

THE
CARTER CENTER



**NGO Submission to the
Universal Periodic Review on
*Tunisia***

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Cycle
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Reporting Organization

1. The Carter Center is a not-for-profit, nongovernmental organization founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University. The Center 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.

2. The Carter Center's Democracy Program works globally to promote democratic elections and governance consistent with human rights. The Center has monitored over 113 elections in 39 countries since 1989, forging many of the techniques now common to the field. Recognizing that democratic transitions involve much more than elections, The Carter Center also conducts long-term monitoring of political transitions and works to strengthen civil society organizations to support democratic governance. The Democracy Program's Democratic Election Standards (DES) project aims to build consensus on standards for democratic elections, based on state obligations under public international law. The Center has developed practical tools, including the Election Obligations and Standards Database, which make available common criteria for assessing elections. The database consolidates more than 150 sources of international law related to human rights and elections.

The Carter Center in Tunisia

3. The Carter Center deployed international observation missions to assess the 2011 National Constituent Assembly elections, and the 2014 and 2019 parliamentary and presidential polls. A summary of its findings can be found [here](#).¹ 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](#).²

Introduction

4. Since the last UPR on Tunisia in May 2017, the Carter Center observed the 2019 general elections and in its final report assessed all three polls as orderly and peaceful, with only minor irregularities. The High Independent Authority for the Elections (known by its French acronym, the ISIE) carried out a successful voter registration drive that added 1,455,898 new voters. Candidate registration was conducted in a professional and efficient manner by the election administration. However, the 2019 elections suffered from a general lack of transparency on the part of electoral authorities and other institutions. In addition, the electoral process was marred by last-minute attempts to restrict the right to stand in the presidential race and the detention of one of the candidates on charges that had been pending since 2016, raising questions of political interference in the judicial system.

5. Tunisia has made little progress in meeting recommendations from the third cycle of the UPR. The limited advances include adopting a domestic violence law in June 2017 and enfranchising the military and internal security forces for municipal elections, although a ban on their voting in

¹ https://www.cartercenter.org/news/publications/election_reports.html#tunisia

² https://www.cartercenter.org/news/publications/election_reports.html#tunisia

national elections remains. There has been no progress in meeting other recommendations to bring Tunisia into greater alignment with its international human rights obligations, including lifting the general declaration on CEDAW which states that the country “shall not take any organizational or legislative decision in conformity with the requirement of this Convention where such a decision would conflict with the provisions of Chapter 1 of the Tunisian Constitution.” Chapter one states that the religion of the country is Islam, thereby allowing the country to use its own constitution as an excuse for not meeting its international human rights obligations; abolishing the death penalty, although the state maintains its moratorium on imposition of the death penalty, it continues to sentence people to death, most recently sentencing nine people to death in January 2022; repealing Article 230 of the penal code which criminalizes homosexuality; enacting the enabling legislation for the establishment and safeguarding of constitutionally mandated independent bodies including the ISIE and the HAICA; establishing the constitutional court; and harmonizing the legal framework on human rights protection in line with the 2014 Constitution.

6. Any further advancement on recommendations has been halted since July 25, 2021, when President Kaïs Saïed invoked article 80 of the 2014 Constitution to dismiss then-head of government, Hichem Mechichi, and suspend parliament. While the president initially stated that the suspension would be for 30 days, he has extended the deadline and taken further actions to consolidate his authority over all branches of government.

7. In August 2021, the president closed the offices and suspended the work of the constitutionally-mandated Anti-corruption Commission. On Sept. 22, 2021, he issued Presidential Decree 2021-117, which suspends most of Tunisia’s constitution, grants the president the exclusive right to enact laws by decree, dissolves a temporary body to vet the constitutionality of laws and bars anyone from overturning decree-laws via Tunisia’s Administrative Tribunal. On Feb. 12, 2022, he weakened judicial independence by issuing a decree dissolving Tunisia’s top independent judicial body, the High Judicial Council – set up in 2011 to shield judges from government influence – and granted himself broad powers to intervene in the functioning of the judiciary.

8. The president’s initial invocation of article 80 was deemed legally dubious by Tunisian legal experts and was labeled a constitutional coup by many stakeholders. However, the failure of Tunisia to implement the recommendation from the third UPR review to swiftly create the constitutional court (See UPR third cycle recommendations 125.11, 125.17, 125.18, 125.21) means that no institution exist to review the actions of the president as required by the constitution, specifically the provisions of article 80. This has given the president unlimited authority to issue decree laws and to take any action he deems appropriate with no checks from the legislative or judicial branches of government.

9. The invocation of article 80 and subsequent statements by the president to suppress and intimidate those who oppose his actions have resulted in Tunisia taking a step back in the implementation of human rights as guaranteed in the 2014 Constitution. These include:

a. *Freedom of Opinion and Expression*: The increased use of military courts to try civilians, including members of parliament, for crimes based on Ben Ali era laws that were never

repealed even though they clearly violate the constitutional guarantee of freedom of expression and Article 19 of the ICCPR, which states, “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. The provisions in the penal code are being used to criminalize free speech by making it a crime to insult the president, the military or express an opinion against the actions of the government under Articles 67, 72, 125 and 128 of the penal code and Article 91 of the Military Justice Code. (See UPR third cycle recommendations 125.14, 125.16, 125.17, 125.21, 125.22, 125.23). The lack of a constitutional court with a mandate to review presidential actions and decrees and to repeal laws that are found unconstitutional, deprives Tunisians of a key safeguard against criminal prosecutions on charges that violate their human rights. Repressive laws, including those criminalizing criticism of state institutions, have remained in force despite the 2014 Tunisian Constitution’s protection of freedom of speech. There is no functioning higher court that is empowered to order the repeal of these laws.

b. *Right to Liberty and Security of Persons*: The use of the state of emergency that has repeatedly been extended since 2015 to impose preventive detention on individuals without revealing their place of detention or the charges they are being detained under. The lack of a constitutional court prevents detainees from challenging their detention or asking for a review of the constitutionality of the state of emergency.

c. The above referenced suspension of the work of the Anti-corruption Commission and dismissal and replacement of the High Judicial Council. (See UPR third cycle recommendations 125.11, 125.12, 125.18)

d. *Right to Assembly and Association*: The excessive use of force by security forces to break up public demonstrations organized by those opposed to the president’s actions including demonstrations on **Oct. 10, 2021**, when the demonstrators attempted to access Habib Bourguiba Avenue. <https://www.tap.info.tn/en/Portal-Politics/14464256-clashes-between>; on **Nov. 14, 2021**, at a demonstration in front of the parliament building organized by “Citizens against Coup”. <https://www.tap.info.tn/en/Portal-Politics/14580447-large-crowd-of>; and on **Jan. 14, 2022**, where the police used force/water cannons to disperse the crowds. <https://www.tap.info.tn/en/Portal-Politics/14775583-police-reports>. On Sat. March 19, the Tunis Governor Kamel Feki announced that all protests staged by political parties at the Habib Bourguiba Avenue in downtown Tunis will be banned. The avenue will now be dedicated to only cultural events, shows and tourist festivities. Since 2011, the Habib Bourguiba Avenue, especially the area around the municipal theatre, has been the venue for protests staged by political parties and movements, trade union organizations and various other social groups.

e. *Freedom of Association*: Draft amendments to Decree law 88 regulating CSOs which, if adopted, would reverse many of the gains made since the 2011 revolution in allowing the freedom of association, have been circulated to government institutions for comment. The amendments would give government authorities overly broad powers and discretion to interfere with the formation of civil society organizations, their functions and operations, funding, and ability to speak publicly about their work and to express their views. In addition, the president

has used increasingly harsh and intimidating language when referring to CSO activities including threatening to ban all foreign funding for CSOs in a speech on February 24, 2022 in which he also accused CSOs of serving foreign interests and trying to meddle in Tunisian politics.

Recommendations

10. The Carter Center recommends that Tunisia:

- Immediately reinstate parliament and cancel the invocation of Article 80 so that the process of implementing the recommendations from the third UPR cycle can continue on a solid legal foundation.
- Move quickly to nominate members to the Constitutional Court.
- Amend the electoral law to allow for voting by security forces in national elections.
- Lift the general declaration on CEDAW.
- Abolish the death penalty and commute all existing death sentences to life in prison.
- Repeal Article 430 of the penal code which criminalizes homosexuality.
- Enact the enabling legislation for the safeguarding and permanent establishment of constitutionally mandated independent institutions.
- Prioritize the harmonization of the legal framework on human rights protections in line with the 2014 Constitution including repealing Ben Ali era laws that restrict freedom of speech.
- Reinstate the Anti-corruption Commission and High Judicial Council.
- Immediately stop the use of military courts to try civilians.
- Review the constitutionality of the state of emergency that has been in place since 2015 and stop the practice of preventive detentions based on the state of emergency without due process of law.
- Investigate and prosecute all excessive uses of force by security forces against civilians exercising their right to peacefully assemble and demonstrate against actions of the government.
- Reverse the total ban on the use of Habib Bourguiba Avenue for political demonstrations.
- Do not promulgate the current draft amendments to decree law 88, the CSO law, and conduct an inclusive consultation with CSOs and other stakeholders before introducing changes to this law to ensure that freedom of association is protected.