

*(Translated from Arabic)*

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Republic of Tunisia  
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*Units for relations with constitutional bodies, civil society and human rights organizations*

*National Commission for the Coordination, Preparation and Submission of Reports and  
Follow-up to Recommendations on Human Rights*

*Permanent Secretariat*

**Reply of Tunisia to  
joint communication from mandate holders of the Human Rights Council  
No. AL TUN 2/2021  
concerning the process of transitional justice in Tunisia**

Further to the joint communication from the special procedures of the Human Rights Council (Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Special Rapporteur on the right to freedom of opinion and expression; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) requesting information regarding the process of transitional justice, the National Commission for the Coordination, Preparation and Submission of Reports and Follow-up to Recommendations on Human Rights hereby submits the following reply from the Tunisian Government:

Following the revolution of 2011, Tunisia has striven to establish a process of transitional justice to address human rights violations of the past. In December 2013, the National Constituent Assembly ratified Organic Act No. 53 of 2013, dated 24 December 2013, which concerns the establishment and regulation of transitional justice and defines the task of the Truth and Dignity Commission, which is to investigate human rights violations committed between 1955 and the end of 2013.

The Act envisages means and mechanisms for addressing human rights violations, discovering the truth behind them, holding those responsible accountable, providing reparation for victims, establishing guarantees of non-recurrence and preserving collective memory. This will contribute to establishing democracy and promoting a system of human rights in Tunisia.

The pledge to publish the final report of the Truth and Dignity Commission – which Tunisia made while discussing its periodic report under the International Covenant on Civil and Political Rights before the Human Rights Committee on 3 and 4 March 2020 – has been duly fulfilled. The report, in fact, was published in the Official Gazette on 24 June 2020, a move that constitutes an important step towards continuing the process of transitional justice and implementing the recommendations of the Truth and Dignity Commission vis-à-vis dismantling the tyrannical system, providing reparation for victims, preserving memory and achieving national reconciliation.

Under Decree No. 97 of 2011, dated 24 October 2011, concerning compensation for the martyred and injured of the revolution of 4 January 2011, a list of persons killed and injured during the revolution has been compiled by the Commission for Persons Martyred or Injured in the Revolution and the High Committee for Human Rights and Fundamental Freedoms and published in the Official Gazette.

With regard to the allegations raised in the joint communique, the following information may be given:



### **Allegations concerning difficulties in the process of transitional justice**

Tunisia has, on many occasions, reaffirmed its full commitment to supporting and accomplishing the process of transitional justice.

In the first place, this emerges clearly in the legislative framework that regulates transitional justice. In fact, article 1 of Organic Act No. 53 of 2013 defines transitional justice as: “An integrated system of means and mechanisms the purpose of which is to comprehend and address human rights violations of the past by discovering the truth behind them, holding those responsible accountable and providing reparation for and rehabilitating victims in order to achieve national reconciliation, preserve collective memory, provide guarantees of non-recurrence, move from tyranny to democracy and promote a system of human rights in Tunisia.”

In sum, the principles upon which transitional justice in Tunisia is based are, fundamentally, the right to justice, the right to truth and the right to compensation and redress, as well as guarantees of non-recurrence and reconciliation.

An institutional framework was defined and established for the implementation of the Organic Act in the form of the Truth and Dignity Commission, which carried out its functions during the term of its mandate then submitted its final report, as mentioned above. The Commission was duly provided with the means and resources it needed to carry out its role.

As stated earlier, the publication of the final report of the Truth and Dignity Commission is the starting point for the implementation of the recommendations and the completion of the process of transitional justice, as per article 70 of the Organic Act on transitional justice under which the Government is required – within a year of the publication of the report – to prepare a programme of action for the implementation of the Commission’s recommendations and proposals, and submit it to the legislative council for discussion.

This clearly shows the commitment of Tunisia to completing the process of transitional justice and to ensuring the fulfilment of article 148 (9) of the Constitution, which stipulates: “The State undertakes to implement the system of transitional justice system in all areas and within the deadlines prescribed by the relevant legislation. In that context it is inadmissible to invoke the non-retroactive nature of laws, a pre-existing amnesty, the force of *res judicata* or the statute of limitations on a crime or a penalty.”

### **Concerning the work of judges in the Specialized Criminal Chambers**

Article 8 of Act No. 53 of 2013 states: “Specialized chambers shall be established by decree within courts of first instance located in the headquarters of appeal courts, and shall consist of judges selected from among persons who have never participated in trials of a political nature, and who shall receive training in the field of transitional justice.”

For its part, article 13 of the same Act stipulates: “Under the present Act the State shall, in the interests of victims, meet the costs of legal action in all cases involving human rights. It shall do so under the laws governing legal aid and judicial assistance before the administrative courts.”

On this basis, the Supreme Council of the Judiciary has been regulating the mobility of judges in the court system in the judicial year 2020/21 using three basic criteria and it has appointed counsellor judges in criminal chambers and specialized chambers at the level both of courts of first instance and of courts of appeal. The purpose of this is to improve fair trial guarantees and to provide an effective judicial infrastructure that has sufficient expertise to rule on cases.

In addition to this, the Ministry of Justice has developed training programmes in transitional justice for members of specialized chambers, most recently a course at the beginning of 2021 which had the aim of fulfilling the formal conditions for working in the chambers.

The Supreme Council of the Judiciary appoints the judges who work in criminal chambers and specialized chambers in accordance with the available human resources. It has been doing this since the previous round of judicial mobility and has continued to do so during the judicial mobility of 2021/22.

Attention is drawn to the efforts made to overcome the perceived lack of investigations regarding lists of charges compiled by the specialized chambers in transitional justice. Those chambers have appointed judge rapporteurs from among their own number to complete the investigations and to conduct fresh investigations, and this is the reason for the delay in emitting sentences.

With regard to strengthening the legal framework and making it consistent with the Constitution and with international standards, a national committee has been set up – under Government Order No. 1196 of 2019, dated 24 December 2019 – with the task of harmonizing human rights laws in line with constitutional norms and the provisions of international treaties.

In particular, the national committee is charged with the following tasks:

- Drawing up a list of the human rights laws that need to be harmonized with the Constitution and with the obligations arising from ratified international treaties;
- Developing and monitoring the implementation of a plan of action to include goals, themes, phases and durations;
- Coordinating between the various stakeholders involved in implementing the plan of action and offering technical support, as required and in accordance with available possibilities;
- Guiding, overseeing and ratifying the work of the national committee's subcommittees, formed in accordance with article 8 of the Government Order;
- Proposing the review and amendment of laws;
- Making its views known on legislative and administrative bills with a bearing on human rights, which are to be referred to the national committee as a matter of course;
- Drafting periodic reports on the progress of the national committee's work and the proposals it makes.

The committee is composed of representatives from ministries, the Assembly of the Representatives of the People, the High Committee for Human Rights and Fundamental Freedoms and civil society.

Two committees have been set up in the Ministry of Justice to review the Criminal Code and the Code of Criminal Procedure. Proposals made include the introduction of additional provisions to the Criminal Code regarding enforced disappearance, consistent with the norms set forth in the International Convention for the Protection of All Persons from Enforced Disappearance, which Tunisia ratified under Order No. 550 of 2011 dated 14 May 2011.

#### **Concerning attempts to invalidate the work of the Truth and Dignity Commission and to dismantle accountability mechanisms**

In response to allegations concerning financial mismanagement and the exploitation thereof to cast doubt on the work of the Commission, overturn its findings, justify the invalidation of its work and dismantle accountability mechanisms, it should be noted that the oversight function carried out by the Court of Audit within the Truth and Dignity Commission is part of that Court's mandate as the supreme body charged with overseeing the use of public funds. The report of the Court and its findings also addressed the shortcomings and failings observed in the running of the Commission's activities and made recommendations, in view of the fact that the Commission is a public body that enjoys financial and administrative independence and that is allocated a separate budget for its work as part of the general State budget. It cannot be claimed on that basis that there has been any attempt to invalidate the work of the Commission, and the matter continues to be followed by the financial judiciary.

#### **Concerning legislative initiatives with a bearing on the process of transitional justice**

As has been stated previously, the Government has had no part in any legislative initiatives, if such exist, that would undermine the course of transitional justice.

Apart from working to fulfil its obligations regarding the implementation of Organic Act No. 53, the Government also issued Order No. 338 of 2016, dated 9 March 2016, regarding the establishment and functions of the Commission for Persons Martyred or Injured in the Revolution or in Terrorist Activities.

Government Order No. 359 of 2019, which was issued on 22 April 2019, concerns the creation of a body charged with reviewing compensation and benefits for victims of terrorism, which is part of the Commission for Resistance Fighters and for Persons Martyred or Injured in the Revolution or in Terrorist Activities and is intended to make the Commission's activities more effective.

On 23 October 2020, the Prime Minister appointed [REDACTED] as head of the new body.

Government Order No. 211 of 2018, which was issued on 28 February 2018, is intended to regulate the functioning of the Dignity and Rehabilitation Fund for Victims of Tyranny, which was set up under article 93 of Organic Act No. 53 of 2013.

In order to complement the course of transitional justice, the Government is currently drafting an order concerning the Commission for Resistance Fighters and Victims of Terrorism and of Tyranny. The order will aim to make transitional justice more effective, also by adding "transitional justice" to the name of the Commission.

Article 2 of the aforementioned draft order defines a victim of tyranny as anyone whom the Truth and Dignity Commission has included on its list of persons who suffered harm as a result of violations under Organic Act No. 53 of 2013 and under Organic Act No. 17 of 2014 relating to transitional justice, during the period between 17 December 2010 and 28 February 2011, and who obtained a reparation decree from the Truth and Dignity Commission.

The order defines the implementation of transitional justice as:

- Providing adequate and effective reparations, and immediate care, to victims of violations, in accordance with articles 11 and 12 of Organic Act No. 53 of 2013, dated 24 December 2013, in regard of cases referred by the Truth and Dignity Commission to the courts;
- Following-up on the implementation of arbitration decisions issued by the Truth and Dignity Commission;
- Following-up on recommendations of the Truth and Dignity Commission concerning measures proposed to promote national reconciliation and protect the rights of the parties involved;
- In general, and in coordination with the relevant ministries, drafting a programme of action for the implementation of the recommendation of the Truth and Dignity Commission to ensure non-recurrence of corruption and tyranny, as per article 70 of Organic Act No. 53 of 2013, and submit that programme to the Government.

### **Concluding observations**

Establishing a process of transitional justice was one of the most important demands of the Tunisian people following the 2011 revolution. In that framework, the Truth and Dignity Commission was established and performed its functions before leaving the field to the executive, the judiciary and the legislature to continue the process of transitional justice, in line with article 148 (9) of the Constitution.

Following the publication of the Commission's comprehensive final report and its list of persons killed and injured during the revolution, the process continues as a consultative process involving a number of stakeholders.

Any holdup observed regarding the completion of the process – which involves addressing human rights violations, discovering the truth behind them, holding those responsible accountable, providing reparation for victims and establishing guarantees of non-recurrence – does not mean that the process has been abandoned; rather, it means that all the parties involved must consolidate their efforts in order to achieve the final objective.

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