



# TUNISIA

## AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 27<sup>TH</sup> SESSION OF THE UPR WORKING GROUP, APRIL/MAY 2017

### FOLLOW-UP TO THE PREVIOUS REVIEW

Of the 125 recommendations made by other states to Tunisia during its second UPR in 2012, it accepted 110 and rejected 15 recommendations. The rejected recommendations related to abolition of the death penalty, decriminalization of same-sex sexual relations, and defamation and discrimination against women with regard to inheritance.<sup>1</sup>

Despite its public commitment to human rights and some positive steps taken since its last review, Tunisia has yet to implement important recommendations that it accepted. The new Constitution adopted in 2014 guarantees key human rights, including equality between men and women and freedom of expression.<sup>2</sup> However, it fails to uphold the right to religious freedom and belief, in line with a recommendation Tunisia accepted.<sup>3</sup> Although Tunisia accepted a recommendation to bring national legislation in line with its international obligations, reforms have been slow and laws that undermine human rights obligations remain in force.<sup>4</sup> Tunisia's support for recommendations to end torture and other ill-treatment and investigate allegations of torture has not been fulfilled in practice.<sup>5</sup>

Amnesty International regrets that Tunisia failed to support recommendations to abolish the death penalty. While there continues to be a moratorium on executions, Tunisia has introduced new laws that prescribe the death penalty for various offences.<sup>6</sup>

Amnesty International also regrets that Tunisia rejected recommendations regarding non-discrimination and equality between men and women.<sup>7</sup> Provisions discriminating against women remain in the Personal Status Code despite the fact that the principle of equality is enshrined in Tunisia's new Constitution.<sup>8</sup>

---

<sup>1</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Tunisia*, 9 July 2012, A/HRC/21/5; Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Tunisia* (addendum), 13 September 2012, A/HRC/21/5/Add.1.

<sup>2</sup> A/HRC/21/5, recommendations 114.3-114.5 (Switzerland, Botswana, the Netherlands, Germany).

<sup>3</sup> A/HRC/21/5, recommendation 114.71 (Canada).

<sup>4</sup> A/HRC/21/5, recommendation 114.62 (Finland).

<sup>5</sup> A/HRC/21/5, recommendations 114.46-114.50 (Greece, Republic of Korea, Botswana, Ireland) and 114.52 (Switzerland).

<sup>6</sup> Tunisia's Penal Code prescribes the death penalty for murder or other crimes that result in death, arson, rape, treason and espionage, amongst other crimes. The Military Code also provides for the death sentence for crimes such as desertion and disobedience. The new counter-terrorism law passed in 2015 provides for the death penalty for a defendant convicted of a terrorist act resulting in death and for rape.

<sup>7</sup> A/HRC/21/5, recommendations 116.1-116.4 (Austria, Poland, Belgium, Canada, Norway) and 116.12 (Honduras); A/HRC/21/5/Add.1.

<sup>8</sup> Under Article 23 of the Personal Status Code, husbands are still considered to be the head of the family and must provide for their wives and children as best they can, and both spouses "must fulfil their marital duties according to custom" and tradition. Women continue to also face discrimination in relation to child custody under Article 58 of the Personal Status Code and inheritance.

Amnesty International regrets Tunisia's failure to support a recommendation to repeal legal provisions criminalizing defamation which have been used frequently by the authorities to quash freedom of expression.<sup>9</sup> Laws criminalizing same-sex sexual relations also continue to be used to prosecute lesbian, gay, bisexual, transgender and intersex (LGBTI) persons on the basis of their sexual orientation or gender identity.

## THE NATIONAL HUMAN RIGHTS FRAMEWORK

### Constitution

In January 2014, the National Constituent Assembly adopted a new Constitution by a large majority.<sup>10</sup> The Constitution guarantees many key human rights, such as the right to non-discrimination; freedoms of expression, association, assembly and movement; rights to life, privacy, liberty and fair trial; and independence of the judiciary. It prohibits torture or any statute of limitations on prosecuting torture.<sup>11</sup> However, some articles, including one prohibiting "attacks on the sacred", could pose a threat to freedom of expression.<sup>12</sup>

The Constitution also fails to abolish the death penalty. While the authorities have commuted a number of death sentences to life imprisonment, they have also handed down new death sentences.

The Constitution provides for the creation of a constitutional court tasked with ensuring that national legislation complies with the Constitution and international treaties. However, the establishment of the court has been delayed.<sup>13</sup> As a result, key rights guaranteed in the Constitution continue to be undermined in provisions of the Penal Code.<sup>14</sup>

### Legislative framework and policy

Following a series of deadly attacks by individuals apparently affiliated with armed groups in various locations across Tunisia in 2015 and 2016, the Tunisian authorities have passed laws and imposed security measures, some of which breach their international human rights obligations.

In March 2015, the government presented Draft Law No. 25/2015 on repression of attacks against the armed forces to the parliament. The draft law is yet to be discussed by parliament; however, if enacted, it would put journalists, human rights defenders and others who criticize the security forces or the army at risk of criminal prosecution and would grant the

---

<sup>9</sup> A/HRC/21/5, recommendation 117.3 (Czech Republic).

<sup>10</sup> See Amnesty International, Tunisia: Let Constitution herald human rights era, MDE 30/003/2014, 31 January 2014, available at: <https://www.amnesty.org/en/documents/MDE30/003/2014/en/>

<sup>11</sup> Such as freedoms of expression and assembly, of association, and of movement; the right to citizenship; and the right to bodily integrity. It also guarantees freedom from arbitrary detention, rights to fair trial and to political asylum, and prohibits torture and the use of any statute of limitations to prevent prosecutions for torture.

<sup>12</sup> Article 6 of the Constitution which guarantees freedom of conscience and freedom of belief, but prohibits attacks on the sacred. During voting the plenary assembly introduced a prohibition of "attacks on the sacred," alongside provisions that prohibit making accusations of apostasy and inciting to violence or hatred. This vague additional prohibition raises concerns that lawmakers or courts could interpret it in a way that would allow them to punish criticism of religions and other beliefs and ideas, a vital component of the right to freedom of expression.

<sup>13</sup> The Constitution provides for the creation of a constitutional court, and Law 50 of 2015 on the constitutional court was passed on 3 December 2015. However, the court has not yet been established due to delays in the formation of the Supreme Judicial Council, which must appoint four of the twelve members of the court. A temporary six-member constitutional court was approved by the NCA in April 2014 until the formation of the official constitutional court.

<sup>14</sup> For example, articles 230 and 226 of the Penal Code continue to be used to prosecute lesbian, gay, bisexual, transgender and intersex (LGBTI) people on the basis of their sexual orientation and gender identity despite the fact that the right to a private life and freedom of expression, thought and opinion are enshrined in the constitution. For more information, see Amnesty International, *Tunisia: 'I am not a monster': state-entrenched discrimination and homophobia in Tunisia*, MDE 30/3903/2016, 17 May 2016, available at: <https://www.amnesty.org/en/documents/mde30/3903/2016/en/>.

security forces excessive powers to use lethal force to protect their property.<sup>15</sup>

A new counter-terrorism law adopted in July 2015, replacing a 2003 law used during the administration of former President Zine El Abidine Ben Ali to repress political opposition, further erodes basic human rights. It defines terrorism in vague and broad terms, gives security forces wide monitoring and surveillance powers, and extends the period during which security forces can hold terrorism suspects for interrogation from six to 15 days, which may increase the risk of torture and other ill-treatment. It also imposes the death penalty for rape and terrorist acts resulting in death, weakens fair trial guarantees by allowing courts to conduct closed trials and withhold the identity of witnesses, and criminalizes expression deemed to "praise terrorism".<sup>16</sup>

Tunisia became the first country in the Middle East and North Africa region to lift all reservations to the Convention on the Elimination of All Forms of Discrimination against Women, ratified in 1985. However, it maintains a general declaration that it will take no organizational or legislative action required by the Convention if this conflict with Tunisia's Constitution.<sup>17</sup>

Tunisia's national legislation does not provide full protection from discrimination and sexual and gender-based violence, including by state agents. In August 2014, in order to address these shortcomings and improve both protection and services for survivors of gender-based violence, the government began drafting a comprehensive law to combat violence against women and girls.<sup>18</sup> The draft law is currently being considered by parliament.

In a welcome move, in February 2016, the authorities amended the Code of Criminal Procedure to address ongoing concerns regarding torture and other ill-treatment.<sup>19</sup> The changes, which came into force in June 2016, provide for access to a lawyer and medical care in pre-charge detention and shorten the pre-charge detention period, among other improved fair trial guarantees. Yet these changes are weakened by provisions which allow incommunicado detention of "terrorism" suspects for up to 48 hours. In contrast, other detainees have the right to request a lawyer from the moment they are detained and to have the lawyer present during interrogations.

In 2013, the National Constituent Assembly adopted legislation to create a 16-member National Body for the Prevention of Torture, empowered to inspect detention facilities without prior consent, except in certain situations. However, three years later, it remains poorly functioning. Although its members were appointed in March 2016, there continues to be lack of clarity as to the exact function and financing of the National Body.

A new transitional justice law, passed in 2013, creates a Truth and Dignity Commission, mandated to address political, social and economic crimes and investigate human rights violations going back to July 1955. The Commission began to receive cases in May 2015.<sup>20</sup> In July 2015, President Essebsi announced a new draft law on special provisions for

---

<sup>15</sup> If passed, the bill would exonerate the security forces from criminal liability for their use of lethal force to repel attacks against their homes, objects and vehicles, when the force used was necessary and proportionate to the danger. This provision would mean that security forces would be permitted under the law to respond with lethal force to an attack on property that does not threaten their own or anyone else's life or risk serious injury. See Amnesty International, "Tunisia: Drop or amend security bill", MDE 30/1605/2015, 13 May 2015, available at: <https://www.amnesty.org/en/documents/mde30/1605/2015/en/>.

<sup>16</sup> See Amnesty International, "Tunisia: Counterterror law endangers rights, legislate safeguards against abuse", MDE 30/2195/2015, 31 July 2015, available at: <https://www.amnesty.org/en/documents/mde30/2195/2015/en/>.

<sup>17</sup> See the UN confirmation of receipt of Tunisia's notification available at: [treaties.un.org/doc/Publication/CN/2014/CN.220.2014-Eng.pdf](http://treaties.un.org/doc/Publication/CN/2014/CN.220.2014-Eng.pdf).

<sup>18</sup> An initial leaked version of the draft law contained proposals repealing provisions criminalizing same-sex relations. However, the Ministry of Women, Family Affairs and Childhood was asked to redraft the law and a revised version, which no longer proposes to decriminalize same-sex relations, was approved by the Council of Ministers and was submitted to parliament for consideration. The timeline for the adoption of the law is unknown.

<sup>19</sup> Law 5 of 2016, dated 16 February 2016, amending and completing some provisions in the code of criminal procedures. Available at: [http://www.iort.gov.tn/WD12oAWP/WD12oAwp.exe/CTX\\_11412-223-HPDrSaUIOY/RechercheJORT/SYN\\_C\\_370210484](http://www.iort.gov.tn/WD12oAWP/WD12oAwp.exe/CTX_11412-223-HPDrSaUIOY/RechercheJORT/SYN_C_370210484).

<sup>20</sup> Initially, the Commission's work was overshadowed by the resignation of some of its members, allegations of corruption against its head, lack of cooperation by the authorities, and media criticism. Law 53 of 2013 on establishing transitional justice and its

reconciliation in the economic and financial sectors.<sup>21</sup> If enacted, this law would hamper future investigations by the Truth and Dignity Commission, including by offering amnesty and immunity from further prosecution to officials and business executives accused of corruption and embezzlement under the administration of former President Ben Ali, if they return the stolen funds.<sup>22</sup>

## THE HUMAN RIGHTS SITUATION ON THE GROUND

### Abuse of emergency measures

The Tunisian authorities continue to use emergency laws in a repressive and disproportionate manner. The country has been in a state of emergency for prolonged periods since 2011, most recently since November 2015 after an attack in central Tunis that killed 12 members of the Presidential Guard. A 1978 Presidential Decree, which regulates the state of emergency, grants the executive broad powers to restrict freedom of movement, association and expression. Since November 2015, the security forces have conducted thousands of arrests and raids, including house searches without judicial warrants, and the courts have handed down harsh sentences to people accused of breaking the curfew.<sup>23</sup> The security forces have also placed hundreds of people under assigned residence orders and imposed travel restrictions, often in an arbitrary and discriminatory manner which interferes with the rights to movement, to private and family life and to employment.<sup>24</sup>

### Torture and other ill-treatment

The use of torture and other ill-treatment is prevalent in Tunisia, especially in pre-charge detention. The definition of torture in Tunisian law continues to be inconsistent with international standards and in some instances continues to be subject to a statute of limitation.<sup>25</sup>

Since 2011, Amnesty International has continued to receive reports of torture and other ill-treatment, and at least six suspicious deaths in custody.<sup>26</sup>

---

organization was adopted on 24 December 2013. It is available at: [http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX\\_11412-223-HPDrSaUIOY/RechercheTexte/SYNC\\_371482218](http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX_11412-223-HPDrSaUIOY/RechercheTexte/SYNC_371482218).

<sup>21</sup> A copy of the draft law 49 of 2015 on Reconciliation in the Economic and Financial Sectors can be found here: [http://arp.tn/site/projet/AR/fiche\\_proj.jsp?cp=90496](http://arp.tn/site/projet/AR/fiche_proj.jsp?cp=90496).

<sup>22</sup> The proposal sparked an angry response from civil society and protests across the country, several of which were dispersed by the security forces with excessive force.

<sup>23</sup> See Amnesty International, "Tunisia: Sweeping crackdown signals abuse of emergency measures", 2 December 2015, available at: <https://www.amnesty.org/en/latest/news/2015/12/tunisia-sweeping-crackdown-signals-abuse-of-emergency-measures/> and Amnesty International, "Tunisia: Arrests and prison sentences show disproportionate use of emergency laws", MDE 30/3459/2016, 17 February 2016, available at: <https://www.amnesty.org/en/documents/mde30/3459/2016/en/>.

<sup>24</sup> See Amnesty International, Tunisia: Severe restrictions on liberty and movement latest symptoms of repressive emergency law, 17 March 2016, available at: <https://www.amnesty.org/en/latest/news/2016/03/tunisia-severe-restrictions-on-liberty-and-movement-latest-symptoms-of-repressive-emergency-law/>.

<sup>25</sup> Despite amendments made to Tunisia's Penal Code in 2011, the definition of torture is inconsistent with the definition in article 1 of the UN Convention against Torture. The definition provided in the new Article 101bis is restrictive in comparison to that found in the Convention in that it lists two prohibited purposes, namely confession and racial discrimination. It no longer lists punishment as a prohibited purpose for torture ignoring the fact that torture is committed for reasons other than to extract information. The definition also restricts discrimination to racial discrimination not allowing for the fact that torture can be committed on the basis of other forms of discrimination. Article 5(4) of Decree 106 adopted in 2011 which introduced changes to the Code of Criminal Procedure contains a 15 year statute of limitation on torture. Since 2015, Amnesty International has documented several cases of torture and other ill-treatment of individuals detained on terrorism-related charges.

<sup>26</sup> The most commonly reported forms of torture and other ill-treatment in police stations and detention centres include beatings, threats of sexual assault of detainees or their family members, and the use of stress positions and sleep deprivation, most often to extract "confessions" or as punishment. See Amnesty International, Tunisia: Submission to the United Nations Committee against Torture, 57<sup>th</sup> session, 18 April-13 May 2016, MDE 30/3717/2016, available at: <https://www.amnesty.org/en/documents/mde30/3717/2016/en/>.

The security forces have also harassed and intimidated family members of individuals suspected of terrorist offences apparently in order to coerce them into providing information on the whereabouts of their relatives. Such harassment includes repeated home raids and searches without judicial warrant, arbitrary arrests, threats, intentional interference with people's jobs by harassing them or their employers, and restrictions on movement. Security officers also harass men and women based on their appearance, including by stopping them repeatedly in the street or removing them from public transport because they have beards or dress in a religious clothing. Others are harassed because of a previous conviction under repressive Ben Ali-era laws.<sup>27</sup>

### **Impunity for human rights violations**

Impunity for human rights violations by the police and the security services, including the National Guard, the judicial police and counter-terrorism units remain unchallenged. Investigations into allegations of torture and other ill-treatment by the security forces often fall far short of international standards and fail to deliver justice. Only a small number of cases has been brought against members of law enforcement agencies and of these few have been concluded.<sup>28</sup>

There is also a continued lack of accountability for crimes committed prior to the 2010-2011 uprising. The Truth and Dignity Commission has received over 47,000 complaints; however, it is not yet clear whether these will result in criminal prosecutions.<sup>29</sup>

### **Sexual and gender-based violence<sup>30</sup>**

Since the 2011 uprising, there have been allegations of sexual harassment and sexual violence by state agents.<sup>31</sup> Effective investigation and prosecution of gender-based violence occurs rarely and sexual violence, particularly by state agents, remains under-reported for fear of repercussions and stigmatization.

Legislation does not provide adequate protection against sexual and gender-based violence. The Penal Code provides for penalties when "non-consensual sexual relations" are committed "with violence", but does not define rape in terms of lack of consent. Marital rape is not explicitly recognized as a crime in national legislation.<sup>32</sup> Under Articles 227bis and 239

---

<sup>27</sup> See Amnesty International, *Tunisia: Submission to the United Nations Committee against Torture*, 57<sup>th</sup> session, 18 April-13 May 2016, p.18-19, MDE 30/3717/2016, available at: <https://www.amnesty.org/en/documents/mde30/3717/2016/en/>.

<sup>28</sup> Figures provided by the Tunisian government in Tunisia's updated periodic report to the UN Committee against Torture in 2014, show the small number of cases that has resulted in prosecutions. Out of 230 cases heard by courts between 1 January 2014 and 1 July 2014, six were dismissed for lack of evidence or legal grounds, three resulted in prison sentences and fines in absentia, two in suspended prison sentences and twenty cases were transferred to the Permanent Military Court in Tunis. The remaining 165 cases were still under investigation at the time the report was written. Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention, Third periodic reports of States parties due in 1997, Tunisia, Addendum, Addition al updated report, 13 October 2014. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTUN%2f3%2fAdd.1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTUN%2f3%2fAdd.1&Lang=en).

<sup>29</sup> See Amnesty International, *Tunisia: When Bones Speak: The struggle to bring Faysal Barakat's torturers to justice*, MDE 30/016/2013, 8 October 2013, available at: <https://www.amnesty.org/en/documents/mde30/016/2013/en/>.

<sup>30</sup> For more information see Amnesty International, *Tunisia: Assaulted and Accused: Sexual and gender-based violence in Tunisia*, MDE 30/2814/2015, 25 November 2015, available at: <https://www.amnesty.org/en/documents/mde30/2814/2015/en/>.

<sup>31</sup> Meriem Ben Mohamed accused two police officers of raping her in September 2012. She was accused of "indecent" because the police officers had found her in a car with her fiancé in the middle of the night. After a lengthy trial, the two police officers were convicted of rape and received 15 year prison sentences which they are now serving.

<sup>32</sup> The lack of explicit recognition of sexual violence within marriage as a crime violates the rights to equality and sexual autonomy of married women and girls. International standards require the effective prosecution of any acts of sexual violence, with no exemptions for perpetrators because of their marital status. In its General Comment No. 19, CEDAW stated that the definition of discrimination in article 1 of the CEDAW includes "gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately" and covers all women, "irrespective of their marital status". The CEDAW Committee recommends that States parties take appropriate and effective measures to address all forms of gender-based violence, whether by public or private act; ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity, and that effective complaints procedures and remedies, including compensation, should be provided.

of the Penal Code, rapists and abductors of young women and girls – under 20 in the case of rape and under 18 in the case of abductions – can escape prosecution by marrying their victim, provided she gives consent.<sup>33</sup>

The criminalization of consensual same-sex relations under Article 230 of the Penal Code makes LGBTI people vulnerable to violence and abuse by the police, who often exploit their fear of arrest and prosecution and subject them to blackmail, extortion and, at times, sexual abuse.<sup>34</sup> Transgender people face the risk of arrest and prosecution under Article 226 of the Penal Code which criminalizes “indecent” and acts deemed to be offensive to public morals. Scores of gay men and transgender women were arrested during the reporting period based on their sexual orientation and gender identity. Homophobic and transphobic crimes are not investigated.<sup>35</sup>

Similarly, the criminalization of sex work and adultery under Articles 231 and 236 of the Penal Code, which prescribe a maximum of two and five year prison terms, respectively, renders sex workers at high risk of abuse by the police and prevents them from denouncing violations and seeking judicial remedies.<sup>36</sup>

Forced medical examinations are imposed on survivors of sexual and gender-based violence and men accused of engaging in consensual same-sex sexual activity. When such tests are conducted involuntarily and involve penetration, they may amount to torture and other ill-treatment.<sup>37</sup>

### **Freedom of expression, association and assembly**

The authorities continue to curtail freedom of expression. Since Tunisia’s last review, the authorities have used articles in the Penal Code, which criminalize defamation of public figures and undermining public morals, to crack down on free speech, criticism and opposition.<sup>38</sup>

The authorities have also restricted freedom of expression and association on counter-terrorism grounds, including by suspending hundreds of organizations and several radio stations for allegedly promoting violence and having links to “terrorist groups”.<sup>39</sup> The authorities have also arrested and prosecuted people for criticizing the government based on

---

<sup>33</sup> Article 227bis of the Penal Code criminalizes the act of subjecting women and girls under the age of 20 to “non-consensual sexual intercourse” without the use of force, but does not expressly prohibit such acts against boys and men. Article 227bis imposes a six-year prison term for the rape of girls under 15 and five years’ imprisonment if the girl is older than 15 but younger than 20.

<sup>34</sup> Article 230 imposes a maximum three year prison sentence for “sodomy and lesbianism”.

<sup>35</sup> See Amnesty International, *Tunisia: Assaulted and Accused: Sexual and gender-based violence in Tunisia*, MDE 30/2814/2015, 25 November 2015, available at: <https://www.amnesty.org/en/documents/mde30/2814/2015/en/>.

<sup>36</sup> Sex workers working illegally are often raped or subjected to extortion by the police. Amnesty International research has shown that some sex workers are afraid to report this abuse for fear that they might be prosecuted or that family members will find out about their sex work.

<sup>37</sup> In order to establish proof of sexual or gender-based violence, survivors are required to obtain a forensic medical report from a public institution. When examining women, forensic doctors conduct ‘virginity tests’ and assess the types of physical wounds suffered. Men accused of engaging in consensual same-sex activity are routinely subjected to an anal examination by medical doctors. The test, which is usually ordered by a judge in an attempt to find “proof” of anal sex, involves penetration. Although detainees have a right to refuse the examination, activists say that most men are unaware of their rights and feel pressured to agree to the test or are compelled to do so through threats. There is no scientific basis for such examinations which violate the prohibition of torture and other ill-treatment when carried out involuntarily and involving penetration and forced anal exams, as is the case in Tunisia. Amnesty International believes that forced anal examinations contravene medical ethics enshrined in Geneva Declaration of the World Medical Association and the UN Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>38</sup> See Amnesty International, “Tunisia: Jailed for complaining of police harassment” MDE 30/001/2015, 6 January 2015, available at: <https://www.amnesty.org/en/documents/mde30/001/2015/en/>. See also Amnesty International, “Tunisia: Freedom of expression on trial”, MDE 30/010/2013, 3 July 2013, available at: <https://www.amnesty.org/en/documents/mde30/010/2013/en/>.

<sup>39</sup> The executive authorities took this action despite Decree Law no. 2011-88 of 2011, which states that organizations may only be suspended pursuant to a judicial decision. See Amnesty International report 2014/2015, *The state of world’s human rights*, Index: POL 10/001/2015.

allegations of complicity in, or praise of, terrorism, using the 2003 anti-terrorism law.<sup>40</sup>

Civilians have been tried by military courts on charges of “defaming the army” under the Code of Military Justice for peacefully criticizing the army or state officials.<sup>41</sup>

The state of emergency gives the government powers to suspend all strikes and demonstrations, ban and disperse all gatherings deemed to threaten public order, and control and censor print, broadcast and other media and publications. In some instances, the security forces have used excessive force to disperse and detain peaceful protesters who defy the ban.<sup>42</sup>

During the period under review, Amnesty International has documented cases of violence at the hands of security officers against protesters and media professionals covering protests as these were forcibly dispersed. Some journalists said they were punched or kicked by police officers or had their equipment broken.

## RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

**Amnesty International calls on the government of Tunisia to:**

*Normative and institutional framework:*

- Ensure national laws, including the Penal Code and the Code of Criminal Procedures, comply with the Constitution and Tunisia’s international human rights obligations;
- Abolish the death penalty;
- Amend Law 25 of 2015 on Counter-terrorism and Preventing Money Laundering to bring it into full compliance with relevant international human rights law and standards, as well as the recommendations of UN human rights bodies.<sup>43</sup>

*Abuse of emergency measures*

- Ensure that any derogations from Tunisia’s international obligations are exceptional and temporary and limited to what is strictly required by the exigencies of the situation and protect non-derogable rights such as the right to life, the prohibition of torture and other-ill-treatment and the principle of non-discrimination.

*Torture and other ill-treatment*

- Bring the definition of torture in Article 101bis of the Penal Code in line with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and remove any reference in national legislation to a statute of limitation for the crime of torture;

---

<sup>40</sup> The 2003 counter-terrorism law largely used by former President Ben Ali to repress opposition was replaced by a new law in 2015 which further eroded rights (see above). See Amnesty International, Tunisia: Teacher facing jail term for online comments: Abdelfattah Said, MDE 30/2677/2015, 19 October 2015, available at: <https://www.amnesty.org/en/documents/mde30/2677/2015/en/>.

<sup>41</sup> See Amnesty International, Tunisia: Blogger jailed by military court should be released, 5 January 2015, available at: <https://www.amnesty.org/en/latest/news/2015/01/tunisia-blogger-jailed-military-court-should-be-released/>; Amnesty International, Tunisia: Tunisian blogger faces military court for criticizing hospital staff, 28 May 2013, available at: <https://www.amnesty.org/en/latest/news/2013/05/tunisian-blogger-faces-military-court-for-criticizing-hospital-staff/>.

<sup>42</sup> In 2015 the Minister of the Interior at the time declared that even peaceful protests were contrary to the emergency law. For more information please see Amnesty International Annual Report 2016: Tunisia, available at: <https://www.amnesty.org/en/countries/middle-east-and-north-africa/tunisia/report-tunisia/>.

<sup>43</sup> Paras. 11-12, UN Committee against Torture, Concluding observations on the third periodic report of Tunisia, CAT/C/TUN/CO/3, 10 June 2016.

- Thoroughly investigate all allegations of torture and other ill-treatment, including rape and other sexual assault, prosecute and punish those responsible in line with international fair trial standards and without recourse to the death penalty, and provide redress and compensation to the victims;
- Ensure that law enforcement officers accused of torture and other ill-treatment are suspended from active service until the investigation is complete.

#### *Impunity for human rights violations*

- Ensure that those identified as responsible for human rights violations, including violations committed under former President Ben Ali, are brought to justice in fair trials, without recourse to the death penalty;
- Ensure full reparations for the victims of human rights violations committed under former President Ben Ali and protect all individuals who provide information for the investigations;
- Undertake an overhaul of the security apparatus and establish a vetting system for all members of the security forces to ensure that those reasonably suspected of serious human rights violations do not remain in - or are not placed in - positions where they could repeat such violations, and make public a clear structure of the security branches, including the chain of command.

#### *Freedom of expression, assembly and association*

- Ensure all allegations of excessive use of force by the security forces against peaceful protesters are investigated in a prompt, effective and independent manner;
- Amend or repeal laws that criminalize the peaceful exercise of the right to freedom of expression, including Articles 121(3), 128 and 226 in the Penal Code that criminalize attacks on sacred values, offences to public order or public morals and Article 98 of the Code of Military Justice;
- Ensure that any restrictions on the rights to freedom of expression, assembly and association, including under emergency measures, are strictly in line with international standards.

#### *Sexual and gender-based violence*

- Adopt a comprehensive law on violence against women and girls that includes the provision of protection orders and appropriate penalties, and compensation for the victims of such violence;
- Amend or repeal harmful laws, in particular:
  - Article 227 of the Penal Code to explicitly criminalize marital rape and redefine rape in line with international standards;
  - Articles 227bis and 239 of the Penal Code to stop rapists and abductors from escaping prosecution by marrying their teenage victims;
  - Articles 236 and 230 of the Penal Code to end criminalization of adultery and same-sex sexual relations;
- Immediately and unconditionally release anyone detained because of their actual or perceived sexual orientation or gender identity;
- End the use of forced anal examinations of LGBTI persons and "virginity" tests of survivors of sexual assault.