

TREATY BODY MONITOR

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Human Rights Monitor Series

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Information submitted to the Committee

State party report

Tunisia's fifth periodic report to the Human Rights Committee (the Committee) was submitted on 14 December 2006, eight years late.¹ Tunisia acceded to the International Covenant on Civil and Political Rights (the Covenant) on 29 November 1968² and submitted its fourth periodic report in 1994.³

¹ The State's fifth periodic report was due in February 1998. The report (CCPR/C/TUN/5) is available at <http://www2.ohchr.org/english/bodies/hrc/hrcs92.htm>

² Tunisia became party to the *International Covenant of Civil and Political Rights* as well as the *International Covenant on Economic, Social, and Cultural Rights* pursuant to Act No. 68-30 of this date.

Tunisia's report details the constitutional and legislative reforms enacted since the submission of its last report which are designed to strengthen the implementation of the Covenant and consolidate civil and political rights. Particular attention is given to addressing the Committee's concluding comments from 1994. It underscores the State party's commitment to a progressive and reformist approach to pluralistic and participatory social democracy, as mandated in the President's declaration of 7 November 1987.⁴ The introduction and conclusion to the report also emphasize the indivisibility of all human rights. The majority of the report, however, is focused on the first 27 articles of the Covenant which impart obligations on State parties to deliver substantive rights. The body of the report refers to provisions in the national constitution, criminal code, decrees, case law and other practical measures to demonstrate how Tunisia has harmonized domestic law with these obligations.

In presenting the report, Mr. Béchir Tekkari, Minister of Justice and Human Rights, acknowledged that considerable work remains, but emphasised that Tunisia has made significant progress in terms of its human rights compliance. For example, it has welcomed United Nations (UN) and African Union (AU) special procedures as well as representatives from Human Rights Watch to inspect its prisons; withdrawn its reservations under the *Convention on the Rights of the Child*;⁵ ratified the *Convention on the Rights of Persons with Disabilities*; is considering ratification of the Optional Protocol to the *Convention on the Elimination of Discrimination Against Women*; will appear before eight treaty bodies this year; and has drafted legislation to ensure its national human rights institution is in compliance with the Paris Principles.⁶ The Minister addressed some of the challenges faced by Tunisia, emphasising the threat of terrorism that his country faces, as well its ongoing struggle to eradicate poverty. He confirmed NGO participation in the drafting of its periodic report to the Committee⁷ as well as its plans to include civil society organizations in the follow-up process.

List of issues

The list of issues was distributed by the Committee on 28 November 2007, and Tunisia's lengthy written replies were submitted on 28 February 2008.⁸ Touching on various topics, the questions contained in the list of issues requested information regarding statistics and plans for further measures, and instances of human rights violations notwithstanding applicable legal provisions. Among the issues that particularly concerned the Committee were torture and other cruel, inhuman or degrading treatment or punishment, as well as violations against human rights defenders.

NGO parallel reports

A total of five parallel reports were submitted to the Committee. The list of issues prepared by the Committee and the questions its members put to the delegation reflected many of the concerns raised by NGOs in their parallel reports.

³ CCPR/C/84/Add.1, available at

<http://www.unhcr.ch/tbs/doc.nsf/5038ebdcb712174dc1256a2a002796da/80256404004ff315c125638c005fa873?OpenDocument>, was discussed at the Committee's 1360th and 1362nd meeting on 18-19 October 1994.

⁴ On this date, Zine El Abidine Ben Ali became President and committed the country to the path of democracy. See <http://www.tunisiaonline.com/government/declaration.html> for the text.

⁵ In a later answer to a question from Ms Chanet, the Minister responded that Tunisia has 'begun a study' to consider whether it can lift its reservations to both the CRC and CEDAW Conventions.

⁶ The "Paris Principles": Principles Relating to the Status and Functions of National Institutions for the Promotion and Protection of Human Rights (General Assembly *Resolution 48/134*, annex) set out standards to guide the establishment and operation of national human rights institutions.

⁷ Tunisian Association of Democratic women, Journalists Union, Workers Union, and other groups representing children and the disabled.

⁸ List of Issues (CCPR/C/TUN/Q/5) and Tunisia's written replies (CCPR/C/TUN/Q/5/Add.1) are available at <http://www2.ohchr.org/english/bodies/hrc/hrcs92.htm>

1. Amnesty International: examined violations of a spate of articles in the Covenant,⁹ underscoring in particular allegations of torture and ill-treatment, curtailed rights of human rights defenders, and the threat of terrorism;
2. International Commission of Jurists: presented arguments for the incompatibility of Tunisia's military criminal justice system with articles 2 and 14 of the Covenant;
3. Conscience and Peace Tax International (CPTI): encouraged Tunisia to introduce legislation providing for conscientious objection to military service;
4. Federation Internationale des ligues des Droits de l'Homme (FIDH): offered a round-up of violations of civil and political rights by Tunisia, and requested that the State party allow visits from special procedures;
5. World Organization Against Torture (OMCT):¹⁰ detailed relevant national and international laws that promote and protect civil and political rights, with particular emphasis on the rights of women and children.

On the opening morning of the 92nd session of the Committee, NGOs were invited to publicly address the Committee. Seven of the nine presentations concerned Tunisia.¹¹ The concerns expressed related to: media censorship; use of force against journalists and human rights defenders; torture; discrimination against lesbian, gay, bisexual and transgender people (LGBT); and women's and children's rights. These reports also informed many of the questions asked by Committee members in their dialogue with the State party.

Themes and issues

Tunisia's delegation

The Tunisian delegation, headed by Béchir Tekkari, Minister for Justice and Human Rights, also included the Permanent Representatives to the UN missions in Geneva and New York, two additional staff from the Ministry of Justice and Human Rights; and the Head of the Human Rights Unit, Ministry of Foreign Affairs. Two senators and several high-level representatives of various ministries (the Ministry of the Interior and Local Development; l'Agence Tunisienne de la Communication Extérieure; the National Office of Family and Population; the Ministry of Education and Formation) also participated in the session.

Death penalty

Although only one question in the list of issues addressed the death penalty,¹² this was a major focus of the Committee's dialogue with Tunisia. When responding to the written request for statistics related to the State party's law on the death penalty, the delegation reiterated its de facto abolition of the use of the death penalty (there have been no executions since 1991), adding that the Head of State recently declared to *Le Figaro*, the French daily, that he would "never" order capital punishment. However, the Committee was puzzled not only by its unwillingness to remove the death penalty from the statutes, but also to stop handing down the sentence.¹³ Mr. Tekkari cited recourse for the victim and public opinion as reasons why Tunisia was not yet

⁹ Articles 2, 3, 6, 7, 9, 10, 14, 15, 16, 17, 18, 19, 21, 22, and 26.

¹⁰ Contributors to this report also included Conseil National pour les Libertés en Tunisie (CNLT), Association de Lutte contre la Torture en Tunisie (ALTT), and Association Tunisienne des Femmes Démocrates (ATFD).

¹¹ Statements were made by the following organisations and individuals: Conseil national pour les libertés en Tunisie; Tunisian Association for the Struggle Against Torture; Ligue tunisienne des droits de l'Homme; Global Rights (referring to discrimination against LGBT people); Association Tunisienne des Droits de l'Enfant; Union Nationale de la Femme Tunisienne; and a representative from another Tunisian NGO representing women's rights.

¹² Question 8.

¹³ Ms Christine Chanut, France, referenced such a decision rendered on 20 February 2008. Mr Prafullachandra Natwarlal Bhagwati, India; and Sir Nigel Rodley, United Kingdom also all expressed hope for the *de jure* abolition of the death penalty.

ready for a *de jure* abolition of the death penalty, though it is a topic of discussion in parliament and amongst the judiciary.

The delegation repeated its argument for laying the groundwork for the eventual *de jure* abolition of the death penalty. Ms Chanet inquired about the process envisioned for this change, and noted that the indeterminate waiting that anyone sentenced to death has to endure is itself a form of degrading treatment. A member of Tunisia's delegation defended its position, explaining that although the Covenant does not compel States to abolish the death penalty, Tunisia is moving toward abolition, and those condemned to death will not be executed.

Torture and other forms of ill-treatment

When addressing the issue of torture and ill-treatment of prisoners, the Committee was similarly focused on exploring the extent to which legislative protections are applied and effective remedies provided in practice. When addressing the five questions on this theme in the list of issues,¹⁴ Tunisia referred to its laws against torture and its ratification without reservation of the *Convention Against Torture*.¹⁵ It further reminded the Committee that it intends to invite the Special Rapporteur on Torture to undertake an official visit, although no timeline was indicated.

Tunisia agreed that accusations of torture and other forms of ill-treatment in its prisons were of concern, and noted measures to address them, including visits by the International Commission of the Red Cross and a recent agreement with Human Rights Watch to do the same. However Tunisia did not indicate a willingness to extend similar access and inspection rights to local NGOs. The head of the delegation apologised for the lack of statistics regarding prisoner complaints about torture and ill-treatment, but acknowledged that they exist. He also pointed out to the Committee that Tunisia is the victim of a "campaign of misinformation" that gives the false impression that ill-treatment of prisoners is widespread. In response, Sir Nigel Rodley wondered why the State party was not prepared to invite broader scrutiny to disprove such misperceptions.

In response to Sir Nigel Rodley's question as to whether there had been any instances of State security officials accused of torture, the Minister admitted to a few, and referred to case law in which the guards were sentenced to four years in prison for amputating a prisoner's legs. Explaining why superiors were not held responsible, he noted that there was a burden of proof for a superior's orders. Sir Rodley viewed this policy as an obstacle in holding those responsible accountable, and an extreme burden on the victim. Mr. Tekkari explained that the burden of evidence lies with the judge. In response to concerns from other Committee members, particularly in relation to the potential for confessions obtained under torture to be used in court, Tunisia insisted that it acts in the rare and isolated cases of wrong doing, as indicated by its action to address several cases referred by the Committee against Torture.

Human rights defenders

The list of issues raised four questions in relation to violations experienced by human rights defenders, indicating the extent of the Committee's concerns in this regard.¹⁶ Allegations ranged from torture and harassment to suppression of the right of freedom of expression and association. However in its dialogue with the Committee, Tunisia maintained that accusations of torture were false; only people who act unlawfully are arrested (rather than on the basis of their profession); and there is a very clear statutory process for the registration of new organisations.

¹⁴ Questions 9-13.

¹⁵ Tunisia signed the CAT on 26 August 1987. It was ratified on 23 September 1988.

¹⁶ Questions 9,12,18 and 20.

In response, Committee members cited the March 2006 report of the Secretary General's Special Representative on human rights defenders,¹⁷ which referred to 78 human rights defenders who had experienced obstructions when trying to register their organisations, or were facing legal proceedings for defamation or disturbing public order, as a result of denouncing human rights violations. Ms Chanet pointedly remarked that all of the 30 urgent appeal cases in 2006 regarding harassment of human right defenders could not have stemmed from 'paranoia', as the State party claimed. Tunisia explained that the restrictions on the registration of organisations are designed to prevent the operation of fanatical elements in society, but noted that if registration is denied, the decision can be appealed to an administrative tribunal.

Mr. Lallah highlighted the situation of human rights defenders in Tunisia as an area of major concern, which the delegation failed to satisfactorily address. He advised that more concerted action from the State was needed to comply with article 22 of the Covenant. He further commented that although the Committee appreciated the need for the State to address fanatical elements, it is 'more productive to involve the thinking elements of society' than to marginalise them. He warned that a State that fails to provide freedom of expression and association may jeopardise its citizens' confidence in the judiciary and thus indirectly provide fertile ground for fanatical elements to take root.

Freedom of opinion, expression and association

Six of the 23 questions in the Committee's list of issues dealt with the suite of freedoms delineated in articles 19, 21, and 22 of the Covenant and described human rights defenders, journalists, and other civil society members as bearing the brunt of violations in Tunisia.

Regarding freedom of assembly, the State party cited article eight of its constitution¹⁸ and spelled out the conditions that must be met to hold a public meeting, and those that must be met to restrict such meetings, which are, in its view, consistent with article 21 of the Covenant.¹⁹ It defended itself against allegations of blocking NGO offices, such as the Arab Bulletin for Human Rights, saying it had to maintain public order. To demonstrate its compliance with the Covenant, Tunisia referred to the ability of human rights organisations such as Amnesty International, as well as political opposition parties, to hold meetings

In response to concerns from the Committee about allegations that the Tunisian Government had restricted NGOs' and human right defenders' access to the press, the State party pointed out that there was no specific evidence behind such claims. It maintained that no media outlet had been shut down for many years, and currently only one journalist is in prison who had 'insulted officials'. The reality, Tunisia explained is that it had undertaken four revisions of the Press Code to enhance journalistic freedoms, and the government does not interfere with editorial content of any media outlet. Rather, 90 percent of media outlets are privately owned, participation of opposition parties is encouraged, and foreign channels are permitted to set up their own feeds.

Committee members voiced scepticism, challenging the need for reforms that required media outlets to employ a higher percentage of 'professional' journalists, provide a monetary deposit in order to publish, and the very broad interpretation of defamation under Tunisian law. Ms. Wedgewood inquired into accusations

¹⁷ E/CN.4/2006/95/Add.5 available at <http://www2.ohchr.org/english/issues/defenders/annual.htm> The Committee referred to paras. 1630 and 1632.

¹⁸ "Article 8 Expression, Unions: (1) The liberties of opinion, expression, the press, publication, assembly, and association are guaranteed and exercised within the conditions defined by the law. (2) The right of unionization is guaranteed." Available at unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan004842.pdf

¹⁹ Article 21 of the Covenant: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others." Available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

about restricted internet access, specifically that members of the President's family own the primary internet service providers (ISPs) and some NGOs allege having their sites and email access periodically shut down. The Minister confirmed the ownership of two of twelve ISPs by family members of the President, but saw no problem with this. He also confirmed some sites are closed down when the government believes the organisations concerned are inciting jihad or displaying pornographic material. He assured the Committee that sites like Amnesty International and Human Rights Watch were regularly and freely accessed. Some Committee members expressed concern over the restriction on foreign media coverage of their presidential election, and wondered why citizens were forbidden from talking to foreign journalists about candidates. Tunisia replied that the presidential election is an "excessively sovereign matter."

However the Committee appeared to remain sceptical and somewhat frustrated at the inconsistency in the State's answers with the information before it, much of it from independent human rights experts. Mr Khalil concluded that freedom of expression and association appear to be "far from tolerated in Tunisia," and in this respect, "little has changed since our last report".

Threat of terrorism and anti-terrorism laws

Issue five of the Committee's list of issues for Tunisia asked for further information on the State party's campaign against terrorism and how it impacts on the rights protected by the Covenant. In a passionate response, Tunisia emphasised that it has been the victim of terrorism on several occasions and these attacks prompted further legislative reform in 2003. It assured the Committee that the anti-terror law is not applied automatically, explaining that there must be a judicial decision on the existence of "imminent danger". Responding to concerns about the overly broad definition of terrorism that Tunisia uses, the State acknowledged there is always room for improvement, but in the absence of a universally agreed definition of terrorism, Tunisia uses one that is very similar to that in the 1999 UN *Convention for the Suppression of the Financing of Terrorism*.

A number of members of the Committee expressed great concern about the legality of withholding the identities of police officers and judges in proceedings in cases involving terrorism.²⁰ The delegation responded that this measure is one of last resort, that it had never been used, and that jurists have the right to waive it. Ms Chanet asked for more specifics on criminal proceedings in cases of terrorism pursuant to the 10 December 2003 law.

Gender equality

In the list of issues,²¹ the Committee asked for detailed information about the scale of domestic violence and the extent to which reported cases are prosecuted. Tunisia acknowledged this is a serious problem, but was not able to provide any statistics or specific information about complaints or prosecutions, although it agreed to do so in future. Instead, Tunisia outlined the legislative and policy measures taken to address violence against women, including the criminalisation of marital rape, government collaboration with women's NGOs to combat gender-based violence, and plans for the National Office of Family and Population to conduct a national survey to assess the prevalence of domestic violence.

The Committee also sought further details about the right to custody of children. Tunisia provided assurances that reforms to the Personal Status Code ensure that there are no special privileges for either sex when it comes to determining who should be awarded care of the child. Rather the principle of 'best interests of the child' is applied by the courts to decide these matters.

²⁰ Mr. Maurice Ahanhanzo Glele-Ahanhanzo, Benin noted this was reminiscent of the "faceless judges" in Peru and neighbouring Latin American countries where prosecutions lacked basic judicial guarantees.

²¹ Question 6.

Independence of the judiciary

The independence of the judiciary was raised in the list of issues²² and was also the subject of many questions from several members of the Committee. Of particular concern was the extent to which the Executive is involved in the operation of the High Council of the Judiciary,²³ which oversees the operation of the judiciary, and is headed by the President. In response, the delegation cited constitutional and legislative guarantees of the independence of the judiciary and pointed to a range of civil law jurisdictions where a body similar to the High Council oversees the judiciary. The Committee appreciated these legal provisions, but queried their enforcement.

Other issues

Other issues that were raised and briefly discussed included: the extent to which Tunisia's national human rights institution (NHRI) complies with the Paris Principles; whether human rights training is provided to the judiciary and law enforcement officials; the rights of minorities such as the Berber population; and freedom of religion.

Conclusions and next steps

At the conclusion of the interactive dialogue, the Chairman of the Committee welcomed the primacy of international law in Tunisia's domestic law, and reviewed the major topics discussed, recapping the concerns voiced throughout the session, and in some cases posing further questions and requesting specific information from the State party in the future.

Minister Tekkari thanked the Committee for the "fruitful exchange" and looked forward to submitting additional written responses for those items for which there was too little time or further information was requested. However, he also intimated that Committee members may not have read Tunisia's responses to the list of issues as closely as they could have, as some questions and concerns raised orally had been addressed in writing. Lastly, the Minister said that the State party would undertake to invite the Special Rapporteur on Torture for a visit.

In its concluding observations,²⁴ the Committee 'welcomed with satisfaction' Tunisia's report and written replies to the list of issues, even if some were incomplete, and recognized the fundamentalist challenge particular to the region. It congratulated the State party on some progress in the rights arena since its last periodic report. It further noted with satisfaction the *de facto* moratorium on the death penalty and its commitment to *de jure* abolition, took note of the delegation's stated intention to invite UN special procedures to Tunisia, and noted with satisfaction its withdrawal of reservations from the *Convention on the Rights of the Child*.

The remainder of the report focused on 14 'principal subjects of concern' and related recommendations. The first two, on the absence of a national human rights institution in compliance with the Paris Principles and its failure to ratify the first Optional Protocol to the Covenant, were not substantial portions of the discussion. The recommendations, covering primarily the much discussed themes of the death penalty, terrorism, detention conditions, judicial independence, and human rights defenders, were limited in their scope to harmonization with the Covenant, lacking substantive procedural suggestions. The Committee's comments on torture (addressing allegations of State involvement, sanctioned impunity, and insufficient recourse for the

²² Question 4.

²³ This body has statutory authority to give opinions, and to take enforceable decisions concerning recruitment, appointment, promotion, transfer and discipline of judges. It also has statutory authority to receive and investigate complaints about the judiciary.

²⁴ The concluding observations, CCPR/C/TUN/CO/5 are available at <http://www2.ohchr.org/english/bodies/hrc/hrcs92.htm>

victim) were more comprehensive, and their related recommendations included greater detail. The Committee's concluding observations also included a request for statistics in the State party's sixth periodic report, due 31 March 2012.

In addition to the Human Rights Committee (HRC), five other treaty bodies have examined the human rights situation in Tunisia,²⁵ and each recommended similar measures to improve Tunisia's future periodic reports and compliance with its international obligations as the HRC. For example, the Committee Against Torture (CAT Committee) recommended the State 'put an end to the degrading practice of torture'; bring the Criminal Code into line with the definition of torture contained in article one of the *Convention against Torture*; and amend legislation to ensure no evidence obtained by torture can be used as evidence in any proceedings.²⁶ The Committee on Economic, Social and Cultural Rights (CESR Committee) pointed out that an independent judiciary is 'an essential instrument' for the protection of the rights under the Covenant,²⁷ and several Committees reiterated their concerns about the State's retention of multiple reservations under individual treaties.²⁸

Some of the Committees expressed a similar frustration to that of the HRC when Tunisia simply provided assertions without the data or supportive information to substantiate its claims. For example, the Committee on the Elimination of All Forms of Racial Discrimination (CERD Committee) advised that it 'does not accept any State party's assertion that there is no racial discrimination' in its jurisdiction, and suggested it provide information about the specific measures taken to protect and promote the culture and language of the Berber population.²⁹ Similarly, the CESR Committee did not accept the State party's 'assertion ...that difficulties in the implementation of the Covenant are attributable to external factors'³⁰ and recommended that in the next periodic report, Tunisia provide 'specific information relating to any obstacles encountered in the implementation of the Covenant.'³¹

Although when appearing before the HRC, Tunisia was no longer in denial about domestic violence being a human rights problem that it needs to address (as it had been with CESCR in 1999),³² it was clear that action is yet to be taken to implement the recommendations from both the CESCR and the Committee on the Elimination of Discrimination Against Women (CEDAW Committee), which required that it 'devise a structure for systematic data collection on all forms of violence against women' and 'ensure that all violence against women is prosecuted and punished.'³³

Last revised and updated: 28 May 2008.

²⁵ *Committee Against Torture*: CAT/C/SR.363, 11 December 1998, available at http://www.bayefsky.com/summary/tunisia_cat_c_sr.3631998.php; *Committee on the Elimination of Discrimination Against Women*, U.N. Doc. A/57/38, paras. 171-210, available at <http://www1.umn.edu/humanrts/cedaw/cedaw-tunisia2002.html>; *Committee on Economic, Social and Cultural Rights*: E/C.12/1/Add.36, 14 May 1999, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G99/420/01/PDF/G9942001.pdf?OpenElement>; *Committee on the Elimination of All Forms of Racial Discrimination*: CERD/C/62/CO/10, 2 June 2003, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G03/421/51/PDF/G0342151.pdf?OpenElement>; *Committee on the Rights of the Child*, CRC/C/15/Add.181, 13 June 2002, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G02/433/31/PDF/G0243331.pdf?OpenElement>.

²⁶ Paras.15-16 of CAT/C/SR.363.

²⁷ CESCR, E/C.12/1/Add.36, para.24.

²⁸ For example, CEDAW, A/57/38, para.188; CRC, CRC/C/15/Add.181, para.11.

²⁹ CERD, CERD/C/62/CO/10, Pars. 8-9.

³⁰ CESCR, E/C.12/1/Add.36, para.9-10.

³¹ CESCR, E.C.12/1/Add.36, para. 30.

³² CESCR, E.C.12/1/Add.36, para.13.

³³ These are recommendations from CEDAW. See CEDAW, A/57/38, para.195. Similar recommendations were made by CESCR, see CESCR, E.C.12/1/Add.36, para.22.

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