MONTHLY BULLETIN

The Specialised Criminal Chambers in Transitional Justice in Tunisia

These newsletters aim to shed light on trial proceedings and integrate diverse narratives to highlight victims' experiences by combining legal analysis and lived-experiences. They seek to foster public engagement and raise collective awareness while emphasizing the importance of accountability and supporting victim-led efforts. This initiative comes to bridge the gap between technical judicial reporting, with a focus on providing more accessible and comprehensive resources to the broader public, including victims and grassroots organizations, to ensure that their voices are adequately heard. The initiative may also serve as an advocacy tool.
This work stems from the sacrifices and documentation efforts of victims themselves, affirming their unwavering commitment and enduring pursuit of truth and the completion of the transitional justice process in Tunisia.

IN THIS ISSUE:

Session adjournments before the Tunis SCC range from a minimum of 83 days to a maximum of 88 days:

February 03, 2025

16 sessions rescheduled for April 28, 2025

- Case No. 35 - Corruption in the banking sector
- Abbas Mlaouhi
- Case of the Tunisian Agency for External Communication (ATCE)
- Mohammed Habassi
- Mohamed Ben Ali
- Radhia Ayachi and others
- Hedi Boutaib
- Fethi Ghedamsi
- Mohamed Ben Neji Monser
- Mohamed Salah Farhat and Sassi Bahri
- Heirs to Mohamed Ali Hachicha
- Heirs to Chedly Mhiri
- Ahmed Dahmani
- Mordechai Ouazzan
- Ouannes Missaoui
- Farhat Hfaidh

February 06, 2025

01 session rescheduled for May 05, 2025

- Revolution Events in West Kram Case

February 10, 2025

18 sessions rescheduled for May 08, 2025

- Dhaw Thebti
- Salwa Housseini
- Roger Paul Stéphane Attias - Claude Naccache and Orlando Titziano
- Farouk Bey
- Mohamed Jalel Ben Hassine
- Heirs to Hallouma Zakaria - Hnifa Ben Ali - Kalthoum Bey - Mohammed Ettaib Bey - Mohamed Kamel Bey - Mohamed Ridha Housseini and Borhen Eddin Bey
- Jnina and Chouikar Paul Bab and his friend - Zeineb and Mohammed Arbi Cherif - Tej Elmolk Khayachi - Dorsaf Khayachi - Raoudha Meddeb - Azza Hassanein - Rafiaa and Hassanein Ismail and Nour Elhouda Ben Hassine
- Mohamed Fellah Maherzi
- Mastouri Abdelwaheb
- Mohamed Mokhtar Bey
- Hssan Najib Azzouz
- Heirs to Mohamed Aziz Bahri
- Heirs to Chedly Haidar and to Jnina Naceur Bey
- Fatma Chelly
- Fethi Baccouche
- Mohamed Hedi Ben Hsouna
- Raafat Bey
- Mohamed Hajri

February 13, 2025

03 sessions rescheduled for May 12, 2025

- Martyr Ahmed Amri/Azizi
- Martyr Taieb Khammassi
- Leftists Case (1987)

February 17, 2025

02 sessions rescheduled for May 15, 2025

- Martyr Abdelaziz Mahouachi
- Case of Carthage Cement

February 20, 2025

03 sessions rescheduled for May 18, 2025

- Martyr Fathi Khiari - Najib Mrad - Kais Founi - Mohamed Fouzi and Samir Bentili
- Martyr Mohamed Amer Deguechi
- Mohamed Chedly Bouaziz

February 24, 2025

03 sessions rescheduled for May 22, 2025

- Martyr Othman Ben Mahmoud
- Martyr Raouf Laaribi
- Fictitious Employment at Tunisair Case

February 27, 2025

03 sessions rescheduled for May 25, 2025

- Martyr Moncef Zarrouk and Victim Mohamed Hedi Zemzemi
- Martyr Hssan Mbarki
- Rachida Kouki

Justice interrupted

Three Critical Barriers Impeding Tunisia's Specialized Criminal Chambers

When Rights Need Voices: Legal Counsel *in Absentia*

What lies behind the barrier?

- Poor coordination among legal representatives
- Limited access to legal representation among victims
- Lack of specialized training in TJ coupled with case-complexity

Pathways forward

- **Specialized Capacity Building:** Implement comprehensive and in-depth training programs tailored specifically for attorneys handling TJ cases. These programs must address the unique procedural requirements and distinctive judicial reasoning that separate TJ from conventional legal proceedings.
- **Financial Support Framework:** Establish a sustainable funding mechanism to subsidize legal representation costs for cases with significant precedential value, and fully implement Article 13 of the Organic Law of 2013 on TJ, which mandates state coverage of litigation expenses for victims through established legal aid channels.
- **Professional Recognition Initiative:** Develop a formal recognition system celebrating excellence in TJ advocacy to incentivize attorney participation and commitment to these complex yet essential cases.

Evading Accountability: The Challenge of Absent Perpetrators

What lies behind the barrier?

- Failure to deliver summonses and non-execution of most arrest warrants and travel bans
- Refusal to appear and non-recognition of the SCCs
- Coordinated opposition from security sector unions

Pathways forward

Enforcement of Existing Remedies: Leverage the full spectrum of existing legal frameworks, particularly Article 142 of the Criminal Procedure Code, to establish penal and disciplinary consequences for evasion. Under this provision, when an alleged perpetrator flees to avoid prosecution, the court may:

- Escalate enforcement mechanisms from summonses to compulsory appearance orders and detention warrants.
- Implement asset restriction protocols through court-mandated trusteeship, in conformity with transparency requirements, via a dual notification system (Official Gazette publication in addition to local jurisdiction posting at the governorate headquarters of the accused's residence). Any subsequent transaction involving these assets upon official notification is legally nullified.

The Judicial Capacity Crisis: Understaffed Benches and Delayed Justice

What lies behind the barrier?

- Disruptions due to annual judicial rotations triggering frequent reassignment of SCC judges
- The statutory requirement of specialized training in TJ
- Unsustainable caseload distribution
  SCC judges must simultaneously manage TJ proceedings alongside their regular judicial duties with no workload accommodation

Pathways forward

- **Strategic Judicial Assignments:** Call upon the Supreme Judicial Council to consider these factors in annual judicial rotations, and to create incentives and comfortable working conditions for SCC members in order to reduce turnover rates and enhance chamber stability.
- **Comprehensive Capacity Development:** Ensure appropriate training for chamber members in TJ matters, including corruption cases, with an emphasis on accounting and tax aspects for the latter.
- **Judicial Protection Program:** Create comprehensive security protocols with threat assessment mechanisms and appropriate protective measures to safeguard judicial independence against intimidation and external pressure.

This Month's Highlight

Financial Corruption and Abuse of Public Funds in the Banking Sector

As defined under Article 2 of Framework Decree No. 120 of 2011 on combating corruption, dated November 14, 2011, *corruption* means **the misuse of power, influence or function for personal benefit**. Corruption includes, in particular, offences such as:

- Bribery in all its forms in both the public and private sectors;
- Embezzlement or misappropriation of public funds;
- Mismanagement or dissipation of public assets;
- Abuse of influence;
- Abuse or misuse of authority;
- Illicit enrichment;
- Breach of trust;
- Misuse of assets belonging to legal entities; and
- Money laundering.

The National Anti-Corruption Commission was established by the same Framework Decree, and its mandate was terminated in 2021.

According to the Truth and Dignity Commission's Executive Summary Report:

- 17,292 complaints concerning cases of financial corruption and diversion of public funds were submitted to TDC, in addition to 685 files that were received from the State Litigation's Department.
- The Commission also received 1,486 cases from the National Anti-Corruption Commission; most of which were inherited from the National Commission of Investigation on the Facts of Corruption and Bribery.
- The TDC held secret hearings for 11,331 of these cases involving victims, witnesses and alleged perpetrators.

http://www.ivd.tn/rapport/doc/TDC_executive_summary_report.pdf

Since the cessation of operations at the National Anti-Corruption Commission headquarters in August 2021, significant concerns persist as to the fate of pending corruption cases. What has become of these critical investigations and documents? More importantly, has the promised protection of whistleblowers been upheld?

While Organic Law No. 10 of 2017, dated March 7, promised a comprehensive regulatory framework - explicitly establishing reporting procedures and robust substantial protections for whistleblowers against retaliatory measures, discriminatory practices, intimidation tactics and prosecution - the reality has proven these to be empty promises. Evidence indicates that whistleblowers continue to face systematic harassment and intimidation. Most concerning, several individuals have been subjected to judicial proceedings precisely for their anti-corruption efforts - the very actions the law was designed to protect.

Legal Brief

Overlooked Victimhood: The State as a Casualty of Corruption

Pursuant to Article 10 of Organic Law No. 53 of 2013, dated December 24, on Establishing and Organizing Transitional Justice, « a victim shall mean any individual, group or legal entity having suffered harm as a result of a violation ».

Case No. 35 - Financial Corruption and Embezzlement of Public Funds in the Banking Sector

On December 31, 2018, the TDC referred a landmark corruption case file to the Specialized Criminal Chamber in Transitional Justice at the Tunis Court of First Instance. The investigation implicated a total number of 31 alleged perpetrators in widespread financial malfeasance. Formal hearings for Case No. 35 - focusing on systemic banking sector corruption - began on July 13, 2020 before the Tunis SCC. The investigation uncovered extensive financial misconduct and plunder operations that undermined Tunisia's economy and drained its treasury through financial violations.

These violations included the strategic freezing of assets belonging to political dissidents and economic competitors, effectively weaponizing the banking system against perceived threats to the regime.

Corruption in the banking sector led to the bankruptcy of numerous successful companies, the sale of essential public companies, and the subjugation of the national economy to foreign debt, which made the state's economic policies subject to the conditions dictated by the International Monetary Fund and the World Bank for an extended period.

In its final report, the Truth and Dignity Commission identified both the Tunisian state and its people as victims of financial corruption. The report documents the cascading consequences of said corruption: the depreciation of the Tunisian dinar and progressive inflation, the exacerbation of public debt, an increase in tax pressure, the deterioration of essential public services (healthcare, education, security, justice and administrative functions), the weakening of infrastructure (transportation networks, bridges, railways and airports), and widespread unemployment, which denied citizens job opportunities and dignified livelihoods. The indictment reveals the involvement of officials working in 13 different banks who facilitated financial corruption during Ben Ali's dictatorship.

The indictment also shows that, during Ben Ali's era, the banking sector was exploited as a tool for political retribution and personal enrichment. Specifically, the accusation list included senior officials from the Central Bank of Tunisia, officials from the Tunisian Bank, the Housing Bank (BH), the Bank of the South as well as high-ranking officials from the Arab International Bank of Tunisia (BIAT). Charges were also brought against the Presidency of the Republic, as well as businessmen from Ben Ali's inner circle, his wife and brother-in-law, and their associates, who collaborated in this corruption network for personal gain.

The Tunis SCC considered this case to be extremely intricate, as it involves 13 interrelated sub-cases dealing with elaborate fraudulent schemes and egregious breaches of laws in the banking sector. And, given the case's unprecedented complexity, the State Litigation Agency representative requested that the Chamber subdivide the prosecution into distinct cases corresponding to each of the 13 implicated financial institutions, including the Banque Franco-Tunisienne case, considered by the TDC as a textbook case of pervasive corruption. This particular matter resulted in an international arbitration ruling in favor of Tunisia in December 2023.

In Focus

Cases No.37/44
Unlawful Expropriation of Property Rights over the Plaza Corniche Hotel

Adel Ayachi is the son of late Othman Ayachi, the former owner of the Plaza Corniche Hotel. He is the claimant in Case No. 37 and represents the interests of his deceased father in Case No. 44, which are both pending before the Tunis SCC.

As a victim of corruption, Mr. Ayachi never knew about the existence of victims' coalitions or associations formed by victims of human rights abuses. His quest for accountability started 40 years ago, relying on his own means to defend his case.

THE NIGHT OF AUGUST 10, 1981

The events in these cases date back to August 1981, when Othman Ayachi was diagnosed with Leukemia and admitted to a medical facility for treatment, and was prescribed sedatives and pain-relief medications. On the night of August 10, when his brother Boubaker (also known as André O'Backar) came to visit him, Othman Ayachi was removed from the medical facility and driven to his home.

There, two notaries were awaiting him to sign documents which included the transfer of ownership of the Plaza to his brother, in spite of the explicit prohibition of entering into contracts while suffering a terminal illness provided for in Tunisian legislation. He was then taken back to the facility where he passed away on October 5, 1981.

ONE NIGHT, TWO CERTIFICATES

While a medical certificate dated August 10, 1981, falsely attested to Othman Ayachi's full capacity to enter into contracts, another certificate, issued by his attending physician, confirmed that upon examining him on the same day - and prior to being taken to his house - his condition had considerably deteriorated. As a result, he was deemed unfit to enter into contracts under the influence of opiate painkillers and sedatives.

Despite this, Othman Ayachi was compelled to relinquish his properties.

WHEN JUSTICE MEETS POWER

Adel Ayachi subsequently took matters before the justice system with the purpose of invalidating the agreement for being concluded during a terminal illness. In 1984, the Tunis First Instance Tribunal issued a ruling pronouncing the agreement invalid, later upheld by the Tunis Court of Appeals in 1989 and followed by an Emergency eviction order.

However, the intervention of state agencies under Ben Ali's rule resulted in erasing all these developments. The implementation of the emergency order was made impossible through the issuance of a decision suspending the execution of the eviction order by the Court of Cassation, which was delivered to the Hotel's legal representative by the Inspector General of the Ministry of Justice. And although evidence attesting the involvement of the Inspector, who had received a sum of 25,000 French francs, was provided by Mr. Adel Ayachi, no measures were taken.

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📩 We kindly invite you to:

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