



## STAKEHOLDER REPORT SUBMITTED TO THE 4<sup>th</sup> CYCLE OF THE UNIVERSAL PERIODIC REVIEW- TUNISIA 2022

### The rights of persons deprived of their liberty and current situation of the Tunisian NPM (INPT)

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#### Stakeholder Presentation

**The National Authority for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (INPT)** is an independent public body, created by virtue of Organic Law No. 2013-43 of October 21, 2013, pursuant to the ratification of the OPCAT by Tunisia in May 2011. The INPT is the first National Preventive Mechanism (NPM) established in the MENA region. It monitors the conditions of detention and the quality of detainees' treatment in all places of deprivation of liberty by carrying out preventive visits, announced or unannounced, to these places and by drafting reports to this end. It also produces an annual public report, makes recommendations for the prevention of torture, raises social awareness on the risks of torture and cruel, inhuman, or degrading treatment or punishment, and carries out and publishes research, studies, and reports on the prevention of torture and other degrading practices. In addition, the INPT receives complaints and notifications of possible cases of torture and ill-treatment. It investigates these cases and then refers them to the competent administrative or judicial authorities. Finally, the INPT provides its opinion on draft legal texts relating to its jurisdiction.

1. Following its 2017 UPR, it was recommended that Tunisia "strengthen the independence of the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, including the provision of a separate and adequate budget" to ensure that it fully exercises its mandate to monitor detention conditions and the quality of detainees' treatment in all places of deprivation of liberty, such as prisons, rehabilitation centers for juvenile offenders, housing or monitoring centers for minors, psychiatric institutions, housing centers for refugees and asylum seekers, immigrant centers, detention centers, transit zones in airports and ports, disciplinary centers, and means of transportation for persons deprived of their liberty.
  
2. Tunisia ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1988 and the Optional Protocol (OPCAT) in 2011. It established its National Preventive Mechanism (NPM), the first of its kind in the MENA region, in 2013, by virtue of Organic Law No. 2013-43, and adopted Law No. 2016-5 amending and supplementing certain provisions of the Code of Criminal Procedure (CCP), which reduces the duration of a suspect's police custody and provides for the right to appoint a lawyer to assist during interrogation and to request a medical examination with the aim of preventing cases of torture or inhuman treatment. However, despite these advances, many challenges are still present. The Committee against Torture expressed its concerns in its seventh periodic report on Tunisia about aspects related to legislative measures regarding the definition of torture, fundamental legal safeguards (particularly during arrest and police custody), and the law on combating terrorism. Similarly, the Committee mentioned practices of torture and ill-treatment that remain present in the security sector, particularly during arrest and police custody and mainly against persons suspected of terrorist activities. Furthermore, a national survey conducted by the INPT in April 2017 on "the view of Tunisians on torture: knowledge and acceptability"<sup>1</sup> found that 34% of the population consider that acts of torture committed by state agents have not decreased since January 2011. In fact, the INPT still observes a clear resistance to change among security guards and prison staff in general. We consider that such an attitude conditioned by a rigid security mindset, inherited from the era of tyranny, is due to a lack of awareness about the risks of torture and other cruel, inhuman, or degrading treatment or punishment.
  
3. In the same vein, it is worth mentioning that the fundamental guarantees provided by Law No. 2016-5 are not generally respected and that coercive interrogation, following the arrest of a suspect and during police custody, persists as a common practice in police investigations. Additionally, increasing police violence against peaceful demonstrators in the public space has prompted the INPT to monitor and document human rights violations during demonstrations and to take a closer look at the conditions of police custody<sup>2</sup>. The INPT has also carried out visits to people under house arrest following an increase in arbitrary restrictions of freedoms by the Ministry of Interior following the declaration of the state of exceptional measures by the President of the Republic on July 25, 2021<sup>3</sup>. In this rather anomalous context, the mandate of the second half of the INPT members expires on May 04, 2022, and the renewal of the current members is unlikely due to the suspension of the Parliament's activities (the Assembly of People's Representatives). It is also important to recall that, as a result of the first half renewal of eight members, following the random draw on May 03, 2019, the members elected by the Assembly of Peoples' Representatives in June 2021 could not take the oath of office until March 26, 2022, and the "old" members who

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<sup>1</sup> - Perception survey conducted by INPT in collaboration with UNDP and OHCHR.

<sup>2</sup> - See its reports on the monitoring of demonstrations in public spaces.

<sup>3</sup> - Five of these visits were conducted jointly with the OHCHR.

were called to leave the INPT simply extended their de facto mandate.

4. The INPT took a proactive preventive approach at the beginning of the health crisis (COVID-19). It has been keen, since March 2020, to encourage all authorities in charge of places of detention to take all measures to protect their staff and the detainees in order to safeguard their health, ensure their safety and respect their inherent human dignity. The INPT sent letters on March 11, 2020, to all ministers whose ministries have jurisdiction over places of detention and asked them to communicate to the INPT the measures taken by their respective departments for the prevention of the spread of the Coronavirus pandemic in the places of detention under their jurisdiction. These include police stations, police custody cells, migrant centers, transit zones, vehicles used to transport arrested persons or persons in custody, prison units, juvenile rehabilitation centers, court custody cells and vehicles used to transport persons deprived of their liberty, discipline centers in military barracks, quarantine centers and psychiatric institutions, social welfare centers and centers for the protection of children, the elderly and women victims of violence.
5. The INPT also requested from the Minister of Health and the Minister of National Defense (on March 11, 2020) to authorize the relevant departments of their ministries to strengthen hygiene measures and help prevent the spread of the Coronavirus pandemic in all places of deprivation of liberty, especially prisons, rehabilitation centers for juvenile offenders, detention centers, police custody centers, psychiatric treatment centers, migrant centers, quarantine centers, transit areas at airports and ports, discipline centers, and vehicles used to transport persons deprived of their liberty. In a related context, the INPT asked the Minister of Justice (March 13, 2020) to take action to reduce overcrowding in the prison rooms and cells, in order to prevent the spread of the pandemic, due to the high risk of contamination by the Coronavirus, as Tunisia has moved to the second phase of the spread scale (mid-March 2020). The INPT also called on the Minister of Justice, in the same letter, to urge the relevant departments of the ministry (the General Committee of Prisons and Rehabilitation) to provide an individual bed for each prisoner, in accordance with the provisions of Law No. 2001-52 of May 14, 2001 pertaining to the penitentiary system, and to comply with international standards relating to the minimum area reserved for each prisoner, which is at least four square meters (in the case of a collective room). We acknowledge that the INPT has received answers to some of these letters from the Minister of Justice, the Minister of National Defense, and the Minister of Health.
6. On March 30, 2020, the INPT published a "Declaration of Principles on the Treatment of Persons Deprived of Liberty in the Context of the Measures Taken to Respond to the Coronavirus Pandemic"<sup>4</sup> on its official page, to disseminate it and sent it to the United Nations Subcommittee for the Prevention of Torture (SPT), the President of the Government, the Ministers of Justice, Interior, National Defense, Health, Social Affairs and Women, Family, Children and Elderly. INPT also sent a letter to the President of the Government on April 13, 2020, regarding the legal framework and procedural protocol of the mandatory quarantine centers for people coming from abroad, and then regarding the request to consider the possibility of issuing a government decree that orders the exceptional release of a certain number of inmates who do not pose a danger to society, within the framework of the mechanisms of provisional and of early release. The aim is to alleviate prison overcrowding, which poses a serious threat to the health of all detainees and to their lives in the event of the spread of the Coronavirus in these places of deprivation of liberty, where the conditions of detention are still incompatible with international human rights standards and national legislation (20 April 2020). On April 21, 2020, the INPT sent letters to the President of the Government, the President of the Assembly of the People's Representatives, the President of the Republic, the

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<sup>4</sup> - See the text of this statement attached.

Minister of Justice, the Minister of Health, the Minister of Interior and the Minister accredited to the President of the Government in charge of Human Rights and Relations with Constitutional Bodies and Civil Society concerning the violation of the rights of some arrested persons within the context of the general lockdown and the curfew, stressing the need to ensure a fair treatment of all the arrested persons, safeguarding the physical integrity and the human dignity inherent to each individual. It is noteworthy that the INPT has received only one response on this subject from the Minister of Health.

7. Two weeks after the beginning of the general lockdown, the INPT opted to go beyond virtual monitoring of the detention conditions, to issue guidelines and send letters to the institutions that have places of deprivation of liberty under their supervision, urging them to strengthen the preventive measures against the pandemic. It conducted a series of targeted preventive visits to directly monitor the living conditions of people deprived of their liberty, in prisons, detention centers, psychiatric wards and mandatory quarantine centers that have been set up as part of the fight against the Coronavirus pandemic. These visits provided an opportunity to observe the measures taken to prevent the spread of the "COVID-19" virus in places of detention and to monitor the quality of the treatment that detainees receive from those in charge of these places and from those who work there, whether medical or paramedical staff, administrative or security officers, including guards. The INPT has been equally keen to contact the authorities in charge of places that have been visited within the framework of the fight against the Coronavirus pandemic and to send them the reports of its visits before they are published, urging them to send us their responses, especially with regard to the recommendations made therein.

#### **8. We recommend the following to the State of Tunisia:**

1. Review the article 101bis of the Penal Code, which defines torture, in order to align it with article 1 of the UN Convention against Torture.
2. Repeal the decree n° 78-50 of January 26, 1978, which regulates the state of emergency, and especially its article 5.
3. Strictly apply the fundamental safeguards guaranteed by law to persons arrested and/or detained in police custody.
4. Comply with the standards and requirements relating to detention conditions and detainees' rights.
5. Train law enforcement officers on "dynamic security and the respect of detainees' rights".
6. Regularly renew half of the INPT's members.
7. Strengthen administrative and financial independence of the INPT.
8. Accelerate the process of publication in the Official Gazette ("JORT") of the implementing decrees of law no. 2013-43.
9. Establish a legal framework that governs mandatory quarantine in places of deprivation of liberty in times of health crisis and that specifies its requirements and consequences.
10. Put in place a legal framework that determines the basic legal safeguards for persons placed in quarantine or sanitary isolation, medical and paramedical personnel, in addition to all other officers and employees who come into contact with them.

#### **We adopt the following recommendations from the "Concluding Observations Tunisia, 2020, HRC, ICCPR Report":**

11. Ensure that complaints of torture and ill-treatment are promptly and impartially investigated by independent judges, that alleged perpetrators are duly tried and, if convicted, receive sentences commensurate with the gravity of their acts, and that victims are granted appropriate reparation.

12. Ensure that any statement obtained through torture cannot be used as evidence against the accused.

**We also adopt the following recommendations published in the "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 2019:**

13. Grant immediate access to a lawyer upon arrest, not 48 hours after arrest (for terrorist suspects);
14. Equip detention and interrogation facilities with cameras.
15. Protect whistleblowers and complainants of torture.
16. Provide appropriate training for law enforcement officers based on the Istanbul Protocol.