



International Covenant on Civil and Political Rights

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Human Rights Committee

Report on follow-up to the concluding observations of the Human Rights Committee*

Addendum

Evaluation of the information on follow-up to the concluding observations on Tunisia

<i>Concluding observations (128th session):</i>	CCPR/C/TUN/CO/6 , 27 March 2020
<i>Follow-up paragraphs:</i>	8, 30 and 48
<i>Information received from State party:</i>	CCPR/C/TUN/FCO/6 , 4 April 2022
<i>Information received from stakeholders:</i>	International Commission of Jurists , 12 December 2023; Alkarama and Association des victimes de torture en Tunisie , 18 December 2023; Minority Rights Group International, Association for the Right to Difference, Avocats Sans Frontières and Mnementy , 21 December 2023
<i>Committee's evaluation:</i>	8 [E], 30 [C] [E] and 48 [C]

Paragraph 8: Constitutional Court

The State party should finalize the establishment of the Constitutional Court and make the necessary amendments to Organic Act No. 50 of 2015 in order to:

- (a) Ensure the diversity of the members of the Court, in particular through adequate representation of different political opinions, in order to guarantee its independence and impartiality, as well as its credibility in the eyes of the public;
- (b) Ensure that the members of the Court have the skills and knowledge necessary to enable them to exercise their functions effectively, individually and collectively, and better define the conditions for their removal;
- (c) Allow any individual to have access to the Court to raise issues concerning the constitutionality of laws in the event of a violation of his or her rights.

Summary of the information received from the State party

The draft amendments to Organic Act No. 50 of 2015, which were prepared with a view to surmounting the obstacles to the election of members of the Constitutional Court, were adopted in the plenary session of the Assembly of People's Representatives on 4 May 2021.

* Adopted by the Committee at its 140th session (4–28 March 2024).



However, the draft was not signed by the President, owing to the expiry of the constitutional deadline for the establishment of the Court set by article 148 (5) of the Constitution. Exceptional circumstances have prevailed in Tunisia since 25 July 2021 and powers have been temporarily reorganized. Article 1 of Presidential Decree No. 117 of 2021, dated 22 September 2021, concerning exceptional measures provided for the suspension of all the powers of the Assembly of People's Representatives. The Decree also provided for the suspension of the provisions of the Constitution with the exception of the preamble, articles 1 and 2, and all provisions that were not incompatible with the provisions of the Presidential Decree. Under article 21 of the Presidential Decree, the temporary authority that had been authorized to monitor the constitutionality of bills was abolished. A timeline was established for the restoration of the regular functioning of State institutions and for the announcement of legislative elections by the end of 2022.

- (a) No information was provided.
- (b) No information was provided.
- (c) No information was provided.

Summary of the information received from stakeholders

International Commission of Jurists; Alkarama and Association des victimes de torture en Tunisie; Minority Rights Group International, Association for the Right to Difference, Avocats Sans Frontières and Mnenmy

In April 2021, despite parliamentary consensus on the amendment to the Organic Act No. 50 of 2015, the President refused to promulgate it on the legally dubious basis that the deadline for establishing the Court had passed. Chapter VI of the new Constitution, adopted in 2022, provides that the Constitutional Court shall be an independent jurisdictional body made up of nine members nominated by presidential decree, from among the most senior members of the judiciary. This does not provide sufficient guarantees of independence in a context marked by severe limitations to the independence of that judiciary. As at December 2023, the Constitutional Court, even in its fundamentally weakened form under the new Constitution, has yet to be established. No meaningful steps to expedite the establishment of the Court have been taken and no deadline for its establishment has been announced. In a judgment issued in September 2022, the African Court on Human and Peoples' Rights found Tunisia to be in violation of the right to be heard and to participate in public and political life for its failure to establish the Court and to allow its citizens to challenge the constitutionality of decisions from the executive power. Furthermore, contrary to article 80 of the 2014 Constitution, under article 96 of the new Constitution, the Constitutional Court has no power or role in relation to the President's declaration of a state of emergency.

Committee's evaluation

[E]

The Committee remains concerned that the State party has yet to establish a Constitutional Court and that no timeline for its establishment has been set. The Committee notes with concern that article 125 of the new Constitution, adopted in 2022, weakens the independence of such a court by providing for the direct appointment of its members by presidential decree and reduces the diversity of its members. The Committee regrets the absence of information on measures taken to better define the conditions for removal of members of the Court or to allow any individual to have access to the Court to raise issues concerning the constitutionality of laws in the event of a violation of his or her rights. The Committee reiterates its recommendations.

Paragraph 30: State of emergency and counter-terrorism

The State party should:

- (a) **Envisage ending the continuous extension of the state of emergency;**

- (b) **Accelerate the process of adopting a law that is in conformity with the provisions of article 4 of the Covenant and the Committee's general comment No. 29 (2001) on derogations from the Covenant during states of emergency;**
- (c) **Ensure the rule of law and respect for non-derogable rights enshrined in the Covenant during states of emergency, in particular the right to due process of law;**
- (d) **Put an end to the misuse of house arrest, restrictions on freedom of movement and violations of the right to privacy.**

Summary of the information received from the State party

(a) A state of emergency was declared for the first time in late 2015 and was subsequently extended on several occasions. It ends when the underlying grounds are eliminated.

(b) A draft organic act regulating the state of emergency was discussed in ministerial councils, most recently on 23 November 2018, and was approved and referred to the Assembly of People's Representatives.

(c) When transgressions are brought to the attention of the relevant authorities, investigations are launched, the perpetrators are pursued and appropriate measures are taken against them. The law authorizes persons who are adversely affected by measures taken during a state of emergency to lodge a complaint with the administrative judiciary. A list will be compiled of legal and regulatory provisions governing the activities of the Ministry of the Interior, some of which may restrict citizens' freedoms, particularly their freedom of movement, in order to review them and ensure their consistency with guarantees of rights and freedoms, including Decree No. 342 of 1975, specifying the functions of the Ministry of the Interior, and Decree No. 50 of 1978, concerning the organization of a state of emergency.

(d) Many complaints have been filed concerning the S17 consultation procedure prior to border crossing, which is subject to the oversight of the administrative judiciary, and the list of persons affected is periodically reviewed. The Administrative Court handed down 74 judgments against the authorities comprising 64 cases concerning suspension of implementation, 6 cases concerning urgent action and 4 cases concerning abuse of authority. This confirms that the authorities' decisions, up to 2020, were based on reliable data, that they were not arbitrary and that freedoms were not systematically targeted.

Summary of the information received from stakeholders

Alkarama and Association des victimes de torture en Tunisie

(a) Despite the Committee's recommendation, the state of emergency has been extended several times, including by a presidential decree dated 30 January 2023, which extended it until 31 December 2023.

(b) It should be recalled that the state of emergency is currently governed by the Presidential Decree of 1978, which grants the Ministry of the Interior broad powers.

(c) Contrary to what the State party indicates, it is rare, if not impossible, to find cases in which, when transgressions are brought to the attention of the competent authorities, investigations are launched, the perpetrators are prosecuted and appropriate measures are taken. Specific cases of arbitrary detention or house arrest of political figures reveal that due process and other rights protected under the Covenant are not being respected during the ongoing state of emergency. More than 50 judges have been dismissed by the President, accused of corruption and various breaches of criminal law. Despite the annulment of the dismissal decisions by the Tunisian judiciary, the judges have not been reinstated in their positions by the authorities. Moreover, they have been subjected to multiple acts of intimidation.

(d) As acknowledged by the State party in its follow-up report, article 5 of Decree No. 50 of 1978 authorizes the Minister of the Interior to place under house arrest any person whose activities or movements are considered a threat to public security. The cases documented by Alkarama since the previous review of Tunisia indicate that this measure is

regularly invoked in an attempt to justify arbitrary deprivations of liberty of former ministers or political leaders and is used in total violation of the principles of proportionality and necessity.

Committee's evaluation

[C]: (a) and (b)

The Committee regrets that the State party has not provided detailed information on the justification for the continuous extension of the state of emergency, in force since 2015, and reiterates its recommendation.

The Committee regrets the absence of updated information on the adoption of a law that is in conformity with the provisions of article 4 of the Covenant and the Committee's general comment No. 29 (2001) on derogations from the Covenant during states of emergency. The Committee reiterates its recommendation.

[E]: (c) and (d)

While taking note of the information provided on the availability and application of judicial review by the Administrative Court of decisions restricting freedom of movement under the S17 consultation procedure, the Committee is concerned at reports of arbitrary detention of political figures and dismissal of judges. The Committee reiterates its recommendation.

The Committee is concerned at reports of the continued misuse of house arrest and regrets the absence of information from the State party in this regard and on violations of the right to privacy. It also notes that there continue to be cases of unwarranted restriction of freedom of movement under the S17 consultation procedure. The Committee reiterates its recommendation.

Paragraph 48: Freedom of peaceful assembly and excessive use of force by State agents

The State party should:

(a) **Ensure that legislative and regulatory provisions governing the use of force comply with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, that law enforcement officials apply non-violent measures before any use of force when conducting demonstration control operations and that law enforcement officials respect the principles of legality, necessity, proportionality and accountability;**

(b) **Ensure that all allegations of excessive use of force and extrajudicial killings by State agents during demonstrations are investigated promptly, thoroughly and impartially, that those responsible are prosecuted and, if found guilty, are punished, and that the victims obtain redress.**

Summary of the information received from the State party

(a) The conditions governing the use of force and firearms are laid down in national legislation. Article 39 of the Criminal Code restricts such use to cases of legitimate defence and article 42 indicates the circumstances in which permission from a competent authority or a legal order is required. Moreover, under article 98 of the Code of Military Procedure and Penalties, guards and sentries are authorized to use a weapon in the event of non-compliance with orders after a third warning has been issued, and under Act No. 4 of 1969 (24 January 1969) concerning public meetings, processions, parades and gatherings. No progress has been made in the enactment of the bill concerning the right to peaceful assembly, submitted to the Office of the Prime Minister in 2013 with the aim of abrogating and replacing Act No. 4 of 1969, owing to the unstable situation, which has undermined the work of the Assembly of People's Representatives and impeded the submission of bills. The Ministry of the Interior intervenes, using legitimate force, when demonstrations deviate from the principle of peaceful assembly, especially when they prevent freedom of movement by closing public highways, and when participants attack public or private institutions or resort

to rioting. When demonstrations become uncontrollable, the supervisors of the security units issue instructions to withdraw in order to avoid human losses among the protesters or the security forces. Work is under way in the Ministry of National Defence to fill the legal void regarding the regulation of intervention by the armed forces in various situations and regarding rules governing the use of weapons.

(b) Departments within the Ministry of the Interior conduct the necessary investigations, through the Ministry's oversight structures, into any grievance or complaint concerning alleged offences committed by security officers and adopt the necessary disciplinary measures in the event of any breach or abuse of the limits of authority. There have not been any recent administrative complaints regarding such conduct or regarding issues relating to human rights and the accountability of government officials.

Committee's evaluation

[C]

The Committee regrets that the legislative and regulatory framework governing the use of force for the maintenance of law and order still does not fully conform to international standards, including with regard to the principles of legality, necessity, proportionality and accountability. The Committee reiterates its recommendation and requests further information on steps taken, including training and other measures, to ensure that law enforcement officials apply non-violent measures before using force to control or disperse demonstrations.

The Committee regrets that the general nature of the information provided by the State party does not allow for a proper assessment of the implementation of the Committee's recommendation. The Committee reiterates its recommendation and requests that the State party submit, in its next periodic report, detailed information on judicial and administrative complaints received, investigations undertaken and their outcomes, as well as information on redress provided to victims.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report.

Next periodic report due: 2027 (country review in 2028, in accordance with the predictable review cycle).
