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Tunisia: Truth and Dignity Commission's first public hearings an opportunity to bring truth and justice to victims

Tunisia's Truth and Dignity Commission first public hearings on 17 and 18 November are a historic opportunity to affirm a commitment to end impunity for past crimes under international law and human rights violations. If the proceedings are conducted in an impartial, transparent and inclusive manner, victims of violations including deaths in custody, torture and secret and arbitrary detention who have waited decades for justice may finally have a chance to have their right to truth fulfilled.

The real test facing Tunisia's transitional justice process, however, is whether it will ultimately lead to criminal prosecutions for the crimes of the past decades which have thus far gone without adequate investigation or punishment. The Truth and Dignity Commission (Instance Vérité et Dignité, IVD) has the power to transfer cases to the criminal justice system, in the form of specialized chambers within first instance courts. Truth commissions can bring partial reparation to victims by uncovering the truth about the human rights violations suffered but they should never become a replacement for judicial proceedings for the crimes committed.

The legacy of impunity for years of abuse continues to permeate today's reality. While Tunisia has made progress in some areas, cases of deaths in custody and torture and other ill-treatment persist and remain largely unpunished, and security officials conducted scores of searches, arrests and detentions, some in an abusive or arbitrary manner, after the adoption of an anti-terrorism law and the reintroduction of a state of emergency in 2015.

The IVD, created by the Transitional Justice Law in December 2013, faces a momentous task. Mandated to uncover the truth about crimes under international law and human rights violations between 1955 and 2013, it is also tasked with arbitrating cases of 'economic crimes'. It is also tasked with setting up and administering a programme of individual and collective reparations, formulate recommendations to guarantee the non-repetition of past crimes and reform state institutions involved in the commission of human rights violations, including by proposing the vetting of members of state institutions.

The IVD states that it has received more than 62,000 submissions, showing the thirst of the Tunisian people for truth and justice. The Commission must meet these high

expectations, in an increasingly hostile human rights context and amidst the controversy surrounding its first years of operation. It needs to show it works in a collegial and transparent manner and keeps communicating with victims and civil society organizations, and ensure that its investigations, reparations programme and recommendations are underpinned by independence and impartiality.

The Transitional Justice Law gives the IVD powers to access state archives, summon individuals, carry on site investigations and request forensic examinations. Amnesty International urges all state agencies to cooperate fully with the IVD and ensure in particular that the IVD has full access to archives of the Ministry of Interior and that any summons of members of the security forces and state officials are complied with.

In July 2015, President Essebsi announced a draft law on special provisions for reconciliation in the economic and financial sectors, which would offer an amnesty and immunity from further prosecution to officials and business executives accused of corruption and embezzlement under the former administration of President Ben Ali, if they return the stolen funds. While the draft law has for now been shelved, it has undermined the mandate of the IVD and sent the message that accountability could be dispensed with.

The authorities should also ensure that the IVD has all the human and financial resources needed to carry out its mandate and full support for the work of the specialized chambers. The IVD also needs to ensure, in fulfilling its broad mandate, that it keeps at the core of its work the right to truth, justice and reparation of victims of crimes under international law and human rights violations.

The IVD has the mandate to take measures to protect witnesses, victims and experts and all those who provide information or testify. Given patterns of security forces' harassment of victims or their relatives to deter them from pursuing justice, the IVD should establish a comprehensive, long-term and effective victim and witness protection programme as the country lacks a specific legal framework to protect victims and witnesses of human rights violations.

The IVD's work has the potential to establish a solid basis for a future based on respect for human rights and the rule of law. Some reforms are underway to strengthen the independence of the judiciary, following the adoption of a new Constitution in 2014, but more needs to be done to establish a justice system capable of bringing perpetrators of international crimes to justice in fair trials before ordinary civilian courts, without recourse to death penalty. For instance, Tunisian law should be reformed to include the concept of responsibility of commanders and other superiors, which under international law makes commanders or superiors liable for crimes committed by subordinates if they knew, or had reasons to know, such crimes had been or were going to be committed and failed to prevent or punish them.

The security sector, in contrast, has been virtually left untouched. The IVD's investigations and recommendations to reform the security apparatus will be crucial, but the opacity of the security forces and its existing chain-of-command, and concerns that personnel associated with past abuses remain in place, constitute obstacles to justice, truth and reparation.