

To the Committee against Torture of the United Nations

(A parallel report by the Tunisian Organization against Torture)

Tunisia presents its third periodic report on the implementation of the Convention against Torture and other cruel, inhuman or cruel, inhuman or degrading treatment to the Committee against Torture of the United Nations.

In this context, the Tunisian Organization against Torture which is an independent, non-governmental organization that militates against torture, ill-treatment and impunity presents its parallel report to the said Committee.

There are several reforms to be implemented by the Tunisian government as to fight the scourge of torture that is still prevalent on a large scale in detention centers (prisons, police stations ...).

The law:

Decree number 106 for the year 2011; an amendment to Chapter 101 of the Criminal Procedure Code; is still not compatible with the definition of torture set out in the first article of the International Convention against Torture as:

- It sets a limited list of motives for torture.
- According to the Tunisian law, torture motivated by punishment is not considered as a crime of torture, but merely a crime of violence inflicted by a public official on individuals.
- Tunisian law does not penalize torture motivated by discrimination with the exception of torture motivated by racial discrimination.

The decree needs to be amended in order to be compatible with the International Convention.

By reference to the Chapter 13 of the Criminal Procedure Code, the detention period is limited to three days and can be extended for three more days in cases of offenses, misdemeanors and felonies.

During this period and according to the law; the suspect is not granted access to a lawyer upon a decision taken by the judicial police and cannot legally request its review.

In practice, the members of the General Prosecutor's Office do not supervise detention centers despite the fact that Chapter 10 underscores the necessity that the judicial police exercise their functions under the supervision of the public prosecution. According to the Prisons Act, investigating magistrates and judges of the courts are not allowed to visit detainees in prisons.

Currently, there is a draft amendment of some provisions of the Criminal Procedure Code that are related to the duration of detention and the right to a lawyer during the initial investigations. The organization presents its observations with regard to the project (attached to the organization's observations).

During the month of January 2016, a law was issued of which the application will begin in June 2016. It grants the access to a lawyer during detention under police custody. The detention period was limited to 48 hours concerning felonies with the exception of terrorist crimes and to 24 hours with regard to misdemeanors, the two periods can be extended upon a decision taken by the prosecutor conversely to the cases of violations that are limited to 24 hours and cannot be extended.

The decision of detention became within the powers of the public prosecution. Formerly, it was within the powers of the investigator whose only duty consists now in informing the prosecution.

The lawyer can now attend the hearings. The judicial police shall notify him about the date of his client's interrogation, as well as about the dates of confrontations between the client and the alleged victims or witnesses.

The lawyer can interview his client in private for 30 minutes.

The detainee, his lawyer or anyone else can request a medical examination.

There are shortcomings in the new law relating to the hours of detention and controversies regarding the period of detention and whether it commences at the moment of arrest, or at the beginning of the hearing undergone by the police.

The law does neither stipulate the obligation for the examining physician to be a forensic doctor nor the need for the examination to be conducted without the supervision of the police.

The law does not provide a standard form for certificates of medical examination that shall include mandatory elements.

The law does not guarantee the right to a counter-medical examination.

Mostly, this amendment is important and can be improved especially that there is a committee working at the Ministry of Justice and operating to implement some reforms of the Code of Criminal Procedure scalability.

Institutions of supervision over detention centers:

the law of the High Commission for Human Rights and Fundamental Freedoms stipulates in its fifth chapter the powers of the President of the High Authority that grant him the right to conduct unannounced visits to penal and correctional institutions, centers of arrest, shelters for children and social bodies destined to individuals with special needs in order to examine the extent to which the national legislations do comply with human rights and fundamental freedoms.

The President of the Commission can use the help of two members of the body while carrying out his duties and during every supervisory visit.

Since October 2015, the parliamentary term of the former commission ended and a new president has been appointed. Till this day, the rest of the members have not been chosen which obstructs the functioning of the commission including the conduction of visits to the detention centers in question.

The law of the High Commission issued in June 2008 does not comply with the Paris standards, and to this day there has been no law adopted in order to be responsive to the criteria of independence in accordance with the Paris standards.

The National Commission for the Prevention of Torture:

The Law of Commission was issued on 21/10/2013. However, the mentioned mechanism has not been established up to this day. The law grants the commission the ability to conduct unannounced visits to detention centers. In general, the law complies with the principles of the Supplementary Protocol to the Convention against Torture. However, Chapter 13 gives the concerned body the authority to deny the visits in specific cases. Therefore, there has been a concern over the exploitation of the said chapter leading to the prevention of conducting visits without prior announcement after the establishment of the commission.

The civil society with regard to visiting detention centers:

On 10/12/2012, the Ministry of Justice ratified a protocol with nine civic organizations allowing them to visit prisons. The Tunisian Organization against Torture and the Tunisian League of Human Rights have rejected the conclusion of the agreement since the third chapter does not admit the conduction of unannounced visits. Furthermore, Chapter 10 stipulates the denial of the Protocol after the issuance of the law of the National Commission for the Prevention of Torture.

During the past months, the Ministry of Justice ratified an agreement with the Tunisian League for the Defense of Human Rights to visit prisons. Furthermore, the Ministry of Social Affairs ratified an agreement with the Association to visit these centers that are supervised by the ministry in question.

On 12/10/2015, The Tunisian Organization against Torture met with the Minister of Justice, Mr. Mohammed Saleh Bin Isa and submitted a dossier to the Ministry of Justice in which it requested the conduction of visits to prisons and up to this day, the organization did not receive any answer.

During the month of December 2015, a meeting concerning visiting detention centers has been held with officials from the Ministry of Interior. The organization directed its observations including an agreement visit draft and it is still pending response.

Conditions in detention centers:

Prisons:

Tunisian prisons are overcrowded due the high amount of detainees and convicted prisoners of whom the number ranges from twenty thousand to twenty-five thousand.

Detainees' ratio ranges between 50% and 60% of the total number.

In Mornaguia prison for instance, the number of inmates exceeds six thousand inmates, while the capacity of the prison is limited to three thousands inmates only. In this prison, there are rooms with more than one hundred prisoners.

The impact of overcrowding on the rights of inmates to nutrition, health, hygiene and entertainment is evident. It also tensions the atmosphere among inmates and affects their relationship with the prison guards and administration officials. Most prisons provide low quality services. Furthermore, the number of doctors is not adequate and a large number of inmates are suffering from skin diseases and other illnesses caused by humidity and the lack of exposure to sun and air.

In large prisons, one bed is shared by two and three inmates, whereas others lay on the walkway separating the ranges of beds. Bunk Beds are stacked on top of each other and amount to three floors due to the high number of prisoners. In other prisons, inmates complain about the high number of insects such as bugs and others.

In most prisons, health facilities are ancient and inadequately maintained, thus depriving the inmates from showers in appropriate circumstances.

Furthermore, there is no respect for privacy rules in prisons, either in rooms or sanitary facilities (showers, toilets ...)

Most prisoners do not have access to health services, already inadequate, only after a period of submitting an application and the majority of them do not receive the necessary medical care due to lack of resident and contractor doctors and deficiency in the health framework.

Even in prisons where there are medical equipments such as dental chairs, the access to the services comes with great difficulty after a long wait.

Because of the poor quality of the food in most of the Tunisian prisons, families are obliged to provide their sons with baskets containing food and other goods claimed by the prisoners.

Furthermore, prisons are poorly maintained in terms of hygiene and inadequately equipped. There are prisons that were not built to be so (barracks, warehouses ...) and they have not been designed according to the penitentiary standards.

The national security zone in El Gorjani comprises several judicial police teams.

On 06/12/2013 a delegation from the High Commission for Human Rights attempted to visit the place but it was denied access under the pretext that the headquarters is destined for investigations solely and not for detention. The responsible in charge required a request from the delegation in order to visit the place although the law stipulates its right to conduct unannounced visits.

Up to this day, the authorities do not allow visits to this place despite the many complaints with regard to the practice of torture within it.

-Statistics confirming the prisons' conditions:

(Source: The reports on the visits conducted by the High Commission for Human Rights and Fundamental Freedoms)

* Visit on 08/07/2014 to Sfax Prison that comprises 1623 inmates (men / women)

The average of inmates per room ranges between 70 and 80 (room 02 for young people having 48 beds comprises 93 detainees).

Inmates residing in room 06: Access to fresh air is limited to half an hour and one hour in the morning. Prisoners are not granted access to fresh air on Saturdays and Sundays since the prison guards rest on these days.

* Visit on 20/09/2013 to Mornaguia Prison (Tunis)

Room 07 pavilion T: the washbowl is broken causing a water leak to the floor.

* Visit on 21/09/2013 to Borj Al-Roumi prison in Bizerte

The prisoners' room that is attached to the kitchen comprises 29 inmates and has 10 beds. The cooling chamber in which the food is kept was broken.

* Visit on 04/04/2015 to Gafsa prison (south-west)

586 inmates are scattered over 7 rooms. Room 03 comprises 73 inmates and has 36 beds (on 3 floors).

Treatment of prisoners:

Practices of torture, violence and ill-treatment are highly spread in Tunisian prisons. Inmates complain of several practices inflicted upon them with the aim to punish or intimidate.

Reports of human rights organizations, including monthly reports issued by the Tunisian Organization against Torture document torture, violence and ill-treatment practiced in prisons (attached).

- Conditions of detention: Bouchoucha police station (Tunis):

Bouchoucha police station receives the highest number of detainees in Tunis (Governorates of Tunis, Ariana, Manouba and Ben Arous).

During a visit conducted by the High Commission for Human Rights and Fundamental Freedoms on 26/11/2013, it stated that no medical examinations are undertaken when receiving the detainees for the first time at the station and there is no ambulance destined for detainees whose number reaches 500 individuals at the end of the week.

Furthermore, meals are poor in terms of calories and tonics (soup, sandwiches, dough ...)

At the end of the week, the detainees' number reaches 60 -70 people in each room, all of them lie on sponge mattresses put on the ground taking as a cover a light sheet.

Foul odors are emitted from toilets and they are unbearable especially for those who sleep beside them.

In other detention centers, Inmates complain of similar circumstances.

- Treatment of detainees:

The Tunisian Organization against Torture receives annually over one hundred files among which cases of torture, violence and ill-treatment exercised within detention centers or prisons.

According to the statistics of the Organization for the year 2015, the police remain responsible for 65% of the violations, followed by prison guards with 27%.

19% of torture cases are inflicted upon victims with the aim to extract confessions, 62% motivated by punishment and 14% aim at humiliation.

In terms of gender, 89% of torture cases are inflicted upon men and 11% upon women.

90% are classified in the category of torture (acts resulting in severe pain either physically or mentally) and 7% are classified as suspicious deaths.

Forms of common torture practices: severe beating over the whole body (kicking, punching, slapping ...) the thing that induces visible marks on the body, undressing the victims, excising pressure on the

wrists using metal handcuffs, depriving the victim of food and forcing him/her to kneel for a long period of time.

In some cases, torture leads to permanent physical impairments (ears, eyes)

Complaints with regard to torture practices:

Before the revolution of December 2010, it was not easy to file complaints concerning torture acts or police violence for a number of reasons, such as the fear of the consequences that will follow the complaints (threats, fabrication of charges) or out of desperation that perpetrators would not be held accountable due to the impunity atmosphere that had reigned over the country. Complaints of torture were not allowed in Tunisian courts and were redirected to the complainers.

After the revolution, it became possible to lodge complaints against police officers, prison guards and customs agents.

Complaints used to be included in the register of the public prosecutor. Since 2014, complaints of torture became included in a special register.

Torture victims can file complaints to the High Commission for Human Rights or to the administrative offices (human rights offices) in ministries of justice and interior. According to Chapter 17 of the Prisons Act, the prisoner can send a correspondence to his lawyer and to the judicial authorities through the prison administration.

The prisoners' complaints are directed either to the public prosecution or to the inspection of prisons and correctional facilities.

The dilemma in relation to complaints resides in the speed of conducting investigation as well as the extent of their seriousness. What is observed in this area that most of the complaints are disrupted either at the level of the judicial police, or at the investigations' phase for several years.

In several cases, pressure is put on the victims to withdraw their complaints or drop the lawsuit, thus the public prosecution finds a justification to dismiss the case implementing the principle of "prosecution suitability" stipulated by the Tunisian procedural law.

Judicial qualification: qualification juridique:

In the few cases where public officials were referred to court, Tunisian courts tend to refer to actions that are attributed to them as "acts of violence committed by a public official against the general public" according to chapter 101 of the penal code and the verdicts are often issued in absentia. In other cases, the sentences are not commensurate with the gravity of the acts committed (fines or deferred prison sentences...)

In cases where the Criminal Chamber of Tunisia found that the acts constitute torture, public officials are either sentenced to jail terms or assessed a fine, however, in the appellate phase, the perpetrators receive a two-year prison commuted sentence (case of Bel Hade/ two police officers).

The organization believes that this judicial orientation has to do with the official political positions of the various state bodies that deny the existence of torture and claim that these acts are merely individual and isolated violence practices.

Fabrication of cases against torture victims:

During its monitoring of torture cases, the organization underscored the resort of police to fabrication of charges (assaulting a public official and infringing the morals) against victims of torture after they file complaints against their aggressors.

The police take in charge of the investigation, the arrest, the transfer to the public prosecution and then to the court.

In most cases, torture victims are sentenced with jail terms, and in return their complaints against public officials remain unsettled.

Reparation for and rehabilitation of torture victims:

Because of the extreme slowness regarding judicial procedures and the consideration of torture complaints, torture victims are deprived of any material or moral compensations.

In Tunisia, there are neither medical or psychological rehabilitation facilities nor social reintegration centers for victims of torture and this applies to both adults and children.

In this section, the organization recorded acts of torture in police stations of which the victims were minors. In other cases, children are being questioned without the presence of their parents. Torture induces physical and psychological impacts on children that are not provided with special care to rehabilitate them. There is one sole institution founded by the civil society in Tunis that provides some psychological services for victims of torture.

Extradition:

Chapter 313 of the Criminal Procedure Code does not allow extradition... It is feared that the delivered person would be exposed to torture.

The amendment to Article 313 issued under Decree 106 for the year 2011 is in line with the principles of the Convention against Torture.

On 24 June 2012, the Tunisian authorities handed over the last First Minister: Mr. Al Baghdadi El Mahmoudi to the Libyan authorities under Muammar Gaddafi regime in Libya.

The extradition did not take into account the unstable political situation in Libya and the lack of sufficient guarantees of a fair trial as well as the possibility that al-Mahmoudi would be tortured or subjected to ill-treatment inflicted by the requesting authorities, as well as the possibility of the issuance of a death sentence against him which violates the International Convention Against Torture, ratified by Tunisia since 1988 as well as the rules of the Criminal Procedure Code.

Later, specifically on 28/07/2015, Mahmoudi was sentenced to death along with eight former officials of Gaddafi's regime.

The extradition of El Baghdadi Mahmoudi has remained a controversial debate until this day in Tunisia.

Reforming the security and penitentiary apparatus:

The security and penitentiary apparatuses are still operating under the same previous legislations that were issued under the dictatorship.

These laws require deep and radical amendments as to comply with the international standards in terms of transparency, legitimacy and respect for human rights.

For example, the law number 70 of 1982 concerning the statute of the Internal Security Forces does neither set a clear structure to the work of the Interior Ministry nor provide the possibility to disobey instructions that violate the law.

Despite the enactment of Law No. 51 of 2001 which stipulates the fact that prisons and correctional facilities agents shall consult with the Minister of Justice. The first chapter stipulates that the mentioned officials are subject to Law No. 70 of 1982 governing the interior security forces.

Despite promises of reform, things are still the same after the expiry of five years from the outbreak of the revolution in December 2010 which ended with the fall of Ben Ali regime.

Anti-Terrorism Act:

After months of the terrorist attack on the Bardo Museum in Tunis during the month of March 2015, the law number 22 for the year 2015 was issued on combating terrorism and money laundering (July 2015). The text stipulates the death penalty law in case people died due to a terrorist act and the maximum length to retain in this law can reach fifteen days.

The recent amendment stipulates the access to a lawyer after 48 hours from the beginning of detention.

The law does not grant the suspect the right to bring a lawyer during the period of detention and primary investigations, paving the way for the exercise of torture, extraction of confessions and falsification of search warrants.

The text of the law stipulates the possibility of not conducting a confrontation between the witness and the accused, but it did not stipulate in this case the unreliability of that testimony (where there was no confrontation) as it cannot be adopted as the sole evidence for conviction. Many complain of being tortured during the primary investigations and forced to sign search warrants of which they ignore the content, leading to a fatal breach of the principles of a fair trial.

There is a political and media discourse that is influencing the public opinion and promoting the idea that torture could be justified to extract confessions or to prevent possible terrorist acts.

Despite the absurdity of such a discourse, the official authorities are not acting to refute or respond to it.

Recommendations:

- Amending Article 101 of the penal code concerning the definition of torture as to become compatible with the International Convention.
- Expediting the establishment of the national mechanism for the prevention of torture and the completion of the High Commission for Human Rights and Fundamental Freedoms' combination pending the amendment of its law.
- Concluding agreements between the relevant ministries and civil society organizations in order to allow visits to detention centers.
- Improving the conditions of detention centers and detainees physically and morally and establishing the necessary financial plans from the state budget.
- Accounting the agents and officials who commit human rights abuses against detainees, as well as those who give the orders or remain silent about those violations, despite knowing them.

- Establishing an effective system for filing complaints in detention centers.
- Training judges to combat torture and enabling them to hold perpetrators accountable by providing them with the necessary legal means.
- Establishing a legal system for reparations destined to victims of torture, regardless of the complaints' progress.
- Accelerating the reforms of the security and penitentiary institutions and the laws governing them.
- Amending the anti-terrorism law in such a way that it becomes in line with international standards.