

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

14 January 2021

Index: MDE 30/ 3525/2021

# TUNISIA: 10 YEARS ON, VICTIMS ARE STILL AWAITING JUSTICE

Ten years after Tunisia's revolution succeeded in ending the iron-fisted rule of President Zine El Abidine Ben Ali, victims continue to face an uphill struggle in their quest for justice and reparation for the unlawful and excessive use of force and other grave human rights violations committed between 17 December 2010 and 14 January 2011, when President Ben Ali relinquished power and fled Tunisia. Since 2011, attempts to hold those responsible for unlawful killings of protesters to account have failed to deliver justice for the victims and their families. During Tunisia's revolution, security forces killed 132 protesters and injured 4000, according to the National Commission to investigate abuses and violations during the revolution<sup>1</sup>. Military courts first tried these cases in 2012 and 2014, in problematic trials that lacked independence and resulted in lenient sentences for those convicted.

With the creation of the Truth and Dignity Commission ("Instance Vérité et Dignité" known by its French acronym IVD), and its power to refer cases investigated directly to criminal trial, victims found new hope and flocked in the thousands to testify. Since May 2018, at least 10 trials in relation to the violent repression of the revolution opened before the Specialized Criminal Chambers created by the Transitional Justice law. These trials may be the last chance to achieve accountability for the crimes committed and deliver justice to the victims and their families.

Yet, analysis by Amnesty International has found that trials are being undermined by the lack of cooperation from the security sector and structural obstacles from within the justice system.

Over the past two years, at least 23 hearings sessions related to the events of the Revolution have taken place before the Specialized Chambers in different tribunals in cities including Tunis, Le Kef and Sidi Bouzid. Dozens of victims and witnesses were heard by the courts. But the hearings have been hampered by the fact that the accused – usually former police officers – have mostly failed to attend the hearings. No judgment or verdict has been handed down. And no case reached the pleading phase to date.

Since 2011, the successive Tunisian governments have failed to take effective measures to ensure accountability for human rights violations committed by security forces such as torture and other ill-treatment or excessive use of force, which has contributed to the persistence of these violations. The overwhelming majority of credible allegations of human rights violations, including torture, by members of security forces have not resulted in prosecutions and usually stall at the investigation stage.<sup>2</sup>

Amnesty International reiterates its call on Tunisian authorities to support the transitional justice process and provide guarantees for the diligent prosecution of those accused of the killings of protesters and other grave human rights violations. The Ministry of Interior must fully cooperate with the courts mandated to prosecute perpetrators of violations by ordering its forces to implement the warrants and summons issued by the courts and ensuring that implicated security officers comply with the courts' orders. The High Judicial Council must ensure that the judges of the specialized criminal chambers are enabled to carry out their duties where it relies on the cooperation of the Ministry of Interior and that the annual judges' rotation does not adversely impact the trials underway or result in undue delays.

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<sup>1</sup> Report of the National Commission to investigate abuses and violations during the revolution, 7 May 2012, [fr.slideshare.net/marsedkadha/ss-12834630](http://fr.slideshare.net/marsedkadha/ss-12834630) (in Arabic)

<sup>2</sup> Amnesty International, *Tunisia: Investigations into deadly police abuses must deliver long awaited justice*, 4 April 2019,

[www.amnesty.org/en/latest/campaigns/2019/04/tunisia-where-running-from-police-can-be-deadly/](http://www.amnesty.org/en/latest/campaigns/2019/04/tunisia-where-running-from-police-can-be-deadly/); Amnesty International, *Tunisia: Open letter urges government to end impunity for security forces*, 13 March 2018, [www.amnesty.org/en/latest/news/2018/03/tunisia-open-letter-urges-government-to-end-impunity-for-security-forces/](http://www.amnesty.org/en/latest/news/2018/03/tunisia-open-letter-urges-government-to-end-impunity-for-security-forces/)

## FAILED PAST ATTEMPTS TO DELIVER JUSTICE

Since 2011, several attempts were made to address the human rights violations committed by security forces during the events of the revolution. In February 2011, interim authorities created a fact-finding commission on abuses committed during the revolution. The commission's report, issued on 4 May 2012, provided a strong description of the events, as well as a list of those killed and injured in the different governorates, but failed to identify the individuals responsible for the use of excessive force and other human rights violations.

In February 2011, a group of lawyers pressed charges in civilian tribunals against state officials for the killings and excessive force that took place between 17 December 2010 and 14 January 2011. Judicial authorities subsequently initiated criminal investigations of the crimes committed during the revolution which led to the indictment of 53 former government officials, police and other security forces members. After interviewing witnesses and victims, collecting evidence and issuing the indictments, the investigative judges transferred the cases to military courts based on a law which gives military courts jurisdiction over cases in which those accused were security forces personnel.<sup>3</sup> The military tribunals grouped different incidents in multi-case trials based on geographical jurisdiction in the first instance military courts of Le Kef, Tunis and Sfax.

Between May 2011 and April 2014, the three first instance military tribunals in Tunis, Kef and Sfax – as well as a military appeals court in Tunis – tried a number of cases related to the revolution in what came to be known as "the trials of the martyrs and wounded of the revolution." These trials were closely followed by the victims and families even though they were denied the right to participate in the investigation phase as per the code of military justice, which meant that they had no access to the court, were not allowed to introduce evidence, make submissions of any kind or request further investigation. Amnesty International calls for trials of human rights violations to take place before civilian – not military – courts, given concerns about lack of independence and impartiality of military courts and concerns about impunity. And there is growing international agreement that the jurisdiction of military courts should exclude human rights violations and crimes under international law.<sup>4</sup>

The proceedings and outcome of these trials were rejected by most of the victims and their families<sup>5</sup> and heavily criticized by human rights organizations for being flawed, lacking in transparency and resulting in disproportionately light sentences.<sup>6</sup> While former President Ben Ali, tried in absentia, received a life sentence at the first instance, only a few low- and middle-ranking officials were found individually responsible and sentenced for shooting at protesters and bystanders.

On 12 April 2014, the Military Appeals Court confirmed the life sentence for Ben Ali but revised the charges against the interior minister and the head of the security services at the time and other co-defendants, convicting them of "negligence," and reducing their sentences to three years in prison. They were all freed after serving two to three years in jail. The military courts' judgments also demonstrated the difficulties of holding high-ranking security officials criminally accountable without material proof that they had knowledge of crimes committed by those under their command and that they gave orders to use lethal force, because of the absence in Tunisian law of the concept of command responsibility, under which civilian, police, and security force commanders can be held liable for crimes committed by their subordinates.

## RE-TRIALS BEFORE THE SPECIALIZED CRIMINAL CHAMBERS

In December 2013, Tunisia's National Constituent Assembly passed the Organic Law No. 2013-53 Establishing and Organizing Transitional Justice.<sup>7</sup> The law sets out a comprehensive framework to address violations committed from July 1955 to December 2013 (when the law was issued) by revealing the truth about past abuses, providing reparations to victims, and pursuing criminal accountability for serious crimes. The law established the Truth and Dignity Commission as

<sup>3</sup> Article 22 of law 70 of 1982 law the basic status of internal security forces stipulates that offences by internal security forces during the course of their duty should be dealt with by military courts

<sup>4</sup> Updated Set of principles for the protection and promotion of human rights through action to combat impunity, Principle 29, E/CN.4/2005/102/Add.1

<sup>5</sup> One step forward, two steps back? One year since Tunisia's landmark elections MDE 30/010/2012 [www.amnesty.org/download/Documents/24000/mde300102012en.pdf](http://www.amnesty.org/download/Documents/24000/mde300102012en.pdf)

<sup>6</sup> Human Rights Watch, *Flawed Accountability; Shortcomings of Tunisia's Trials for Killings during the Revolution*, 12 January 2015, [www.hrw.org/report/2015/01/12/flawed-accountability/shortcomings-tunisia-trials-killings-during-uprising](http://www.hrw.org/report/2015/01/12/flawed-accountability/shortcomings-tunisia-trials-killings-during-uprising)

<sup>7</sup> ICRC, Organic Law No. 2013-53 Establishing and Organising Transitional Justice, 2013. [ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=E65641E6572650FAC1257D2D0056813E&action=openDocument&xp\\_countrySelected=TN&xp\\_topicSelected=GVAL-](http://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=E65641E6572650FAC1257D2D0056813E&action=openDocument&xp_countrySelected=TN&xp_topicSelected=GVAL-992BU6&from=state)

[992BU6&from=state](http://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=E65641E6572650FAC1257D2D0056813E&action=openDocument&xp_countrySelected=TN&xp_topicSelected=GVAL-992BU6&from=state)

the official body to investigate and report on past abuses, and mandated the creation of Specialized Criminal Chambers (SCC) to prosecute serious human rights violations of the past referred to it by the IVD.

During its mandate, the work of the IVD faced strong resistance from successive governments and parliament, which failed to comply with the transitional justice law on many levels.<sup>8</sup> The IVD completed its mandate in December 2018, published its final report<sup>9</sup> and referred 200 cases of past crimes to trial before the Specialized Criminal Chambers in which 1426 persons were charged with violations of human rights involving 1120 victims.<sup>10</sup>

The Specialized Criminal Chambers were formally established by Decree No. 2014-2887 of 8 August 2014 and were set up within the courts of first instance in those of Tunisia's governorates that have appeals courts.<sup>11</sup> On 29 May 2018, the first hearing about an enforced disappearance case before the SCC was held in the Tribunal of First Instance in Gabès.<sup>12</sup>

The IVD was mandated by the Transitional Justice law to carry out investigations in the cases of the "Martyrs and Wounded of the Revolution" and refer them for re-trial by the Specialized Criminal Chambers, creating another opportunity for a transparent accountability process to take place. The IVD received 163 files related to violations of the right to life in the context of the events of the Revolution (from 17 December 2010 to 28 February 2011) and 4,282 files concerning the violation of physical integrity and injury during protests as a result of excessive and disproportionate use of force by security forces.<sup>13</sup> The IVD organized a public hearing on 17 January 2017 in which some family members of people killed during the revolution testified.<sup>14</sup>

Despite the refusal of the military justice system to guarantee the IVD access to their judicial files and cooperate with its investigations<sup>15</sup>, the IVD completed the investigation into the files of the victims of the grave violations in the context of the revolution. The IVD then directly referred 12 indictments to the Specialized Criminal Chambers which led to 10 trials to date relating to 127 victims of unlawful killings or injuries.

Sihem Ben Sedrine, president of the IVD, told Amnesty International that the IVD had faced several obstacles during its investigations particularly in relation to the cases of violations against protesters during the revolution:

**"The IVD encountered many obstacles in order to investigate cases eligible for transfer to specialized chambers, in particular the refusal of the alleged perpetrators of violations to respond to the IVD's summons, the denial of access to police archives and especially the refusal of the military courts to communicate to us the files of the martyrs and wounded of the revolution that they had to judge."**<sup>16</sup>

The trials before the Specialized Criminal Chambers continue to face resistance from the security sector, with the main security force unions in Tunisia refusing to cooperate, claiming in various statements that these trials are "vindictive" and aim to "weaken security forces," and calling for legislative reform to stop them. In addition, Ministry of Interior officials continuously fail to implement arrest warrants or respond to summons issued by the Specialized Criminal Chambers.

In hearings of cases such as the excessive use of force in Kasserine, Thala, Tunis and Sidi Bouzid, the judge listed the names of defendants for whom there was no confirmation of receipt of the summons or whose addresses are unknown and thus did not have the summons delivered to them.<sup>17</sup> The responsibility of delivering the summons lies with the Ministry of Interior, since a number of the defendants are security officers in active duty today or retired security officials whose addresses would be known to the administration of the Ministry of the Interior.

The failure to execute the courts warrants by the judicial police must be investigated and disciplinary action must be taken where necessary, Amnesty International said. The judges of the specialized chambers must deploy all the procedural prerogatives available to them to ensure that the alleged perpetrators partake in the trials, including issuing arrest warrants which has not happened yet even in cases where the alleged perpetrators are accused of unlawful killings.

8 Amnesty International, *Tunisia, fate of the truth commission unclear as it refers two historic cases to trial*, 26 April 2020, [www.amnesty.org/en/latest/news/2018/04/tunisia-fate-of-truth-commission-unclear-as-it-refers-two-historic-cases-to-trial/](http://www.amnesty.org/en/latest/news/2018/04/tunisia-fate-of-truth-commission-unclear-as-it-refers-two-historic-cases-to-trial/)

9 Amnesty International, *Tunisia, Tunisian authorities must sustain progress on transitional justice*, 13 December 2018, [www.amnesty.org/en/latest/news/2018/12/tunisian-authorities-must-sustain-progress-on-transitional-justice/](http://www.amnesty.org/en/latest/news/2018/12/tunisian-authorities-must-sustain-progress-on-transitional-justice/)

10 IVD, Final report, Executive Summary, pp85-86, [ivd.tn/rapport/doc/TDC\\_executive\\_summary\\_report.pdf](http://ivd.tn/rapport/doc/TDC_executive_summary_report.pdf)

11 See Decree No. 2014-4555 of 29 December 2014 modifying Decree No. 2014-2887 on the creation of the specialized criminal chambers in the field of transitional justice within the tribunals of first instance in the courts of appeals of Tunis, Gafsa, Gabès, Sousse, Le Kef, Bizerte, Kasserine and Sidi Bouzid, further amended by Decree No. 2016-1382 of 19 December 2016 to include additional chambers in Mednine, Monastir, Nabeul and Kairouan.

12 Avocats Sans Frontières, Observation report Kamel Matmati trial, [www.asf.be/fr/blog/trialobservation/matmati-kamel/](http://www.asf.be/fr/blog/trialobservation/matmati-kamel/) (in French)

13 IVD, Final report, Executive Summary, page 343

14 Public hearing organized by the IVD on 14 January 2017, [www.youtube.com/watch?list=PLpglHuGzFsmdqFHfNhxO\\_NqqCMiG\\_Qvd&v=E8CTPRbC54w](http://www.youtube.com/watch?list=PLpglHuGzFsmdqFHfNhxO_NqqCMiG_Qvd&v=E8CTPRbC54w) (in Arabic)

15 The President of the Truth and Dignity Commission (IVD) sent 21 correspondences to General Public Prosecutor Head of the military justice to give TDC copies of judicial files to no avail.

16 Written interview with Sihem Ben Sedrine on 22 December 2020

17 Avocats Sans Frontières, *First observation report of the Thala and Kasserine Trial*, [www.asf.be/fr/blog/observation/13-07-18-premiere-audience/](http://www.asf.be/fr/blog/observation/13-07-18-premiere-audience/) (in French)

All the injured victims and relatives of those killed interviewed by Amnesty International described feelings of frustration at the resistance of authorities to commit to the transitional justice process and achieve accountability and their weariness from the length of the process. Yet all those interviewed stated their commitment to see the trials through and keep fighting for justice until they achieve it. Though only a selection of the interviews conducted are reflected in this statement, those that are included are representative of the situation typically described by the families of victims and the injured:

One of the protesters who was killed in Thala on 8 January 2011 was 19-year-old **Marwen Jamli**. His father, Kamel Jamli, told Amnesty International

**“Our children did not die for nothing; it is our duty to fight for justice now so that nobody else has to suffer what we are suffering. They sacrificed their lives, we will make the sacrifices needed too. We spent two years going to the military court in Kef every couple of weeks, then two years going back and forth to Tunis to follow the appeal trial and we will now keep going to Kasserine no matter how tired and old we get. We know who killed our sons in Thala, we know that they are still in active duty and that is something we have to live with every day until justice is achieved. At least they have to confess, tell the truth about what they did and express remorse.”<sup>18</sup>**

Mimoun Khadhraoui, whose brother, **Abdel Basset Khadhraoui**, was shot dead by police on the streets of Tunis on 13 January 2011, said he and his family are still supporting the process: **“the people that believe the most in the transitional justice process are the families of the martyrs of the revolution. The proof is that we are still here 10 years later. We are tired and frustrated but we will not give up. This is beyond our right to justice or my brother's case, it is the right of the Tunisian people to truth and justice.”<sup>19</sup>**

The slowness of the trials is due to repeated adjournment of hearings, most often linked to the absence of an accused or his lawyer, or even to the absence of judges due to the lack of quorums in the Specialized Criminal Chambers. Judges are not permanently assigned to these chambers and are therefore moved to other tribunals following the annual rotation of magistrates, regardless of the status of the trial. The last annual judges' rotation of July 2020 resulted in the transfer of 29 of the 91 judges sitting on the SCC benches, which in turn resulted in lengthy delays in the trials in some of the courts including the Tunis SCC.

The turnover on the benches of the Specialized Criminal Chambers contributes to slowing down the trial and could result in weakening the judicial process. When new judges are appointed mid-trial, they need a certain amount of time to study the cases which inevitably leads to the postponement of hearings. In addition, the transitional Justice law stipulates that all judges sitting on trials before the Chambers are required to receive training sessions related to Transitional Justice before taking their posts, which slows down the process of replacing the judges who are transferred mid-trial. The instability of the judicial panels of the Chambers is one of the structural obstacles causing unnecessary delays and prolonging the trials. In addition to the frustration this causes victims and families who have already waited a decade to see justice done, it is also contrary to fair trial standards to be tried without undue delay.<sup>20</sup>

The trial related to the revolution in Thala and Kasserine started on 13 July 2018. The trial includes the cases of 20 killed and at least 30 wounded. In total, nine sessions were held, in which judges listened to at least 35 victims and witnesses' testimonies and interrogated only one of the 25 alleged perpetrators. At the seventh hearing on 6 December 2019, six of the alleged perpetrators briefly appeared before the court and requested an adjournment which the court granted.<sup>21</sup> According to lawyers and victims, at each hearing, the injured and families of those killed were present, but the benches of the accused were frequently either empty or had many missing. Where defendants were present and where interrogated by the court instead of asking for postponement, they all denied responsibility in the killing of 20 protesters.

The case related to the 2011 events of Regueb, in Sidi Bouzid Governorate, includes 16 victims, four of whom were killed. The IVD referred it to the Specialized Criminal Chamber of the Court of First Instance of Sidi Bouzid on 24 December 2018. Amnesty International spoke to Ourida Kaddoussi, whose son, **Abderraouf Boukadous**, was killed when he was 27

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<sup>18</sup> Interview with Kamel Jamli on 14 December 2020

<sup>19</sup> Interview with Mimoun Khadhraoui on 7 December 2020

<sup>20</sup> Article 14(3)(c) of the 1966 International Covenant on Civil and Political Rights provides that everyone shall be entitled “to be tried without undue delay”; and Article 7(1)(d) of the African Charter on Human and Peoples' Rights enshrines “the right to be tried within a reasonable time by an impartial court or tribunal.”

<sup>21</sup> Avocats Sans Frontières, Observation report of the 9th hearing of the Thala Kasserine trial, 4 June 2020, [www.asf.be/fr/blog/trialobservation/martyrs-et-blesses-de-la-revolution-thala-kasserine/](http://www.asf.be/fr/blog/trialobservation/martyrs-et-blesses-de-la-revolution-thala-kasserine/)

years old by security forces on 8 January 2011. She told Amnesty International that she had high hopes for the re-trial in the beginning but is now becoming skeptical:

**"We will not give up our claim for justice but I'm not sure anymore if these new trials will lead to that because they are not going as they should. I went to the first four hearing sessions, I testified before the judge as did the other family members of other martyrs but no one of the accused was there and the hearing sessions just stopped or maybe they stopped telling us about the dates on which they were happening ." Ourida Kaddoussi<sup>22</sup>**

Tunisia is under the obligation to guarantee the right to effective remedy for victims of human rights violations under international law.<sup>23</sup> This includes the right to truth, by revealing the facts; justice, by investigating past violations and prosecuting the suspected perpetrators; and reparation by providing full and effective reparation to the victims and their families, in its five forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Principle VII of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law states: "Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; and (c) Access to relevant information concerning violations and reparation mechanisms."<sup>24</sup> This obligation extends to past human rights violations committed under previous governments.

States must ensure that the truth is told, that justice is done and that reparation is provided to all the victims without discrimination, Amnesty International said.

## Recommendations

In order to fulfil the victims' right to justice, Amnesty International calls on the Tunisian authorities to:

- Ensure the full cooperation of all government agencies with the Specialized Criminal Chambers entrusted with trying the cases related to gross human rights violations committed between 1955 and 2013 in order to guarantee the right to a remedy of hundreds of victims and their families,
- Ensure that the prosecution of past human rights violations occurs in full respect of due process and fair trial standards and upholds the rights of the victims and defendants without undue delay,
- Guarantee that the judicial police execute the arrest warrants issued by the Specialized Criminal Chambers in transitional justice trials in accordance with the law.
- Investigate and discipline officers and security sector officials who evade their duties in executing court orders issued by the Specialized Criminal Chambers.
- Consult with the High Judicial Council, in a manner that upholds the independence of the judiciary, on measures to mitigate any adverse impacts on the trials before the SCC of the annual rotation of judges, with a view to avoiding undue delay to these trials.
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<sup>22</sup> Phone interview with Ourida Kaddoussi on 30 Novembre 2020

<sup>23</sup> The right to an effective remedy for victims of human rights violations and serious violations of international humanitarian law is guaranteed in international law. It is enshrined in Article 2 (3) of the ICCPR and further expanded in the Human Rights Committee General Comment No.31 on the "Nature of the General Legal Obligation imposed on States Parties to the Covenant", adopted on 29 March 2004 at its 2187th meeting. It is also recognized in Article 8 of the Universal Declaration of Human Rights, Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 39 of the Convention on the Rights of the Child, Article 75 of the Rome Statute of the International Criminal Court, Article 7 of the African Charter on Human and Peoples' Rights and Article 23 of the Arab Charter on Human Rights.

<sup>24</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles on the Right to a Remedy and Reparation), adopted and proclaimed by UN General Assembly Resolution 60/147 of 16 December 2005 (UN Doc. A/RES/60/147).

