

THE ROLE OF TUNISIA'S JUSTICE SYSTEM IN DEMOCRACY-BUILDING

Side Event

13th United Nations Congress on Crime Prevention and Criminal Justice

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Moderator: Shira Stanton, ASF's Human Rights Expert

The 13th United Nations Congress on Crime Prevention and Criminal Justice highlights considering *"specific ways in which crime prevention and criminal justice can address social and economic challenges and promote the rule of law."*¹ While the role of justice in strengthening security has been well established, it is becoming increasingly important for the rule of law and sustainable development.

However, when it comes to development and socio-economic challenges, the links between development, security and justice are often less clear or even overlooked. Pablo De Greiff, the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, uses the example of Tunisia as a country that excelled in achieving the Millennium Development Goals, but where the protests and revolution in 2010-2011 contradict the success of these development policies: *"People [...] did not need any theory to know that well-being certainly includes economic opportunities, basic personal security and decent governance, but also access to justice, and that these are not totally independent goods that can be either traded off against one another or ordered in a sequence that allows for the indefinite postponement of some."*² He thus recommends applying the "Tunisia Test" when setting sustainable development objectives, to ensure that the new development agenda and indicators include issues of security, justice and human rights.³

This side event examines the role that justice and remedy for Tunisians can play in addressing socio-economic challenges that are generally addressed through development programmes. In some regions in Tunisia, basic social services are failing, water and land are polluted, and administrative systems often marred by corruption and opaque decision-making processes. People should be able to cooperate with the criminal justice system to address development problems, using a human rights-based approach that focuses on access to justice to increase the accountability of policy-makers.

¹ Discussion Guide, 13th United Nations Congress on Crime Prevention and Criminal Justice, A/CONF.222/PM.1, § 12.

² Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, 2013. A/68/345, § 14.

³ Ibid.

In a context of democratic transition, what are the guarantees that the law – national and international – can offer people in terms of respect of their human rights and their environment? The catalyst for the Tunisian Revolution was the demand for more dignity and respect for economic and social rights. If the current justice system does not meet these expectations, the much-desired democracy and the "Tunisia Test" will be undermined. Side event speakers, from Tunisian and international civil society, will talk about their work supporting key human rights principles that must guide Tunisia's transition. These examples illustrate the importance of access to justice and human rights for achieving sustainable development.

Building democracy through public participation



This side event draws on civil society experiences during the post-revolution period. **Amira Yahyaoui** is **President of Al-Bawsala**,⁴ a Tunisian NGO working to increase public participation and policy-maker accountability in the construction of democracy.

Ms. Yahyaoui will demonstrate how human rights principles and approaches can improve access to justice and restore the public's confidence in the justice system after suffering from systematic and widespread violations of their rights. Al-Bawsala advocates involving people seeking justice in decision-making processes, so that they have the power to act to guarantee their safety and to hold policy-makers accountable.⁵

Guaranteeing access to remedy to ensure the rule of law

Justice, integral to Tunisia's transition, can also contribute to development based on respect for human rights. The Tunisian economy is largely dependent on foreign investment. Whether in labour-intensive industries such as the textile sector, or in the exploitation of natural resources, foreign investors represent the main operators, contractors and customers. The constant transnational socio-economic developments expose the criminal justice and law enforcement authorities to new challenges.



In June 2014, the Monastir Court of First Instance ruled against five Tunisian companies, all members of the Belgian textile group Jacques Bruynooghe Global (JBG), for non-compliance with social legislation. The 311 workers won their case and were granted almost all of the benefits owed to them: back-pay, bonuses and compensation for unfair dismissal, totalling over four million Tunisian dinars (€1.8 million). However, to date this judgment has not been executed; due to opaque financial arrangements, the Tunisian subsidiaries of the JBG group are considered bankrupt and the defendant JBG has no physical or financial presence in Tunisia. Workers were able to access the justice system, but have not received remedy.

⁴ Al Bawsala is a non-profit NGO established under Tunisian law. The NGO is independent from political influence. Al Bawsala has three objectives: 1) To reposition citizens at the core of political action by offering them the means to stay updated on the work of their elected representatives and by providing them ways to defend their fundamental rights. 2) To build relationships with elected representatives and decision-makers to work towards the establishment of good governance practices and political ethics. 3) To participate in defending the concepts of social progress and citizen empowerment. www.albawsala.com.

⁵ Demonstrating practically the words of the Special Rapporteur: "these [human rights] violations have as a consequence diminished capacities for agency and [...] create severe social coordination problems. The combination of these effects is a weakened ability to raise claims, which should be a severe concern for any conception of development that goes beyond the barest forms of basic service delivery. The fact that massive human rights violations lead to diminished agency (including the willingness to raise claims vis-à-vis others, particularly, State authorities) as well as to social coordination problems, helps to buttress the case for the developmental relevance of impunity..." Paragraphs 20-21. Also see paragraphs 25-29, op cit.

For actions intended to improve criminal justice in the socio-economic sphere to be sustainable, it is essential that Tunisian workers are aware of their rights and know whom to contact – relevant authorities or civil society members – in the event that these rights are not respected. Ensuring that criminal justice and crime prevention help meet social and economic challenges requires involving rights-holders in the process, ensuring that they can use the justice system to protect and defend themselves.

Preventing crime and improving the justice system must focus on the structural inequalities that prevent citizens from acting. This is a two-way process: how can the justice system ensure that people have the power to make the necessary choices to realise their rights? And how can active public participation strengthen the justice system's effective protection, guaranteeing them power to act?

Led by the International Corporate Accountability Roundtable (ICAR)⁶ and Amnesty International, the "*Commerce, Crime and Human Rights*"⁷ project intends (i) to identify opportunities and challenges to pursue, at the national level, multinationals responsible for crimes including human rights violations and (ii) to develop a framework governing the State practice to hold companies responsible for these crimes to account. Lawyers and experts in criminal law are drafting guidelines for States as part of the project.



Katie Shay, Legal and Policy Coordinator at ICAR, will present the project's recommendations, aimed at public prosecutors and other members of the judiciary. Using the Tunisian example as a starting point, she will suggest courses of action so that States guarantee the effective recognition of the criminal responsibility of legal entities.

Using criminal law as a tool for transparency in development

State actors bear the responsibility for constructing the rule of law and ensuring socio-economic development. Effective accountability mechanisms are needed to combat or avoid structural discrimination (such as that favouring one region over another for public investment⁸) and the lack of transparency and access to information. Criminal justice and the measures taken to prevent crimes must be able to effectively deal with corruption issues.

These mechanisms are particularly important for democratic transition. The lack of public services in remote areas and the inability of people in these areas to obtain justice when they think that hiring practices are marked by corruption, create obstacles for constructing democracy and the rule of law. Using the justice system to address the root causes of poverty shows that the structural inequalities that perpetuate poverty are not inevitable, but rather are "*perpetuated by acts and omissions of States and other economic actors.*"⁹ Using the criminal justice system to hold these actors to account for violations of the law is needed to support fair and sustainable development.

⁶ The International Corporate Accountability Roundtable (ICAR) is a coalition of human rights, environmental, labour, and development organisations that creates, promotes and defends legal frameworks to ensure corporations respect human rights in their global operations. www.accountabilityroundtable.org.

⁷ www.commercecrimehumanrights.org.

⁸ See ASF's report (forthcoming) on the concept of the "victim region" in the context of transitional justice in Tunisia.

⁹ United Nations Guiding Principles on Extreme Poverty and Human Rights, A/HRC/21/39, paragraph 5.



Mouheb Garoui, Executive Director of I Watch,¹⁰ will present the work of his anti-corruption NGO, sharing his experience on the causes and consequences of corruption in job recruitment. He will present the main findings of a survey on how young Tunisians perceive open competitions, and discuss the main challenges hampering efforts to combat corruption and the improvement needed for the legal framework based on Tunisia's economic and security context.

Will Tunisia pass its own test?

ASF's side event brings together members of Tunisian and international civil society actively promoting public participation, access to remedy, and transparency, and who are committed to supporting the Tunisian justice system in the face of social and economic challenges. This event gives a snapshot of current issues and the status of public initiatives intended to ensure that political decisions pass the test of democratic transition.



At the heart of the efforts of these civil society members is their support for developing the public's power to act using the law. Through their actions, the justice system can be strengthened by increasing and improving its use, and offer greater opportunities for people to protect and realise their rights. It is only in this way that those responsible for a sustainable and just development can be held accountable for their actions.

Avocats Sans Frontières (ASF) is an international non-governmental organisation (NGO) with headquarters in Brussels, Belgium and offices and activities around the world in various post-conflict and fragile countries (Tunisia, Democratic Republic of Congo, Burundi, Uganda, Chad, Morocco, Egypt, Nepal, and Myanmar).

We promote the rule of law through improved access to justice for society's most vulnerable and marginalised groups. We work with local actors to improve the availability, accessibility, adaptability and quality of legal aid services. Our work ranges from protecting the freedom of speech in North Africa to addressing the systemic causes and consequences of illegal pre-trial detention in the African Great Lakes region; from representing victims of international crimes before the International Criminal Court in The Hague to promoting complementarity mechanisms on the national level, so that victims can engage with the justice system on their own level; from improving access to justice for the structural causes of gender-based violence to protecting lawyers who are threatened when carrying out their work independently.

Throughout all our work, we focus on the person seeking justice at the centre of our work, strengthening their ability to know and claim their rights and the capacity of legal actors to support them.

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¹⁰ I Watch is the national chapter in Tunisia of Transparency International, a global movement that combats corruption. www.iwatch-organisation.org.