
ILAC Discussion Paper:

Access to Justice for Vulnerable Groups in Times of COVID-19 – Tunisia

Authors: Ylva L. Hartmann and Ismaël Benkhalifa



Photo: Ismaël Benkhalifa

**International Legal Assistance
Consortium Discussion Paper:**

Access to Justice for Vulnerable Groups in Times of COVID-19 Tunisia

March 2021

This is one of three reports focusing on access to justice for vulnerable groups in times of COVID-19. The other two reports deal with Libya and Palestine respectively.

© Copyright 2020 by the International Legal Assistance Consortium (ILAC). All rights reserved.
ILAC encourages the use of the information contained in this report but requires citation to the authors and source. Cover photo: Ismaël Benkhalifa.

Contents

List of abbreviations	4
Executive Summary	5
Authors	7
Introduction	8
1 Delivery of justice during the pandemic	9
Remote hearings and communication between justice seekers and justice providers during COVID-19.....	10
Lack of the accused’s consent in remote hearings.....	10
The right to physically appear in front of a judge.....	11
Online access and communication should be put first.....	12
Increased use of telephone, e-mail, WhatsApp and Facebook to communicate with justice seekers	13
Physical display systems	14
The orienting judge – le juge aiguilleur	14
Recommendations for the Tunisian authorities.....	16
Legal aid and access to the client.....	16
Recommendations for the Tunisian authorities.....	18
2 Vulnerable groups’ access to justice during the pandemic	19
Domestic and gender-based violence.....	20
The dramatic rise of men’s violence against women and girls..	20
Procedural obstacles to obtain justice	21
Dissuasion to report the crimes	22
Difficulties proving violence	22
Divorced women and their children.....	23
Recommendations for the Tunisian authorities.....	25
Migrants and refugees	26
Recommendations for the Tunisian authorities.....	27
Persons in detention	28
Recommendations for the Tunisian authorities.....	29

Employment conflicts and regional differences.....	30
Recommendations.....	31
Conclusion.....	32

List of abbreviations

ABA	American Bar Association
ARP	Assembly of the People's Representatives (Assemblée des représentants du peuple)
AMCR	Alternative Means for Conflicts' Resolution
CDIS	Centres of Defence and Social Integration (Centre de défense et d'intégration sociale)
COVID-19	Coronavirus Disease of 2019
GBV	Gender Based Violence
GDP	Gross Domestic Product
HIIL	Hague Institute for Innovation of Law
ILF	International Legal Foundation
ILO	International Labour Organization
LGBTQI+	Lesbian, Gay, Bisexual, Transexual, Questioning/Queer, Intersex +
NGO	Non-Governmental Organisation
SIDA	Swedish International Development Cooperation Agency
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

Executive Summary

The COVID-19 pandemic has caused significant difficulties in ensuring equal access to justice for all, an essential part of Agenda 2030 Sustainable Development Goal number 16. Assessing vulnerable groups' access to justice is a 'litmus test' for how fair the delivery of justice is in the whole society, and ultimately provides valuable information on the status of the rule of law.

This discussion paper provides guidance for addressing the widening justice gap that has occurred during the pandemic. It builds on a series of in-depth interviews with lawyers, judges and prosecutors in Tunisia: legal practitioners working to uphold the rule of law under difficult circumstances. Drawing on their experience, the discussion paper suggests recommendations to address this gap and on using lessons learned from the COVID-19 pandemic to enhance access to justice for vulnerable groups.

Due to time and connectivity constraints, the sample selection of interviews was limited. The discussion paper does not intend to provide exhaustive or representative views of all legal professionals, but rather spotlight key areas based on practical experience to set out on the right paths towards ensuring equal access to justice for all.

The collected data showed that few legal needs were specific to COVID-19, but that the pandemic has increased an already existing justice gap for many vulnerable categories of people. Victims of domestic and gender-based violence, alimony and divorce, migrants and refugees and detainees were particularly affected. The data showed that part of law enforcement has insufficient knowledge of these people's legal protection and realities and was therefore not adequately equipped to respond nor prevent these various categories of vulnerable groups from being exposed to injustice.

The discussion paper also illustrates that vulnerable groups' access to legal aid and legal representation was made worse during COVID-19. One principal conclusion is that the importance of direct contact with lawyers and access to legal representation for vulnerable groups has been heightened during the pandemic. This report presents a set of recommendations for addressing the widening justice gap.

Interviewees recurrently pointed out that there was a general lack of planning and coordination between state authorities during COVID-19. Many underlined that the absence of preparation and a strategy increased the slowness of the judicial system. Many interviewees also underlined the inefficiency and lack of coherence of the judicial system, induced by the more general and pre-existing problem of the absence of a criminal justice policy, including on legal aid. The absence of a criminal justice policy creates legal uncertainties, since individuals and even institutions adopt ad hoc solutions

and address similar cases in an uneven way. The elaboration of a criminal justice policy seemed to be under way at the time of writing; this is a positive step. The policy needs to be speedily adopted and effectively implemented. In several instances covered in this discussion paper, there was also a significant problem of interpretation and law enforcement of Law 2017-58 on gender-based violence, as well as Law 2016-5 on early access to justice. This was compounded by the still-weak digital infrastructure of the justice system, a general lack of digital literacy, and scaling up of remote hearings without comprehensive analysis of the consequences on defendants' right to a fair trial.

The majority of the pre-existing obstacles to access to justice have been reinforced by COVID-19 in Tunisia. At the same time, there is also an impressive sense of creativity among legal professionals to meet these obstacles and justice seekers' needs. If Tunisian authorities capitalise on this creativity and build a comprehensive strategy on justice delivery, the COVID-19 crisis can even provide an opportunity to enhance and rethink access to justice in Tunisia.

Key recommendations

- When moving trials and hearings to remote mechanisms, **hearings which do not impact liberty or bodily integrity should be prioritised.**
- **Conduct training among police officers on Law 2017-58 on gender-based violence.** Efforts should be particularly intensified towards the officers working in the specialised units that receive gender-based violence claims.
- **Ensure prioritisation of alimony and divorce cases,** even during pandemics and other emergency situations.
- **Make the process of appointing legal aid more efficient;** the appointment mechanism must be faster, while the dissemination of information on the provision of legal aid should be improved.
- **Provide methods for lawyers to meet privately with their clients in detention without risk of infection** – for example, in a private room with a plastic barrier or through an unmonitored phone call in a private room.

Authors

Ylva L. Hartmann, Legal Adviser, ILAC

Ismaël Benkhalifa, Senior Adviser, ILAC

The American Bar Association Rule of Law Initiative and ILAC are grateful to Montassar Ben Slimane, Marco Soliman, Ahmad Shukri, Maha Shomali, Tina Burjaliani, Susan Goldman and Judge Nona Tsotsoria for their contributions to this report.

We express gratitude to Holly Holbart, Jennifer Smith, Hanen Fathallah and David Anderson from the International Legal Foundation (ILF) for their input.

Disclaimer

The Board of Governors of the American Bar Association (ABA) has neither reviewed nor sanctioned this report's content. Accordingly, the views expressed in the report should not be construed as representing the policy of the ABA. Furthermore, nothing contained in this report is to be considered rendering legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel.

The report was made possible by core funding provided by the Swedish International Development Cooperation Agency (Sida).

Introduction

Beyond affecting peoples' access to justice, the wider effects of COVID-19 include endangering Tunisia's already-fragile democratic transition, as well as its economy; this in turn is contributing to additional instability. Lawyers, judges and clerks also resorted to strikes during 2020. The judges' main reasons to go on a month-long strike, at the end of 2020, were poor working conditions, lack of personal protective equipment and demands to improve the efficiency of the justice system.¹ In October 2020, the Tunisian Bar Association announced a general strike against the abuse of power by the police and its effects on the independence of the judiciary.²

Some studies have already illustrated the pandemic's effects on the rule of law and the continuity of justice delivery in Tunisia.³ This discussion paper focuses specifically on the impact of COVID-19 on vulnerable groups and their access to justice. The report draws on 22 in-depth interviews conducted with legal professionals in different areas across the country, including Tunis, El Kef, Sfax, Kasserine, Monastir, Ariana and Bizerte, between September and November 2020. The interviews were conducted by the American Bar Association – Rule of Law Initiative (an ILAC member organisation), and ILAC Senior Adviser, Ismaël Benkhalifa. Interviewees were selected with consideration to their particular contact with or knowledge of the situation of vulnerable groups.

¹ A.A. Tunis, "Tunisie: suspension de la grève des magistrats suite à un accord conclu avec le gouvernement", 18 December 2020.

² Les Observateurs/France 24, "À Tunis, des associations dénoncent la multiplication des violences policières contre des femmes", 14 August 2020; The Nesrine Karnah Affair, Directinfo, "Tunisie – Affaire Nesrine Karnah: la justice décide de laisser en liberté le principal accusé", 10 October 2020.

³ See, for instance, Deux mois de lutte contre le COVID19 en Tunisie Analyse en matière d'État de droit, Par les membres de l'Alliance pour la Sécurité et les Libertés : Al Bawsala, Avocats Sans Frontières, Forum Tunisien des Droits Economiques et Sociaux, Jamaity, Mobdiun, Organisation Mondiale Contre la Torture, Psychologues Du Monde Tunisie, Solidar-Tunisie; National Centre for State Courts, Continuity of Service in the Justice Sector, Tunisia Case Study, 29 May 2020; Beity, Rapport Urgence Beity-COVID-19, Mars-Avril-Mai 2020; La COVID-19 Révélateur et facteur aggravant les inégalités intersectorielles envers les femmes, L'Observatoire Tunisien de la Transition Démocratique, Friedrich Ebert Stiftung, La Tunisie à l'épreuve du COVID-19, Association Tunisienne de Défense des Libertés Individuelles, Les libertés aux temps du Coronavirus, June 2020.

1 Delivery of justice during the pandemic

Access to Tunisian courts has been severely limited during the pandemic. The suspension of judicial proceedings to counter the spread of the virus did not include ‘urgent’ cases. The category of urgent cases includes criminal cases involving detention and violations of governments orders related to the pandemic, domestic violence, child protection, civil and family, and administrative matters, which are all deemed as urgent by the Presidents of the Courts.⁴ Domestic violence was not initially considered among urgent cases. However, after advocacy from civil society, it was eventually included on the list of prioritised cases. Also, during the month-long strike of judges and clerks at the end of 2020, there was a total suspension of judicial proceedings.

General remarks from many interviewees related to the lack of knowledge about the legislation among justice seekers. Lack of resources was also highlighted as a reason for the justice system’s slowness. The effects of these two pre-existing factors have been magnified during COVID-19.

Many interviewees underlined that the judicial system’s inefficiency and lack of coherence was induced by the more general and pre-existing problem of the current absence of a criminal justice policy, including on legal aid. They argued that a comprehensive and holistic policy guiding the criminal justice system was needed to better address peoples’ justice needs. The absence of a criminal justice policy creates legal uncertainties, since individuals and even institutions adopt ad hoc solutions and address similar cases in an uneven way. Some interviewees noted that a criminal justice policy was being drawn up. This is a highly positive step; the policy now needs to be speedily adopted and implemented.

The restricted access, with courts limited to urgent matters, also led to divergent interpretations and situations. Some courts kept receiving complaints of a particular nature, while others did not. One prosecutor interviewed started receiving plaintiffs without them having to pass through the Clerk’s Office, to accelerate procedures.

⁴ National Centre for State Courts, Continuity of Service in the Justice Sector – Tunisia Case Study, 29 May 2020.

Remote hearings and communication between justice seekers and justice providers during COVID-19

During the pandemic, Tunisia made legal changes to be able to conduct remote hearings in criminal matters in cases of an ‘imminent threat’ or to prevent risks of transmission of diseases, without the consent of the defendant. In normal times, the legal changes provide that remote hearings can be held at the demand of the court, the prosecutor or the defendant. The defendant’s consent is required outside cases of pandemics or similar crises.⁵ During the first wave of the pandemic, the use of virtual hearings was limited. During the second and third wave, it had become more common. At the time of writing, 15 Courts of First Instance, five Administrative Courts and eight penitentiary establishments were fully equipped to conduct remote hearings, and there were plans to equip more tribunals. For example, remote hearings may be used weekly in the First Instance Court of Tunis 2.

Lack of the accused’s consent in remote hearings

All interviewees affirmed the importance of digitalisation as a key step in modernising the judiciary and judicial proceedings in Tunisia, to be able to increase access to justice. However, almost all interviewees raised serious doubts about the efficiency of the system and that it potentially breached the rights of defendants.

According to the new legislation, the decision to resort to a virtual hearing is taken by the court and cannot be appealed.⁶ The court may decide to resort to a virtual hearing without the consent of the accused to prevent the spread of infection of communicable diseases.⁷ This puts the accused in a vulnerable position and gives rise to concerns regarding the right to a fair trial.⁸ Several interviewees had concerns over the accused’s lack of right to consent to his/her hearing being held remotely, something which is vital in ensuring due process and equality of arms.

⁵ Décret-loi 2020-12, 27 April 2020, amending Article 141 of the Code of Criminal Procedure with Article 141 bis.

⁶ Article 141 bis of the Code of Criminal Procedure, “La décision d’adoption des moyens de communications audiovisuelles est rendue par le tribunal par écrit, et elle est motivée et n’est susceptible d’aucune voie de recours”.

⁷ Article 141 bis of the Code of Criminal Procedure, “En cas de danger imminent ou en vue de la prévention de l’une des maladies transmissibles, le tribunal peut décider de mettre en œuvre cette procédure sans que le consentement du prévenu incarcéré ne soit recueilli”.

⁸ Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR), Article 7 of the African Charter on Human and People’s Rights, ratified by Tunisia 6 August 1982. The right to a fair trial cannot be derogated from, even in times of public emergencies, such as the COVID-19 pandemic; see UN Human Rights Committee’s Statement on derogations from the Covenant in connection with the COVID-19 pandemic, CCPR/C/128/2, 30 April 2020, § 2(d).

Many respondents stressed the importance of direct contact between the lawyer and their clients. In the words of an interviewed lawyer: “We can’t guarantee that a defendant can express themselves freely unless in the presence of their lawyer”. Many also suggested that consent of the detainee could be obtained through his/her lawyer and that the lawyer should be present with the detainee in the detention facility during the trial, rather than being in court, in order to support him/her.

The right to physically appear in front of a judge

International law is clear on the right of the accused of criminal charges to appear physically before the judge.⁹ One of the reasons for this, is that the physical presence of the accused permits the judge to inquire into the treatment they are receiving in custody.¹⁰ It is also to provide for the possibility to immediately transfer the accused to another place of detention if deemed necessary.¹¹ This is even more important in Tunisia, where there are regular reports of torture and ill-treatment in custody.¹²

In fact, many of the interviewees stressed that a detainee would not benefit from the same protection in detention facilities as he/she would receive in a court, exposing the detainee to greater risk of pressure or threats. Several interviewees insisted on the fact that detainees usually felt much more at ease talking about mistreatments in court than in detention.

The right to appear physically before a judge also relates to the right of defence and ability to effectively participate in one’s hearing, both key aspects of the right to a fair trial.¹³ Research has shown that for people with disabilities, their effective participation is put at risk during remote hearings.¹⁴ Communication via video does not manage to capture vital human elements, such as eye contact and body language, affecting perception and possibly decision-making.¹⁵ There is also the question of how ‘the digital divide’ (the gap between the ones who have access to internet and those who have not) affects the full participation of all parties, both in terms of access and in skills. The right to a public hearing is also put at stake.¹⁶ Justice must

⁹ Article 14(3)(d) of the ICCPR.

¹⁰ UN Human Rights Committee General Comment 35 on the right to liberty and security of person (Article 9), CCPR/C/GC/35, 16 December 2014, § 34. See also the International Commission of Jurists advocacy briefing paper on the protection of the rights of the judiciary, the accused and other proceeding participants as judicial proceedings resume following COVID-19 lockdown, 8 June 2020.

¹¹ Ibid.

¹² UN Committee Against Torture, Concluding Observations on Tunisia, CAT/C/TUN/CO/3, 10 June 2016, § 15.

¹³ Article 14(3)(b) and (d) of the ICCPR.

¹⁴ Equality and Human Rights Commission of England, Scotland and Wales, “Inclusive Justice: A System Designed for All”, 22 April 2020.

¹⁵ Lisa Bailey Vavonese, Elizabeth Ling, Rosalie Joy and Samantha Kobot, “How Video Changes the Conversation, Social Science Research on Communication Over Video and Implications for the Criminal Courtroom”, September 2020.

¹⁶ Article 14(1) of the ICCPR.

be seen to be done and the lack of public access can also impede trial monitoring.

There are of course nuances to the scepticism against remote hearings; justice cannot be put on hold during pandemics and similar crises. Many actors and researchers have already developed some initial guidance on how to prioritise to safeguard fair trial rights. Remote hearings can be better considered for non-criminal cases and some procedural criminal hearings, for instance, that do not affect substantive rights.¹⁷ Also, the organisation Fair Trials has developed a set of criteria to determine if a hearing should be heard remotely, as follows:

- the length of delays and their impact on defendants (including length of pre-trial detention),
- the nature of the hearing (complexity, need to call witnesses, risk of deprivation of liberty),
- the availability and quality of equipment and systems, and
- the existence of impairments or other factors that could negatively affect the defendant's ability to participate effectively.¹⁸

Many interviewees stressed the importance of human contact during criminal cases but were more open to resorting to remote hearings when appropriate in civil cases – for example, when it was technically possible. Most of the interviewees had not participated in remote hearings. One interviewee declared that his opinion was negative at first but changed after having been part of one since the quality of the video and sound were excellent. One of the interviewers involved in this present study also attended a remote hearing, confirming the good quality of the equipment. One interviewee stressed that modifications could be carried out in detention facilities. For instance, the interviewee herself asked for the installation of mirrors to cover all the spaces and avoid blind spots in the room. Another interviewee suggested that lawyers should be encouraged to be present in detention facilities with their client, instead of being present in court during remote hearings. Alternatively, civil society organisations and lawyers could send trial observers to the prison and detention centres to monitor the proceedings and check if detainees showed signs of mistreatment.

Online access and communication should be put first

One common conclusion among interviewees was that digitalisation was essential to modernise the judicial system in Tunisia, including the digital infrastructure. However, more emphasis should be put on digitising online

¹⁷ Incarcerations Nations Network, "Is Virtual Justice Really Justice?", September 2020.

¹⁸ Fair Trials, "Safeguarding the right to a fair trial during the Coronavirus pandemic: Remote Criminal Justice Proceedings", March 2020.

access to case status and case updates, as well as sending documents digitally, while respecting the right to privacy and taking cybersecurity into account. Online access and the possibility to communicate on pending cases digitally are measures that will help avoid crowds in the courts and would be an essential step in improving the delivery of justice in Tunisia.

Some respondents praised the efforts of several courts, like Manouba's courts or Tunis District Court, in their use of e-mail to inform lawyers on case status updates and to receive digital documents. Also, a draft bill has been submitted to the Assembly of the People's Representatives (Assemblée des représentants du peuple [ARP]) to introduce the possibility of electronically signing legal documents.

Increased use of telephone, e-mail, WhatsApp and Facebook to communicate with justice seekers

During the pandemic, several courts used new communication tools to respond to the limitations on access. This consisted mainly of phone and email communication, which was much less used before the pandemic. Many interviewees stressed that the most needed information concerning the administration of justice was the outcome of cases. Calls from lawyers' clients increased dramatically, with the vast majority asking for the results of their cases.

There is a lack of an e-mail culture among the general public in Tunisia. One Tunisian court created an e-mail address specially dedicated to answering citizens' queries and to allow remote access to the 'orienting judges' services' (see below). Despite an extensive advertisement, the e-mail address has barely been used. However, lawyers tend to use e-mail to a greater extent; according to interviewees, e-mail communication between legal professionals increased substantially during COVID-19.

"Formerly, I used my e-mail from five to six times a week, but now I use it from five to six times a day. I also provide legal advice by e-mail and get paid through bank transfer by the client, something I never did before." -Lawyer

The National Order of Lawyers created an e-mail address in collaboration with the Tunisian Post company, where lawyers can exchange reports. Applications like WhatsApp and Facebook Messenger were mainly used to communicate between lawyers, but also sometimes between lawyers and their clients.

Some lawyers did use mobile applications such as WhatsApp or Facebook Messenger; this was mainly to communicate with colleagues, but also with some of their clients. Smartphone cameras were sometimes used to

photograph documents or evidence and relay these to lawyers. Face-to-face meetings were held primarily in sensitive cases like rape or domestic violence.

Physical display systems

Lawyers, courts and associations in contact with justice seekers, have started to use display systems to a greater extent during the pandemic. These displays or boards list information on the status of cases, court sessions and even simplified guides informing about procedures or rights. Amplifying the use of physical display systems outside of courts would facilitate transmission of information from justice providers to justice seekers.

“Clients were kept informed of the outcomes of their cases and their court sessions through a sheet of paper hanging on my office door.”-
Interviewed lawyer

The orienting judge – le juge aiguilleur

Many interviewees stressed that the figure of the *orienting judge* (*le juge aiguilleur*) in the Tunisian legal system plays a fundamental role when it comes to accessing legal information. The orienting judge’s role is entrusted to prosecutors and is seated in the Public Prosecutor’s Office. The orienting judge is responsible for directing justice seekers who wish to know more about a specific procedure, the follow-up on a case or unblocking an obstacle to the normal course of a case. The office is located in the Courts of First Instance. It is also important that the prosecutors taking on the role of an orienting judge are properly trained, including on the rights of vulnerable groups. In particular, it is essential that they provide orientation and *not* legal advice.

Creative solutions to improve communication among and between justice providers and justice seekers during COVID-19:

- The Kasserine Court set up a box outside its premises to receive claims and grievances, without people having to physically access the court.
- One lawyer participated in a radio show, providing information about legal procedures in a simplified manner and raising awareness of rights. These included the right to a lawyer during an initial investigation.
- In El Kef, lawyers created a closed group on Facebook. Here they published the outcomes of cases and coordinated with one another, so that some lawyers could conduct sessions and replace their colleagues at court to avoid overcrowding and contagion.
- The Manouba District Court communicated with lawyers through e-mail. The lawyers were updated on the outcomes of their cases and the dates of the hearings and did not need to go to the court.
- The Regional Office of Lawyers in Sousse organised work between lawyers and published an online weekly schedule with lawyers volunteering to coordinate and conduct other lawyers' sessions in order to avoid overcrowding in courts. A similar solution was adopted in Kasserine, where the Regional Office of Lawyers coordinated to manage their hearings and their fellow colleagues' hearings smoothly.
- One lawyer started to resort to informal negotiation with undocumented migrants' informal employers to receive unpaid salaries, for instance. The negotiations were oftentimes successful, and many employers paid the salaries after the first lockdown.
- In Sfax, there is a special observatory designed for migrants and refugees from sub-Saharan Africa tasked to monitor violations and appoint lawyers to represent these groups before the courts.

Recommendations for the Tunisian authorities

- When moving trials and hearings to remote mechanisms, **hearings which do not impact liberty or bodily integrity should be prioritised**. Consider the organisation Fair Trials' prioritisation criteria:
 - a) the length of delays and their impact on defendants (including length of pre-trial detention),
 - b) the nature of the hearing (complexity, need to call witnesses, risk of deprivation of liberty),
 - c) the availability and quality of equipment and systems, as well as ensuring data security.
 - d) the existence of impairments or other factors that could negatively affect the defendant's ability to participate effectively.

- **Ensure that there is true consent from the accused before proceeding with a remote hearing in a criminal case**, for example, through the accused's legal counsel.

- **Take stock and evaluate the impacts of video trials in Tunisia on the right to a fair trial**, with a particular focus on the right to legal defence, on lack of the defendant's consent to a remote hearing and on the possibility to detect mistreatment in custody. The practice of using video hearings should be adapted accordingly.

Legal aid and access to the client

Access to legal aid and legal representation has been generally poorer during COVID-19. In Tunisia, the legal aid system is not well known among the general public. Each court has a Legal Aid Office within its Prosecutor's Office. The Legal Aid Offices do not provide legal aid as such; rather, they assess if there is entitlement and then refer the individual to the lawyers' section where a lawyer is assigned. Legal Aid Offices are often understaffed and lack resources. If an individual is in need of legal aid, it is up to him/her to ask for it at the Legal Aid Office; here, an assessment is made if the individual is entitled to legal aid or not. When a justice seeker is granted legal aid, the delays in practically obtaining it are long; sometimes the lawsuit is already completed once aid is received.

Many interviewees noted that the public legal aid system lacked efficiency. Several solutions were suggested to mitigate some of the problems within the public system, as follows:

- Improving access by also locating Legal Aid Offices/consultations in other institutions such as public libraries.
- Supporting non-governmental organisations (NGOs) in providing legal aid. This often leads lawyers to specialise in different legal fields and a better understanding of the specific legal needs of particular groups, which is needed to provide qualitative legal aid.
- The Tunisian bar could create a platform for free legal consultations or legal clinics to answer citizens' questions, with a particular focus on vulnerable groups.
- Cooperating with the Ministry of Social Affairs and its Centres of Defence and Social Integration (Centre de défense et d'intégration sociale [CDIS]). These centres are in contact with vulnerable groups and can better reach them with advice and legal aid, ensuring necessary non-legal services that will result in better case and life outcomes.
- Civil society organisations providing legal aid should coordinate with child protection officers who are linked to the Ministry of Women, Family, Children and Seniors, to create a direct link to juveniles in need of legal aid.
- Weekly meetings in cafés and municipalities to inform people about their rights. This is particularly important for people who do not have access to the internet.

Also, some lawyers believed that the mandatory appointment of a lawyer in felony cases was not enough. They believed that the law must be amended, rendering lawyer's representation mandatory in all criminal proceedings, including for misdemeanour cases. Misdemeanour cases make up the vast majority of criminal cases in Tunisia.¹⁹ This suggestion should be read against the background that international human rights law requires the right to legal counsel in all criminal cases.²⁰

¹⁹ Avocats sans frontières, "Détention en Tunisie: Des sanctions au-delà de la privation de liberté", 2014.

²⁰ Article 14(3)(d) of the International Covenant of Civil and Political Rights, ratified by Tunisia 18 March 1969,

Some also advocated for civil cases to be eligible for legal aid. One lawyer stated that the financial obstacles of filing complaints should be exonerated, since this poses a disproportionate financial burden on people with limited economic means. All the while, one has to be wary of what consequences these suggestions can have in terms of overwhelming courts with complaints.

The vast majority of lawyers stayed in contact with their clients who were not in detention during COVID-19. The most used means of communication was the phone; it is still not that common to communicate via e-mail with clients or among colleagues in the legal profession in Tunisia. Also, the phone may be used since some clients do not have access to the internet, computers and/or smartphones.

Recommendations for the Tunisian authorities

- **Make the process of appointing legal aid more efficient;** the appointment mechanism must be faster, while dissemination of information on the provision of legal aid must be improved.
- **Amend the code of criminal procedure to require legal representation in all criminal proceedings,** including for misdemeanour cases.
- **Consider developing and using alternative means for conflicts' resolution (AMCR)** to decongest the judiciary.

2 Vulnerable groups' access to justice during the pandemic

Naturally the limited freedom of movement, access to transportation, and reduced working hours of public institutions and courts have aggravated the situation of plaintiffs and severely impacted the rights of the accused. This has exacerbated problems with the previously slow functioning of the justice system in Tunisia. The data collected show that vulnerabilities often overlap, cumulating individuals' experience of discrimination and marginalisation in their access to justice.

The categories of cases or groups are not clear cut – for instance, individuals can simultaneously fall under several of the different categories; women, migrants and refugees or LGBTQI+ (lesbian, gay, bisexual, transsexual, questioning/queer, intersex +), which thereby increases their vulnerability. For example, two of the lawyers interviewed in this study highlighted the situation of LGBTQI+ people during the pandemic in Tunisia and their increased vulnerability. The lawyers were in contact with several individuals from the LGBTQI+ community, most of whom preferred seclusion and staying out of sight during the pandemic due to the continuous harassment and abusive arrest and detention of these groups by law enforcement authorities. The lawyers also noted that police officers often ignored the requirement to inform arrested LGBTQI+ citizens of their right to counsel at the pre-charge phase, regulated by Law 2016-05 on early access to justice. In other cases concerning migrants and refugees, the general challenge of documentation and legal status has created a precarious situation for women migrants specifically. Many women migrants working in the domestic sector lack formal employment, while economic hardships caused by the pandemic have further alienated them from formal protection and security. These intersections and overlaps of vulnerabilities existed before the pandemic, but are accentuated by the continuing health crisis.

Domestic and gender-based violence

“After all it is the father of your children, what will the family think about all this ...?” – A police officer trying to dissuade a woman from reporting domestic violence.

Gender-based violence:

Gender-based violence (GBV) refers to harmful acts directed at an individual or a group of individuals based on their gender. It is rooted in gender inequality, the abuse of power and harmful norms. The term is primarily used to underscore the fact that structural, gender-based power differentials place women and girls at risk for multiple forms of violence. While women and girls suffer disproportionately from GBV, men and boys can also be targeted. The term is also sometimes used to describe targeted violence against LGBTQI+ populations, when referencing violence related to norms of masculinity/femininity and/or gender norms.

Domestic violence:

Domestic violence, also called domestic abuse or intimate partner violence, is any pattern of behaviour that is used to gain or maintain power and control over an intimate partner. It encompasses all physical, sexual, emotional, economic and psychological actions or threats of actions that influence another person. This is one of the most common forms of violence experienced by women globally.

Source: UN Women

Dramatic rise of men’s violence against women and girls

All the interviewees unanimously pointed to women, as victims of domestic violence, as one of the most affected groups during the pandemic. One lawyer concluded that the statements made by women victims of domestic violence, to the association where she worked, went from 45 in April 2019, to 117 in April 2020. In addition, after the first lockdown, the number of complaints made to the police unit specialising in domestic violence claims, went from a usual number of three or four daily complaints to 40–45. This correlated with observations from other respondents and official reports. In May 2020, the Ministry of Women, Family, Children and Seniors recorded 6,693 calls to its toll-free line for reporting domestic violence (dating from 22 March to 3

May).²¹ Carnegie Endowment for International Peace reported that incidents of reported gender-based violence cases saw a five-fold increase in Tunisia during the first three months of the pandemic.²² This shows that Tunisia has been no different than other countries in the world during the COVID-19 pandemic. Prior to the pandemic, UN Women reported that, “globally, 243 million women and girls aged 15–49 have been subject to sexual and/or physical violence perpetrated by an intimate partner in the previous 12 months”.²³ Violence against women and girls, and particularly domestic violence, has only intensified since the outbreak of the pandemic.²⁴

Since domestic violence was initially not included in the category of urgent cases, this severely hampered women and girls’ access to courts in these situations. A coalition of civil society organisations sent an open letter to the President of the High Judicial Council, Mr Youssef Bouzakher, stating the importance of the courts receiving and hearing cases of domestic violence. It was subsequently decided to incorporate domestic violence in urgent cases on 28 and 29 April 2020.²⁵

Procedural obstacles to obtain justice

Despite the High Judicial Council deciding that cases of domestic violence would be dealt with as a priority at the end of April 2020, many obstacles hampered women accessing justice for these crimes. First, as pointed out by many of the interviewees, there is a lack of public knowledge of Tunisia’s legal framework. Law 58, passed in 2017, is Tunisia’s first law to combat gender-based violence. It includes preventive measures, as well as support for survivors, and takes a broad definition, including economic and psychological aspects of gender-based violence. The law also provides that survivors filing complaints about gender-based violence, based on a medical certificate, are automatically eligible for free legal aid, without income conditions. However, in practice, this aspect seems to rarely be applied, and very few women are aware of this right.

Due to limitations imposed during the pandemic, means of transport were drastically limited. Several police units specialising in gender-based violence, do not work outside administrative hours – at night or during weekends. During the pandemic, working hours were even more limited. According to interviewees, some units stopped working after 2pm and only responded to

²¹ Business News, “Basta, la campagne de sensibilisation contre les violences faites aux femmes”, 21 December 2020.

²² Carnegie Endowment for International Peace, Sarah Yerkes, Maro Youssef, “Coronavirus Reveals Tunisia’s Revolutionary Gains for Women Only Exist on Paper”, 22 June 2020.

²³ UN Women, “COVID-19 and ending violence against women and girls”, 2020.

²⁴ Ibid.

²⁵ Euromed Rights, “Tunisia: pandemic increases violence against women”, 2 June 2020.

high-risk cases, such as there being a substantive risk of a husband killing his wife.

Dissuasion to report the crimes

Many lawyers interviewed reported that some police officers tried to dissuade women from reporting domestic violence, arguing that it could harm them or their families. This is something that has also been reported in the Tunisian media.²⁶ It was a problem even before the pandemic, but the phenomenon seems to have been exacerbated during COVID-19. A number of interviewees stressed that some police officers may have increasingly resorted to the practice of dissuasion due to the increased amount of work during COVID-19. It is important to highlight that trying to dissuade reporting of gender-based violence is a crime according to Tunisian Law (2017-58).

The vulnerability of the women subjected to violence also increased during the pandemic, since lawyers avoided physical contact with clients to a greater extent and did not accompany them as often to the police station to report a crime. Lawyers have noted that when they accompany their clients, the practice of dissuading plaintiffs from reporting the violence is not as common. One of the interviewees said that his client was subjected to domestic violence but waived her right to prosecute her husband. Restrictions on movement between different cities made it impossible for her to seek refuge at her parent's house, and she literally did "not have a place to spend the night".

Difficulties proving violence

According to many interviewees, authorities did not take action or did not take the complaint seriously unless there was significant harm and violence that could be proved. This demonstrates a grave misunderstanding of the phenomenon of gender-based violence, as recognised in Law 2017-58, since it often has psychological, but also economic, aspects that are impossible to detect with the bare eye.

Law 2017-58 on gender-based violence provides that after a complaint has been filed at the police station, the complainant then receives a document that has to be brought to a public hospital. Here the complainant is mandated to obtain an 'initial medical certificate'. This certificate is the basis of the whole procedure and constitutes evidence before the public prosecution. Without a medical certificate, it is virtually impossible to prove that a crime has been committed. During the pandemic, hospitals in several cases – due to infection risks – refused or delayed examination and the delivery of

²⁶ Inkyfada, Noujoud Rejbi, "Derrière une loi vitrine, le calvaire des femmes victimes de violences continue", 8 October 2020.

certificates. This happened even in cases when the victim did have an authorisation from the police. Many hospitals did not consider these cases to be emergencies and declined both examination and the issuance of medical certificates. Several interviewees argued that this was partly due to a more general problem of lack of planning and coordination between public institutions.

Some interviewees noted that if a woman went to hospital without an authorisation from the police, she was not admitted for examination. However, there is no legal procedure or text preventing medical examination of complainants in the absence of such an authorisation. The complainant is also often required to pay for the issuance of a medical certificate and people in financial hardship are rarely able to do so. The lack of funds of women reporting violence was also underlined by the interviewees as an obstacle when trying to get alternative accommodation during the pandemic. Not having alternative accommodation was also sometimes a ground for not reporting violence or even withdrawing complaints.

One lawyer stressed the need for a holistic approach, linking the Ministries of Justice, Interior, Women, Health, Social Affairs and Religious Affairs, to coordinate the application of Law 2017-58. At the same time, the COVID-19 pandemic calls for accelerating progress on a holistic and coordinated approach between government and justice institutions, including civil society. This would be an important measure to both prevent and address violence against women, regardless of the COVID-19 pandemic. Another interviewee added that there were simple measures which could drastically improve the situation of women victims of violence. Hotline services and taking advantage of technological solutions are important, but additional measures, to ensure a broad outreach to the entire population, may also be essential. These might include the adoption of procedures allowing women to make a statement in pharmacies, as happens in France and Spain, or putting special letter boxes to receive complaints in front of each court.

Divorced women and their children

“Take what he gives you, that is better than nothing” ...- Police officer trying to convince a divorced woman to accept a lower alimony sum than that to which she was legally entitled

Alimony and divorce cases are areas where many women have suffered substantial harm during the pandemic in Tunisia. The duration of alimony

and divorce cases increased, due to court closures or postponement of hearings. Law 2017-58 on gender-based violence, includes protective measures such as separation from the marital home, placements, etc. These measures could often not be enforced during COVID-19, due to the reduced activity of the courts. Some lawyers suggested that Article 26 of Law 2017-58 on gender-based violence should be applied, providing that the police, after authorisation of public prosecution, could enforce protective measures prior to judicial authorisation, but this was without success.

One of the interviewees stated that, during the pandemic, alimony cases were heard after three or four months, instead of the usual one-month timeframe. There are also regional differences, it seems, such that alimony cases in the Tunis capital area were the most delayed. The non-payment of alimony sometimes led to dramatic consequences, putting divorced women in extreme financial hardship and/or forcing them to stay with a violent husband. The delay in divorce cases had similar effects.

Bailiffs (*huissiers de justice*) are in charge of collecting alimony debts, as provided by the law. Yet many interviewees stated that bailiffs had not been working during the COVID-19 crisis. Additionally, unemployment and non-payment of salaries, caused by the pandemic, had increased maintenance debts drastically.

Several of the interviewees affirmed that some police officers had tried to dissuade women from filing for divorce or encouraged them to accept lower maintenance due to the husband's economic difficulties. Some interviewees referred to "male solidarity" as an underlying rationale for such tactics.

Children were also affected by delays in the resolution of divorce cases and alimony payments, although the data obtained did not provide more insight into their particular situation. Yet, there were alarming reports on the consequences of COVID-19 on children in Tunisia, in particular in terms of an increase in child poverty.²⁷ UNICEF is even framing this as a 'lost generation', since the pandemic can cause irreversible harm to children's education, nutrition and well-being.²⁸ More research is needed to better understand the specific legal needs of children resulting from the pandemic.

It is clear that there are general challenges to the issues of gender-based violence, LBTQI+, and divorced women and their children that require a general shift in political attention and the proper allocation of resources. One

²⁷ UNICEF, "Tunisie: Impact des mesures de confinement associées à la pandémie COVID-19 sur la pauvreté des enfants".

²⁸ UNICEF calls for averting a lost generation as COVID-19 threatens to cause irreversible harm to children's education, nutrition and well-being, 18 November 2020.

example is the importance of ensuring due access to the protective measures granted by Law 2017-58 for victims of gender-based violence, including healthcare, legal representation/aid, psychosocial support and shelter, combined with economic recovery schemes. Investments are also needed in holistic and coordinated mechanisms to respond to domestic violence. This can be most efficiently done by the adoption of Standard Operating Procedures or national guidelines that are financially resourced and rolled out, with capacity building of first responders on Law 2017-58. More research is also needed to identify the specific legal needs of women as a result of the pandemic; preventive strategies have to be included, as well as ensuring the direct participation of women, and other vulnerable groups, in mapping needs and subsequent policy development.

Recommendations for the Tunisian authorities

- **Conduct training and sensitisation on Law 2017-58 on gender-based violence among police officers**, with efforts particular intensified towards officers working in the specialised units that receive gender-based violence claims.
- **Ensure prioritisation of alimony and divorce cases**, even during pandemics and other emergency situations.
- **Ensure the due enforcement of Law 2016-05**, governing notification of defendants on their right to a lawyer upon their arrest at a police station.

Migrants and refugees

Both migrants and refugees have often found themselves in a situation of increased vulnerability during COVID-19. Interviewees pointed out that this group were more likely to abandon legal processes they were involved in or were facing lengthy procedures due to restrictions of access to courts. Migrants were also particularly affected by the impact of the crisis on employment, since they were often employed without formal labour contracts. They were among the first to be fired, since many migrants work in sectors not considered essential during the pandemic, such as on construction sites, in cafés and restaurants, or as mechanics, most commonly in the informal economy. This had led to a chain reaction, leading to migrants being unable to pay rent and losing their accommodation. Some had kept working but had had to stay in their employers' houses because of restrictions on movement. This led in some cases to a higher amount of work and more vulnerability. Through the data collected, the various categories of vulnerable groups were often exposed to a multitude of problems. Migrants and refugees, in particular women who work domestically, lack formal labour contracts and are unable to be provided with legal protection or access to justice.

Even before the pandemic, the main divide was between migrants and refugees who were documented, and the ones who did not have legal status and the right to stay in Tunisia. During the first wave of the pandemic (March–May 2020), around 20 undocumented migrants were administratively detained in Ouardia detention centre, Tunis, which functions under the Ministry of Interior (unlike all other Tunisian detention centres, which are governed by the Ministry of Justice). Their detention was decided by administrative orders instead of court orders. There were about 100 migrants detained in total in the Ouardia detention centre. Ouardia is problematic, since there is no legal text recognising it as a detention centre and it is known to the public as a 'reception and orientation centre'. The migrants were detained for lacking or having expired residency permits.²⁹ A coalition of civil society organisations filed a complaint in June 2020 against the administrative detention. In July, The Administrative Court of Tunis ordered the suspension of the detentions since the migrants were not guaranteed access to counsel and their detention exceeded by far the 48 hours required by the Code of Criminal Procedure.

One of the lawyers interviewed had a client whose expulsion was issued by a court order, but instead of being expelled, the migrant was sent to Ouardia

²⁹ Forum Tunisien pour les Droits Économiques et Sociaux, 29 April 2020.

detention centre. The conditions of detention at Ouardia are deplorable.³⁰ As at the date of writing, the client was still detained at Ouardia.

Migrants remaining in Tunisia after their visas have expired have to pay a fine based on the length of their unofficial stay, and they can't leave until the fine is paid. This forces many undocumented migrants to stay and puts them in an increasingly vulnerable position. Authorities have announced that they will freeze this penalisation during COVID-19.³¹

Refugees in Tunisia with refugee status, holding a UN Refugee Agency (UNHCR) document, are not exempt from such difficulties with the authorities. Even when showing the UNHCR document, police often ask about the refugees' status and demand to see their identification documents. Some interviewees explained this by the fact that migrants and refugees were quite a new phenomenon in Tunisia, with many public officials still ignoring refugees' status and rights. Therefore, even documented refugees try to avoid contact with the police and the courts.

Tunisian law provides that the employer of a foreigner needs to prove that the person's skills are not available among Tunisian nationals.³² This is almost impossible to prove for low-qualification jobs and many migrants – most of whom are from sub-Saharan Africa – have no choice but to divert to the informal economy, putting themselves in a position of extreme fragility. The rise in discrimination and xenophobia against migrants has also been reported during the pandemic by the International Labour Organization (ILO).³³

Recommendations for the Tunisian authorities

- **When migrants and refugees staying in Tunisia irregularly want to leave the country, abolish the fine that they are obliged to pay.**
- **Extend access to health services and social protection coverage to migrant workers.**
- **Conduct awareness raising among public officials and law enforcement officers about the status and rights of documented refugees.**

³⁰ Middle East Eye, "Dans ce centre, on n'applique pas la loi": El Ouardia, zone grise pour les migrants qui arrivent en Tunisie, 8 October 2020.

³¹ Mixed Migration Centre, Urban Mixed Migration Tunis Case Study, November 2020.

³² Article 258-2 of the Tunisian Labor Code.

³³ ILO Policy Brief, "Protecting migrant workers during the COVID-19 pandemic", April 2020.

Persons in detention

Persons in detention are particularly vulnerable to virus infections and pandemics; correctional facilities are in their nature more prone to fostering transmission of diseases, since detained and incarcerated persons are concentrated in small spaces. On two occasions, the President granted special pardons to 2,090 prisoners to reduce the prison population and limit the risk of outbreaks of COVID-19.³⁴ The focus was on the elderly and people with chronic diseases; however, many persons in detention were excluded.

Many interviewees noticed that when defendants were arrested, they were not presented to the prosecutor after the end of the first pre-charge detention period of 48 hours – in violation of the Code of Criminal Procedure. Instead, they were forced to spend 14 days in quarantine in detention before getting their case heard. In felony cases, some interviewees indicated that the investigative judge could take up to 14 months to finish the investigation and refer the case to court. Misdemeanour cases also suffered from lengthy proceedings. The increasing delays resulted from the suspension of judicial proceedings during COVID-19, but also occurred because of the accumulation of new cases filed during the pandemic.

Due to lockdown measures, lawyers were not able to meet their clients during the first wave of COVID-19, in violation of their right to counsel and right of defence. The lack of physical meetings between lawyers and persons in detention also continued after the first wave, since many lawyers did not trust the health measures adopted by prison staff and were worried about being infected. This was true both for prisons and pre-trial detention centres.

In many cases, detained persons have been dismissed from the court because they were not wearing a face mask, as required by the Supreme Judicial Council. Face masks should be provided to people in detention by the prison administration.³⁵ Consequently, such hearings have been postponed, with detained people remaining in custody and causing unnecessary stress to the prison system. Many Tunisian prisons are overcrowded, ranging from 150 percent³⁶ to 300 percent in a number of prisons.³⁷ According to the UN Committee Against Torture, the state of prisons is dilapidated, while sanitary

³⁴ International Legal Foundation, “Urgent Call to Action to the President of the Republic of Tunisia to Protect Prisoners from COVID-19”.

³⁵ The General Committee of Prisons and reeducation provided two face masks for each detainee on 27 October 2020.

³⁶ UN Committee Against Torture, Concluding Observations on Tunisia, CAT/C/TUN/CO/3, 10 June 2016, § 27.

³⁷ International Legal Foundation, “Urgent Call to Action to the Minister of Justice and the President of the Supreme Judicial Council on COVID-19 Justice Sector Response”.

conditions are deplorable.³⁸ There have been outbreaks of COVID-19 in prisons, and lack of medical services and personal protective equipment has been reported.

Overcrowding of prisons is common around the world; prisons in 118 countries hold more than their capacity.³⁹ Solutions to this type of systemic issue often include more structural measures. Pre-trial detention should, for instance, only be used as a last resort when non-custodial measures are not enough to guarantee the accused person's presence at trial. In Tunisia, 57 percent of the prison population are in pre-trial detention.⁴⁰ Severely restricting pre-trial incarceration would therefore serve to decongest the prison system. Granting amnesty to vulnerable groups in detention⁴¹ or using non-custodial measures as alternatives to imprisonment are other structural solutions to overcrowding. During crises like COVID-19, good detention conditions become even more important; key issues include improving healthcare in detention, but also ensuring the distribution of protective equipment to detainees and prison employees.

Recommendations for the Tunisian authorities

- **Provide methods for lawyers to meet privately with their clients in detention without risk of infection** – for example, in a private room with a plastic barrier or via an unmonitored phone call in a private room.
- **Ensure that quarantine of persons in detention does not delay the mandatory procedural deadlines.**
- **Implement social distancing for persons in detention** by decreasing the maximum allowed population of prisons and keeping all people two meters apart from each other.

³⁸ Supra note 35.

³⁹ World Prison Brief, Institute for Crime and Justice Policy Research, Birkbeck University of London, Statistics on Occupancy Level in 206 countries, January 2021.

⁴⁰ World Prison Brief, Data on Tunisia, as of November 2020.

⁴¹ Groups considered for amnesty could be, for example, elderly prisoners (over 60), female prisoners, prisoners with underlying health conditions, prisoners convicted for misdemeanor offences and children placed in juvenile rehabilitation centers or prisons.

Employment conflicts and regional differences

The Tunisian economy was already in a poor condition before COVID-19 hit. In recent years, Tunisia has seen chronic economic decline, where the gross domestic product (GDP) has decreased from 47.63 billion Tunisian dinars in 2014 to 39.86 billion Tunisian dinars in 2018.⁴² In 2020, Tunisia's unemployment reached 18 percent overall.⁴³ However, disaggregated by geographic region and age, it is clear that certain groups are more affected by the economic recession than others. Youth unemployment (ages 15–24) was on average at 36.5 percent in 2020,⁴⁴ while women's unemployment rate (25%) is significantly higher than men's (15.2%).⁴⁵ Factoring in geography, unemployment and poverty rates are much higher in the interior regions of the country compared to the Greater Tunis area. While a decree prohibiting wrongful/abusive dismissal during the COVID-19 pandemic period was issued by the government,⁴⁶ interviewees reported that abusive dismissals had been commonly used during the pandemic.

In 2017, a report from the Hague Institute for Innovation of Law (HiiL), showed that the most frequent legal disputes faced by Tunisians related to employment conflicts. The most common issues were a lack of equal opportunity in recruitment, precarious work situations and dismissals.⁴⁷ Younger people were disproportionately hit by employment conflicts. According to Tunisian law, the presence of a lawyer is not compulsory or guaranteed in labour conflicts, weakening employees' means of defence. There is some work being done by Tunisian NGOs to strengthen legal aid and representation in labour conflicts, but needs are far from being met. It is important to address this issue holistically, using a longer-term perspective, to capitalise on the potential of the Tunisian population to contribute to economic development, but also to protect people's rights.

While some support measures to ensure people's economic, social and cultural rights have been made, the lockdown risks having a highly detrimental effect on the financial situation of the population engaged in the informal economy, and on the high numbers of people who are dependent on day-labour wages.

⁴² World Bank, available at:

<https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?end=2018&locations=TN&start=2011>

⁴³ Tunisian Bureau of Statistics, "Indicateurs de l'emploi et du chômage du deuxième trimestre 2020 Impact de la pandémie du COVID-19 sur le marché de l'emploi Tunisien", pg. 6.

⁴⁴ Id. pg. 8.

⁴⁵ Id. pg. 7.

⁴⁶ Governmental Decree No. 2 of 14 April 2020. The Decree introduces a couple of temporary provisions related to the Labor Law and suspends certain Labor Code provisions.

⁴⁷ HiiL, "Justice Needs in Tunisia – 2017, Legal Problems in Daily Life".

It is also important to draw attention to how vulnerabilities overlap, cumulating individuals' experience of discrimination and marginalisation in their access to justice. One of the lawyers interviewed for this study described three cases in which long-standing employees (in their jobs for 6–12 years) were forced to leave their positions during the economic hardship caused by the pandemic. Their employers threatened to charge them with a crime such as theft, or to expose the employee's sexual identity to the police, if the employees questioned the dismissal in any way, illustrating one of many ways in which LGBTQI+ people's legal security is jeopardised by the indirect consequences of the COVID-19 pandemic.

The COVID-19 pandemic has seriously impacted many categories of people, placing them further at risk, sometimes without social protection or job security. Meeting people's justice needs, particularly at the regional level, will be critical in laying the groundwork for sustainable societies built on principles of the rule of law.

Recommendations

- **Amend the Code of Commercial and Civil Procedures to ensure access to legal counsel in labour conflicts.**
- **Train lawyers on labour law, with a focus on gender.**

Conclusion

“The judiciary is still operating with a system from the 1960s that is based on the obligation of attendance at the courtroom to exchange memos and also relying on using lots of papers and hard copies.” - Interviewed lawyer

COVID-19 represents an unprecedented situation for many legal professionals who have been faced with new situations and challenges. It is fair to say that they have responded with creativity and flexibility. Many have learned to use or increased their use of technology and digital communication platforms during the pandemic.

The collected data showed that few legal needs were specific to COVID-19, but the pandemic increased an already-existing justice gap for many vulnerable categories of people. Victims of domestic and gender-based violence, alimony and divorce cases, migrants and refugees, and people in detention have been particularly affected.

Interviewees were consistent in their findings concerning the weaknesses of the judicial system, declaring that even if the crisis highlighted a surprising sense of creativity, the initiatives had been mainly personal. This revealed a lack of planning and coordination between institutions and jeopardised the sustainability of the initiatives. Interviewees found that their own working methods had been enhanced, including through better organisation and communication to limit interactions and their presence in courts. If Tunisian authorities capitalise on this creativity and build a comprehensive strategy on justice delivery, the COVID-19 crisis could even provide an opportunity to enhance and rethink access to justice in Tunisia.

This Discussion Paper assesses how the COVID-19 pandemic has affected access to justice for vulnerable groups in Tunisia. The study shows that, while few legal needs were specific to the pandemic, the current crisis has increased an already-existing justice gap for many vulnerable categories of people. Victims of domestic and gender-based violence, alimony and divorce, as well as migrants, refugees and detainees have been particularly affected.

The Discussion Paper maps a number of challenges, which, if addressed, could increase access to justice for vulnerable groups. An impressive sense of creativity was found among legal professionals to meet these obstacles and justice seekers' needs. If Tunisian authorities capitalise on this creativity and build a comprehensive strategy on justice delivery, the COVID-19 crisis could even provide an opportunity to enhance and rethink access to justice in Tunisia.

The Discussion Paper builds on a series of in-depth interviews with lawyers, judges and prosecutors in Tunisia, jointly conducted by ILAC and the American Bar Association Rule of Law Initiative. It was made possible by core funding provided by the Swedish International Development Cooperation Agency (Sida).

Authors:

Ylva L. Hartmann, International Legal Assistance Consortium (Sweden)

Ismaël Benkhalifa, International Legal Assistance Consortium (Tunisia)



ILAC is a global rule of law consortium providing technical assistance to justice sector actors in fragile and conflict-affected countries.

ILAC's mission is to rapidly respond to and assess the needs of the justice sector in conflict-affected and fragile countries, and help strengthen the independence and resilience of justice sector institutions and the legal profession. Today, ILAC has more than 80 members including individual legal experts as well as organisations that represent judges, prosecutors, lawyers and academics worldwide.



**International
Legal Assistance
Consortium**

ILAC Secretariat

Stockholmsvägen 21,
SE-122 62 Enskede, Stockholm
Sweden
Phone: +46 (0)8-545 714 20
info@ilac.se

www.ilacnet.org



For nearly 30 years and in more than 100 countries, the American Bar Association's Rule of Law Initiative (ABA ROLI) has been promoting justice, economic opportunity and human dignity through the rule of law. Our international democracy, human rights, and governance programs strengthen justice sectors, improve human rights and access to justice, mitigate conflict, and ensure inclusive and sustainable development around the world.

Read the report online:

