



## **OMCT High Level Mission to Tunisia**

### **Eradicating torture is a benchmark for the success of the transition**

**Tunis, 23 May 2011**

At the conclusion of a seven day visit to Tunisia by a delegation of anti-torture experts, the World Organisation Against Torture (OMCT) calls on the transitional authorities and all actors in the transition process to make the eradication of torture a priority objective. Overcoming the legacy of a policy of widespread and systematic torture in Tunisia will be a key to the success of the transition process. It requires a firm plan of action and a policy of zero tolerance to any incident of torture, or cruel, inhuman or degrading treatment.

The OMCT delegation wishes to express its appreciation for the openness of the discussions with the transitional authorities on the reforms required to end any practices of torture and to honour the right of victims of torture to reparation. The delegation met with the Prime Minister of Tunisia, the Minister of Justice, the Minister of Internal Affairs, the Minister for Social Affairs, the State Secretary of the Ministry of Foreign Affairs. The mission also met the President of the High Commission for Political Reform and the Commission investigating the abuses and violations during the revolution. The OMCT is grateful for the opportunity to access a number of detention facilities in the course of its visit. It expresses its hope that this will be the beginning of transparency of the penitentiary system in a democratic Tunisia.

In this regard, the OMCT warmly welcomes assurances received during its meeting with the Prime Minister that the transitional government will deposit this week the ratification documents for the Optional Protocol to the UN Convention Against Torture (OPCAT) at the United Nations in New York. The delegation is also encouraged by engagements expressed by the authorities to consider the implementation of a series of individual decisions by the UN Committee Against Torture which the previous regime refused and which held that Tunisia violated the absolute prohibition of torture.

Recognizing the significance of the changes undertaken, the delegation learnt with grave concern of serious allegations that practices of torture and ill-treatment by the police and other law enforcement bodies continue and that impunity for such violations so far remains the rule.

It is thus vital to accelerate the reform process and to make the fight against impunity a priority. The transitional nature of the government - despite its inherent limitations - should not be the reason for delaying needed reforms to protect from torture. To the contrary, such delay may put the enthusiasm for the project that started on January 14<sup>th</sup> in jeopardy.

## Ending impunity

Some victims have already submitted complaints and there is today a compelling body of documentation on torture, including by OMCT's member organisations (Council for National Liberties in Tunisia, Tunisian Organisation Against Torture, Tunisian League for Human Rights). The justice system has to start assuming its legal and professional responsibility to investigate allegations of torture expediently in order to bring those responsible to justice.

As expressed by the UN Special Rapporteur on Torture, investigating allegations of torture is a normal state function not dependent on the election of a Constituent Assembly. In this regard, the delegation was regularly referred to the possibility for victims to lodge complaints – a possibility that had proven illusory in the past. It emphasizes that it is a positive obligation of the State to investigate any case of torture *ex officio* even without any formal complaint. Ending complacency towards torture requires that any state authority, including prison or police officials, prosecutors or judges, who become aware of torture or ill-treatment need to bring this information to the attention of the prosecuting authorities.

The Commission set-up to investigate abuses and violations during the revolution provides another opportunity to break with the concept of impunity, ultimately by submitting cases to the justice system for prosecution. In this context, it encourages all actors in the transition process to consider a comprehensive process of truth and justice to address the legacy of torture in Tunisia beyond the limits of the present commission, and to make the voices of the victims heard as soon as possible.

## Legal reforms

Moreover, the OMCT encourages the transitional authorities to move swiftly on legal reforms in Tunisia to prevent torture and to enable the justice system to protect human rights. This includes reforms strengthening the independence of the judiciary and limiting the jurisdiction of military courts as required by international standards.

The visit of the delegation of places of detention and information received from victims confirms a real urgency to provide safeguards against torture at the moment of arrest in police detention. Priority should thus be given to provide access to lawyers from the moment of arrest and the strengthening of judicial control and oversight over arrest and detention. The delegation also encourages the authorities to work in close cooperation with civil society for developing a robust independent mechanism as required within one year after the ratification of the Optional Protocol to the UN Convention Against Torture.

The OMCT delegation also discussed the central challenge to reform the security apparatus. It shares the view of the UN Special Rapporteur on Torture that those who are implicated in the policy of torture, including those who authorized, planned, participated or failed to prevent torture, can in no case continue to serve within the services. The OMCT also considers that a clear separation between intelligence and the judicial police should be maintained and consideration be given to establish effective democratic oversight over any security services.

## Penitentiary reform

The OMCT greatly appreciates the opportunity to visit a number of detention facilities. On the basis of this information received it recommends an independent review of the penitentiary system to assess reforms to ensure compliance with international human rights standards. The visits have underlined also a need to investigate allegations of ill-treatment within the prison system and to

provide effective complaint mechanisms, but also to allow for a review of convictions based on torture confessions as such cases are not covered by the amnesty decree.

### Final remarks

Finally, the OMCT considers that transition processes regularly benefit from making universal human rights standards an integral part of the legal system and of any reform process under consideration.

It also encourages the legal community to use international human rights standards, for example in relation to challenging the lawfulness of detention. International human rights standards, such as those contained in the UN Convention Against Torture, are not foreign but Tunisian standards.

The delegation is confident in light of its meetings of the resolve of Tunisian society to overcome the legacy of torture and impunity. It also expresses its expectation that Tunisia will equally become a vocal actor on the international level re-enforcing international human rights law and mechanism.

### Background of the OMCT mission:

The delegation was composed of Mr. Yves Berthelot, President of the OMCT, Mr. Eric Sottas, Secretary General of the OMCT, Mr. Gerald Staberock, Deputy Secretary General of the OMCT, as well as Mr. Roberto Garreton, member of the national human rights institute of Chile and member of the UN Working Group on Arbitrary Detention, and Mr. Emilio Ginés, Vice-President of the Federation of Spanish human rights associations, and a member of the UN Sub-Committee on the Prevention of Torture (both joining this mission as OMCT expert and not in official UN function).

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