OMCT
SOS-Torture Network

10 OBSTACLES TO JUSTICE

A GUIDE TO LEGISLATIVE REFORMS TO COMBAT IMPUNITY

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10 OBSTACLES TO JUSTICE AND HOW TO OVERCOME THEM

A GUIDE TO LEGISLATIVE REFORM TO COMBAT IMPUNITY

INTRODUCTION

Torture and impunity were two of the primary triggers for the Tunisian revolution in December 2010. Torture has quickly moved from being a taboo subject to a major focus of public and political discourse and of interest for both Tunisian civil society and political authorities. Yet twelve years later, the outcomes of the fight against torture remain limited. Impunity has certainly been reduced, but is still widely prevalent,with a resurgence of various forms of institutionalized violence presumably perpetrated with the explicit or tacit consent of the state apparatus. When faced with allegations of violence, security forces support and protect each other and even resort to counter-attacking the vicitims that present the allegations. The harassment and mistreatment of victims of violence by the police and judiciary is further setting back the fight against torture. Public policies have been introduced in an attempt to prevent state violence and facilitate access to justice for victims. However, recent reforms have contributed more to silencing witnesses than to eradicating state violence.

The evolution of the transitional justice process is an example of this backsliding. Transitional Justice is intended to put an end to the decades of dictatorship by bringing justice to thousands of victims of serious human rights violations, demonstrating the Tunisian State's willingness and ability to engage in the process of democratization and rule of law. However in reality, victims' hopes for justice and reparations are stalled, as it is clear today that the process is seriously jeopardized.

One of the main causes of the problem is the feeling of impunity among the security apparatus and their superiority as a central power within the executive branch. In this case, the judicial system, relegated to a secondary position, cannot play its protective role. Its independence has been significantly undermined by the recent reforms of the Superior Council of the Judiciary and the dismissal of 57 judges by the President of the Republic. The separation of powers has been weakened, and ultimately it is the victims of those attacks on liberties and rights who pay the price.

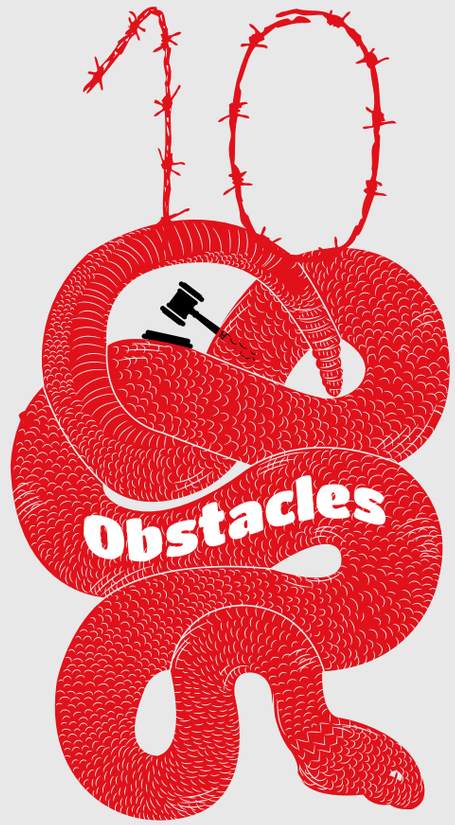
At its session in November 2022, the Committee Against Torture adopted a list of issues to be addressed to the Tunisian authorities ahead of the Committee's next review of Tunisia. This list of issues challenges the State on measures taken since the last review in 2016, as a result of which the Committee identified major obstacles to victims' access to justice.

The Tunisian authorities have little time left to implement substantial reforms to remove these obstacles before the next review by the Committee.

The World Organisation Against Torture proposes a guide to legislative reforms to combat impunity and to make Tunisian law compliant with the country's international commitments.

These reforms require a redistribution of powers, with the establishment of a strong, democratically elected legislative branch that is representative of the Tunisian people. This entails restoring the role of the judiciary as the enforcer of the rule of law, and ensuring that the security forces serve the executive and the judiciary, and not the other way around.

Reforming the legislative framework is only a first step and is not sufficient to eradicate impunity. Judges, police officers, prison officials, doctors, lawyers and victims themselves all have a role to play in the justice system. However, profound legislative reforms are required and expected to provide all these actors with a framework and means of action, and to signal that the eradication of torture and impunity is once again a political priority.


10
Obstacles

OBSTACLE 01

THE LIMITATIONS OF THE NATIONAL DEFINITION OF TORTURE COMPARED TO INTERNATIONAL STANDARDS

Despite numerous allegations of torture filed throughout the country each year, only one conviction for torture has been handed down. On March 25, 2011 four government officials were convicted in a case dating back to 2004. The police officers received a two-year suspended sentence, which does not reflect the serverity of the crime.

The lack of convictions since then is largely due to the limitations of the definition of torture in the Tunisian Penal Code, which do not meet international standards.

Article 101 bis of the Tunisian Penal Code, which criminalizes torture, defines the term as follows:

> *« Torture means any act that intentionally inflicts severe physical or mental pain or suffering on a person, whether for the purpose of obtaining information or a confession from that person or a third party regarding an act that the person or a third party has committed or is suspected of having committed.*
>
> *Torture also encompasses acts of intimidation or coercion against a person or a third party to obtain information or a confession.*
>
> *Additionally, torture includes pain, suffering, intimidation, or coercion based on racial discrimination.*
>
> *A public official or similar person who orders, incites, approves, or remains silent about torture in the exercise of their duties or in connection with them is considered a torturer.*
>
> *However, suffering resulting from legal punishments, entailed by them, or inherent to them, is not considered as torture. ».*

The definition of torture provided for in the Tunisian Penal Code, last amended by Decree-Law 2011-106 of October 22, 2011 does not comply with the Convention Against Torture, ratified by Tunisia in 1988.

The Tunisian definition of torture is more limited compared to the international definition. Article 1 of the Convention against Torture includes the infliction of severe pain or suffering for the purpose of punishing a person for an act they have committed or are suspected to have committed. This punitive objective is not included in the Tunisian definition. Article 101bis of the Criminal Code only considersacts of violence as torture if they are intended to obtain information or a confession, disregarding any severe suffering caused by other purposes.

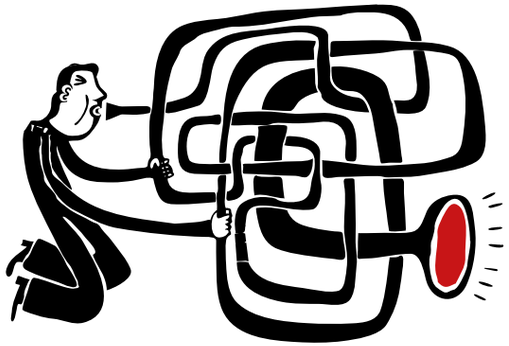
However, recent cases of torture documented by SANAD, the OMCT's assistance program for victims of torture and ill-treatment, show that the majority of torture cases are punitive, whether in the public sphere or in prisons. Even in police custody, the purpose of the abuse may be punitive and does not always involve obtaining statements.

Furthermore, Article 101bis defines torture as violence based on «racial discrimination» rather than «any form of discrimination» as required by the international definition. However, there are numerous cases of punitive violence against individuals who are targeted because of their sexual identity or perceived religious beliefs and practices. These assaults are severe enough to qualify as torture under international law, but are classified by the Tunisian judiciary as violence because they are not aimed at extorting a confession and are motivated by non-racial discrimination.

During Tunisia's last review of its implementation of the Convention against Torture in 2016, the Committee Against Torture called on the state to amend Article 101bis of the Penal Code to align it with the international definition. However, six years later, this reform has yet to be adopted.

RECOMMENDATION

AMEND ARTICLE 101 BIS OF THE CRIMINAL CODE TO ALIGN WITH ARTICLE 1 OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, THEREBY CIMINALIZING TORTURE.



OBSTACLE 02

DIFFICULTIES FOR VICTIMS IN ACCESSING LEGAL COUNSEL

According to Article 12 of the Convention against Torture, States are required to «conduct an immediate and impartial investigation whenever there are substantial grounds for believing that an act of torture has been committed within their jurisdiction. Similarily, the Tunisian Penal Code mandates prosecutors to initiate or request an investigation whenever an offense has been committed.

However, while a victim's allegation of torture or ill-treatment to a judicial authority should in theory be sufficient to trigger an independent, impartial, prompt, and diligent investigation, in practice, without the assistance of legal counsel, the victim has little chance of obtaining justice and compensation.

In addition, there are several practical obstacles that prevent victims from accessing justice. These include the slow pace of investigations, the lack of diligence by investigators, who often close cases prematurely, and the inadequate legal classification of acts that may constitute torture but are instead labeled as simple acts of violence.

In order for an investigation of torture to be successful, victims must make substantial efforts. However, without the assistance of a lawyer, victims cannot take necessary actions such as requesting more information, challenging the legal status of the facts, or pursuing other legal avenues. Effective lawyers in these cases must be proactive, precise, rigorous, creative, courageous and persistent. In addition, they must provide extensive documentation, legal analysis, reminders, and pressure on judges to ensure that the case is persued to the fullest extent possible.

Lawyers can play a critical role in the immediate aftermath of an assault that occurs in police custody. They can ensure that their clients have access to medical examinations, are able toreport the violence to the public prosecutor for prompt investigation, and can record their clients' allegations of torture or ill-treatment during the hearing before a judge at the end of police custody.

However, not all victims of institutional violence have access to legal representation. Often, they come from underprivileged or marginalized socio-economic backgrounds and cannot afford to hire a lawyer, especially for lengthy and complex procedures such as torture and ill-treatment cases.

Law No. 2002-52, passed on June 3, 2002, provides for the granting of legal aid to victims of crimes who lack income or whose annual income is limited and insufficient to cover the costs of justice and its enforcement without seriously impacting their vital needs.

In reality, most victims and litigants are often unaware of the legal aid mechanism that exists. Moreover, municipalities tend to arbitrarily require litigants to provide proof of their financial precariousness by submitting a certificate to the legal aid offices (BAJ) before legal aid can be granted. Unfortunately, these offices, whose locations within courts are often unknown to beneficiaries and lawyers, suffer from numerous shortcomings and do not diligently perform the public service entrusted to them. For instance, they fail to hold monthly meetings on the granting of aid, do not issue receipts for the filing of files, unjustly refuse to recognize the economic precariousness of the applicants, and refuse to take charge of certain legal acts.

Furthermore, lawyers' lack of professional involvement in such cases is explained by the low requisition fee paid to them, which is often paid many months late.

In addition to the financial obstacle to accessing a lawyer, convicted prisoners face a legal obstacle if they are subjected to violence in prison. According to law no. 2001-52 of 14 May 2001 on the organization of prisoners, such prisoners will not be granted access to a lawyer without the prior authorization of the administration responsible for prisons and rehabilitation. This poses a significant concern, as the prison administration may be reluctant to authorize access to a lawyer, thereby preventing the victim from filing a complaint against prison officers.

RECOMMENDATIONS

- ✓ REFORM THE LEGAL AID SYSTEM BOTH AT THE STRUCTURAL LEVEL (CONDITIONS OF GRANTING AND SCOPE) AND AT THE OPERATIONAL LEVEL (ACTORS AND FINANCING) TO IMPROVE ITS QUALITY. ALLOCATE SUFFICIENT BUDGETARY RESOURCES TO THIS SERVICE AND MOVE AWAY FROM CONSIDERING LEGAL AID AS COST TO VIEWING IT AS A FINANCIAL AND SOCIAL INVESTMENT. ENSURE THAT LEGAL AID OFFICES FUNCTION PROPERLY TO PREVENT ANY ARBITRARINESS IN GRANTING LEGAL AID.
- ✓ CONDUCT AN EVALUATION ON THE IMPLEMENTATION OF LAW 5 OF 2016 AND ADD A PROVISION TO ARTICLE 13 OF THE PENAL PROCEDURE CODE STIPULATING THE INVALIDITY OF THE POLICE CUSTODY PROCEDURE IF IT DOES NOT COMPLY WITH THE PROCEDURAL GUARANTEES PROVIDED BY LAW 5.
- ✓ AMEND LAW NO. 2001-52 ON THE ORGANIZATION OF PRISONS TO GUARANTEE CONVICTED PRISONERS' EFFECTIVE AND UNCONDITIONAL ACCESS TO A LAWYER.

OBSTACLE

03

LACK OF EMPOWERMENT FOR VICTIMS DURING INVESTIGATIONS

International law provides guidelines for the right to a remedy for victims of serious human rights violations. The International Covenant on Civil and Political Rights of 1966, the Convention against Torture of 1984, and the African Charter on Human and Peoples' Rights have established the framework for an effective remedy. This includes the right of victims to be informed about the progress of the investigation and to actively participate in the process.

Thus, the effectiveness of the remedy in the criminal process depends on the victim's position and role in the overall process. International bodies, such as the Committee Against Torture and the Human Rights Committee, have clarified the extent of victims' rights to information and intervention.

They recommend that victims and their families be informed of their rights and have access to available services (legal, medical, psychological, administrative, etc.). That they can access. Moreover, they have the right to seek, request and receive all available information regarding the causes and conditions of the violations they have suffered. This includes access to all elements related to the investigation, such as the status of proceedings, options for continuation or closure, the decision on prosecution, hearing organization and access, dates and results of their cases, possibilities of appeal, etc. Victims also have the right to challenge decisions, request reasoning, present additional evidence to the judge, and compel the judge to perform acts necessary for uncovering the truth. In this way, victims are encouraged to take an active and participatory role in proceedings.

In Tunisia, victims of serious human rights violations are granted few rights in criminal investigations under the Penal Code. Insufficient provisions exist to guarantee the rights of victims during the preliminary investigation or judicial inquiry.

During the preliminary investigation stage, victims are permitted toreport the facts and file a complaint. However, the entire investigation remains confidential, and victims and their lawyers cannot access the investigative material. The victim's right to participate is contingent on the criminal indemnification proceedings, which can only be initiated at the investigation stage. While the preliminary investigation is under the control of the prosecutor, victims are forced into a passive role with no prerogatives. This forced passivity can last for years, as there is no maximum time limit for the preliminary investigation.

In some cases, the prosecutor may issue an indictment at the end of the preliminary investigation without requesting a judicial inquiry. In such cases, the victim, who never had access to the investigation, can challenge the act before the Correctional Chamber. However, the victim can only dispute the characterization of the facts or the evidence in the file, without the ability to implicate other perpetrators.

At the judicial investigation stage, the victim's rights are further diminished in Tunisia. To be informed of the investigation's progress, the victim must be a civil party. If the victim is a civil party, he or she can challenge the closure order at the end of the judicial investigation. However, there is no provision that guarantees the victim's right to obtain a copy of the file or to take investigative measures during the trial.

Despite the legal provisions, judicial practice is more lenient towards victims. Depending on the judge's discretion, civil party lawyers can sometimes obtain a copy of the investigation file and request investigative measures. Nevertheless, judges are not required to provide reasons for their decisions regarding the plaintiff's claims. As a result, civil party requests for action often remain unanswered.

In cases of torture where the victim does not know the perpetrator or in cases of suspicious death, the public prosecutor typically opens an investigation based on Article 31 of the Penal Code. Sometimes, the investigating judge interprets Article 31 as precluding the victim or his or her relatives (if the victim is deceased) from being a civil party or even being informed about the investigation's progress, as long as no accused is identified. This implies that the victim has no right or interest to be informed or to participate in the investigation without the accused.

The case of Hatem HMAIDI, who allegedly died after being tortured in policy custody in 2017, exemplifies this situation. The investigation was initiated under Article 31 in August 2017. Despite their request to file a civil lawsuit in March 2018, his family has still not been granted access to the autopsy report over five years later.

RECOMMENDATION

AMEND THE PENAL CODE TO ENSURE THAT VICTIMS HAVE AN EFFECTIVE RIGHT TO INFORMATION AND PARTICIPATION AT ALL STAGES OF THE JUDICIAL INVESTIGATION.

OBSTACLE

04

PROSECUTION OF VICTIMS OF POLICE VIOLENCE AND WHISTLEBLOWERS

In recent years, there has been a growing trend of using contempt and similar charges against victims and witnesses of institutional violence, particularly police violence. These charges are commonly referred to as «gag orders» as they are designed to silence and prevent victims from speaking out against police violence. They represent a form of retaliation and a major obstacle to the victims' access to justice, which is a clear violation of Article 13 of the Convention against Torture. This article stipulates that «steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.»

Each year, SANAD's multidisciplinary assistance centers for victims of torture and ill-treatment receive increasing numbers of individuals who report being targeted by gag orders. Many of these people are the targets of contempt complaints and other false accusations that are used to justify their arbitrary arrests and to force them to drop their complaints about the violence they have suffered at the hands of agents.

These attacks also affect journalists, bloggers, human rights defenders, and activists who monitor and condemn police violence in the media, on social networks, and through sit-ins and demonstrations. They are particularly susceptible to police violence and gag orders, which serve as a means to silence their voices and intimidate them into refraining from speaking out against institutional violence.

The following articles are most commonly used to bring forward charges against victims of institutional violence:

- Article 125 of the Penal Code punishes the offense of insulting a public or similar official in the performance of their duties. This contempt charge is frequently used to justify the arrest of the person after the fact.

- Article 315 punishes the refusal of an individual to declare their identity or address, to allow police officers to enter their home, and other forms of resistance to orders. This article is often used to justify the use of force by police officers in the face of resistance by an arrested person.

- Article 116 punishes as rebellion anyone, who uses or threatens to use force to resist a public official.

- Article 128 punishes teh imputation of illegal acts related to their duties to a public official or similar, without establishing the truth of such acts. This incrimination is particularly used against journalists or bloggers who have denounced acts of torture or violence in the press.

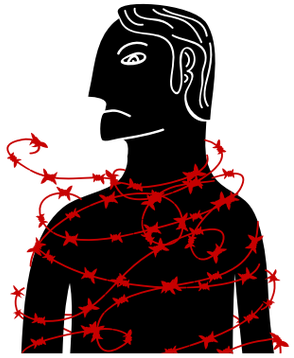
Police officers sometimes fabricate other charges against people they have just beaten, such as drug use or drug possession or criminal conspiracy.

Gag orders are carried out with the complicity of a judiciary that enforces justice at a faster pace for victims of institutional violence on trumped-up charges than for the perpetrators of the violence. Additionally, individuals accused of contempt or other offenses are often held in pre-trial detention, while security officials accused of torture or ill-treatment often remain in their positions despite the ongoing proceedings against them.

The recent adoption of Legislative Decree 2022-54 on cybercrime raises fears about increased judicial harassment of whistleblowers. Article 24 of this Decree-Law punishes the spreading of rumors through information and communication networks with imprisonment for up to five years and a fine of 50,000 TND for violating the rights of others, public security or national defense, or spreading terror. The vagueness of the terms contained in this provision undermines its legality, and the heavy penalties it carries make it particularly dangerous.

RECOMMENDATION

AMEND ARTICLES 116, 125, 128, AND 315 OF THE PENAL CODE AND ARTICLE 24 OF LEGISLATIVE DECREE 2022-54 TO CLARIFY THAT THEY MAY NOT BE USED TO PUNISH OPPOSITION TO ARBITRARY ADMINISTRATIVE DECISIONS THAT VIOLATE FUNDAMENTAL RIGHTS AND FREEDOMS, OR THE DENUNCIATION OF VIOLATIONS OF SUCH RIGHTS AND FREEDOMS, SUCH AS TORTURE AND ILL-TREATMENT, BY STATE AGENTS.



OBSTACLE 05

LACK OF DILIGENCE IN INVESTIGATING TORTURE AND ILL-TREATMENT

According to the Convention against Torture and Tunisian law, an investigation must be carried out whenever there are doubts or allegations of torture or ill-treatment reported during a hearing or explicitly denounced in a formal complaint.

This judicial investigation, in accordance with international standards, must be independent, impartial, exhaustive and expeditious. It should establish and clarify the facts, identify and punish those responsible, and compensate the victims. The judicial investigation may be conducted with the assistance of the judicial police, provided that the latter are not involved or have no obvious bias in the case. The investigative acts include hearings of the victim, the accused, and witnesses, requests for the communication of official documents (registers, minutes, warrants, etc.), verifications, confrontations, as well as forensic examinations, such as ballistic, forensic physical or psychological. At the end of the investigation, the judge will indict both the perpetrators and the accomplices of the torture or violence. These include the officers who inflicted the beatings/abuses, those who witnessed or observed the violence and did nothing to protect the victim, those who ordered the violence, those who recovered the victim after the episode of violence and failed to report the facts to the prosecutor and/or failed to provide the necessary care, the doctors who saw the victim in police custody showing signs of violence or alleged assault and returned her to police custody without reporting the incident to the prosecutor.

It is the responsibility of the State to use all possible means to carry out an investigation under these conditions.

The reality of the Tunisian justice system differs significantly from what is required by the Convention against Torture and Tunisian law. Increasingly, prosecutors and investigating judges are merely taking note of allegations of torture without initiating an investigation. Furthermore, when an investigation is ordered, it is often subjected to unacceptable delays and entrusted to the judicial police, which does not consistently display the necessary professionalism and impartiality. Investigations are typically cursory, limited to brief hearings, and victims are not asked for sufficient details about their allegations. If officers are identified by the victim, they may be interviewed, but no attempt is made to identify other individuals involved. Witnesses are often not heard or only partially heard, and confrontations are not genuine, merely repeating the content of each person's previous hearings. Alibis are not checked, and primary medical documentation, usually in the form of an immediate medical certificate, is often not considered evidence. Even when forensic investigations are performed, it is often too late, resulting in traces of violence on the body disappearing. The psychological dimension of institutional violence and its effects are rarely taken into account.

In addition to these investigative shortcomings, government agencies often lack cooperation and coordination, leading to a failure to share information. For instance, obtaining essential information from the judiciary, such as the list of police or law enforcement officers present during the violence, hospital medical records, and CCTV footage, is challenging or impossible. Requests for these elements of the investigation are typically slow and frequently go unanswered.

Lawyers lack sufficient resources to challenge structural failures and compel judges or investigators to be more thorough in addressing cases of institutional violence. Consequently, investigations are frequently closed prematurely due to insufficient evidence or de facto abandonment. In the rare instances when investigations are completed, the characterization of the events is sometimes inadequate due to the lack of evidence and/or the insufficient definition of torture in the Tunisian Penal Code.

The prevailing climate of fear among members of the judiciary is likely to make them more cautious. The two decree-laws enacted in 2022 (Decree-Law No. 11, which dissolved the Superior Council of the Judiciary, and Decree-Law No. 35, which amended it) grant the President of the Republic the authority to remove judges who make decisions «likely to undermine the prestige of the judiciary, its independence or its proper functioning». These new laws considerably undermine the independence of the judiciary by allowing the president to dismiss judges who are too independent of the state and government.

It is imperative to implement necessary reforms to ensure the existence and proper functioning of an independent and competent judiciary with the human, material and procedural resources to fulfill the right of victims of institutional violence to justice and satisfactory reparations.

RECOMMENDATIONS

- ✔ ENACT A LAW THAT ESTABLISHES A SPECIALIZED UNIT DEDICATED TO INVESTIGATING SERIOUS INTERNATIONAL CRIMES, INCLUDING TORTURE, ILL-TREATMENT, AND ENFORCED DISAPPEARANCES. THE UNIT SHOULD HAVE A SPECIALIZED PROSECUTOR'S OFFICE AND INVESTIGATING JUDGES, AND A SPECIALIZED JUDICIAL POLICE ATTACHED TO THE MINISTRY OF JUSTICE. THE LAW SHOULD REQUIRE THESE JUDGES AND PROSECUTORS TO RECEIVE TRAINING IN INTERNATIONAL LAW RELATING TO SERIOUS INTERNATIONAL CRIMES, INCLUDING TRAINING ON THE ISTANBUL PROTOCOL. THE LAW SHOULD ALSO GUARANTEE THEIR RIGHT TO CAREER ADVANCEMENT WITHOUT BEING SUBJECT TO ROTATION OR TRANSFER.
- ✔ PROVIDE THE SPECIALIZED UNIT WITH THE NECESSARY RESOURCES AND MEANS TO CONDUCT PROMPT AND THOROUGH INVESTIGATIONS INTO ACTS ATTRIBUTED TO THE SECURITY FORCES.
- ✔ AMEND THE PENAL CODE TO STRENGTHEN THE AUTHORITY OF INVESTIGATING JUDGES IN REQUESTING THE TRANSMISSION OF DOCUMENTS FROM RELEVANT ADMINISTRATIONS AND TO ESTABLISH THE OBLIGATION OF ADMINISTRATIONS TO COMPLY WITHIN REASONABLE TIME LIMITS.

OBSTACLE

06

IMPEDIMENTS BY POLICE IN TORTURE AND ILL-TREATMENT INVESTIGATIONS

Prosecutors and investigating judges frequently delegate investigations of torture and ill-treatment to the judicial police, which is responsible for ensuring the presence of the accused officers during their trial and executing sentences imposed against them.

Investigations of torture or ill-treatment are occaionally conducted by officers from the same post where the violence occurred, which breaches the obligation of impartiality and independence of the investigation. When the case is transferred to another judicial police station, officers often have ties to colleagues who are the subject of the investigation or may impede the investigation out of loyalty to their fellow officers. In some cases, officers try to dissuade victims or their families from filing a complaint by pressuring, intimidating, or threatening to fabricate false accusations against them. When victims visit the hospital to document evidence of the assault, officers who assaulted them or their colleagues may pressure emergency physicians to refuse to issue a medical certificate. Moreover, the judicial police officers responsible for investigating torture or violence, as requested by the public prosecutor or the investigating judge, are often slow in conducting hearings and confrontations and are not very diligent in collecting evidence.

During the trial phase, law enforcement officials may obstruct justice by failing to execute arrest warrants for police officers accused of torture or violence. Despite judges issuing arrest warrants to ensure the presence of the accused at their trials, police responsible for executing these warrants often fail to comply. They either do not respond or claim not to have found the accused's address, even when the accused is a well-known security official or an officer still on duty. In some cases, accused individuals are tried and convicted in absentia, yet continue to work in the security forces without facing any disciplinary proceedings.

The failure to execute arrest warrants is particularly evident in the context of transitional justice, with trials being held in spcialized chambers for over four years with partially or completely empty docks.

Refusing or failing to execute an arrest warrant issued by the judicial police is a criminal offense. However, to date, no investigation has ever been carried out, and no sanctions have been imposed against these officers.

Security officers who are prosecuted for acts committed in the line of duty, recieve another favorable measure: judges sometimes order their trial to be held in camera. This trial modality, normally intended to protect public order or good morals, is now used to shield the accused from the scrutiny of observers, journalists and the general public.

The impunity of the perpetrators of torture and ill-treatment is one of the consequences of the unchecked power of the security forces, which has been bolstered by the growing influence of the police unions. In 2011, after decades of prohibition, Tunisian security forces were allowed to form unions. The fundamental role of these unions is to defend the social and economic rights of their members, such as issues related to training, benefits, pace, and working conditions.

However, many of these unions have deviated from their mission exhibited unethical and unlawful behavior , encouraging de facto impunity in the country. In recent years, trade unions have posted calls for hatred, stigmatization, and violence against political activists and human rights defenders on their Facebook pages.They have also repeatedly urged police officers not to assist the judiciary in investigations and trials for torture and violence committed by members of the security corps.

Despite numerous denunciations from civil society, the Ministry of Interior has not taken any measures to sanction the criminal behavior of these unions. This leniency undoubtedly contributes to impunity.

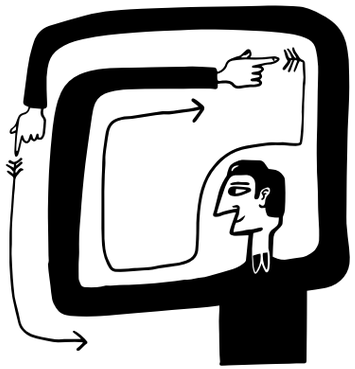
RECOMMENDATIONS

- ✔ **ESTABLISH A SPECIALIZED JUDICIAL POLICE FORCE THAT IS RESPONSIBLE FOR INVESTIGATING CASES OF TORTURE AND ILL-TREATMENT, THIS FORCE SHOULD BE UNDER THE SUPERVISION OF THE MINISTRY OF JUSTICE TO ENSURE INDEPENDENCE AND IMPARTIALITY.**

- ✔ **AMEND THE PENAL CODE AND THE CODE OF CRIMINAL PROCEDURE TO ENSURE THAT ARREST WARRANTS ARE EXECUTED IN A TIMELY AND EFFICIENT MANNER. THE LAWS SHOULD ALSO PROVIDE FOR SANCTIONS AGAINST OFFICIALS WHO FAIL TO EXECUTE THEM.**

- ✔ **AMEND LAW NO. 82-70 OF 6 AUGUST 1982 ON THE GENERAL STATUS OF THE INTERNAL SECURITY FORCES TO:**

  - PROVIDE A CLEARER FRAMEWORK FOR THE RESPONSIBILTIES AND AREAS OF INTERVENTION OF TRADE UNIONS, AND CLARIFY THAT TRADE UNIONS AND THEIR LEADERS CAN BE HELD CRIMINALLY LIABLE FOR ANY OFFENCE THEY COMMIT (ARTICLE 11).
  - ELIMINATE THE REQUIREMENT THAT TRIALS INVOLVING SECURITY OFFICERS BE HELD ON CAMERA (ARTICLE 22).
  - PROVIDE FOR THE AUTOMATIC AND IMMEDIATE SUSPENSION OF ANY PUBLIC OFFICIAL ACCUSED OF TORTURE OR VIOLENCE. IF THE OFFICIAL IS FINALLY CONVICTED, THEY SHOULD BE REMOVED FROM THEIR POSITION (ARTICLE 54).



OBSTACLE

07

INADEQUATE MEDICAL AND FORENSIC DOCUMENTATION OF TORTURE AND ILL-TREATMENT

Among all the pieces of evidence that can be considered in an investigation and trial of torture and ill-treatment, medical and forensic documentation is the most critical. As time passes, the signs of violence disappear or become increasingly difficult to attribute to the alleged violence, making a timely medical assessment all the more crucial.

The Istanbul Protocol, also known as the «Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,» adopted by the United Nations, provides guidelines for the medical (physical and psychological) documentation of torture. The medical examination must be prompt, accessible, confidential, and comprehensive.

The medical and forensic documentation practices in Tunisia fail to meet the requirements outlined in the Istanbul Protocol. The immediate Medical Report (IMR) is the initial form of forensic documentation completed by an emergency room physician after the victim has been assaulted. However, if the victim is under arrest, the medical examination is usually carried out in the presence of police officers, which violates the confidentiality requirement and the medical code of ethics. The procedure prevents the victim from speaking openly about their experiences. Additionally, emergency services are often overburdened, and physicians are not trained in forensic documentation. As a result, they do not have sufficient time to conduct a comprehensive examination, including additional exploratory tests.

Consequently, the IMR only briefly lists the marks and injuries found, and indicates the required rest period without providing details about the context of the assault, the initial physical and psychological trauma, or the correlation between the victim's stories and the injuries found.

If the victim is placed in custody, a medical examination is required upon entering prison. However, this examination is not conducted routinely and is often carried out by a nurse who lacks the training to detect signs of aggression. Additionally, the examination report, which is kept in the prisoner's medical file, is not accessible to the prisoner and often difficult to obtain even by judicial authorities.

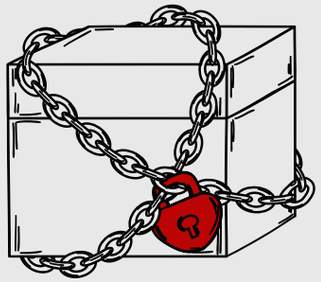
To undergo a more comprehensive and reliable forensic examination, the victim must wait for a court-ordered expertise. However, such an examination is often ordered too late, and there may be a significant delay between the request and completion of the examination, especially if the victim is still in custody. These delays are problematic since signs of torture typically fade quickly, and the longer the period between the violence and its documentation, the more difficult it is to establish that the signs are attributable to the violence suffered and not the result of subsequent acts. This is especially challenging if the victim has not had the benefit of a prompt, rigorous, and impartial Immediate Medical Report (IMR).

Although forensic doctors in Tunisia are generally well trained but not numerous. Additionally, the evidentiary value of their opinions will depend on how the judge phrases the request for an expert opinion because the forensic doctors can only answer the specific questions asked of them.

Unfortunately, there is also a severe lack of psychological documentation of torture in Tunisia. The psychological effects of torture and ill-treatment are often less visible than the physical effects, but they are equally real and can be long-lasting. According to the Istanbul Protocol, the documentation of psychological sequelae should be as systematic and significant as the documentation of physical sequelae, particularly when most of the violence has been psychological or when the physical traces have faded.

RECOMMENDATIONS

- ✔ ENACT A LAW TO ESTABLISH A FORENSIC UNIT IN EVERY HOSPITAL CONSISTING OF EMERGENCY PHYSICIANS AND FORENSIC DOCTORS WHO ARE TRAINED AND COMPETENT TO EXAMINE VICTIMS OF VIOLENCE, INCLUDING THOSE OF TORTURE AND ILL-TREATMENT, AND ISSUE INITIAL MEDICAL CERTIFICATES (IMCS) IN ACCORDANCE WITH THE STANDARDS OF SPEED, QUALITY, COMPETENCE, AND IMPARTIALITY OUTLINED IN THE ISTANBUL PROTOCOL.
- ✔ PROVIDE THESE FORENSIC UNITS WITH THE NECESSARY RESOURCES TO CARRY OUT THEIR DUTIES AND ENSURE THAT VICTIMS OF VIOLENCE HAVE UNRESTRICTED AND FREE ACCESS TO THEM WITHOUT REQUIRING A REQUISITION.
- ✔ IMPLEMENT A REFORM OF PRISON MEDICAL SERVICES BY HIRING AN ADEQUATE NUMBER OF PRISON DOCTORS, ASSIGNING THEM TO THE MINISTRY OF HEALTH, AND TRAINING THEM TO DOCUMENT IN COMPLIANCE WITH THE ISTANBUL PROTOCOL.
- ✔ REVISE LAW NO. 2001-52 ON PRISON ORGANIZATION TO STIPULATE THAT IF A PRISONER SHOWS SIGNS OF VIOLENCE DURING THE MEDICAL EXAMINATION ON ADMISSION TO PRISON OR DURING HIS OR HER DETENTION, OR ALLEGES THAT HE OR SHE HAS BEEN INJURED, THE PRISON DOCTOR SHALL IMMEDIATELY PERFORM A FORENSIC EXAMINATION AND SUBMIT A COPY OF THE REPORT TO THE JUDGE RESPONSIBLE FOR THE EXECUTION OF SENTENCES. ENSURE THAT THE INMATE HAS ACCESS TO HIS OR HER MEDICAL RECORDS.



OBSTACLE

08

LACK OF TRANSPARENCY IN INVESTIGATIONS AND SANCTIONS BY CENTRAL INSPECTION

The Central Inspectorate of the Ministry of Interior was established through Government Decree No. 2017-737 on June 9, 2017, amending Decree No. 91-543 of April 1, 1991, which pertains to the organization of the Ministry of Interior. This organization, which reports directly to the Minister of Interior and whose members are appointed by the Minister of Interior, is responsible for investigating complaints, requests, or claims that it receives from the Ministry regarding corruption, abuse of power, or serious violations attributed to agents or structures of the same Ministry.

The decree mandates that the Inspectorate is responsible for drafting reports on the results of its monitoring, inspection and investigation missions, indicating the recommendations, and initiating administrative or legal proceedings where appropriate. For these missions, the Central Inspectorate has extensive investigative powers that are not subject to professional secrecy. The investigation carried out by the Central Inspectorate is complementary to a judicial investigation, which may be conducted in parallel, into acts of torture or other serious human rights violations allegedly committed by State agents.

The establishment of the Central Inspectorate was met with high expectations from civil society organizations and victims who saw it as an opportunity to overcome the sluggishness of the criminal justice system and the difficulties in accessing information during investigations.

However, in reality, the Central Inspectorate operates in a non-transparent manner. The government decree does not specify the procedures regulating the Inspectorate's work and citizens are not informed about the progress and results of its investigations. Confrontations between agents and alleged victims are sometimes organized within the Ministry of Interior, but victims do not know the consequences of these confrontations. No figures are provided on the investigations carried out nor on the decisions ultimately taken by the Inspectorate.

At times, there are rumors of transfers or suspensions of officers, which may be disciplinary actions resulting from an investigation, but there is no official document to verify the accuracy of this information. Occasional statements or letters have been sent or visits have been organized by the Inspectorate, but these communications are too infrequent and reflect the unsystematic nature of the steps that may or may not be taken.

The lack of transparency of the Central Inspectorate prevents the public from assessing the effectiveness of its services and the actual role it plays in the fight against torture and institutional violence. This lack of transparency contributes to the sense of impunity that persists in Tunisia.

RECOMMENDATION

AMEND THE LAW ON THE ORGANIZATION OF THE CENTRAL INSPECTION OF INTERNAL SECURITY IN ORDER TO INCLUDE AN OBLIGATION TO PUBLISH PERIODIC REPORTS DETAILING THE NUMBER OF COMPLAINTS RECEIVED, THEIR CATEGORIES, THE CASES INVESTIGATED, AND THE DECISIONS TAKEN.

OBSTACLE

09

UNREASONABLE DELAYS IN JUSTICE

Both the Convention against Torture and the International Covenant on Civil and Political Rights, which Tunisia has ratified, require the competent authorities to promptly open and conduct investigations into allegations of torture and other serious human rights violations.

However, the Tunisian Penal Code does not establish time limits for investigations, except when the accused is placed in preventive detention for the entire duration of the judicial investigation, a measure which is not applied in cases of institutional violence. Similarly, the Code does not establish time limits for trials, which often result in excessively lengthy procedures.

Complaints of torture and ill-treatment are sometimes left unanswered or forgotten in the prosecutors' offices. Even when a complaint is processed, vicitms often wait for days or even weeks before being heard. Preliminary investigations can drag on for months, or even years, without victims being informed of the investigation's progress or given the chance to expedite the case or transfer it to an investigating judge. The judicial investigation itself can also take years. Victims who have filed a civil lawsuit can monitoe the investigative acts or to expedite or close the case.

These delays are not always due to the complexity of the case or the number of investigative acts performed by the investigating judge. Rather, they stem from a variety of factors: the overburdened workload of prosecutors and investigating judges; a lack of diligence, due in part to the sensitivity of the case and the fear of reprisals; pressure exerted by the perpetrators and their colleagues; the obstacles created by the various administrations involved in transmitting evidence to the judiciary.

These lengthy delays compromise the effectiveness and credibility of the investigation and justice system as a whole.

Once the investigation is finally completed and the trial begins, it is again characterized by unbearable slow pace.

This is largely due to the lack of temporal continuity of the legal process, which is not conducted in a single session, but instead is characterized by several hearings, often several months apart. The continuous postponement of hearings, undue delays between hearings, the rotation of judges, and the frequent absence of the accused have a significant negative impact on the proper conduct of trials and the rights of victims, to the extent that it is entirely justified to speak of a real denial of justice.

These denials of justice are particularly egregious in the area of transitional justice. The first trial began in May 2018, but more than four years later, no decision has been reached.

RECOMMENDATIONS

- ✔ AMEND THE PENAL CODE TO ESTABLISH TIME LIMITS FOR BOTH PRELIMINARY INVESTIGATIONS AND JUDICIAL INQUIRIES, IN ORDER TO ENSURE THAT INVESTIGATIONS ARE CONDUCTED IN A PROMPT AND EFFICIENT MANNER.
- ✔ AMEND THE PENAL CODE TO INTRODUCE THE PRINCIPLE OF TEMPORAL UNITY IN TRIALS, WHICH WOULD REQUIRE THAT HEARINGS BE HELD IN A TIMELY AND CONTINUOUS MANNER, AND MINIMIZE UNDUE DELAYS AND POSTPONEMENTS.
- ✔ ALLOCATE INSUFFICIENT HUMAN, MATERIAL, FINANCIAL, AND COMMUNICATION RESOURCES TO THE JUDICIAL AUTHORITIES, TO ENABLE THEM TO CARRY OUT THEIR TASKS EFFECTIVELY AND EFFICIENTLY, AND ENSURE THAT JUSTICE IS SERVED WITHIN A REASONABLE TIME FRAME.

OBSTACLE 10

LACK OF SUBSTANTIAL REPARATIONS FOR VICTIMS

According to the Convention against Torture, victims of torture or ill-treatment have the right to «redress and fair and adequate reparation, including the means for the fullest possible rehabilitation». This right extends to the relatives of those who died as a result of torture.

Reparations must be adequate, effective, complete, prompt, and adapted to the situation of the victims, and must be proportionate to the gravity of the violation. They should also be independent of the initiation or outcome of any investigation and criminal proceedings, as well as the identification of the perpetrators of the violations.

Reparation for victims of torture and ill-treatment extends beyond compensation and encompasses various elements, such as restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Restitution aims to restore the victim to their original situation as much as possible prior to the violation. Compensation encompasses physical and mental injuries, moral damages, loss of earnings, earning capacity due to disability caused by torture or ill-treatment, medical expenses, and legal aid. Rehabilitation aims to restore the victim's independence, physical, mental, social, and vocational abilities, and facilitate their reintegration into society. Satisfaction is associated with the right to truth, public apology, preservation of memory, and punishment of those responsible. Finally, guarantees of non-repetition necessitate the adoption of legislative and structural measures, such as the adequate criminalization of torture, the independence of the judiciary, or the protection of human rights defenders.

All these components of the right to reparation are encompassed in Article 11 of Law 2013-53 which establishes transitional justice. Nevertheless, its implementation is still pending.

The Truth and Dignity Commission (IVD) was tasked with developing a comprehensive program of individual and collective reparations for victims. To this end, The IVD has issued restitution decisions for nearly 30,000 victims and established the Al Karama Fund in 2014 to support the dignity and rehabilitation of victims of the dictatorship. However, despite the opening of the fund at the Treasury on the occasion of the 10th anniversary of the Tunisian Revolution, these decisions have yet to be implemented by the authorities, revealing a lack of clear political will.

Similarly, while collective reparation was recommended in the IVD's final report, it has not been acted upon. In addition, the punishment of offenders by specialized chambers has been delayed, with no decision made four years after the first trial began in May 2018.

Furthermore, the Tunisian state has yet to issue an official apology on behalf of all the victims of the dictatorship, which is long overdue.

Regarding guarantees of non-repetition, the IVD made specific recommendations in its final report to modify the Tunisian legal framework to align it with international standards and ensure better protection of individual freedoms. However, substantial legal reforms that promote the rule of law and prevent the continuation of abuses have yet to be implemented. In fact, new laws have recently been adopted that undermine the rule of law, such as Decree-Law 2022-35, which weakens the independence of the judiciary, and Decree-Law 2022-54 on cybercrime, which contains several provisions that seriously imped upon the freedom of expression.

Outside of the transitional justice context, reparations for victims of torture and ill-treatment are grossly insufficient. In the vast majority of cases, even when a trial is successfully prosecuted despite the aforementioned challenges, sanctions imposed on perpetrators are minimal and fail to reflect the severity of the inflicted violence. Financial reparations are almost non-existent. Criminal judges increasingly deny civil claims for reparations, forcing victims to endure another lengthy administrative court procedure to potentially obtain compensation. Delays in obtaining possible compensation can be especially harmful to victims from lower socio-economic backgrounds, as is often the case, and for those who suffer severe disabilities as a result of the violence they have endured.

RECOMMENDATIONS

- ✔ RESUME THE PROCESS OF DEVELOPING AND IMPLEMENTING A PLAN AND PROGRAMS TO ENSURE THE NON-REPETITION OF SERIOUS HUMAN RIGHTS VIOLATIONS, IN ACCORDANCE WITH ARTICLE 70 OF LAW 53-2013, BY TAKING INTO ACCOUNT THE RECOMMENDATIONS MADE BY THE IVD.
- ✔ ENACT A LAW THAT EMPOWERS THE AL-KARAMA FUND TO PROVIDE COMPENSATION TO ANY VICTIM OF TORTURE OR VIOLENCE COMMITTED BY STATE AGENTS WHO REQUESTS COMPENSATION IN THE CONTEXT OF A CRIMINAL OR ADMINISTRATIVE DISPUTE. THE LAW SHOULD INCLUDE PROVISIONS ON THE MODALITIES OF REPLENISHMENT OF THE FUND TO ENSURE ITS SUSTAINABILITY AND EFFECTIVENESS.

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