UPR submission
Tunisia
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Tunisians enjoy their civil and political rights to a greater extent than they did under President Zine el-Abidine Ben Ali, whom they ousted in 2011, or under his predecessor, Habib Bourguiba. During the ten months between Ben Ali's departure and the seating of the National Constituent Assembly in November 2011, Tunisia's interim authorities promulgated a number of laws expanding freedom of association and the right to form political parties as well as reforms to the press code that eliminated several speech offenses punishable by prison terms. On January 27, 2014, the National Constituent Assembly adopted a new Constitution that featured many protections for key civil and political, as well as social, economic, and cultural rights. The Constitution envisages the creation of a Constitutional Court that is empowered to rule on the constitutionality of laws, and that can invalidate laws that are not in conformity with human rights standards affirmed in the Constitution. On December 3, 2015, the Parliament adopted law No.50 creating the Constitutional court, but to date the court has still to be put in place and its members appointed.

Tunisia's interim authorities also ratified the Rome Statute establishing the International Criminal Court and ratified the International Convention for the Protection of All Persons from Enforced Disappearance, the second additional protocol to the International Covenant on Civil and Political Rights, and other instruments. In April 2014, the government lifted Tunisia's reservations to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

These steps notwithstanding, serious human rights violations, including torture, violations of LGBT rights, lack of accountability for past human rights violations, arbitrary house arrests and travel restrictions under the state of emergency continued.

During the transition period, Tunisia experienced several deadly attacks by Islamist extremists that left dozens of people dead and others injured. On March 18, 2015 two gunmen attacked the Bardo Museum, adjacent to Tunisia's Parliament, killing 21 foreign tourists and one Tunisian security

agent. On June 26, a gunman rampaged through a beach resort in Sousse, killing 38 foreign tourists. On November 24, 2015, Tunisian President Béji Caid Essebsi declared a state of emergency after a suicide bombing in Tunis that killed 12 presidential guards and wounded 20 others. On September 16, 2016, Caid Essebsi renewed it for the seventh time. The state of emergency is based on a 1978 presidential decree that gives the Interior Ministry the authority to ban strikes or demonstrations deemed to threaten public order, and to order the house arrest of anyone whose "activities are deemed to endanger security and public order." to invoke a 1978 decree to declare a state of emergency that empowered authorities."

Implementation of the Constitution

During the 2012 UPR Review, Tunisia accepted numerous recommendations related to its judicial system, most notably to *Integrate into the new Constitution important human rights guarantees, including the right to non-discrimination, freedom of expression, association and assembly, the independence of the judiciary, protection from torture and other forms of ill-treatment, the protection of the rights of the minorities, the right to life, and the protection of economic, social and cultural rights*. The 2014 Constitution guarantees key civil, political, social, economic, and cultural rights. Tunisian authorities made some progress in harmonizing legislation with the Constitution.

For example, article 29 of the Constitution affords detainees "the right to be represented by a lawyer," but the code of criminal procedures allowed detainees to consult a lawyer only after they appear before an investigative judge, up to six days after arrest. On February 2, 2016, Parliament adopted revisions of the Code of Criminal Procedure to grant suspects the right to a lawyer from the onset of detention, and to shorten the maximum pre-charge detention to 48 hours, renewable once.

Additionally, in 2012, a recommendation to *Reform the judicial system to establish an independent judicial power in accordance with international standards, and ensure the existence of the rule of law and justice* was accepted by Tunisia. The 2014 Constitution guarantees judicial independence and calls for establishing a Supreme Judicial Council (SJC). On November 16, 2015, Parliament approved a law creating the SJC, whose functions will include making judicial appointments and overseeing discipline and the career progression of judges.

Despite these positive steps, Tunisia must carry out other extensive reforms to bring its legislation in line with the Constitution and international standards.

Although the SJC law improves on the High Judicial Council (HJC) law, which became widely discredited under former President Zine el-Abidine Ben Ali for compromising judicial independence and ensuring that the courts were subservient to the government, it has not totally removed the executive branch's influence on the judiciary. The new law empowers the justice

minister to institute misconduct investigations against judges and does not give judges adequate protection against politically motivated punitive transfers to other jurisdictions. In addition, Tunisian authorities have not yet undertaken to revise the law on the statute of the Magistrates, despite accepting a recommendation on it during the 2012 UPR review.

Article 80 of the Constitution gives the president the power to impose exceptional measures "in the event of imminent danger that threatens the nation or the security or independence of the country and that hampers the normal operations of state institutions." The measures, the Constitution states, are to provide for a return to the normal functioning of state institutions and services at the "earliest opportunity." The Constitution gives the Parliament the right, after 30 days from the state of emergency announcement, to request from the Constitutional court an assessment of the situation. Tunisia's has a 1978 presidential decree, which gives the president of the republic the right to declare a state of emergency of up to 30 days, renewable, in response to serious disturbances to the public order. The presidential decree does not have the same guarantees as the Constitution as it lacks oversight over the decision to impose the state of emergency. According to the General Comment 29 of the UN Human Rights Committee, states of emergency must be of an exceptional and temporary nature, and they must be declared in accordance with the Constitutional and legal framework of the country in order to be considered as lawful.

Recommendations

- Expedite legislative overhaul of Tunisian laws that are inconsistent with the Constitution and international standards with respect to human rights. In particular, repeal the 1978 presidential decree on the state of emergency which does not respect the conditions under article 4 of the ICCPR;
- Ensure a quick establishment of the Constitutional court, which will play a crucial role in ensuring respect for human rights by striking down laws that are inconsistent with the Constitution's framework on rights and freedoms, and give it all the means to perform its work in full independence of the executive and legislature.

Freedom of Expression

The transitional authorities liberalized the press code and law pertaining to the broadcast media, eliminating most of the criminal penalties these laws impose on speech offenses. However, the Penal Code, the Code of Military Justice and the Telecommunications Law still contain articles that impose prison terms as a punishment for speech offenses. The state used these articles, which relate mostly to defamation of individuals and state institutions, and to vaguely defined offenses such as harming public order and public morals, to prosecute and imprison at least 17 persons during the transitional period, between 2011 and 2014. A new draft law on "repression of attacks against the armed forces," if adopted, could represent an even bigger threat to free speech by

criminalizing "denigrating the armed forces." Despite accepting recommendations that would indicate the contrary, the government approved the draft law on April 10, 2015 and sent it to Parliament, which has yet to set a date to debate the bill. One notable recommendation accepted by the Tunisian government in 2012 was to "*take measures to ensure that its national legislation is fully aligned with the international human rights obligations undertaken, including laws affecting the ~~realisation~~realization of the freedom of expression and assembly*.

Regardless of these UPR pledges, a penal code article that criminalizes "insulting a public official" has served, in practice, as a means by which the police can arrest individuals – some of whom ended up being prosecuted and imprisoned -- merely for arguing with the police, or for being slow to heed orders, or when they filed a complaint or were suspected of being likely to file a complaint against the police.

Recommendations

- The Parliament should eliminate the remaining repressive laws that still pervade the criminal code, such as articles criminalizing defamation;
- The Parliament should drop the draft law criminalizing denigrating the armed forces.

Transitional Justice

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During the 2012 UPR, Tunisia accepted all recommendations related to the establishment of a mechanism to ensure transitional justice, including one to establish a transitional justice mechanism to determine the responsibilities of perpetrators and ensure their accountability, and provide reparations for the victims of violations and oppression by the previous political regime. On December 24, 2013, the National Constituent Assembly (NCA) adopted the Law on Establishing and Organizing Transitional Justice.

The lawsets out a comprehensive approach to addressing past human rights abuses. It provides criminal accountability via specialized chambers within the civil court system to adjudicate cases arising from past human rights violations, including abuses committed by military and security forces.

The lawalso established a Truth and Dignity Commission (TDC) tasked with uncovering the truth about abuses committed between July 1955, shortly before Tunisia's independence from France, and the law's adoption in 2013. The NCA elected 15 of the TDC's members on May 15, 2014. As of this writing, the TDC received 62065 complaints from people alleging human rights abuses and had begun processing them.

On July 14, 2015 however, the government approved a draft Law on Economic and Financial Reconciliation, strongly supported by President Beji Caid Essebsi. The bill, if adopted, offers a

halt to ongoing, and any future, prosecutions and trials of public servants and other state officials for financial corruption or misuse of public funds, for anyone who did not carry out the act for personal gain, provided that they negotiate a "reconciliation" agreement with a state-run commission to repay unlawfully obtained money to the state treasury. The law would void sentences or halt prosecutions for business people or government officials who benefited personally from financial corruption or embezzlement, in exchange for their reaching a "reconciliation" agreement with a state-run commission to repay unlawfully obtained money to the state treasury.

On June 29, 2016, Parliament's general committee on legislation started debating the bill. In Tunisia, as elsewhere, there is an association between corruption and human rights abuses. According to the 2012 report of the National Commission to Investigate Corruption and Embezzlement, Ben Ali's family and friends diverted public funds and lands for their benefit, instrumentalizing state institutions such as public banks, the judiciary, and the police to benefit themselves and to punish those who resisted their business initiatives.

Recommendations:

- Withdraw the draft law on economic and financial reconciliation from parliamentary examination;
- Ensure full support for the work of the Truth and Dignity Commission whose task is to ensure that victims exercise their right to truth, justice and reparation for the abuses they suffered.

Accountability for past human rights violations

Although ex-President Ben Ali's security forces used torture extensively, the authorities have failed in the five years since his overthrow to investigate or hold anyone accountable for the vast majority of torture cases, despite accepting all 2012 UPR recommendations related to ill-treatment and torture, including one made by Switzerland to *Investigate in an exhaustive manner all alleged cases of torture and ill-treatment, bring to justice the perpetrators and ensure moral and material support to the victims*

Military courts have tried several groups of defendants accused of killing protesters during the revolution that toppled Ben Ali. These trials appeared to respect defendants' rights and enabled some victims to pursue justice, but several factors undermined their value towards achieving accountability, notably the authorities' failure to identify the direct perpetrators of killings and lack of an adequate legal framework to prosecute senior officers with command responsibility for crimes that their subordinates committed. The government's failure to press effectively for Ben Ali's extradition from Saudi Arabia also undermined accountability.

The law on transitional justice established specialized chambers within the court system to try grave abuses committed between July 1955 and December 2013. The chambers have jurisdiction to re-open the killing of protesters cases. The chambers have yet to begin functioning.

Recommendations:

- Ensure accountability for grave human rights abuses covering the widespread crimes committed during the 23 years of the Ben Ali era. In particular, authorities should ensure that an independent and effective civilian criminal justice is in place able to investigate allegations of torture by police of suspects under interrogation and hold perpetrators accountable, pursuant to Tunisia's obligations under the Convention against Torture;
- Ensure full support for the work and functioning of the specialized chambers:
- Give the Truth and Dignity Commission full access to all the archives of the State in order to facilitate its mapping of the human rights violations and their perpetrators.

Counterterrorism and Security

On July 25, 2015, Tunisia's Parliament adopted a new counterterrorism law that imperils human rights and lacks the necessary safeguards against abuse. The law grants security forces broad and vague monitoring and surveillance powers, extends the maximum allowable period of incommunicado detention from six to 15 days for terrorism suspects, and permits courts to close hearings to the public and allow witnesses to remain anonymous to the defendants.

The definition of terrorism contained in the law is ambiguous enough that it could allow the repression of certain acts that are not of a terrorist nature as defined by international law.

Despite also making a concrete pledge to *Initiate a reform of police custody by considering to reduce its maximum duration to 48 hours, while allowing the presence of a lawyer and making the legal grounds and records of arrest available to the families and the defence* during the 2012 UPR, Tunisian legislative framework also contains other problematic provisions for terrorism cases. The investigative judge and the prosecutor have the authority to delay access to a lawyer for 48 hours after the beginning of detention in cases where the detainee is accused of crimes of terrorism.

A Human Rights Watch study from July 2015 found that Tunisian authorities, under the guise of fighting terrorism, were arbitrarily banning persons under age 35 from travel to countries including Algeria, Libya, Morocco, and Turkey unless they obtained their father's authorization to travel, even though Tunisian law does not require adults to obtain such authorization. This practice continued through 2016.

Following several terrorist attacks against tourist sites in 2015 and a deadly attack on Mohamed V Avenue in Tunis that killed 12 presidential guards and wounded 20 others, the President of the Republic declared a state of emergency on November 24, 2015, which remains in force.

At least 139 Tunisians since November 2015 have been confined without charge pursuant to indefinite house arrest orders that the police deliver orally, providing no document that can enable the affected person to mount a court challenge.

The measures have created economic hardship, stigmatized those targeted and prevented them from pursuing their study or business.

Recommendations

- Amend the counterterrorism law so as to clearly define acts of terrorism in conformity with international standards and ensure that all persons detained in cases of terrorism are charged promptly in accordance with international standards;
- Make the necessary legislative changes to ensure that every person held in custody enjoys all fundamental legal safeguards, including in terrorism-related cases. This should include access to a lawyer from the time of initial detention.
- Ensure that measures taken under the state of emergency are not arbitrary, are strictly necessary for the exigencies of the situation and are ended as soon as they are no longer strictly necessary and that they are carried out with respect to the rule of law and provide the affected person with access to a meaningful review of any decision restricting his or her liberties, including the right to judicial review of any form of detention..

Torture and Ill-Treatment

The interim authorities in 2011 narrowed the definition of torture in the penal code by recognizing abuse as torture only if it is inflicted to extract confessions or information, or for reasons based on racial discrimination. This definition ignores the stipulation in the UN Convention against Torture that abuse carried out to punish rather than to extract information can constitute torture. This despite accepting all UPR recommendations to align their legislation on torture to international UN standards.

The National Constituent Assembly in October 2013 approved legislation to create the High Authority for the Prevention of Torture, Tunisia's National Preventive Mechanism under the Optional Protocol to the Convention Against Torture.. But Parliament elected its 16 members only on March 30, 2016. The High Authority has the authority to carry out unannounced inspections of detention sites.

In its concluding observations, after considering the third periodic report of Tunisia during its sessions held on April 19 and 21, 2016, the UN Committee against Torture welcomed constitutional and legislative progress in the fight against torture. However, it also noted with concern the persistence of torture in police custody, and the consistent reports of the lack of due diligence exercised by judges and the judicial police in the course of investigations into torture or ill-treatment.

Recommendations

- Revise paragraph 3 of article 101 bis of the penal code to align the definition of torture with the one in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, by including punishment and other grounds as one of the possible motives for acts that constitute torture;
- Train police forces on best practices in police investigation, emphasizing how the use of torture is not only a criminal offense but, when used to extract a statement, renders that statement inadmissible. Training should also highlight the important role of independent monitoring—including by civil society—of police conduct;
- Amend the CCP to indicate that where there is an allegation of torture or ill treatment, the burden of proof lies on the prosecution to prove that any confession has been obtained by lawful means, pursuant to the recommendation made by the UN special rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment in his February 2012 country report on Tunisia;
- Grant the National Authority for the Prevention of Torture all the necessary means to conduct its work.

Women's Rights

Tunisia, long viewed as the most progressive Arab country with respect to women's rights, marked additional strides in this field. The adoption of a gender parity requirement in the new electoral law required political parties to alternate male and females on each of their lists of candidates. This resulted in the election of 68 women in the parliamentary elections of 2014, out of 217 seats. On June 2016, Parliament adopted an amendment to the electoral law that required political parties to have at least half of their electoral lists headed by women, in future local and regional elections.

On October 28, 2011, the interim government promulgated the decree law lifting the reservations to the Convention on the Elimination of All Forms of Discrimination against Women, and officially sent it to the UN on April 23, 2014. It has thus implemented the recommendation of the 2008 UPR review. However, the government maintained "a general declaration" suggesting that it might not implement reforms that conflict with Islam.

The 2014 Constitution provides improved protection for women's rights and obligates Tunisia to work towards achieving gender parity in elected assemblies during national, regional and municipal elections.

Parliament adopted a new law on November 10, year 2015 that will allow women to travel with their minor children without getting permission from the children's father.

Tunisia has a personal status code that gives women greater rights within the family than those allowed by other states in the region, but the code retains some discriminatory provisions. These deny women an equal share with men of any inheritance. Tunisia noted all recommendations related to gender parity in inheritance matters during its 2012 UPR review, including one to *continue to combat all forms of discrimination still faced by women, notably those remaining in the Personal Statute Law in the areas of inheritance and child custody*.

A comprehensive draft law to combat violence against women, which contained provisions increasing protection to survivors of sexual and gender-based violence, remained under consideration at this writing at the level of the government. Tunisia accepted recommendations to this effect during the 2012 UPR, for example to *put in place the necessary legislation to eliminate gender-based violence*.

Recommendations

- The government should reform the personal status code to eliminate all forms of discrimination between men and women;
- The State should also lift the general reservation on the CEDAW Convention in order to prevent any sweeping or arbitrary interpretation by judges;
- Adopt a comprehensive strategy for combating violence against women.

Sexual Orientation and Gender Identity

The penal code punishes consensual same-sex conduct with up to three years in prison. Anal testing is used as the main evidence in order to convict men for homosexuality. Tunisia noted all three recommendations related to Sexual Orientation and Gender Identity that it received during the 2012 UPR.

In two high-profile cases in 2015, at least seven young men were subjected to forced anal examinations by forensic doctors, in Sousse and in Kairouan, two towns in Tunisia. The medical reports prepared by the doctors who examined them were used as evidence to convict them of sodomy. Police assaulted several of the men to force them to submit to the tests. They were thus physically abused and stripped of their dignity, in the presence of, and with the complicity of, Tunisian medical personnel.

The United Nations Committee against Torture, in its most recent evaluation of Tunisia, condemned the use of forced anal examinations as an attempt to find "proof" against people accused of homosexual conduct.

Recommendations

- Revoke article 230 of the penal code, which criminalizes sodomy;
- Prohibit anal testing as a method of proving consensual homosexual activity. These abusive tests have no evidentiary value and cannot be consented to freely by persons in police custody.