors engaged in the transitional justice process, and starkly contrasts with the public discourse that affirms impunity has been addressed.

The apparent inaction of the Judicial Police to comply with summons compelling the attendance of the accused in trial proceedings remains a source of disappointment and anger for victims, their families and other actors engaged in the transitional justice process, and starkly contrasts with the public discourse that affirms impunity is over.

Beyond the disappointments of victims, the absence of many accused persons at trial undermines the rule of law and marks a return to the principle of two-tiered justice: effective justice for «ordinary» citizens accused of a crime, versus a much more lenient form of justice for accused members of the security forces. After all, the objective of transitional justice is to break with the waves of the past and, in particular, injustice.

« We do not accept a travesty of justice! »

said Ridha Barakati, discontented to see his brother’s torturers boycotting their trial. Similar sentiments were espoused by Jamel Baraket who expected the accused to attend proceedings and tell the whole truth before the court.

« The torturers must give accounts of the crimes committed and not try to pass the ball among themselves, as they have been trying to do since the beginning. How can we forgive and begin a process of reconciliation in the face of such denial? »

If the trials continue under these conditions, a significant number of accused persons will be tried and potentially convicted in absentia. Convictions in absentia do not become final if, within the limitation period, the convicted persons do not voluntarily appear before a court or are not arrested. The failure of the police to ensure their presence at court leaves little room for optimism in terms of guaranteeing the enforcement of the judgments that will be handed down. There is a real risk that the judicial proceedings are more prolonged and that the right to truth is emptied of its meaning.

As the trials are not over, there is still time to address these issues.



**SCC judges should use all their available procedural prerogatives to ensure that the accused attend their trial. This includes, in particular, the possibility to issue warrants or detention orders as provided by article 142 of the Code of Criminal Procedure. Also, and above all, it is imperative that the judicial police demonstrate the same rigor in the implementation of warrants as they do in common law cases that do not involve police officers as defendants. The non-execution of a warrant by a judicial police officer is a criminal offense that should imperatively trigger investigations and, where applicable, disciplinary measures and criminal prosecutions.**

10. Information drawn from the trial observation by OMCT, which is a civil party in these two cases.

11. IVD’s response to the press release issued by the Police Unions, 29 June 2018, available at <http://www.ivd.tn/هيئة-الحقيقة-والكرامة-استجاء-لميني>



## D. Challenges related to the investigation of cases before the Specialized Criminal Chambers

Organic Law No. 53 granted the IVD investigative powers (including the collection of evidence) which, in ordinary criminal proceedings in Tunisia, are the responsibility of the Public Prosecutor's Office, investigating judges, and the Indictment Chamber. The law also gave the IVD the power to determine which cases should be transferred to the SCC for prosecution and to prepare the indictment.

However, Organic Law No. 53 does not make specific provisions for the application or how general criminal procedure laws apply before the SCC. As a result, applicable laws have in practice been widely assumed to grant the IVD almost exclusive competence to investigate complaints referred to it pursuant to the transitional justice process. The cases were then referred by the IVD to the Public Prosecutor's Office, which automatically transferred them to the SCC, without any further intervention on its part, according to Article 3 of Law No. 17 of 12 June 2014. The IVD has now been dissolved and almost all trials have begun before the SCC. The Public Prosecutor's Office remains very reticent and plays little or no role in the conduct of trials to date.

The application of this special regime regarding the role of the Public Prosecutor's Office and the quasi-exclusive investigative powers conferred on the IVD poses several problems that jeopardize the outcome of the trials<sup>12</sup>.

12. ICJ, Tunisia: Strengthening Accountability Through the Specialized Criminal Chambers (2020), available at <https://www.icj.org/tunisia-strengthen-accountability-through-the-specialized-criminal-chambers-new-briefing-paper/>

Indeed, the IVD's ability to collect evidence in an exhaustive manner has been affected by numerous obstacles, such as the lack of cooperation from state security organs in the transmission of information or the impossibility of compelling the accused to appear before the Instance. Thus, in some cases, the case files transferred to the Prosecutor's Office for referral to the SCC appeared incomplete, including those where indictments had been drafted. Noticeable gaps in evidence include the omission of exculpatory evidence, official documents, forensic evidence such as exhumation and autopsy records, and expert reports.

This lack of evidence undermines the right of victims to have their complaints diligently investigated and to receive reparations, including the criminal conviction of perpetrators. At the same time, the inadequacy of the investigations conducted by the IVD could threaten the right of the accused to receive a fair trial, given that judicial authorities have the obligation to conduct an investigation and collect both inculpatory and exculpatory evidence. Unlike ordinary criminal investigations, in transitional justice cases, the few accused who were questioned by the IVD have enjoyed of limited guarantees at the investigation and confirmation of the indictment stage. In particular, they did not have the opportunity to effectively challenge the evidence and charges against them.

As no trial has yet been completed, there is still time for the SCC to order additional investigative measures. This would involve either a referral of

the case by the Public Prosecutor to an investigating judge, or the appointment of a judge rapporteur within the SCC who would be responsible for conducting this additional investigation, provided that he or she does not participate in the judgment of the case.

The same applies to the 131 cases that were referred to the chambers without an indictment. Victims in these cases also have the right to have their complaints investigated in a serious, independent, and impartial manner, and to be provided with reparations.

Finally, there are the tens of thousands of victims who seized the IVD but whose cases were not referred to the SCC. During its mandate, the IVD indeed received 62,720 complaints and interviewed 49,654 potential victims of gross human rights violations. It was materially impossible for the IVD to conduct a detailed investigation into each of these complaints and, where appropriate, to refer them to the SCC. Nevertheless, these victims are entitled to have their claims to be duly investigated in accordance with international standards and, where there is sufficient evidence, the perpetrators of these human rights violations must be prosecuted and punished.

To guarantee the right of all victims of gross human rights violations to obtain justice, judicial authorities should :

-  **Refer all cases without indictment to the Public Prosecutor's Office to ensure that investigations be completed and, where necessary, an investigative judge be seized to issue an indictment in accordance with the Code of Criminal Procedure and international law, including the presumption of innocence ;**
-  **Ensure that, where additional investigations are undertaken during the trial, the accused and the civil parties be duly informed on the applicable procedure throughout the investigation process and prosecution, their rights in relation to the investigation and the trial, as well as the time limits for exercising these rights. The accused and the civil party must have the possibility to (i) examine and cross-examine any additional witnesses; (ii) request that certain investigate steps be taken; and (iii) introduce independent expert evidence, in full compliance with their rights to equality of arms, to defend themselves and to examine witnesses ;**
-  **Ensure that, where the case is temporarily suspended due to further investigation, the accused be informed of the nature of the charges held against them and can exercise their rights to adequate time and facilities to prepare a defense, to be tried without undue delay and to a remedy in cases of averred undue delay, consistent with international law ;**
-  **Ensure that all gross human rights violations as defined in Organic Law No. 53 of 24 December 2013 that were submitted to the IVD but that were not transferred to the SCC be investigated in a thorough, efficient, prompt and impartial manner and that, when such violations amount to crimes under international law or domestic law, alleged perpetrators be prosecuted in fair trials.**



## E. Uncertainty regarding the existence of a double degree of jurisdiction

Organic Law No. 53 does not explicitly provide scope to appeal decisions of the SCC. This omission, however, does not mean that appeals are not possible, as this procedure is provided for in article 108 of the Constitution.

To date, the vagueness concerning the steps that need to be taken to ensure an effective double degree of jurisdiction on transitional justice matters continues to hinder the progress of trials pending before the SCC. The government and the HJC should clarify this ambiguity, particularly by:

-  **Establishing, by way of government decree, SCC situated within the courts of appeal ;**
-  **Where such a decree is not adopted, ensuring the HJC designates the SCC within the courts of appeal ;**
-  **Training judges attached to the SCC appeals chambers, particularly on international standards, as is already the case with SCC judges sitting in the tribunals of first instance.**

# Conclusion

Despite all the obstacles observed during the past two years, the SCC have played an essential role in the revelation of truth and the construction of national memory.

On 11 June 2019, Abdallah Kallel, prosecuted in the case of «Kamel Matmati» before the SCC of Gabes, for the first time, apologized directly to the mother of Kamel Matmati, who was present in the courtroom as a civil party and witness. The accused, however, contested the charges against him. This was an important moment for Kamel Matmati's mother, who, for four years, brought a meal basket to the prison, the administration of which pretended to give it to her son who had in fact died under torture.

On 11 July 2019, during the first hearing in the case of the attempted coup of 1962<sup>13</sup>, victim Kaddour Ben Yachret delivered testimony to the court, in which he spoke of the visit of Beji Caïd Essebsi - Interior Minister at the time - to the Borj Erroumi prison. Ben Yachret reportedly noted the ill-treatment and torture to which the prisoners had been subjected, as well as the deterioration of their health. Ben Yachret's testimony substantiated the hypothesis that the officials' visit was solely aimed to verify the execution of orders and the proper conduct of the torture. This testimony in particular marked the relevance of the SCC's role insofar as it implicated the President of the Republic – who was in office at the time of the hearing - in the commission of acts of torture and gross human rights violations.

The two examples illustrated above call our attention to the major role the SCC can play in unleashing the spoken voice of victims, revealing the truth and even in national reconciliation. The latter is often brandished by political actors as being incompatible with the dispensation of justice, likely with the intention of bringing the transitional justice process to a speedy and unilateral conclusion that does not ensure accountability.

With a view to ensuring that the SCC continue to play their role in revealing truth, delivering justice, and possibly national reconciliation, the Tunisian authorities must address the obstacles identified in this report.

13. In 1962, a group of former resistance fighters and soldiers were arrested for an attempted coup d'état and conspiracy against President Habib Bourguiba. About ten of them were sentenced to capital punishment without guarantees of a fair trial, and the others served prison sentences and forced labor, first in Ghar el Melh and then in a basement at the Borj Erroumi prison in Bizerte, where the victims have been subjected to acts of torture and harsh prison conditions for 8 years.

It should be recalled that there are several examples in the comparative experiences of societies where impunity prevailed over reconciliation efforts, especially on the social, political and cultural levels. One example in this regard is the famous case of South Africa, where the South-African Coalition for Transitional Justice and other members of civil society still question the amnesty granted to torturers who refused to testify publicly and reveal their crimes. Today, society in South Africa is marred by inequalities, which is a reminder that declared reconciliation in Tunisia will not heal the wounds of the past unless it involves holding those responsible for past violations to account, particularly in light of the strong and widespread sense of impunity experienced by Tunisians.

*In the words of Thabo Mbeki<sup>14</sup>,*

**« it is a very delicate thing to manage the relationship between these two elements (transformation and reconciliation). It's not mathematical ... If we manage the transformation without changing much of the status quo, those who are the injured will rebel, and then farewell to reconciliation. »**

The SCC therefore presents a unique opportunity for Tunisia to address its legacy of atrocities, and to combat impunity in compliance with international law and the right to a fair trial, especially at the level of local judicial institutions.

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14. South African President 1999-2008.

# Recommendations

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**The judicial authorities, in particular the HJC and the Presidents of the SCC, must adopt effective measures aimed at ensuring that trials before the SCC take place and be completed within a reasonable timeframe, and that the necessary means are allocated to achieve this objective, in particular by ensuring that their presidents and members are exclusively seconded to work on cases that the IVD referred to the SCC;**
- 
**The HJC should ensure the irremovability of SCC judges, while providing them with the necessary guarantees for their promotion and advancement of their career, and that annual rotations do not affect the ability of SCC to operate and deliver justice to victims;**
- 
**The HJC should also ensure that newly appointed judges receive appropriate and timely training on transitional justice, as required by Organic Law No. 53 of 24 December 2013. In addition, safeguards must be put in place to ensure that any change in the composition of the SCC mid-way through trials does not affect the fairness of the proceedings, and to ensure that all judges hearing these cases have the appropriate understanding of the evidence and arguments presented by all parties during the trial;**

-  SCC judges should use all their available procedural prerogatives to ensure that the accused attend their trial. This includes, in particular, the possibility to issue warrants or detention orders as provided by article 142 of the Code of Criminal Procedure. Also, and above all, it is imperative that the Judicial Police demonstrate the same rigor in the implementation of warrants as they do in common law cases that do not involve police officers as defendants. The non-execution of a warrant by a judicial police officer is a criminal offense that should imperatively trigger investigations and, where applicable, disciplinary measures and criminal prosecutions;
-  Refer all cases without indictment to the Public Prosecutor's Office to ensure that investigations be completed and, where necessary, an investigative judge be seized to issue an indictment in accordance with the Code of Criminal Procedure and international law, including the presumption of innocence;
-  Ensure that, where additional investigations are undertaken during the trial, the accused and the civil parties be duly informed on the applicable procedure throughout the investigation process and prosecution, their rights in relation to the investigation and the trial, as well as the time limits for exercising these rights. The accused and the civil party must have the possibility to: (i) examine and cross-examine any additional witnesses; (ii) request that certain investigate steps be taken; and (iii) introduce independent expert evidence, in full compliance with their rights to equality of arms, to defend themselves and to examine witnesses;
-  Ensure that, where the case is temporarily suspended due to further investigation, the accused be informed of the nature of the charges held against them and can exercise their rights to adequate time and facilities to prepare a defense, to be tried without undue delay and to a remedy in cases of averred undue delay, consistent with international law;

-  Ensure that all gross human rights violations as defined in Organic Law No. 53 of 24 December 2013 and were submitted to the IVD but were not transferred to the SCC be investigated in a thorough, efficient, prompt and impartial manner and that, when such violations amount to crimes under international law or domestic law, alleged perpetrators be prosecuted in fair trials;
-  Establish SCC in the courts of appeal by way of government decree;
-  Where such a decree is not adopted, the HJC should designate the SCC within the courts of appeal;
-  Ensure the training of SCC judges attached to the appeals chambers, in particular on international standards, as is already the case with SCC judges sitting in the tribunals of first instance.





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