

**TORTURE
&**

IMPUNITY

**Joint submission
for the Universal
Periodic Review
of Tunisia**

**41st session of the
UPR Working Group**



SOS-Torture Network

Ligue tunisienne de défense des droits de l'Homme

Organisation contre la torture en Tunisie

Organisation mondiale contre la torture

TORTURE AND IMPUNITY

JOINT SUBMISSION FOR THE UNIVERSAL PERIODIC REVIEW OF TUNISIA

41ST SESSION OF THE UPR WORKING GROUP

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Introduction

- 1.** On January 14, 2011, the Tunisian people completed the first stage of their revolution, which aimed to put an end to decades of systematic torture as a mode of governance and regulation of public space and to break the chain of impunity.
- 2.** More than ten years later, however, torture and impunity remain major concerns. This is mainly due to a lack of substantial reform within both the security and justice systems. The legal texts governing the powers of the security apparatus remain unchanged. The security forces retain a propensity for torture and ill-treatment, which remain common practices carried out against 'ordinary' victims. Institutionalized violence against targeted groups has also resurfaced in recent years.
- 3.** All this is made possible by persistent impunity. Although judicial powers have gained independence since the revolution, they continue to be beset by multiple dysfunctions and enduring political and security pressures.

The definition of torture

- 4.** At the end of the last universal periodic review, Tunisia accepted several recommendations regarding the need to align the national definition of torture with the definition in the Convention against Torture. This reform has never seen the light of day, and Article 101bis of the Tunisian Criminal Code, established in 2011 after the revolution, remains unchanged.
- 5.** Article 101bis contradicts the international definition by limiting the characterisation of torture to acts inflicted for purposes of obtaining confessions or information. This definition is extremely limited, as it excludes from the article's scope of application violence perpetrated for punitive aims.
- 6.** In the majority of cases we have documented in recent years, torture is inflicted for punitive purposes, regardless of whether it occurs in public spaces or in prison. Even in police custody, the objective of the abuse may be punitive and does not always involve the signing of statements with confessions.

7. The main consequence of this inadequate definition of torture is that, to date, there have been no convictions for torture in Tunisia, with one exception that occurred just after the revolution in which two officials received outrageously minor sentences. The definition of torture in the Tunisian Criminal Code is not the only source of impunity, but it is a primary one. Thus, in recent years, the OMCT has accompanied several victims in their quest for justice, who have seen the abuses they suffered considered to be simple violence rather than torture because these abuses were inflicted for punitive purposes.
8. Furthermore, the current definition of torture criminalises violence based on «racial discrimination» and not on the basis of «any discrimination» as required by the international definition. There are too many cases of punitive violence against individuals targeted because of their gender identity or their alleged religious beliefs and practices. These assaults are sufficiently severe to qualify as torture under international law, but will be considered violence by Tunisian courts because they do not aim to obtain a confession and discriminate based on non-racial qualities or identities.

Recommendation

1. To amend Articles 101bis and 101-3 of the Criminal Code that criminalise torture to align them with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The persistent use of torture and ill-treatment

The context of torture and ill-treatment

9. Since the last review of Tunisia, our organisations have documented dozens of cases of torture and/or cruel, inhuman, or degrading treatment (CIDT) perpetrated by officers of the police or the National Guard—both of which are under the authority of the Ministry of the Interior—for punitive purposes following a dispute. Sometimes the incident constitutes a private dispute in which the officer, acting outside their job, abuses their status and authority. In most cases, torture and ill-treatment inflicted for punitive purposes are the result of a dispute between a Tunisian citizen and a police official or National Guard officer in service.
10. Torture for punitive purposes may also be carried out in prisons by prison officers. These cases are fewer in number than those involving police or National Guard officers, but they are not anecdotal.
11. Law enforcement officers continue to use violence during arrest or in police custody to extort confessions or information. These acts are perpetrated against persons suspected of terrorism

or common crimes, but also against individuals arrested for political activism expressed on social networks or through participation in protests.

- 12.** The violence most often consists of punches, kicks, baton or stick blows inflicted all over the body, sexual assault, humiliation and threats of rape, death and prosecution on the basis of false accusations. The consequences can be severe.
- 13.** In addition, authorities frequently resort to psychological violence in the form of police harassment, which causes significant psychological and material damage. This harassment affects both persons listed as 'S' due to their presumed dangerousness as well as persons targeted by the Ministry of the Interior for their political activism or advocacy for human rights.

The violation of procedural safeguards: a breeding ground for torture and CIDT

- 14.** Regardless of whether violence is used to exact punishment or to secure a confession, in most cases the violence starts in public places (at the stadium, on the street, in the hospital, etc.) and continues at the police station.
- 15.** With rare exception, arrests are made without a warrant and often not in flagrante delicto, in violation of the rules of the Code of Criminal Procedure regulating arrests. This explains why, in many cases, the person assaulted by the police is taken to the police station and accused of contempt or other fabricated allegations, in an attempt to justify the arrest after the fact and to dissuade the victim from filing a complaint.
- 16.** In the majority of cases, once at the police station, the detainee is not informed of their right to a lawyer, nor of their right to a medical examination or for their family to be notified. This practice is in violation of Law No. 2016-5 adopted on February 16, 2016, which is intended to increase procedural guarantees for persons in police custody and thus prevent the use of violence and the falsification of investigation reports. Often the custody record mentions that the detainee has been informed of their rights and that the detainee has renounced them. In some cases, the detainee explicitly requests their right to a lawyer but is denied.
- 17.** If a detainee is suspected of a crime and does not renounce legal assistance but cannot appoint one himself due to insufficient financial means, a lawyer must be appointed. In practice, many criminal defendants are not provided with counsel until the first court hearing. Court-appointed counsel remains a mechanism that is rarely used by the judicial police, and lawyers, who are poorly compensated and often delayed in payment, are reluctant to provide assistance.
- 18.** Violations of procedural safeguards during police custody are further facilitated by the fact that the prosecutor's office has no control over events that occur during police custody. Prosecutors systematically renewed police custody each time it was requested by the judicial police, without meeting with the detainees.

19. In addition, quite often after being taken into police custody, defendants are remanded to preventative detention in prison again without seeing the prosecutor. In these cases, it is impossible for them to promptly report the violence they have endured.

Recommandations

- 2. To install video surveillance devices in all interrogation and police custody centers, while respecting the right of detainees to privacy and confidentiality of interviews with counsel or a physician;**
- 3. To strengthen the monitoring of detention locations, including by the National Institution for the Prevention of Torture (INPT) and civil society;**
- 4. To entrust to an independent judicial authority determination of the reasons for the placement and renewal of police custody, as well as the conditions under which it is carried out, and. to establish a procedure for the detainee to have recourse to this authority;**
- 5. To guarantee in practice the right to a lawyer even in the case of an accusation of a crime, as well as the right to a medical examination during police custody, and to cancel all acts carried out during police custody that are in violation of procedural guarantees**
- 6. To amend the Code of Criminal Procedure to remove the option for persons in police custody to renounce legal assistance, in order to prevent judicial police officers from forcing detainees to renounce this right;**
- 7. To guarantee in practice the presentation of the detainee to an independent judge at the end of police custody;**
- 8. To reaffirm unambiguously the absolute nature of the prohibition of torture and to make it publicly known that anyone who commits, is complicit in, or tacitly authorizes such acts will be held personally responsible before the law.**

Victims of torture and CIDT

20. In most cases, torture and CIDT are inflicted on 'ordinary' citizens, either as a result of a dispute with an officer of the security forces in a public space and subsequently at a police station or against detainees in prison.

21. In recent years, we have also seen an increase in institutionalized violence. Since the revolution, this violence has resurfaced in the form of systematic police harassment of persons listed as 'S' and suspected of posing a threat to public order.

22. In recent years, we have also seen an increase in violence for purposes of punishment or obtaining a confession perpetrated against two types of actors: protesters (or suspected protesters) and LGBTIQ++ rights activists. At the same time, the use of torture against those suspected of terrorism remains widespread.
23. The severity and systematic nature of the violence against these groups indicates that this is a conscious and orchestrated practice and not an isolated incident, contrary to what the public communications of the Ministry of the Interior might sometimes suggest.

Police harassment of persons listed as 'S': A severe form of institutional violence

24. Institutional violence can take forms other than physical assault and be equally as violent and traumatic. Such is the case with police harassment of persons registered on the 'S' list due to their presumed danger to public order. In recent years, we have documented dozens of cases of persons listed as 'S', all of whom are subjected to measures depriving them of their liberties as a result of this status. These restrictions, also called administrative control measures, are ordered and implemented by the Ministry of the Interior without any judicial authorization.
25. These measures can take various forms, such as house arrest, prohibition to leave the country, repeated summonses to the police station, extrajudicial searches, refusal to issue administrative documents, prolonged detention for interrogation during road or border controls, or neighbourhood inquiries and visits by police officers to homes and workplaces.
26. Most of the individuals on the 'S' list are exposed to several kinds of measures, some of which are repeated to the point of constituting police harassment and even ill-treatment. All the restrictions imposed on people listed as 'S' are arbitrary due to their lack of legal basis. In many cases, the Ministry justifies these restrictions by invoking Presidential Decree 78-50 of 1978, which regulates the state of emergency, or the 1975 decree establishing the powers of the Ministry of the Interior. These two texts attribute to the Ministry prerogatives defined in terms that are too vague to satisfy legal requirements. Moreover, the 1975 decree is a simple regulatory text, while the 1978 presidential decree was adopted in the context of a previous state of emergency and is not intended to have had any legal value for over 40 years.
27. The administrative control measures imposed on persons listed as 'S' are neither necessary nor proportional. They are in effect temporally unlimited, and the administration does not provide the individuals—or even the administrative court when it is seized by an appeal—with the detailed and comprehensive reasons justifying the designation of these individuals as 'S' and the measures that this status entails.
28. These restrictions therefore violate both the Tunisian Constitution and the standards of international law governing such deprivation of liberty. They have caused serious physical and psychological damages. Many of the persons listed as 'S' have lost their jobs or their homes as a result of police pressure. Some have been rejected by their families or spouses. They all suffer from severe psychological consequences.

Recommendations

9. To urge the cessation of administrative control measures against individuals that do not meet the requirements of legality, necessity and proportionality;
10. To prosecute and punish, both in the criminal justice system and in disciplinary proceedings, any official who is guilty of arbitrary restriction or deprivation of freedom against an individual, and to provide compensation to the victims;
11. To ensure compliance by the Ministry of the Interior with the rulings of the Administrative Court overturning illegal administrative measures.

La répression des manifestations

30. Over the past two years, Tunisia has witnessed an increase in protests against the economic and political marginalization of large segments of the population, as well as against police violence and impunity. The response has consisted solely of security measures. Police and National Guard forces have used disproportionate force to disperse protesters at several rallies, including through the excessive and inappropriate use of tear gas and water cannons, as well as public beatings. They have made numerous arrests, many against minors. Most of these arrests were violent. Security forces interrogated detainees without lawyers and forced some to sign statements. In many cases, prosecutors ordered that defendants be held in pre-trial detention without seeing them, owing to the large number of detainees and the public health crisis brought about by COVID-19. Some detainees then had to wait weeks to see a magistrate and be sentenced.
31. This wave of repression that swept across much of the country targeted protesters but also extended to activists, human rights defenders, and youth from low-income neighbourhoods suspected of participating in protests, many of whom were minors.

Recommendations

12. To amend the legal framework governing the management of public gatherings, and in particular law 4/1969 of January 24, 1969 on public meetings, in order to guarantee freedom of assembly and to better control the use of force by authorities;
13. To ensure that all allegations of torture and violence committed by security forces during and on the margins of demonstrations are investigated impartially, promptly, seriously and independently.

The targeting of LGBTIQ++ activists

- 32.** Despite several recommendations in the last review to abrogate or amend Article 230, which punishes same-sex relations with a sentence of three years in prison, the article is still in place. Authorities continue to subject those suspected of engaging in sexual relations with those of the same sex or gender to an anal examination under Article 230, which is ordered by a judge and conducted by a forensic physician. Legally, persons accused of same-sex relations have the right to refuse the test. In practice, however, many submit to the test under threat from the police, who claim that refusal of the test would be interpreted as an admission of guilt.
- 33.** In addition to judicial harassment of those suspected of same-sex activity, recent years have seen an increase in attacks on members of the LGBTIQ++ community by police officers and private individuals alike. In many cases, victims refuse to file a complaint out of fear of being prosecuted under Article 230 of the Tunisian Criminal Code criminalising homosexuality.
- 34.** Attacks and harassment have also been inflicted on members of associations defending the rights of LGBTIQ++ persons, including the non-governmental organisation DAMJ (l'Association tunisienne pour la justice et l'égalité), whose legal activism rankles the authorities. Some of the organisation's members were intimidated and threatened to such a degree that they could no longer meet at the organisation's offices. Some even received death threats and verbal assaults by phone. Several have open legal proceedings against them as a result of their activism.

Recommendations

- 14. To repeal Article 230 of the Tunisian Criminal code criminalising consensual sex between adults of the same sex or gender and end the practice of anal testing.**

Combat against terrorism

- 35.** Tunisia has not implemented any of the recommendations made during the last EPU concerning respect for the fundamental rights of those suspected of terrorism, including with regard to the prevention and legal sanction of torture and ill-treatment in this context.
- 36.** The torture and ill-treatment of persons arrested in the context of the fight against terrorism continue, perpetrated by both the police and the National Guard. Each of these two departments has a directorate of inquiry and investigation, which together form a national unit for the investigation of crimes of terrorism consisting of investigators who are assisted by an anti-terrorist brigade (BAT) that arrests and transfers suspects to interrogation centers. BATs and investigators often use torture against detainees. These practices are facilitated by the law of derogation applicable to investigations of terrorism. Law No. 2015-26 of August 7, 2015, which regulates anti-terrorism efforts and the repression of money laundering, introduced a twice-renewable exceptional period of police custody of five days, without the presence of a lawyer during the first 48 hours.

- 37.** Most detainees remain locked in the interrogation centre for part of their time in detention and are subjected to torture day and night, often for several days at a time, until they sign confessions that often they are not able to read. They are kicked, punched, and beaten with sticks all over their bodies, tied in the 'roast chicken' position, electrocuted, subjected to mock drowning, threatened with rape, and sexually assaulted.

Recommendations

- 15. To amend Law No. 2015-26 of August 7, 2015 on the fight against terrorism and Article 13 of the Code of Criminal Procedure to reduce the duration of police custody and make the presence of a lawyer mandatory from the outset of police custody in terrorism investigations.**

Detention conditions

- 38.** One of the overriding challenges within prisons is overcrowding. In recent years, the total number of prisoners has fluctuated between 22,000 and 24,000, while the capacity of the institutions did not exceed that of 18,680 in December 2019. Overcrowding is a source of violence among inmates as well as between inmates and officers, and also affects the organisation of and procedures for family visits. The primary reasons for overcrowding are the overly repressive penal policy, the widespread use of pre-trial detention (55% of inmates are in pre-trial detention, according to the latest available statistics), the lack of alternative punitive measures, and the use of incarceration as penalty for minor offences. Although the Tunisian Criminal Code has provided for alternative penalties to prison sentences of less than one year since 1999, including community service, the use of these penalties remains marginal concerning the number of prison sentences handed down. This is due to the absence of a legal framework for the application of alternative sanctions and a lack of awareness among judges of the use of such sanctions.
- 39.** In many prisons, first-time offenders are often detained with repeat offenders, and convicts are held with pre-trial detainees. Hygiene conditions are quite poor, with the result that prisoners at times contract incurable diseases. Access to health care is grossly inadequate. Prisons are confronted with an acute shortage of health personnel and financial resources. This phenomenon also concerns the involuntary hospitalization of persons with psychiatric disorders who are in prison due to a lack of beds in psychiatric hospitals. The management of physical and mental health issues in prisons requires urgent measures by the Ministry of Health and the Ministry of Justice.
- 40.** Leisure and rehabilitation activities are qualitatively and quantitatively insufficient, resulting in the deterioration of inmates' psychological state, in turn leading to violent behaviour towards themselves and others.

41. In general, the penitentiary administration shows a real desire to improve prison conditions, but it does not always have the necessary financial resources or the necessary support of other ministries such as the Ministry of Health.
42. In addition, the improvements implemented by the penitentiary administration cannot substitute for a serious interrogation of the penal policy aimed at reducing the number of prison sentences, especially for minor offences and those related to questions of lifestyle or morals, as well as implementing holistic reintegration programs aimed at reducing the recidivism rate.

Recommendations

16. **To reform the Code of Criminal Procedure to implement a legal framework that encourages the use of alternative sentencing and sentence adjustment;**
17. **To reform the Code of Criminal Procedure to tighten the conditions for the use of pre-trial detention, reduce its duration, and establish a chamber of rights and freedoms in charge of promptly examining appeals against pre-trial detention;**
18. **To grant the penitentiary administration and the justice system the human and material resources necessary to implement a penal policy focused on rehabilitation and not only on the repressive scope of the sentence ;**
19. **To adopt the necessary measures to guarantee the strict separation between accused and convicted persons, as well as between adults and minors, and to ensure their adequate care, including medical and psychological care;**

Retaliation against victims

43. Victims of institutional violence, regardless of their profile and the circumstances in which they are tortured or assaulted, are often pressured or retaliated against to discourage them from or punish them for filing complaints against officials.
44. Many victims are wrongly accused of contempt of public officials based on the controversial Article 125 of the Tunisian Criminal Code. This accusation is usually intended to justify arbitrary arrests after the fact, and/or to dissuade the victim from prosecuting the assaulting officers. The use of false accusations by officers is commonplace and is especially problematic as it often leads to what is in effect prosecution aided by judicial complicity.
45. The proceedings for charges of contempt proceed much more quickly than investigations into torture or violence allegedly committed by law enforcement officials. In addition, while law enforcement officials are never taken into custody—with very few exceptions—those charged with a simple contempt offence usually spend time in prison before being acquitted or receiving a sentence that corresponds to the time spent in custody.

Recommendations

20. To ensure that alleged perpetrators of torture and ill-treatment are immediately suspended from duty during the investigation, particularly if there is a risk that they may be in a position to repeat the acts of which they are suspected, retaliate against the alleged victim, or obstruct the investigation;
21. To repeal or amend Article 125 of the Tunisian Criminal Code on contempt of public officials to ensure that the law is no longer abused by law enforcement officials;

The persistence of impunity

46. The process regarding the sanction of and reparations for the crime of torture is strewn with often insurmountable obstacles. Some arise due to a lack of diligence on the part of the magistrates, whereas others are provoked by the injustice these magistrates perpetrate. Some are the result of an overburdened judicial system, while others are the result of the numerous obstacles created by officials of the security forces who refuse to collaborate in investigations and sometimes threaten victims and witnesses. As a result, to date, no complaint has resulted in a satisfactory process founded on a diligent investigation.
47. Despite the amendment of the Code of Criminal Procedure in 2016 to increase procedural safeguards in police custody, in the majority of cases, victims of torture or ill-treatment in police custody do not have access to a lawyer. The presentation of the detainee to a magistrate following police custody is therefore the first opportunity the victim has to effectively denounce the abuse they have endured.
48. More and more prosecutors and investigating judges are agreeing to note allegations of torture by detainees in their records, but do so without ordering an investigation.
49. When a victim formally files a complaint, it is rarely pursued, despite repeated requests by lawyers. If an investigation is finally launched, the prosecutor or examining magistrate in charge of the investigation delays the victim's hearing and medical examination, which allows the traces of physical violence to disappear.
50. When the magistrate (prosecutor or investigating judge) agrees to order a medical examination while the victim is in detention, the examination is not undertaken or is undertaken several weeks or even months later, as the examination request is sent to the prison director who waits weeks before carrying it out. Whether the victim is free or in detention, when the examination does finally take place, the medical report is delayed in being sent to the magistrate.
51. As long as the case is in the hands of the prosecutor at the preliminary investigation stage, the victim cannot file a civil action and is therefore not informed of the progress of the investigation. Very often, the investigation only materializes through one or two acts followed by a de facto abandonment without the victim being able to compel the prosecutor to advance the case.

52. Judicial instructions executed by investigating judges also suffer from their long duration and a lack of diligence on the part of magistrates. The victim can be a civil party at the investigation stage, but this status gives him or her few rights other than to appeal against the order closing the case, which is made after years of investigation. In many cases, the investigation is limited to the hearing of the victim and the suspect, and possibly to the performance of a late forensic examination. Just as the public prosecutor during the preliminary investigation, the investigating judge most often entrusts the investigation to the judicial police, who do not demonstrate the necessary seriousness and impartiality.
53. After years of investigation, when the judge finally refers the case for trial, the legal characterisation of the acts is often inadequate. In many cases, the acts constituted a crime of torture within the international definition, but they were instead characterised as violent offences subject to a maximum of five years imprisonment. This is partly due to a restrictive conception of torture limited to violence inflicted in order to obtain a confession, as conceived in Article 101 bis of the Criminal Code.
54. In the majority of trials for violence brought against law enforcement officials, the defendants do not attend the trial, which is therefore conducted in their absence. However, the defendants are easily located and in most cases continue to work. If they are sentenced to a prison term at the end of the trial, they are not arrested. The victim must wait for the perpetrators to appeal their conviction in order to get a true trial.
55. In the majority of cases, the sentences handed down are minimal and do not reflect the severity of the torture or ill-treatment inflicted. No convictions for torture have been handed down to date. Financial compensation is almost non-existent.
56. This climate of impunity is the principal factor explaining the persistence of institutional violence.

Recommendations

22. **To ensure that all complaints of torture and ill-treatment are immediately investigated seriously, impartially and promptly;**
23. **To ensure that a forensic examination in accordance with the Istanbul Protocol is promptly ordered and conducted;**
24. **To amend the Code of Criminal Procedure to guarantee victims greater rights at the stage of the judicial investigation**
25. **To create a specialized judicial police force for the investigation of torture and ill-treatment, which would be under the auspices of the Ministry of Justice;**
26. **To take all necessary measures to ensure that acts of torture are prosecuted as such and not as crimes of violence;**
27. **To guarantee the presence of accused officials at their trial through the execution of warrants and the seizure of their property, and to ensure that sentences pronounced at the end of trials are executed, including through the arrest of accused persons who will be sentenced to a fixed prison term;**

The INPT, an active institution

57. The National Authority for the Prevention of Torture (INPT), the national mechanism for the prevention of torture (MNP) created under the Optional Protocol to the Convention against Torture, is particularly threatened in its existence.
58. With persistent rumours that the independent institutions will be thoroughly restructured according to the vision of the President of the Republic, the future of the INPT is uncertain. Until now, this institution has played a preventive role through a significant number of monitoring visits to places of deprivation of liberty and the publication of reports and communiqués on its observations. The INPT has played a particularly important monitoring role during the protests that have been taking place in the country since January 2021.
59. Nonetheless, since the establishment of the state of emergency on July 25, 2021, the dialogue between the administration and the INPT has been increasingly hindered. The Ministry of the Interior has repeatedly invoked the current security and health contexts to prevent the INPT from accessing courts and police stations when the INPT wished to inquire about the situation of individuals arrested in connection with the protests.
60. In addition, according to the law on the INPT, its members must be regularly renewed, with half of the members renewed each time. The first half was renewed by the Assembly of People's Representatives in 2021. Due to the political instability that has worsened since the establishment of the state of emergency, however, they were not able to take their oaths of office and the former members simply extended their de facto mandate. The term of the second half of the members expires in May 2022, but they cannot be reappointed because of the suspension of parliament.

Recommendations

28. To allow the members elected in 2021 to be sworn in and to take office ;
29. To guarantee unrestricted access by the INPT to all places of deprivation of freedom in accordance with article 20 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

