



# Universal Periodic Review: Tunisia

## Third cycle

### Submission to the summary of stakeholders' information

**Alkarama Foundation – 22 September 2016**

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1. The present contribution falls within the framework of the third cycle of the Universal Periodic Review (UPR) pertaining to the general human rights situation in Tunisia and takes into account the recommendations made in 2012.

## **1. General context and framework**

### **1.1 Constitutional and legal context and recent developments**

2. Tunisia has been experiencing a transition period since 2012. On 24 January 2014, a new Constitution guaranteeing civil and political rights was adopted. The first free legislative elections by direct universal suffrage were held respectively on October 26, 2013 and December 21, 2014.

3. In 2012, the country committed to implement a transitional justice process to address human rights violations committed under the previous regime. On 24 December 2013 the National Constituent Assembly (NCA) passed the Law on Establishing and Organizing Transitional Justice, which created the Truth and Dignity Commission (TDC) to shed light on serious human rights violations committed between 1955 and 2013.

4. However, this transitional justice process was not accompanied by a security sector reform, and the judiciary still suffers from the executive branch control. These shortcomings led to a return to past practices such as arbitrary detention, torture, and police violence, especially in the fight against terrorism.

### **1.2 The scope of international obligations**

5. On 29 June 2011, Tunisia ratified the International Convention for the Protection of All Persons from Enforced Disappearances (ICCPED) and the Optional Protocol to the Convention against Torture (OPCAT), as well as established a National Preventive Mechanism (NPM).

6. Tunisia also ratified the Rome Statute on 24 June 2011 and the Optional Protocol to the International Covenant on Civil and Political Rights on 29 June 2011.

### **1.3 Institutional framework, human rights infrastructures and general policy measures**

7. The NCA passed the organic law No 43/2013 establishing the National Authority for the Prevention of Torture (NAPT) on October 23, 2013 and elected its 16 members on 30 March 2016. Following their visit on 12 April and 14 April, the Subcommittee on Prevention of Torture (SPT) experts stressed that the NAPT was facing challenges "ranging from the real independence of its members to having the necessary financial resourced from the State to carry out its functions"<sup>1</sup>.

8. However, Alkarama notes that, according to Article 13 of Law No 43/2013, authorities may refuse to schedule or unannounce NPM visits "for urgent and compelling grounds of national defense, public safety, natural disaster or serious disorder".

Article 128 of the Constitution of 2014 established a new National Human Rights Institution (NHRI) whose members are elected by the parliament. The authorities announced that a draft law was being prepared to ensure its full compliance with the Paris Principles.

## **9. Recommendations :**

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<sup>1</sup> *Ensure torture prevention body well-resourced and independent, UN experts urge Tunisia*, 15 avril 2016, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19823&LangID=E> (accessed September 5, 2016).

- a) Guarantee the independence of the NAPT and the NHRI and allocate the necessary resources to this end ;
- b) Remove the restrictions contained in organic law No 43/2013 in order to give the NAPT full and uninterrupted access to all places of detention.

## **2. Cooperation with human rights mechanisms**

### **2.1 Cooperation with treaty bodies**

10. Despite the ratification of the ICCPED, Tunisia did not recognise the Committee's competence to examine individual complaints under article 31.

### **2.2 Cooperation with special procedures**

11. In 2012, Tunisia committed to continue to cooperate with special procedures<sup>2</sup>. Alkarama noted that this recommendation has been respected at a general level since the standing invitation to the special procedures was issued, on 28 February 2012. Thus, the Special Rapporteurs on the independence of judges and lawyers (SRIJL) and on torture (SRT) visited the country from 27 November 27 to 5 December 2015 and from 15 May to 22 May 2011. However, the latter was denied access to some detention facilities.

### **12. Recommendations :**

- a) Accede to the individual complaint mechanism established under article 31 of the ICCPED ;
- b) Make the recommendation issued by the SRT after his visit in April 2016 public.

## **3. Right to life, liberty and personal security**

### **3.1 The death penalty**

13. Tunisia has observed a *de facto* moratorium on death penalty since 1991; the Constitution of 2014 did not abolish it *de jure*. Moreover, the Anti-Terrorism law No 26/2016 imposes the death penalty on anyone convicted of a terrorist act resulting in death and several death sentences were issued since it passed. During the last UPR, the state agreed to commute death sentences to life in prison<sup>3</sup> while merely taking note of the recommendations regarding the definitive abolition of the death penalty<sup>4</sup>.

### **3.2 Procedural safeguards in detention**

14. During the last UPR, Tunisia agreed to reform its system of police custody by reducing its maximum duration to 48 hours, while allowing the presence of a lawyer and making the legal grounds and records of arrest available to the families and the defenses. This commitment was only partly honoured. On 2 February 2016, the draft law No 13/2013 amending the Criminal procedure code was adopted by the Assembly of the Representatives of the People (ARP). The law was enforced on 1 June 2016 and provides that police custody in ordinary criminal cases should not exceed 48 hours, renewable once for crimes. The person in custody is also entitled to have a lawyer present from the moment of arrest, for thirty minutes only. However, the 15-day period of custody remains unchanged in terrorism cases<sup>6</sup>.

<sup>2</sup> Recommendation 114.66 (Uruguay).

<sup>3</sup> Recommendation 114.46 (France).

<sup>4</sup> Recommendations 116.6 (Turkey, Germany, Italy), 116.7 (Portugal), 116.8 (France, Ireland, Norway, Uruguay), 116.9 (Hungary, Belgium), 116.11 (Spain)

<sup>5</sup> Recommendation 114.38 (Austria).

<sup>6</sup> See Section 6 of this report.

### 3.3 Enforced disappearances and secret detention

15. Tunisian law does not define enforced disappearance as an autonomous offence. However, this definition is essential in order to prosecute the perpetrators and ensure that violations are not repeated<sup>7</sup>.

16. Also, Alkarama documented cases of suspected terrorists secretly detained or held incommunicado for periods of up to 15 days, during which they were subjected to torture.

### 3.4 Torture and ill-treatment

17. Since the introduction of article 101 *bis* of the Criminal code, torture has been defined as a separate offence. This article was amended by decree-law No 2011/106 of 22 October 2011. However, it defined torture more narrowly than article 1 of the Convention does<sup>8</sup>.

18. Alkarama received credible testimonies that torture is once again practiced, in particular – but not only – in the context of the fight against terrorism. The aim is to either punish the victim or force them to sign confessions they are not allowed to read or challenge. Although article 155 of the CPC voids any confession obtained through torture, no court decision dismissing such means of evidence was reported, despite the many allegations made by defendants before courts.

19. Alkarama remains concerned about prison overcrowding. In early April 2016, the country accounted for 24,000 detainees - most of whom were placed in pre-trial detention - even though total capacity was 16,000<sup>9</sup>.

## 20. Recommendations

- a) Implement all the recommendations of the Committee on Enforced Disappearance, namely by defining enforced disappearance as a separate offence in domestic law;
- b) Implement all the recommendations of the Committee against Torture, namely by adopting a definition of torture in conformity with article 1 of the Convention and make sure that all complaints of torture lead to impartial and independent investigations;
- c) Put an end to prison overcrowding, namely by adopting alternative measures to pre-trial detention.

## 4. Administration of justice, including impunity, and the rule of law

### 4.1 General framework

21. Judicial independence remains a major challenge after decades of corruption and executive control on the judiciary. It must be set as a political priority in order to strengthen the rule of law. During the second UPR cycle, Tunisia accepted all the recommendations calling for a reform of the judicial system to ensure its independence and impartiality and the transparency of procedures<sup>10</sup>.

22. However, in November 2014 the SRIJL noted that close ties between the judiciary and the executive power remained at the expense of the latter's independence<sup>11</sup>. Through the individual cases

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<sup>7</sup> Committee on Enforced Disappearance, *Concluding observations on the reports submitted by Tunisia under article 29 (1) of the Convention*, 25 May 2016, CED/C/TUN/CO/1, para. 14.

<sup>8</sup> Committee against Torture, *Concluding observations on the third periodic report of Tunisia*, 10 June 2016, CAT/C/TUN/CO/3, paras 7-8.

<sup>9</sup> Leaders, *L'encombrement des prisons tunisiennes : 24000 détenus pour une capacité de 16000 lits*, 24 avril 2016, <http://www.leaders.com.tn/article/19647-l-encombrement-des-prisons-tunisiennes-24000-detenus-pour-une-capacite-de-16000-lits> (accessed September 2, 2016).

<sup>10</sup> Recommendations 114.26 (Mexico, Azerbaijan, Slovakia, United Arab Emirates, Peru, Turkey), 114.31 (United Kingdom, Belgium), 114.28 (Kyrgyzstan), 114.29 (Malaysia).

<sup>11</sup> Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Tunisia*, 26 May 2015, A/HRC/29/26/Add.3, para. 5.

submitted to UN procedures, Alkarama identified a lack of independence and impartiality of the judiciary, which is reflected in the lack of independent investigations and prosecutions when allegations of torture are made to public prosecutors by detainees presented before them.

## **4.2 Military justice system**

23. Alkarama is concerned about the extension of the jurisdiction of military courts to try civilians and former members of the armed forces prosecuted for international crimes, when they cannot guarantee the same level of independence and impartiality as ordinary courts.

24. In the so-called case of "Barraket Essahel" brought before the Tunis military court, acts of torture committed by the defendants were classified as "acts of violence", which is considered a minor crime. Therefore, the sentences imposed by the court were not commensurate with the gravity of the acts committed<sup>12</sup>.

25. During the trial, victims' lawyers Mr Najet Laabidi and Mr Abderaouf Ayadi were prosecuted before the military court for challenging its jurisdiction in the course of the trial.

## **4.3 Transitional justice**

26. During the last UPR cycle, Tunisia accepted several recommendations calling on the state to strengthen its transitional justice process, to ensure that those responsible for past violations do not benefit from impunity and to guarantee the non-repetition of the violations<sup>13</sup>.

27. Alkarama welcomes the effort of the TDC but remains concerned with the fact that cases are not being transferred to the relevant chambers within courts for prosecution, and that the material and human resources allocated to the institution are insufficient.

## **28. Recommendations :**

- a) Take the necessary steps to ensure judicial independence, namely by implementing all recommendations issued by the SRJL following his country visit ;
- b) Bring all perpetrators of serious human rights violations before ordinary courts, regardless of their status;
- c) Allocate the necessary funds and time to allow the TDV to carry out its mission and ensure the transfer of all cases to the relevant chambers for prosecution.

## **5. Freedom of expression, association and peaceful assembly and the right to participate in public and political life**

29. Following the revolution, several laws enshrining the rights to freedom of association, peaceful assembly, expression and press were adopted, including three decree-laws of 2011 on associations, political parties and the media<sup>14</sup>.

30. In 2012, Tunisia agreed to take measures to ensure protection and respect for the rights to information, freedom of expression and freedom of press<sup>15</sup>. Even though the Constitution of 2014 enshrines these rights<sup>16</sup>, the draft law on access to information initially scheduled for 2015 has yet to be adopted.

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<sup>12</sup> In 1991, nearly 244 soldiers were arrested and accused for preparing a coup. All of the suspects were severely tortured at the Directorate of State Security premises, eventually causing the death of at least three persons and irreversible damage to many others.

<sup>13</sup> Recommendations 114.39 (Republic of Korea), 114.40 (Togo), 114.41 (Chile), 114.42 (Belgium), 114.43 (Morocco).

<sup>14</sup> Decree-law No 2011-88 of 24 September 2011 on associations, decree-law No 2011-87 of 24 September 2011 on political parties, decree-law No 2011-115 of 2 November 2011 on the media.

<sup>15</sup> Recommendation 114.55 (Spain).

<sup>16</sup> Article 31 guarantees freedom of expression, article 32 guarantees access to information and article 127 creates the Audio-Visual Communication Commission.

## 5.1 State of emergency

31. On 24 November 2015, the state of emergency entered into force and was extended for the last time on 19 July 2016 for two months. The current state of emergency is regulated by a 1978 presidential decree that grants broader powers to the Minister of the Interior, including the power to restrict the right to free movement, suspend all strikes and demonstrations, forbid and disperse all gatherings seen as a threat to public order and order the house arrest of any person whose activities are considered to be a threat to public policy and security.

32. Alkarama notes that this measure inherited from the previous regime is used in a way that does not meet the necessity and proportionality criteria and is often invoked to justify repression and prohibition of any peaceful assembly<sup>17</sup>.

## 5.2 Infringement of freedom of opinion and expression

Alkarama has been documenting cases of journalists or bloggers facing reprisals for exercising their right to freedom of expression. In early 2015, blogger Yassine Ayari was sentenced by a military court for criticizing the army.

## 5.3 Freedom of association

33. After the revolution, the number of political parties and associations has increased<sup>18</sup>. However, associations remain vulnerable due to the lack of public funding and obstacles to registration imposed by the executive branch.

34. Meanwhile, requests for dissolution of associations have increased since 2014. On 22 July 2014, the government announced that notices of suspension had been sent to 157 charitable associations after soldiers were targeted by an attack<sup>19</sup>. Procedures are used in violation of decree-law No 2011-88 according to which only judges are the only competent authority to order the suspension or dissolution of an association<sup>20</sup>.

## 5.4 Disproportionate use of force against demonstrators

35. Since 2011, many demonstrations continue to be violently repressed with the use of excessive force by law enforcement authorities, such as the ones that took place on 27 and 28 November 2012 in Siliana. Clashes between demonstrators and agents of the Public Order Brigade (BOP) resulted in the injuries of 210 demonstrators wounded by shotgun pellets. Additionally, many demonstrators were hospitalised for severe eye damage. On 23 August 2015, two women were shot to death by security forces in Kasserine. None of these cases resulted in convictions.

36. Alkarama notes that the UN Basic Principles on the Use of Force and Firearms are not being complied with, which emphasises the urgent need for the adoption of a new legal framework applicable to law enforcement in compliance with international standards.

### 37. **Recommendations :**

- a) Ensure that the new media law complies with the relevant international standards;

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<sup>17</sup> Tunisia Live, *Tunisia Anti-Reconciliation Law Protest is Given Go-Ahead*, 12 September 2015, <http://www.tunisia-live.net/2015/09/12/tunisia-anti-reconciliation-law-protest-is-given-go-ahead/> (accessed September 7, 2016).

<sup>18</sup> Before the revolution, Tunisia accounted for 9'000 associations and only 9 political parties officially recognised by public authorities. Since decree-law No 2011/87 of 24 September 2011 was passed, 8'858 associations and 150 political parties have been created.

<sup>19</sup> "Errahma" and "al-Khayria" are among the associations threatened as they were suspended with an excuse of inquiry into their financing and donations received in 2014. On April 24, 2016 Secretary General of the Government suggested that the Government had started examining these two cases.

<sup>20</sup> Human Rights Watch, *Tunisia: Suspension of Associations Arbitrary*, 13 August 2014, <https://www.hrw.org/news/2014/08/13/tunisia-suspension-associations-arbitrary> (accessed September 7, 2016).

- b) Make sure that all measures restricting fundamental freedoms observe the principles of necessity and proportionality;
- c) Ensure that law enforcement officers respect the Basic Principles on the Use of Force and Firearms;
- d) Conduct an independent and impartial investigation on the use of excessive force by law enforcement officers.

## 6. Human rights and the fight against terrorism

38. Counterterrorism law No 26/2015 remains problematic with regards to Tunisia's international human rights obligations. It provides a vague and imprecise definition of terrorism<sup>21</sup>. Additionally, Article 30 incriminates "apology for terrorism" without providing a clear definition of the notion, which in practice, leads to criminalizing the exercise of freedom of opinion and expression, including statements that do not call to violence<sup>22</sup>.

39. According to that law, the period of custody may be automatically extended to up to five days renewable twice – which raises the maximum duration to fifteen days in total – on the authorization of the prosecutor and without appearance before a judicial officer. Although the Criminal Procedure Code ensures access to a lawyer in custody, this right may only be exercised after 48 hours of custody – limited to a 30-minute meeting.

### 40. Recommendations :

- a) Revise organic law No 26/2015 in order to clarify the definition of terrorism, as required by the relevant international standards;
- b) Ensure that persons arrested have equal access to the fundamental guarantees entrenched in the Constitution and the law, namely by reducing the period of police custody to 48 hours and allowing access to a lawyer from the moment of arrest.

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<sup>21</sup> UN Human Rights Council, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Scheinin: ten areas of best practices in countering terrorism*, 22 December 2010, A/HRC/16/5, paras 26-28.

<sup>22</sup> Amnesty International, *Tunisia: Letter to the Tunisian Parliament: Concerning draft organic law No 22/2015 relating to the fight against terrorism and prevention of money laundering*, <https://www.amnesty.org/en/documents/mde30/2035/2015/en/> (accessed September 7, 2016).