

THE CARTER CENTER



Submission to the United Nations Universal Periodic Review of Tunisia

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The Carter Center is a not-for-profit, nongovernmental organization that has helped to improve life for people in more than 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University to advance peace and health worldwide.

The Carter Center's Democracy Program works globally to promote democratic elections and governance consistent with human rights. The Center has monitored more than 100 elections in 38 countries since 1989, forging many of the techniques now common to the field. Recognizing that democratic transitions involve much more than elections, the Center also conducts long-term monitoring of political transitions and works to strengthen civil society organizations to support democratic governance. The Democratic Election Standards (DES) initiative aims to build consensus on standards for democratic elections, based on state obligations under public international law.

Introduction

During the second UPR Cycle, Tunisia accepted a number of recommendations focused on promoting equality between men and women; the abolition of the death penalty; ending the practice of torture; addressing prison crowding and the treatment of detainees; ensuring the protection of freedom of expression; and ensuring inclusive reform processes.

Tunisia has ratified a number of international treaties including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); The International Convention on the Elimination of All Forms of Racial Discrimination; and the Convention on the Rights of Persons with Disabilities. Overall, Tunisia has made significant advances in human rights since Jan. 14, 2011, among others through the adoption of several law-decrees in 2011 (No. 87 Freedom of establishment of political parties; N°. 88 Freedom of association; N°. 41 Free access to information; N°. 115 Freedom of the press; N°. 116 Legal framework for audiovisual media and creation of the audiovisual regulation authority).

However, there remain areas where improvement could be made. This report addresses the degree to which the recommendations of the last cycle have been implemented, and Tunisia's human rights obligations fulfilled.

The Carter Center in Tunisia: The Carter Center deployed international observation missions to assess the 2011 National Constituent Assembly elections, and the 2014 parliamentary and presidential polls. A summary of its findings can be found [here](#). In addition to its work surrounding Tunisia's electoral processes, the Center observed and reported on Tunisia's constitution-making process, issuing a series of statements and public reports from 2011 to 2014. Key findings can be found [here](#). This report is based on data collected by the Center between May 2012 to September 2016.

Findings and Recommendations for Consideration

Tunisia has emerged from a long period of dictatorship that trampled on human rights, overcoming significant challenges to strengthen the democratic governance of the country. The fulfillment of a national election cycle represents a successful end after a long and difficult period of transition. During that time, Tunisia adopted a new constitution that has granted many civil, political, social, economic and cultural rights to several categories of people, particularly women, and created mechanisms and institutions that promote their respect. Tunisia negotiated various political crises through dialogue, earning the concerned civil society organizations the Nobel Prize for Peace in 2015. Tunisia also adopted a new electoral law that allowed, for the first time in the history of the country, the democratic and transparent election of a Parliament and a President of the Republic in 2014. The Supreme Independent Authority for Elections (ISIE) made considerable efforts to improve its performance after each successful stage of the 2014 elections.

Furthermore, in an attempt to further consolidate democratic gains, Tunisia's parliament (ARP) issued the Law on the Supreme Judicial Council (SJC) paving the way for the creation of an institution that will ensure the independence of the justice system. Parliament also adopted the law organizing the Constitutional Court, the implementation of which is expected in late 2016. Despite the security challenges posed by terrorist acts on its soil, Tunisia perseveres towards the adoption of new laws on human rights. One of the most significant laws amends the Code

on Criminal Procedures, strengthening safeguards for suspects and narrowing the discretionary powers of the police to hold a person in custody. Tunisia also created the National Mechanism for the Prevention of Torture whose members were elected by the ARP. In addition, there has been progress on preventing human trafficking, and increasing access to information.

Recognizing the remarkable human rights gains made by Tunisia in the last several years, The Carter Center respectfully offers the following recommendations as the country embarks on the next phase of reform:

1. Lift the General Declaration on CEDAW and ratify other treaties that promote equality between men and women

Tunisia has long been regarded as the most progressive Arab country in terms of women's rights. The initial draft Constitution of 2012 by the National Constituent Assembly (NCA) however cited the "complementary roles" of both sexes within the family. Civil society activists reacted strongly to this language as it was perceived as a step backward from the principle of equality between men and women. Intensive lobbying resulted in the adoption of the January 2014 Constitution which improves the protection of women's rights and obligates Tunisia to seek to establish gender parity in elected assemblies.

The Tunisian government, upon ratification of the Convention on the Elimination of all Forms of Discrimination against women (CEDAW), expressed certain reservations that were annexed to Law N°. 85-68 of July 12, 1985 on the ratification of the CEDAW. These reservations focused on Article 9 (nationality), Article 15 (equality before law) and Article 16 (marital law) of the Convention. These reservations were removed by Decree-Law N° 2011-103 of October 24, 2011 after the Jan. 14 2011 revolution in Tunisia. However, in practice, the Troika government, Tunisian's first elected government following the revolution, did not send the notice of withdrawal to the United Nations (UN) Secretary-General. This resulted in the reservations not being lifted and depriving them of any legal effect. It was only with the advent of the technocratic government of 2013 on April 17, 2014 that the Secretary General of the UN was notified of the withdrawal for the lifting of the reservations to CEDAW and for them to take effect.

It should be noted however, that Tunisia maintains its general declaration on CEDAW, which states "in accordance with the requirements of this agreement, the Tunisian Government undertakes not to take any organizational or legislative decision which conflicts with Article I of the Tunisian Constitution." This position risks contradicting the lifting of the reservations. In its Communiqué of April 28, 2014, the Tunisian Association of Democratic Women said that the statement could be exploited to restrict women's rights as provided under the constitution.

The Protocol to the African Charter on Human Rights and Peoples relating to women's rights in Africa, signed by 51 of the 54 countries that make up the African Union (AU), entered into force on Nov. 25, 2005. Three member countries of AU have still not signed, including Tunisia.

Tunisia should ratify international conventions on women's rights, including the Protocol to the African Charter on human rights and women's rights treaty peoples in Africa (Maputo) and the ILO Convention concerning Decent Work for Domestic Workers (No. 189).

2. Develop a framework law to prevent and punish violence against women.

Tunisia's Code of Personal Status dates back to 1956. It grants women substantially greater rights within the family than other countries in the region. After Jan. 14, 2011, the Ennahda political party, which lead the government, attempted to revise the Code of Personal Status, ostensibly to conform Islamist principles. Their attempts were not successful. However, the Code of Personal Status contains discriminatory provisions related to unequal inheritance between men and women. Tunisian women have called for equality in inheritance to be enshrined in law. A bill filed by members of Assembly of the Representatives of the People (ARP) in June 2016 for the recognition of this principle has not yet garnered the support across the political spectrum.

Women and girls continue to be pressured and subjected to violence from their families to force them to submit to the dogmas that organize their lives. Thus, the 'burqa' is very often imposed on several women and girls, sometimes girls as young as 4 or 5 years of age, attending Koranic kindergartens. The bill filed by some members of the ARP to ban the 'burqa' was met with strong opposition and has not advanced.

3. Repeal national legislation and abolish the death penalty.

The 2014 Constitution retained the death penalty. NGOs that had hoped that anti-terrorism legislation passed in 2015 would also be more respectful of the right to life, and expressed disappointment and criticism at the final legislation passed. The death penalty, missing in the 2003 anti-terrorism text adopted during Tunisia's dictatorship, was introduced in a law on 'the fight against terrorism and money laundering,' adopted last year. Capital punishment exists in the penal code, however Tunisia has observed a moratorium on executions since 1991.

4. Promote the optimal functioning of the National Authority for the Fight against Torture and Inhumane Treatment, and the improve the training of officers of the judicial police and prison services aimed at altering their behavior in relation to the accused or prisoners

Article 23 of the Constitution commits the State to 'protect the dignity of the human being and their physical integrity and prohibits moral or physical torture. It considers torture as a crime that is not subject to the statute of limitations.' Several incidents of torture or other ill-treatment were reported and verified between 2012 and 2016, among them some cases of death by torture.

In May 2014, the Special Rapporteur of the United Nations on torture found that prosecutors and Tunisian judges took 'very few measures' to deal with the accusations of torture, committed during the Ben Ali regime and since the Revolution of 2011.

In 2011, Tunisia acceded to the Optional Protocol of the United Nations Convention against Torture. The Protocol requires state parties to establish a national preventative mechanism against torture and other cruel, inhumane or degrading treatments in the form of a national Authority. The legal framework of the National Authority for the Prevention against Torture was adopted by an organic law in October 2013. Elections of the board of the National Authority for the Prevention against Torture and that of its chairman were held in March 2016, however, the Authority has not started working normally for lack of material and logistical resources.

5. Fulfill obligations to end discrimination on the basis of race

The persistence of discrimination against the black population of Tunisia, be they native Tunisians or immigrants from sub-Saharan Africa, is a significant challenge to the development of a cohesive and just society. Discrimination in the workplace, government institutions, and housing market has the potential to alienate racial minorities from society, and prevent them from freely exercising their constitutionally guaranteed rights.

Given this context, we note the existence of a legal vacuum in terms of domestic legislation on the fight against racism. The 2014 Constitution has no provision prohibiting racial discrimination. Also there is no law criminalizing such behavior.

A group of deputies of the ARP decided to present a bill on the fight against racial discrimination. This bill was prepared by civil society organizations in Tunisia and aims to fill a constitutional and legislative gap. It aims to provide a legal framework to protect, in accordance with international conventions, persons discriminated against, and criminalize all discriminatory practices based on race, religion, nationality and color of skin. This project would be an instrument to fight against the problem of discrimination and injustice in Tunisian society. But adopting a legal text is not enough to change realities. An effort must be made to change attitudes.

6. Implement a prison-overcrowding-reduction-plan, renovate prisons and improve the training of prison officers

During the presentation of Tunisia's periodic report on 'measures taken to implement the United Nations Convention against Torture and other cruel, inhumane and degrading treatment' by the Tunisian delegation to the International Committee against Torture, several shortcomings in public policies to fight against torture and inhumane treatment were noted. The Committee's rapporteurs expressed their concerns over the state of disrepair and lack of maintenance of several Tunisian prisons. They especially emphasized their overpopulation. Indeed, statistics show that Tunisian prisons suffer, on average, of a 150 percent overcrowding; each prisoner has an average of two square meters, while international standards require a minimum of four square meters. Overcrowding is a catalyst of disease and violence; it promotes the recruitment of prisoners by organized crime and terrorists.

7. Promote freedom of expression

Gaining the right to freedom of expression is undoubtedly the main achievement of the Tunisian Revolution. However, cases of curtailment of free expression have been reported in the intervening years.

In September 2012, a prosecutor indicted two visual artists for works deemed harmful to public order and morality. On March 28, 2012, in the first instance, a court in the town of Mahdia sentenced two surfers to seven and a half years in prison for online writings perceived as offensive to Islam. This sentence was upheld on appeal. On May 3, 2012, Nabil Karoui, the director-general of the TV channel Nessma TV, was sentenced to a fine of TND2300 (USD \$1490.00) for broadcasting the animated film "Persepolis," which was denounced as blasphemous by some Islamists who attempted to assault him at his home.

The authorities decided in May 2013, after some delay, to implement Decree Law 116 of the broadcast media promulgated in November 2011. The application of the text resulted in the establishment of the Independent High Authority for audiovisual communication (HAICA) for regulating the audiovisual media sector. However, the executive power continued to designate

managers of public radio and television stations unilaterally in contravention of international standards on freedom of expression governing the independence of public service media.

In 2013, judicial authorities pursued a number of journalists, bloggers, artists and intellectuals for the abusive exercise of freedom of expression on the grounds of the provisions of the penal code criminalizing ‘defamation,’ ‘attacks against representatives of the State’ and ‘disturbing public order,’ offenses that can be punished by imprisonment.

The acts of violence committed against journalists have increased notably in 2012 and 2013. A report of the journalists' union shows that violence was committed by the police, supporters of the government majority, supporters of the opposition and even by groups of people fomenting social protest.

Specifically, The Carter Center recommends that Tunisia implement the legal framework of the constitutional authority regulating the audiovisual media sector (election by ARP), and introduce legal measures to sanction violence committed against journalists.

8. Ensure inclusive electoral processes

Following its election observation missions in 2011 and 2014, the Carter Center found that elections largely conformed to international standards of democratic elections. Dramatic improvements from previous elections saw that systems of voter registration, balloting, and tabulation ensured a democratic result to the election process.

Despite these advancements and protection for voting rights in the 2014 constitution, there remain several issues that tarnish their exercise. These include:

- The disenfranchisement of the military and internal security forces which is inconsistent with Articles 21 and 34 of the Constitution in 2014;
- The absence of measures to facilitate voting by certain vulnerable groups of voters or potential voters, especially those hospitalized or in custody; and
- The lack of facilities that allow persons with disabilities to exercise their franchise independently and in secret - Currently, visually impaired individuals have to rely on a guide who could, in addition, fail to respect the choice of the voter without the former's knowledge.

The Carter Center, therefore recommends that Tunisia recognize the right to vote for the military and internal security forces in the constitution and national enabling legislation; encourage measures that grant access to the exercise of voting rights of vulnerable categories of voters or potential voters, especially those hospitalized or in custody; and assure the exercise of the right to vote in secret to people with disabilities.