



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

TUNISIA

1. The Human Rights Committee considered the fifth periodic report of Tunisia (CCPR/C/TUN/5) at its 2512th, 2513th and 2514th meetings on 17 and 18 March 2008 (CCPR/C/SR.2512, 2513 and 2514). It adopted the following concluding observations at its 2527th meeting (CCPR/C/SR.2527) on 28 March 2008.

A. Introduction

2. The Committee welcomes with satisfaction the submission of the fifth periodic report of Tunisia and the opportunity it presents to resume the dialogue with the State party after more than 13 years. It also welcomes the participation during the consideration of the report of a high-level and competent delegation. It is grateful to the State party for the written replies (CCPR/C/TUN/Q/5/Add.1) and additional explanations provided in advance and during the consideration of the report, even though some of the responses were incomplete.

3. While recognizing the existence of obstacles that are not the responsibility of the Tunisian authorities relating to the politicization of religion and religious extremism, which compromise human rights and constitute a negation of tolerance representing a challenge for both the State and society, the Committee considers that this cannot serve as a justification for derogations or restrictions not authorized by the Covenant.

B. Positive aspects

4. The Committee welcomes the progress made in law and in fact concerning the application of article 3 of the Covenant. It notes with interest the examples of jurisprudence of national jurisdictions having to do with child custody, transmission of nationality and inheritance rights, in particular with regard to the transmission of nationality by Tunisian women and rules of succession.

5. The Committee welcomes the moratorium on the death penalty applied in the State party since 1991. It welcomes the fact that the State party considers itself de facto abolitionist. In that regard, it takes note of the solemn commitment reiterated by the President of the Republic that no sentence of capital punishment would be carried out.

6. The Committee takes note of the delegation's statement regarding the State party's decision to accede to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and to the Convention on the Rights of Persons with Disabilities. It notes the commitment by the delegation of the State party to invite various United Nations special rapporteurs, within the framework of their mandates, to undertake missions to Tunisia, including the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. It notes that the State party also intends to establish a body responsible for follow-up to the recommendations of treaty bodies.

7. The Committee welcomes the State party's intention to remove its reservations to the Convention on the Rights of the Child, in particular with respect to the effective application of articles 23 and 24 of the Covenant.

C. Principal subjects of concern and recommendations

8. The Committee regrets the fact that the State party has still not established a national institution with competence in the area of human rights in accordance with the Paris Principles, even though the delegation indicated that bringing the High Committee on Human Rights and Fundamental Freedoms into conformity with the Paris Principles was currently the subject of a bill before Parliament following a recent decision by the Council of Ministers in that regard (article 2 of the Covenant).

The State party should take the necessary steps to ensure that the High Committee on Human Rights and Fundamental Freedoms functions in conformity with the Paris Principles.

9. The Committee notes that the issue of the advisability of acceding to the Optional Protocol is still being debated.

The State party should consider acceding to the first Optional Protocol to the Covenant.

10. While acknowledging the efforts of the authorities to eradicate domestic violence, the Committee notes that more attention should be paid to the situation of women who are the victims of violence.

The State party should increase the awareness of public opinion regarding the problem, and take all necessary steps to eradicate the phenomenon.

11. While welcoming the fact that the courts have handed down a certain number of convictions against public officials found guilty of acts of torture or ill-treatment, and that reparations have been made to victims, the Committee is concerned about serious and substantiated reports that acts of torture and cruel, inhuman or degrading treatment or punishment are being committed in the territory of the State party. According to some of these reports: (a) some judges refuse to register complaints of ill-treatment or torture; (b) some inquiries ordered subsequent to such complaints take an unreasonable amount of time; and (c) some superiors responsible for the conduct of their agents, in violation of article 7 of the Covenant, are neither investigated nor prosecuted. It regrets the lack of statistical data on the number of complaints of torture submitted to and registered by the authorities (articles 2 and 7 of the Covenant).

The State Party should:

(a) Ensure that all allegations of torture and cruel, inhuman or degrading treatment or punishment are investigated by an independent authority, and that the perpetrators of such acts, including their hierarchical superiors, are prosecuted and punished and that the victims receive reparation, including appropriate compensation;

(b) Improve the training of public officials in this area;

(c) Include detailed statistics on this subject in its sixth periodic report.

12. While noting with satisfaction that article 101 bis of the Criminal Code prohibits torture, the Committee is concerned by reports that, in practice, confessions obtained through torture are not excluded as evidence in a trial. The Committee further notes that such confessions are not explicitly prohibited by the State party's legislation (articles 7 and 14, paragraph 3 (g) of the Covenant).

The State party should prohibit the use of confessions obtained through torture in all jurisdictions. Likewise, it should ensure that the burden of proof does not rest on the victims.

13. The Committee is concerned that Tunisian law allows the police to make arrests and detain individuals for a period of three days, renewable subject to a judge's consent. During these periods of deprivation of liberty, detainees do not have access to a lawyer. According to numerous reports transmitted to the Committee, the legal guarantees of persons deprived of their freedom are not observed in practice. Thus the lawful period of police custody is allegedly

exceeded, in certain cases, without the persons arrested being allowed to undergo medical examinations and/or without their families being informed of their arrest. Furthermore, the Committee is concerned at the fact that persons deprived of their liberty do not have the right to take proceedings before a court so that it may decide without delay on the lawfulness of their detention (article 9 of the Covenant).

The State party should take measures to limit the lawful duration of police custody and bring its legislation into conformity with all the provisions of article 9 of the Covenant.

14. The Committee notes with satisfaction the progress the State party has made towards abolishing the death penalty and commuting the death sentences of certain prisoners. It regrets, however, that the courts are still handing down death sentences and that in some cases persons condemned to death have not automatically had their sentences commuted. The Committee is also concerned that the competent authorities take into account the time elapsed since a death sentence has been passed when taking a decision on commuting the sentence (articles 2, 6 and 7 of the Covenant).

The State party should take the necessary measures to commute all death sentences as soon as possible. The State party should consider abolishing the death penalty and ratifying the second Optional Protocol to the Covenant.

15. While understanding the security requirements related to combating terrorism, the Committee is concerned at the lack of precision in the particularly broad definition of terrorist acts contained in the Terrorism and Money-laundering Act (Act No. 2003-75). The Committee is concerned in particular that, under this Act, (a) lawyers are released from their obligation of professional confidentiality and obliged to testify or face the risk of imprisonment; and (b) investigators and judges may remain anonymous (articles 6, 7 and 14 of the Covenant).

The definition of terrorist acts should not lead to interpretations allowing the legitimate expression of rights enshrined in the Covenant to be violated under the cover of terrorist acts. The State party should ensure that the measures taken to combat terrorism are in conformity with the provisions of the Covenant (arts. 6, 7, 14).

16. While noting the assurances given by the delegation of the State party regarding regular and unannounced inspections of prisons conducted both by the authorities and by the International Committee of the Red Cross (ICRC) under the terms of an agreement signed between the Government and ICRC, the Committee expresses its concern at the numerous reports of the poor conditions of detention prevailing in some prisons (article 10 of the Covenant).

The State party should ensure compliance with the provisions of article 10 of the Covenant. The State party should increase the supervision and monitoring established in places of detention, in particular by allowing national NGOs access to such places.

17. The Committee is concerned by the question of the independence of the judiciary. It is also concerned that the executive branch still wields too much influence over the High Council of the Judiciary, despite the 2005 reform (article 14 of the Covenant).

The Committee recommends that measures be taken to strengthen the independence of the judiciary, in particular with respect to the executive branch.

18. The Committee is concerned by certain provisions of the Press Code as well as by their application in practice, which is contrary to article 19 of the Covenant. Article 51 of that Code contains a particularly extensive definition of the offence of defamation, which is moreover subject to severe penalties, including imprisonment, especially in cases of criticism of official bodies, the army or the administration (article 19 of the Covenant).

The State party should take steps to put an end to direct and indirect restrictions on freedom of expression. Article 51 of the Press Code should be brought in line with article 19 of the Covenant, so as to ensure a fair balance between protection of a person's reputation and freedom of expression.

19. The Committee is concerned that during elections, the Electoral Code (article 62-III) prohibits anyone from using a private or foreign radio or television channel or one broadcasting from abroad with a view to encouraging listeners to vote or to abstain from voting for a candidate or list of candidates (articles 19 and 25 of the Covenant).

The State party should abolish these restrictions in order to make the provisions of the Electoral Code fully compatible with articles 19 and 25 of the Covenant.

20. The Committee is concerned that various human rights organizations and defenders are unable freely to conduct their activities or exercise the right to peaceful assembly, and are subjected to harassment and intimidation and sometimes even arrest (articles 9, 19, 21 and 22 of the Covenant).

The State party should take steps to put an end to acts of intimidation and harassment and to respect and protect the peaceful activities of human rights organizations and defenders. Reports of acts of intimidation and harassment should be investigated without delay. The State party should ensure that any restrictions imposed on the right to peaceful assembly and demonstration are compatible with the provisions of articles 19, 21 and 22 of the Covenant.

21. The Committee is concerned at reports that a very limited number of independent associations have been registered officially by the authorities and that, in practice, several associations for the protection of human rights whose objectives and activities are not in violation of the Covenant have encountered impediments when applying for such registration (articles 21 and 22 of the Covenant).

The State party should ensure that such organizations are registered, and they should be provided with effective and prompt recourse against any rejection of their applications.

22. The Committee establishes 31 March 2012 as the date by which it should receive the sixth periodic report of Tunisia. It requests the State party to publish and disseminate widely the text of the fifth periodic report and the present concluding observations to the public as well as to the country's judicial, legislative and administrative authorities and to circulate the sixth periodic report to non-governmental organizations working in the country.

23. In accordance with article 71, paragraph 5, of the Committee's rules of procedure, the State party should transmit within a year the information on follow-up to the Committee recommendations contained in paragraphs 11, 14, 20 and 21 above. The Committee requests the State party to provide information in its next periodic report concerning the implementation of the other recommendations and the Covenant as a whole. The State party has undertaken to make an effort to give the Committee more detailed information on the concrete results achieved.
