



## TUNISIA WHISTLE-BLOWING OVERVIEW

This overview on whistle-blowing in Tunisia gives a first insight into the situation of whistleblowing in the country and aims to start a discussion on improved protection of whistle-blowers.

There is a total absence of a whistle-blowers' protection legislation in Tunisia. In its self-assessment report for the United Nations Convention Against Corruption (UNCAC), Tunisia identified whistle-blowers' protection as one of the gaps that needs to be addressed in the legislation<sup>1</sup>. In the Tunisian legal framework, whistle-blower protection is only granted in the anti-terrorism law of 2003<sup>2</sup>. There is also mention of the phrase 'denounce corruption' in the penal code, but in a pejorative way implying 'snitching' more than 'reporting'.<sup>3</sup> Amid a fragmentation in official opinion (between the government and the national anti-corruption commission), a number of institutions have been working on assisting Tunisia to draft its own law.

The Organisation for Economic Co-Operation and Development (OECD) and the United Nations Development Program (UNDP) are the two main partners assisting the government to draft and pass a whistle-blower protection law.<sup>4</sup> On 11 March 2015, the Tunisian government organised an open-door event to share the first draft of the law with civil society and legal experts. In terms of content, the law is inadequate as it protects only whistle-blowers, but does not include the protection of witnesses and experts.<sup>5</sup> In addition, it only protects whistle-blowers in the public sector not in the private one. The law states that an internal body will be created within the government to receive complaints, which put into question the transparency of the process and its efficiency.

<sup>1</sup> Implementation Review Group of the United Nations Convention against Corruption, Executive Summary: Tunisia, 26 May 2015, Vienna, p.5, Found online at: [www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/1-5June2015/V1503711f.pdf](http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/1-5June2015/V1503711f.pdf), accessed on 8/12/15

<sup>2</sup> Law no.2003-75 concerning the support of international effort to combat terrorism and repress money laundering. Found online at: [www.menafatf.org/images/UploadFiles/Law\\_n\\_2003\\_75\\_Tunisia.pdf](http://www.menafatf.org/images/UploadFiles/Law_n_2003_75_Tunisia.pdf) accessed on 8/12/15

<sup>3</sup> Code de Procédure Pénale, Loi n° 68-23 du 24 juillet 1968, portant refonte du code de procédure pénale, found online at: [www.wipo.int/edocs/lexdocs/laws/fr/tn/tn032fr.pdf](http://www.wipo.int/edocs/lexdocs/laws/fr/tn/tn032fr.pdf) accessed on 8/12/15

<sup>4</sup> The Organisation for Economic Co-operation and Development, "Tunisia: A Reform Agenda to Support Competitiveness and Inclusive Growth", March 2015 p.65

<sup>5</sup> Human Rights Watch, 'Tunisia: Drop or Amend Security Bill', May 13 2015, found online at: [www.hrw.org/news/2015/05/13/tunisia-drop-or-amend-security-bill](http://www.hrw.org/news/2015/05/13/tunisia-drop-or-amend-security-bill) accessed on: 8/12/15

Transparency International's official National Chapter in Formation in Tunisia, I WATCH, has a number of reservations about the law in addition to the aforementioned concerns. The central reservation was that the government drafted the law without consulting local experts or civil society.<sup>6</sup> Pressure was placed on the drafting process through an international effort rather than a local one. Another stark reservation was that law was drafted in Lebanon, and not in Tunisia. In addition, during the open day the draft was not handed to the media and was not publicly distributed. The draft was only available for disbursement through the staff of the OECD in Tunisia.

## THE RISKS WHISTLEBLOWERS FACE

Through its platform [www.billkamcha.tn](http://www.billkamcha.tn) and through the annual event The Whistle-blower of The Year Award, I WATCH met with a number of Tunisian whistle-blowers. Most of them are subjected to intimidation, threats and credible risk to their physical safety. The worrying case of Anis Azizi is an example of the possible threats to whistle-blowers in the country. Mr Azizi shared information on his Facebook page detailing corruption in his job within the Tunisian administration and finally expressed concern for his safety.<sup>7</sup> He was murdered two weeks later in front of his house. Even though the official response of the Attorney General is that the murderer had 'mental issues', no investigation was opened around Mr Azizi's whistleblowing or death.

The lack of awareness about the importance of blowing the whistle among citizens is another challenge. In fact, even though the government claims that they are committed to fighting corruption and protecting whistle-blowers, no effort has been made in order to encourage people to stand up and speak up against corruption. Incidents such as the arrest and detention of police officer Samir Feriani, who blew the whistle on those responsible for the killing of protesters during the Tunisian revolution in 2011, actively discourage people from reporting.<sup>8</sup>

Tunisians are deeply concerned, but some citizens share their information with organizations like I WATCH because with the lack of a governmental will. There is also increasing pressure on the media in Tunisia exacerbated by the recent anti-terrorism law that gives security services the power to crack down on press freedoms<sup>9</sup>. This further diminishes the space for public debate and transparency.

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<sup>6</sup> Samti, Farah, 'In Tunisia, a New Reconciliation Law Stokes Protest and Conflict Instead', 15/9/15, Foreign Policy

<sup>7</sup> 'Arrestation d'un suspect dans l'assassinat d'Anis Azizi à Ben Arous', 31/5/14, [www.mosaiquefm.net](http://www.mosaiquefm.net), found online at: [www.mosaiquefm.net/fr/index/a/ActuDetail/Element/37972-arrestation-d-un-suspect-dans-l-assassinat-d-anis-azizi-a-ben-arous](http://www.mosaiquefm.net/fr/index/a/ActuDetail/Element/37972-arrestation-d-un-suspect-dans-l-assassinat-d-anis-azizi-a-ben-arous) last access on: 16/02/16

<sup>8</sup> Human Rights Watch, 'Tunisia: Free Would-Be Whistle-Blower

<sup>9</sup> International Media Support, 'Tunisian media: Between a rock and a hard place', 13/8/15, found online at: [www.mediasupport.org/tunisian-media-rock-hard-place/](http://www.mediasupport.org/tunisian-media-rock-hard-place/) accessed on: 8/12/15

## CURRENT LEGAL CONTEXT

The Tunisian government ratified the UNCAC in September 2008, but the country's legal framework still does not fully comply with the articles of the Convention. In fact, one of the legal gaps that was highlighted in the self-assessment was related to whistle-blowing and the state of whistle-blowers in Tunisia.<sup>10</sup> Even though Tunisia went through several transitional periods promoting democratic governance since 2011, the country still does not have a law that protects whistle-blowers. However, there are provisions scattered in different legal texts, which establish some of the necessary measures for these persons' protection. For instance, the Anti-Terrorism and Prevention of Money-Laundering legislation of 2003 provides for protection concerning reports on these offences.<sup>11</sup>

Other legislation that include whistle-blower protection provisions is the Framework decree No. 120, of 14 November 2011, concerning fighting corruption, states in article 11 that: "the state guarantees in its policy to fight corruption the encouragement of declaring on corruption by spreading the social awareness of its danger and reducing the legal and practical obstacles that prevents its discovering and by establishing measures to protect victims, witnesses and whistle-blowers."<sup>12</sup> However this article does not state the legal mechanisms needed to implement the law. Without expressly detailing the mechanisms that organise the range and procedures of this protection, it will be inefficient.

Moreover, Article 29 of the Code of Criminal Procedures obliges "all the authorities and public servants to inform the Public Prosecutor about the crimes they learn about while performing their official duties."<sup>13</sup> It also obliges them to hand over all the notes and documents concerning said crimes. However, the article did not state a punishment for not reporting crimes. In 2015, the Tunisian government, under international pressure proposed a bill to afford greater protection of whistle-blowers. The law states that an internal body will be created within the government to receive complaints, which put into question the transparency of the process and its efficiency. The law was shared with Tunisian civil society as well with international experts on whistle-blower protection. The consensus among civil society and experts was that the bill was insufficient and needs significant improvements to raise whistle-blower protection in Tunisia up to the standards of international practice.<sup>14</sup>

## DOES THE LAW PROVIDE FOR THE PHYSICAL SECURITY OF WHISTLEBLOWERS?

There is no single law that protects whistle-blowers. However, there are protection mechanisms scattered across different legal texts. Experts agree that the collection of texts still does not add up to adequate legal protection for whistle-blowers.

## IS THERE A PUNISHMENT FOR THE NON-REPORTING OF CRIMES?

There is no punishment for those who do not report crimes they witness.

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<sup>10</sup> Implementation Review Group of the United Nations, p.5

<sup>11</sup> Law no.2003-75

<sup>12</sup> I WATCH, A Review on Tunisia Compliance with the United Nations Convention Against Corruption, July 2014, p.24

<sup>13</sup> Ibid

<sup>14</sup> Human Rights Watch, 'Tunisia: Drop or Amend Security Bill'

## INSTITUTIONAL FRAMEWORK

There are several barriers that limit Tunisia's ability to combat corruption. They include the vague legislation already detailed, but also the lack of resources for investigators and prosecutors and the lack of education and support in the workplace for whistle-blowers.

A platform developed by the government is available at [www.anticorruption-idara.gov.tn/](http://www.anticorruption-idara.gov.tn/), but its impact will be negligible as long as whistle-blowers are not adequately protected by strong policies and a comprehensive legal framework.

Jurist Samir Annebi, stated that the National Anti-Corruption Agency investigated more than 1,000 cases of corruption, of which 500 were referred to the courts but only 50 were brought to trial.<sup>15</sup> During the same interview, Mr Annabi underlined the fact that the Agency lacks financial resources, which contributes adversely to its efforts.<sup>16</sup>

### **TUNISIA'S WHISTLEBLOWER OF THE YEAR AWARD:**

In 2012, I WATCH, launched an initiative called "the Whistle-blower of the Year Award". This initiative is organized on a yearly basis in which I WATCH pays tribute to whistle-blowers and raises awareness on whistleblowing in Tunisia. The winner is selected by public vote, and I WATCH publicizes the vote as a way to encourage whistle-blowers to speak out.<sup>17</sup> The Whistle-blower of the Year Award is also a way to advocate the authorities to institute laws protecting whistle-blowers in order to rebuild the trust between citizens and the government.

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<sup>15</sup> Samir Annabi: Sur 500 dossiers de corruption, 50 seulement devant la justice, 8/3/14, found online at [www.mosaiquefm.net/fr/index/a/ActuDetail/Element/34180-samir-annabi-sur-500-dossiers-de-corruption-50-seulement-devant-la-justice](http://www.mosaiquefm.net/fr/index/a/ActuDetail/Element/34180-samir-annabi-sur-500-dossiers-de-corruption-50-seulement-devant-la-justice), accessed on: 8/12/15

<sup>16</sup> Ibid

<sup>17</sup> Youtube commercial advertising the award: found online at: [www.youtube.com/watch?v=5jXBu0pF8wA](http://www.youtube.com/watch?v=5jXBu0pF8wA) accessed on: 8/12/15

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## CONCLUSIONS AND RECOMMENDATIONS

- Provide legal protection for citizens who report on corrupt practices and their families by establishing a legal framework and clear mechanisms to implement the framework
- Provide more financial aid to the National Anti-Corruption Commission to follow-up on investigations of corruption
- Advocate the importance of whistle-blowing. This effort should be made jointly by the Tunisian government and civil society in Tunisia.

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