

Coalition against the criminalization of poverty and minor crimes and NGOs partners

Joint contribution for the universal periodic review (UPR) of Tunisia

41st UPR working group session November 2022

Themes:

The right to life and the abolition of the death penalty in Tunisia

Against torture and places of detention

Against racial discrimination and minority rights

Children's rights

Decriminalizing minor misdemeanors and applying alternative penalties

Presentation of the coalition (C.C.C.D.D.M) and NGOs partner:

The coalition against the criminalization of poverty and minor offences, created in January 2021, is composed of fifteen civil society organizations active in Tunisia.

This coalition aims to carry out advocacy campaigns for the decriminalization of minor crimes (begging, vagrancy, financial crimes, etc....) and the application by Tunisian justice of alternative measures and penalties to detention and punishment of imprisonment.

The logos:



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**Joint submission for the universal and periodic
review of Tunisia 41st session of the universal periodic
and review working group**

**“The right to life and the abolition of the death penalty in
Tunisia”**

1) - Since Tunisia's independence in 1956, 135 persons have been executed, more than half of them in cases of a political nature, and they were buried in secret cemeteries without enabling their families to receive their bodies.

2) - The Tunisian state has committed itself since 1991 to suspension the implementation of the death penalty , and since 2012 has continued to vote in favor of the United Nations resolution calling for a global suspension on the implementation of the death penalty , and the 2014 constitution recognized in article 22 that “ the right to life is sacred and may not be violated except in extreme cases that are controlled by the law.

3)- Despite the suspension of the death penalty 31 years ago , the path towards abolition remains extremely fragile , as calls by some conservative and populist currents to activate the death penalty under the pretext of addressing the escalation of crime , and won after the 2019 elections, the support of the president of the republic .Civil and military courts also continue to issue death sentences on an exalting basis , under the pretext of addressing the aggravation of criminal or terrorist crime, as the total number of those sentenced to death reached the limits of 2021 ,about 136 including three women and two suffering from psychological and

mental disorders , and January 2022 alone witnessed 13 death sentences and in March 17 judgments.

4)- The twenty –seventh session of the universal periodic review in 2017 , witnessed the submission of 18 recommendations to Tunisia regarding the death penalty , of which only 4 were accepted , and only one of them was implemented , which is to maintain the optional suspension of the death penalty execution.

Recommendations:

1) - Allowing a public national dialogue to be opened on the abolition of the death penalty.

2)- Constitutionalizing and codifying the suspension of the execution of the death penalty that has continued for 31 years , by reviewing the penal code , the military judiciary code , and the Anti –terrorism law in the direction of abolishing the death penalty for all crimes without exception.

3) – Adoption of the draft additional protocol to the African charter on human and peoples’ rights on the abolition of the death penalty and ratification of the second optional protocol to the international covenant on civil and political rights.

4)- Establishing the right of access to information regarding the number of people sentenced to death on a regular basis due to the lack of the required transparency in official figures.

“Against torture and places of detention”

5)- Article 101 bis of the penal code defines torture as “ every act that results in severe pain or suffering , whether physical or mental , is intentionally inflicted on a person with the intention of obtaining information or a confession from him or from others, or punishing him for an act he has committed or is suspected of having committed “.

Article 23 of the Tunisian constitution of 2014 stipulates that “ the Tunisian state protects the dignity of the human person and the sanctity of the body and prohibits moral and material torture and the crime of torture does not fall within the statute of limitations”.

6)- Tunisia has ratified since 1988 to accede to the optional protocol to the convention against torture .

7)- Tunisia has adhered to the international covenant on civil and political rights since 1968, and in 2011 Tunisia ratified the annex to the international covenant on civil and political rights.

8)- Despite the constitution prohibition of torture and the establishment of the National authority for the prevention of torture , the practice of torture continued leading in many cases to suspicious death during arrest or detention. Impunity continues through the decrease in convictions related to cases of torture and ill-treatment , and the issuance of sentences that do not do justice to the victims.

Recommendations:

5)- Amending article 101 of the penal code related to the definition of torture to bring it into line with the international definition , especially with regard to racial discrimination and with regard to generalizing the status of the perpetrator to include a public official or any person acting in an official capacity.

6)- Allow civil society human rights organizations to make sudden and unannounced visits to prisons , centers and places of detention.

7)- Ensuring the administrative and financial independence of the high commission for human rights and fundamental freedoms and making it a structure with a binding and deciding authority

independent of the presidency of the republic.

8)- Establishing a special legal system that forces the harm of torture victims which is compatible with international standards .

9)- Creating specialized chambers within the courts in cases of torture.

10)- Allocating a budget for the promotion of human rights for the ministries and concerned bodies , and implementing training programs on human rights for judges , public officials , security agents and the armed forces.

11)- Cancellation of the ban on the lawyer's presence at the beginning researcher in relation to terrorist crimes by revising article 13 bis.

12)- Revise article 103 of penal code related to ill-treatment by making threats against children punishable by the same punishment as ill- treatment.

“Against racial discrimination and minority rights”

9) - Despite establishing racial non- discrimination as a basic principle of international law, Tunisia is witnessing the continuation

of racism and discrimination against minorities and related intolerance and other practices.

The above reality clearly demonstrates the necessity of looking for new ways to resolve these problems.

10) - Measures taken :

- Tunisia ratified the international convention on racial discrimination in 1967.

- Drafting law No 50 of 2018, relating to addressing and reprimanding practices of racial discrimination.

-Creation of a national committee to combat racial discrimination.

The Tunisian courts relied on law 50 and issued judicial judgments in the matter on three occasions.

11) - challenges:

But on the other hand, the preamble of the constitution and some of its provisions stipulate that Tunisia religion in islam and its language is Arabic .

Article 74 of the constitution states that the president of the republic must be of Tunisian origin.

It is certain that the above provisions do not recognize pluralism and diversity within society and represent a confiscation of the right to belief and freedom of conscience , as they affect the civil and political rights of segments of Tunisians in relation to their right to run for the presidency of the republic.

Order 13/4/2021 was issued regarding the establishment and composition of the National committee against racial discrimination , but this composition is not diverse and does not include civil society.

Recommendations:

12)- Allocate the necessary financial and human resources to address racial discrimination through awareness- raising , education and culture.

13)- Amending ordinance 13/4/2021 regarding the establishment of the racial discrimination committee regarding its composition so that it is independent , diversified and based on representation .

14)- Holding the Tunisian state responsible for reparation for victims of racial discrimination in the event that discrimination is issued by a state agency .

15)- Amend the constitution preamble and articles 1 and 71 of it , so that its provisions are compatible with Tunisia obligations regarding equality and non – discrimination .

16)- Adoption of positive discrimination for ethnic minorities in the field of employment and recruitment in the public sector.

17)- Take the necessary measures to protect the culture and beliefs of minorities.

18)- Implementation of additional measures aimed at eliminating discrimination and violence on the basis of sexual oriented and repealing article 230 of the penal code , which criminalizes homosexuality .

19)- Conducting an official census of minorities in Tunisia.

“Child rights”

13)- The Tunisian state has paid attention to the rights of the child and has singled it out with special laws . It has also ratified many international conventions , the most important of which are the convention on the rights of the child and the European council convention for the protection of children from wars and against sexual exploitation and abuse .

14)- However , it signed some conventions and did not ratify them (the African convention on the rights of the child and Paris protocol for the protection of children from wars)

15)- Within the 2014 constitution , the rights of the child are included in article 47 , and article 48 singles out people with disabilities ,in the chapter on rights and freedoms , the right to education , culture , sports , entertainment , water and the environment is also mentioned . It also stipulates the creation of a constitutional body concerned with the rights of future generations and the environment and a human rights body .

16)- The Tunisian legislator singled out the child in the child rights protection magazine , which created the two institutions : the Family judge and the child protection delegate.

17)- Law No 61 of 2016 was enacted to prevent and combat trafficking in persons , and the child victim was recognized .

18)- Law No 58 related to the elimination of violence against women and thus the protection of children was enacted .

-The Tunisian state has ratified the third optional protocol to the international convention on the rights of the child and the Lanzarote convention of the European council .

Challenges :

19)- Some judicial procedures are considered unfair to children , as there is haste , for example , with regard to preventive detention , and the judgment is issued against children and placing them in correctional centers instead to of handing over to the parents , and this violates the rights of every child to live among his family .

20)- On the other hand , children are heard without the presence of their parents and without the presence of a lawyer .

The lack of guaranteeing the child's physical and moral safety in places of deposition , and the lack psychological and social protection against the negative effects resulting from placement (the mandatory presence of a lawyer must be activated).

21)- The child protection representative foundation also complains of shortcomings , as it operates with an administrative time , and this a violation of the principle of continuity of the public facility.

22)- The lack of training for judges in the field of childhood , as trials are conducted according to the ordinary criminal procedure law , alternative penalties are not applied.

23)- Recourse to the mediation mechanism has declined , according to the statistics of the child protection delegate .

24)- Not recognizing the child victim.

25)- Non –formation of those involved in child hood , according to the child protection journal .

26)- The lack of a special phone (a free green number) to notify cases of violations against children .

27)- Canceling the participation of children in municipal councils from the new local communities magazine (retreat)

Education :

28)- The right to education and the quality of education has declined.

-The multiple indicator cluster survey showed that 60 percent of children from 7 to 14 years old do not do well in arithmetic , and 30 percent do not do well in reading while they continue their education.

29)- The absence of a national assessment , except for the baccalaureate exam, which led to the decline of the Tunisian state on the level of the global ranking.

30)- The growing phenomenon early school dropouts , as 100.000 students annually drop out , with the absence of mechanisms to surround children , which led to the spread of the phenomenon of street children , and 27 percent of children live below the poverty line , and the absence of mechanisms to shelter them makes them vulnerable to sexual abuse , economic exploitation and other risks.

31)- Infringement of the right to health : there is a regression in the vaccination system , and 30 % of children have not completed the vaccination calendar (at the end February 2022)

32)- The growing phenomenon of child labor :

The 2017 survey showed that 215,700 children between the ages of 5 and 14 are in a situation of economic exploitation despite the existence of the 2017 law that states that beggary is prohibited and

the employment of minors in homes is considered trafficking in persons.

Note that no court ruling was issued in this regard .

Recommendations:

- 20)- Consolidating the concept of the threatened child and protection mechanisms .**
- 21)- Establishment of the constitutional body for human rights.**
- 22)- Establishment of the commission for the rights of future generations and the environment.**
- 23)- Reviewing the texts of the child rights protection journal and deleting such as " foundling and delinquent child " .**
- 24)- Cancellation of legal provisions that deprive a child born out of wed lock of inheritance.**
- 25)- Establishment of a higher commission for the rights of the child.**

“Decriminalizing minor misdemeanors and applying alternative penalties”

33)- The Tunisian penal system includes many minor crimes , the occurrence of which does not have a severe impact on social peace and security .

As well as misdemeanors for which the punishment is imprisonment for a short period. Excessive criminalization leads to overcrowding in prisons, burdening the state and a high rate of recidivism.

34)- It should be noted that the Tunisian state seeks to implement treaties and charters related to alternative measures and penalties ,and this has been established in the constitution and some laws.

-The Tunisian legislator has approved alternatives to prison sentences for crimes that are often minor and have no effect on public security so that the novice delinquent avoids a sentence of deprivation of liberty.

35)- Many of the accused have benefited from alternative sentences before the Tunisian courts , whether when the verdict was pronounced or during the execution of the sentence as part of the conditional release .

Challenges:

36)- Despite the importance of alternative penalties , their application remained limited and without hope , given some difficulties , particularly the failure to control the list of institutions eligible to operate for the public interest in coordination with the relevant ministries under their jurisdiction , in addition to the reservations expressed by some institutions regarding the acceptance of the principle of convicts employment and how to proceed working with it and due to the absence of coordination between the accompanying offices and the incubating institutions in terms of protection against work accidents and occupational diseases.

37)- The reality highlighted several other difficulties that prevent the application of alternative penalties , including the penalty of punitive compensation , the most important of them is the link between the application of the mentioned penalties and the discretionary authority of the judge , as the application of this penalty is not automatic but is subject to the judge's freedom , even if the conditions for its application , (purity of the criminal record , not seriousness of the crime ...) are met , as is the case with

the penalty of working for the benefit of the public interest . The judge may resort to other penalties such as sin or postponing the implementation of corporal punishment , as it is easier than alternative penalties at the level of procedures (especially at the level of execution) .

Recommendations :

26)- The Tunisian state must implement the alternative penalties to imprisonment established by the legislator , expand its scope and with draw it for violations and misdemeanors punishable by imprisonment for a maximum of 3 years.

27)- The Tunisian state should abolish imprisonment for offenses and minor misdemeanors that require a punishment depriving liberty for a short period.

28)- The Tunisian state should search for new alternatives to the prison sentence and establish the daily penalty for sin that has been approved by some comparative legislation.

29)- The Tunisian state must apply alternative penalties , even in the case of recidivism , taking into account the exceptions established by law for some crimes because of the danger they pose to society .

30)- The Tunisian state must give more flexibility to the conditions established by the legislator to provide aid to those convicted by deferring the execution of punishment and granting them conditional release and special pardon.

31)- The Tunisian state should expand the scope of the conciliation mechanism through mediation in crimes identified by the legislator to include , in addition to the tracking phase , the trial and execution phases , with the result that the public lawsuit ends , the trial is suspended , or the punishment is executed .

32)- The Tunisian state must automatically provide alternative penalties for the accused , as soon as the conditions stipulated in the law are met.

33)- T he Tunisian state must organize awareness sessions for public institutions in accepting prisoners to carry out work for the public interest.

34)- The Tunisian state should define the concept of minor misdemeanors and set an exclusive list.

Annexes :

List of signatory associations:

- **The organization against torture in Tunisia**
- **Tunisian coalition against the death penalty**
- **Tunisian league for the defense of human rights**
- **Lawyers without borders**
- **Washm association**
- **South citizen dancers**
- **Volenteers association**
- **Tunisian association of Amazigh culture**
- **Beity association**
- **Damj association Tunisian Association for Justice and Equality**
- **Free sight association**
- **Tunisian association for the defense of child rights**
- **Intersection association**

- **Anti-marginalization association**
- **Dissonances association**
- **Association Vigil for Democracy and the Civil State Yakdha**
- **Association forum of citizen and progressive thought Etajdid**
- **Euromed rights**
- **World organization against torture**