

Tunisia: Ensure Specialized Criminal Chambers' effective adjudication of sexual and gender-based crimes

9 July 2021

Tunisia's transitional justice process has failed to provide accountability for thousands of survivors of sexual and gender-based crimes, the International Commission of Jurists (ICJ) said in a new report published today.

The report, titled 'Strengthening accountability through the Specialized Criminal Chambers (SCC) in Tunisia', documents the many legal and practical obstacles that impede justice for sexual and gender-based (SGB) crimes perpetrated between 1955 and 2013, among the 'gross human rights violations' referred by the Truth and Dignity Commission (Instance Verité et Dignité, IVD) to the country's Specialized Criminal Chambers.

Tunisia's criminal provisions proscribing rape and "indecent assault" do not conform with international law and standards. Furthermore, the report highlights how the pursuit of justice may prove traumatic for victims and survivors of SGB violations, by exposing them to further human rights violations and abuses, such as stigma arising from their interaction with the justice system, and their having to relay and recount their statement repeatedly during the same investigation.

At least 795 complaints of rape and 3,274 complaints of other forms of sexual abuse were filed with the IVD but the IVD has referred only 25 SGB cases to the SCC. It is worth noting that 87% of those 25 cases involved male victims, as the large majority of people taken into custody were men and boys. This illustrates how, while women and girls are specifically at greater risk of SGB crimes, men and boys may too be victims to them.

"The Specialized Chambers provide a unique opportunity for the survivors of SGB crimes to have their day in court, and to obtain justice and reparation for the harm they suffered," said Said Benarbia, ICJ's Middle East and North Africa Director. "The SCC should address the decades-long impunity that prevailed for SGB crimes in Tunisia and ensure survivors can play their critical role in those proceedings, as witnesses and victims."

The report sets out a detailed list of legal, policy and practical reforms the Tunisian authorities should adopt with a view to ensuring the country's full compliance with international law and standards on the investigation, prosecution and adjudication of SGB crimes, and preventing recurrence of and impunity for SGB crimes.

"The Tunisian authorities should ensure that rape and other sexual crimes are adequately recognized and characterized — in accordance with their proscription under international law — and that gender-sensitive approaches and procedures be adopted and followed in the investigation, prosecution and adjudication of SGB crimes," Benarbia added.

Other recommendations include Tunisia's need to ensure that:

- The Criminal Code, the Code of Criminal Procedure and other relevant domestic law guarantee that all perpetrators of SGB offences be held criminally responsible and victims' rights to an effective remedy for violations of their human rights be upheld in SCC proceedings;
- The SCC proceedings guarantee broad procedural standing to victims of SGB crimes;
- In the context of SCC proceedings, domestic law be interpreted and applied in accordance with international law and standards, including by ensuring that SGB crimes be considered as "serious crimes" and be accurately charged as such;
- A victim-centered, gender-sensitive approach be adopted and followed at all stages of the SCC proceedings, including by limiting the number of times victims of SGB crimes are interviewed, as well as the number of people who interview them; and
- The SCC judges and prosecutors should minimize victims' and witnesses' exposure to risk and to re-traumatization in conformity with international law and standards.

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