



Law No. 5 and the Freedom of Demonstration and Assembly in Tunisia in 2021

These pictures were painted by 10 Tunisian youth who participated in the drawing contest organized by Belady-an Island for Humanity within the framework of the “حقنا بالقانون” project



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Executive Summary

The protests of January-June 2021 have led to large scale arrests of Tunisian demonstrators, which called into question the extent of enforcement of Law No. 5 of 2016 dated 16 February 2016, amending and supplementing some provisions of the Code of Criminal Procedure. This law organizes custody proceedings, guarantees the detainee's rights, and ensures the conditions to a fair trial according to the January 2014 constitution and the universal human rights system.

The first section of this research focuses on the extent to which Law No. 5 was implemented on women in the arrests of January- June 2021, particularly during the arrest itself, based on extensive semi-directive interviews conducted by Belady's team with ex-detainees. This section addresses the detainee's rights stipulated in the fifth paragraph of Article 13 bis (new) of Law No. 5, which includes the detainee's right to be informed of their rights, the right to be informed of the reason for the arrest and its duration, the right to legal representation (retaining a lawyer), and the right to inform whomever the detainee chooses.

The second part of this research tackles the human rights violations against women during arrests, represented in physical, psychological or sexual violence. Subsequently, it addresses the effectiveness of the right of defense and the extent to which health procedures related to the Corona pandemic are respected within various detention centers.

Introduction

In 2021, Tunisia witnessed a harsh year due to various events. Along with the worsening of the political, social, and health crisis, hundreds of demonstrators were protesting against the Tunisian political class. The police response was mainly violent. It adopted a deterrent approach as it relied on closing the outlets leading to the street and deploying intensive security reinforcements to suppress the protesters. However, this led to the opposite result by further fueling the protests between January-June 2021, which generally witnessed a vast wave of arrests against activists and demonstrators.

Business News had published a report on the January 2021 protests under the title «Arrests, harassment, and torture -Is the police state back?»¹. This report began with the story of a Tunisian student who was arrested during the revision period for the first semester exams. He left his home and headed to the pharmacy, which is only a few meters away from his place of residence. He was arbitrarily arrested by a security patrol and dragged to the National Security Center in Al-Morouj for “protesting.” Later, he was subjected to violence and was forced to sign a search report without reading it or having access to a lawyer.

Moreover, the Tunisian Organization Against Torture report² stated that «the right to demonstration was violated and the outlets and streets were blocked with major security reinforcements. Afterward, the demonstrators were harassed, and arbitrary arrests, retribution and malicious trials began.»

These systematic and widespread violations on the police side, along with a restriction on freedom of expression and demonstration, represent a clear breach of the law. As a matter of fact, Law No. 5 of 2016 regulates the procedures and duration of detention and guarantees the detainee's rights.

This law was issued to interpret constitutional principles to guarantee a fair trial. Hence, Article 27 of the Tunisian Constitution stipulates that «The accused is innocent until proven guilty in a fair trial in which all defense guarantees are ensured to them during the trial and prosecution phases.» As for Article 29 of the Constitution, it states that “a person may not be arrested or detained except in flagrante delicto or by a judicial decision.

¹ [Report - January 2021: Arrests, Harassment, Torture - Is the Police State Back?](#)

² [Report of the Tunisian Organization Against Torture on the violations witnessed in January 2021](#)

They are immediately informed of their rights and the accusation against them, and they may appoint a lawyer. Furthermore, the law determines the period of arrest and detention.”

Through Law No. 5, the legislator attempted to reorganize the entire detention facility according to the constitutional rules. Therefore, Chapter 13 bis was abolished and replaced with a new text regulating the detainee's rights and compelling execution agents (police and security agents) to respect these procedures through written quotations under the supervision of the Public Prosecutor and his assistants.

In this context, Belady discussed the extent to which Law No. 5 of 2016 is applied, the violations that the female detainees were subjected to during detention, and the extent to which the Corona pandemic health protocol is respected.

Methodology

For data collection, Belady relied on a questionnaire (annex) related to the arrest campaigns about the general data of arrest, the extent of enforcement of Law No. 5 on women in the January-June 2021 arrests, and the various violations they were subjected to during arrest and trial.

The data collection tool conception was based on Law No. 5 of 2016 dated 16 February 2016 amending and supplementing some provisions of the Code of Criminal Procedure, Part II of the Tunisian Constitution on rights and freedoms, and Basic Law No. 58 of 2017 dated 11 August 2017 on the elimination of all types of violence against women.

The data were exclusively collected between April 16 and July 26 through extensive interviews with ex-detainees, while respecting the confidentiality of their personal data, in accordance with the Basic Law No. 63 of 2004 dated 27 July 2004 on the protection of personal data.

After collecting and adapting quantitative and qualitative information through the questionnaire, they were transformed into coded data and later tested for their quality by a different team.

The sample was randomly selected to consist exclusively of female ex-detainees, whose average age, after data assessment, is 25 years. All detainees, without exception, are activists in civil society, and their duration of detention ranged between half an hour and 24 hours, with an average detention time of 4.5 hours for each ex-detainee.

Results & Discussion

I- The extent to which Law No. 5 was applied on Tunisian women during the arrests of January-March 2021

1- The detainees' right to be informed of their rights

Chapter 13 bis, paragraph five of Law No. 5, requires that “the judicial police³ officers, when keeping the suspect, inform him/her, in a language he/she understands, of the procedure taken against him/her, its reason, duration, and ability, in accordance with the extension period in detention set forth in the fourth paragraph, and read what the law guarantees him/her of a request to submit him/her to a medical examination and his/her right to choose a lawyer to attend with him/her.”

Based on the interviews that were conducted with the former detainees, it was found that none of them were granted the right to read their rights included in the above-mentioned chapter.

This leads us to conclude that law enforcement agents may believe that reciting the rights of the detainee is a matter of formality that is useless to exercise. However, it is an obligatory procedure in Chapter 13 bis of the Code of Criminal Procedure, which also stipulates “the adoption of a special record signed by the public prosecutor or one of his assistants that includes the date on which the detainee was granted these rights.

Article 13 bis stipulates that “... the judicial police officers provided for in the first paragraph of this article must keep a special record in the offices where the pages are numbered and signed by the public prosecutor or one of his assistants, and in which the following stipulations must be included:

- **-The identity of the person in custody according to the data provided for in the minutes.**
- **-The subject of the crime for which the retention is committed.**
- **-The date, day, and hour on which the family or the person in custody was informed of the action taken.**
- **- Request for a medical examination, or to choose a lawyer, if it occurs, whether from the detainee, a member of his family, or someone appointed by him/her; or a request to appoint a lawyer if the custodian does not choose a lawyer to defend him/her in the event of a felony.**

In the face of these legal guarantees stipulated in the aforementioned chapter, we cannot help but wonder how the legally mandated authorities perform their oversight role, especially as the law did not specify a clear form for this information

None of the detainees were informed of their legal rights.

³ In Tunisia, the judicial police officers work under the supervision of the public prosecutor and are in charge of the preliminary investigation.

2- The right of the detainee to be informed of the reason for the detention and its duration

Pursuant to Article 13 bis, and as mentioned in the previous paragraph, the detainee has the right to be informed of the reason for the detention and its duration. However, 8 out of the 11 former detainees were not informed of the reason for the detention, as well as its duration. This provision is part of the procedures aiming, in theory, to modify the broad powers entrusted to the judicial police in terms of their ability to arrest any suspect. The Code of Criminal Procedure grants judicial police agents the powers to arrest any person if they deem it necessary for investigation.

8/11 ex-detainees were not informed of the reason for the detention or its duration.

When the police put you in their mind, they take you to Bouchoucha* for any reason they like

Testimony of an ex-detainee.

*Bouchoucha is one of the most known detention centers in Tunis.

3- The right to legal representation

The right to legal representation is considered one of the most important pillars of a fair trial, and legal representation is essential in cases of failure to provide effective oversight mechanisms for ill-treatment within detention centers and to activate the legal safeguards stipulated in Article 13 bis.

Despite the obligatory legal provision for this right, 8 out of 11 former detainees were deprived of their right to choose a lawyer before hearing or pleading (i.e. before writing the investigation report on the suspected crime).

According to the research “The New Detention Law in Tunisia: Between Theory and Practice,”⁴ published by Human Rights Watch in 2018, women detainees are deprived of this right because the security services neglect to inform the detainees of it, and some lawyers registered with the Bar Association fail to assist the detainees in the absence of a plan that covers their expenses. This makes us wonder how keen the authorities are to activate these legal texts and respect their application, despite the warning sirens of civil society.

8/11 Female ex-detainees were deprived of their rights to choose their lawyers before the hearing or pleading.

⁴ [You want a lawyer... really?](#)

4- The right to inform whomever the detainee chooses

Article 13 bis paragraph 6 states: “The judicial police commissioner must immediately inform one of the ascendants, descendants, brothers, or consort of the suspect, or whoever he/she appoints according to his/her choice.

This right was first stipulated in consideration of the sudden nature of the detention, and secondly to include the content of informing the detainee of a request to appoint a lawyer. However, despite this legal stipulation of the detainee’s right to inform the person of their choice, 10 out of 11 former detainees were not allowed to make a phone call during detention, while visits were prohibited for %100 of them.

II- Human rights violations during the period of arrest

1- Physical violence

Law No. 5 stipulates that the detainee, his/her lawyer, or one of the persons that (s)he chose to inform, can request that he/she be submitted to a medical examination. As stated in the chapter, “In this case, a doctor must be hired for the purpose to conduct the required medical examination immediately”.

Despite the necessity of this procedure, our study shows that 8 out of 11 detainees were subjected to physical violence.

Two detainees were beaten, slapped and dragged; two were beaten and dragged; 3 were beaten and slapped; and one was beaten.

It was also revealed from the interviews that 5 of the female detainees were subjected to violence during the arrest in the street, while two female detainees were subjected to violence inside the police car and one inside the detention center.

Belady notes that the deliberate failure to inform the detainees of their rights and to hold accountable those involved in violence and ill-treatment leads to these practices and abuses, which are in clear violation of the law, the Constitution and the universal system of human rights.

8/11 female ex-detainees were subjected to physical violence.

**I was naked while a policewoman
was stepping on me with her shoes**

Testimony of an ex-detainee in Bouchoucha detention center.

2- Psychological violence

Despite the provision of mechanisms that theoretically aim to avoid cases of physical violence, Law No. 5 did not provide mechanisms to protect the detainee from abuse that could be represented in the form of psychological violence, which was severely imposed on all the former detainees who answered the questionnaire.

It was proven that all of the arrested women were subjected to psychological violence. 10 of them were insulted, offended and humiliated, while one detainee was subjected to bullying and even threats of rape.

There was no safe place for these eleven detainees, as they were verbally assaulted in the street in two cases, in the police car in four cases, and in the security center in the remaining cases.

11/11 female ex-detainees were subjected to psychological violence

**I was shocked by the police's
treatment, no mercy**

Testimony of an ex-detainee

3- Sexual violence

Despite the existence of a law related to the elimination of violence against women in Tunisia, especially Basic Law No. 58 of 2017 on the elimination of all types of violence against women and the preservation of the physical and psychological sanctity of Tunisian women, violations occur inside places of detention. The absence of real state oversight, the failure to seriously consider victims' complaints, and the failure to provide the necessary protection mechanisms for victims of sexual violence, given the unequal legal status of the aggressor and the victim, makes these practices highly present during arrests.

5 of the 11 former detainees stated that they had been subjected to sexual violence, which included verbal harassment and searches of intimate areas. The sexual assaults of the detainees took place in the police car, the detention centers, and even the street for one of the detainees.

**If you went home with me,
none of this would have happened,
that's what the policeman told me**

Testimony of an ex-detainee

4- The right to legal representation

The law No. 5 grants, through legal representation, the right to visit the detainee in private for 30 minutes before the interrogation. However, the law does not fully guarantee legal representation for those who are unable to appoint a lawyer, because there is no system for covering lawyers' fees for detainees who are unable to cover these expenses. On the other hand, the law on granting judicial aid provides the detainee to have a lawyer in serious crimes (the punishment of which exceeds 5 years), and this procedure takes place after a long process, which means that the legal representation does not take place until after the case is referred and not during the period of detention.

Our study shows that 6 out of 11 former detainees were unable to hire a lawyer during any period of detention, while 5 were provided with lawyers by civil society. Likewise, no female detainee was able to appoint a personal lawyer, and no female detainee without a lawyer was able to obtain legal representation.

5- Respect of the health protocol related to the Corona pandemic

All the detainees, without exception, expressed that the health protocol to prevent Coronavirus was not respected in the places of detention.

In view of the difficulty of the health situation and the unprecedented spread of the pandemic during the period in question, and despite the laws and leaflets that obligate agents and administrative staff to wear a mask and respect the health protocol to prevent the Coronavirus, we did not record any act respecting these health procedures inside the detention centers. This presents a serious risk in the possibility of the spread of the infection inside the detention centers and an attack on the physical safety of detainees and aides alike.

All of the above refers to the fact that, despite the Tunisian arsenal in terms of legal texts, the detainee remains subject to an almost total absence of law enforcement and is a victim of all kinds of violations, abuse and menaces that represent a threat to his/her psychological and physical well-being.

Conclusion

Despite the legislative progress in the field of protection of rights and freedoms in Tunisia, the law cannot change the prevailing situation unless every effort is made to implement it on a wide scale and effective monitoring mechanisms are adopted to ensure its application in its essence and procedures.

Also, evaluation follow-up is necessary to identify the flaws of the law, especially since certain negative measures are considered dangerous for rights and freedoms. Therefore, the law should not deviate from its exceptional nature and turn into a tool of political violence to limit the right to demonstrate and the right to assemble - precious and valuable rights for the Tunisian citizens - or commit any discrimination on the basis of gender for the purposes of revenge, mainly against women and minorities.

Belady's recommendations

1- To the Parliament

- Amending the Code of Criminal Procedures towards further controlling the conditions of suspicion before detaining persons.
- Relying on the applied data to evaluate the efficacy of the law and the extent to which it fulfills the legislator's intention.
- Accelerating the application of the right of every detainee to legal defense by enabling them to have lawyers beginning from the search period and without conditions.

2- To the Tunisian Executive Branch

- Training the Ministry of the Interior's staff to match their work with the new laws, the Tunisian Constitution and the universal human rights system.
- More collaboration with civil society and Constitutional Bodies, especially for the oversight role to protect rights and freedoms.
- Enabling detainees exposed to violence of all kinds to present the matter to a supervisory body.
- The necessity of administrative and penal follow-up and lack of leniency with those who violently assaulted a detainee.

Annex

Survey on human rights violations of women arrested between January and June 2021

Introduction: As part of a mini-research on the extent of implementation of Law No. 5 and human rights violations for women arrested between January and June 2021, Belady is collecting information about this period. All data that you will share with our team will be in the form of codes and in an anonymous way. All this information will remain confidential and does not contain names. It also will not be presented to anyone other than the organization's research and analysis team.

Metadata

Date:
 Survey code:
 1- Age:.....
 2- Gender/Sexual orientation:
 3-Profession or Studies:
 4- Arrest date:.....
 5- Arrest duration:
 6- Arrest location

Questions

Research points	Research questions
The extent of implementation of the Law No. 5 in the arrests of women in January - June 2021	7- Were you informed of your rights (in other words, the reason for and the duration of the arrest, your rights as a detainee to submit for a medical examination, legal representation, remaining silent except in the presence of a lawyer, right to visitation, to make a call) by the competent authorities? Which competent authority?
	8- Were you informed of the reason for the arrest and its duration?
	9- Were you able to contact a lawyer before the hearing or pleading?
	10- Were you medically examined when you submitted?
	11- What are the charges against you if you were accused? Were you informed of this during the investigation?
	12- Were you allowed to make a phone call if you requested it?
	13- Were you allowed to receive a visit?
Violations during the arrest	14- Have you been subjected to physical violence (form of violence: beating / slapping / dragging / other)? Where did it occur?
	15- Have you been subjected to psychological or moral violence (form of violence: cursing / insulting / other)? Where did it occur?
	16- Have you been subjected to sexual violence (harassment / other)? Where did it occur?
	17- Have you been asked to do a medical test? What type of test is required? Did you reject it? Did you accept it? Were you pressured to accept or undergo it ?
Violations during trial	18- In case your rights were violated before the trial, were you presented before a judge? Did the judge take any measure in this regard?
	19- Were you able to retain a lawyer (personal, civil society...)? Did the court appoint a lawyer if you were unable to hire one?
	20- Was the detention renewed? What was the duration of the renewal?
Arrest location	21- Where were you arrested? How was the condition of the arrest location (crowded, uncrowded, moderate)? How were the precautionary measures to prevent the spread of Corona? The cleanliness of the arrest location? Bathroom? Sleep? Cold? Humidity? Insects and/or reptiles, etc.)?
Quotes	Would you like to add something? What do you want to say to youth or the authorities? Or to your family/friends?

