



## **Tunisia's Compliance with the International Covenant on Civil and Political Rights: The Death Penalty**

**Submitted by The Advocates for Human Rights**

a non-governmental organization in special consultative status with ECOSOC since 1996

**The World Coalition Against the Death Penalty**

**La Coalition tunisienne contre la peine de mort**

and

**ECPM**

**128th Session of the Human Rights Committee  
2–27 March 2020**

**Submitted 3 February 2020**

**The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications.

**The World Coalition Against the Death Penalty** is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

**La Coalition tunisienne contre la peine de mort** is a volunteer-based non-governmental organization committed to the definitive abolition of the death penalty in Tunisia, via the Constitution and the development of a citizen movement in favor of abolition and holding Tunisian authorities accountable. Created in 2007 and recognized in 2012, it is also committed to monitoring the situation of persons sentenced to death including the respect for their rights before and after conviction, and to rehabilitate the memory of persons executed for political motives under the dictatorship in Tunisia.

**ECPM** (Together Against the Death Penalty) is a French non-governmental organisation that fights against the death penalty worldwide and in all circumstances by uniting and rallying abolitionist forces across the world. The organisation advocates with international bodies and encourages universal abolition through education, information, local partnerships and public awareness campaigns. ECPM earned its legitimacy as a unifying group of the abolitionist movement because of its strong sense of ethics and values. ECPM is the organiser of the World Congresses against the death penalty and a founding member of the World Coalition Against the Death Penalty. In 2016, ECPM was granted consultative status with ECOSOC.

## EXECUTIVE SUMMARY

1. Tunisia has not executed a person in nearly 30 years. In light of this *de facto* moratorium on executions, many have characterized the state as effectively abolitionist with respect to the death penalty. After the revolution of 2010-2011, transitional government authorities considered abolition and, in 2012, commuted the death sentences of at least 121 individuals to life in prison. There is sustained advocacy for complete abolition, but political elites and public opinion remain divided, particularly after recent terrorist attacks. Tunisia has yet to formally abolish the death penalty, and it has not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights. A number of offenses in the Tunisian criminal code remain punishable by death; and a 2015 counter-terrorism law, as amended in 2019, expanded the applicability of the death penalty. Moreover, with the election of a new president in September 2019 whose reported views on the death penalty differ from recent predecessors, the *de facto* moratorium on executions may be at risk. Ongoing reports of torture in detention facilities, various due process deficiencies in the Tunisian criminal justice system, and inequities in the application of the death penalty further amplify these concerns.
2. Therefore, the authors of this report suggest that the Human Rights Committee recommend that Tunisia formally abolish the death penalty and ratify the Second Optional Protocol; and, as temporary measures, that Tunisia continue to vote in favor of UN General Assembly resolutions for a universal moratorium on the death penalty and to narrowly restrict application of the death penalty to the most serious criminal offences, in accordance with Article 22 of the Tunisian Constitution and Article 6 of the ICCPR. The authors further recommend that the Tunisian Government commit to formal curative efforts to remedy due process violations and demonstrate through law and practice respect for the dignity of the accused and condemned, and their families, before, during, and after trial. Finally, the authors recommend that Tunisian authorities renew national efforts to ensure equality under the law.

### **Tunisia fails to uphold its obligations under the International Covenant on Civil and Political Rights**

3. This report addresses five issues raised in the Committee's List of Issues Prior to Reporting ("List of issues") related to the death penalty in Tunisia: failure to abolish the death penalty or to make further progress toward abolition pursuant to Article 6; recent expansion of offenses punishable by death in contravention of Article 6; due process violations, measured against Articles 9 and 14, as they relate to the death penalty; the use of torture proscribed by Article 7; and economic and geographic disparities with respect to sentencing raising equal protection concerns under Article 14.

#### **I. Despite a long-observed moratorium on executions, Tunisia has not abolished the death penalty (Art. 6).**

4. Tunisia has observed a *de facto* moratorium on executions since 1991. As noted in Tunisia's sixth periodic report, that moratorium has been maintained pursuant to General Assembly resolutions adopted in 2012, 2014, 2016, and 2018. However, Tunisia has not formally abolished the death penalty and there are concerns that, within the government,

both in the office of the Presidency and in Parliament, support for the moratorium may be eroding.

5. Paragraph 13 of the List of Issues directly addresses the death penalty. In particular, the Committee requests confirmation that the moratorium on capital punishment “remains in force.” The Committee also requests information on the number of death sentences, broken down by demographic information, over the reporting period, as well as an update on whether Tunisia intends to ratify the Second Optional Protocol. The state party confirms in paragraph 149 of its response that the moratorium is still being observed. It provides statistics related to the number of death sentences handed down in Annex 15 to its response. Tunisia also states, in paragraph 153, that ratification of the Second Optional Protocol would require a “broad societal dialogue and consensus.”
6. Tunisia’s response concedes its primary shortcoming, namely that the state continues to sentence criminal defendants to death. According to civil society estimates, in 2019, at least 47 individuals were sentenced to death,<sup>1</sup> (many in absentia), though the actual numbers could be higher. In 2018, 12 or more individuals were believed to have been sentenced to death, compared with at least 25 in 2017.<sup>2</sup> Annex 15 of the State Party’s response asserts that 46 individuals are currently condemned to death in Tunisia and another 49 face the death penalty in pending trials. Those figures are not reliable. According to civil society estimates through 2018, at least 89 individuals were known to be under sentence of death,<sup>3</sup> three of whom are women. The authors of this report welcome the continued moratorium on executions and the general downward trend in the issuance of death sentences, but remain concerned that Tunisian courts continue to sentence people to death.
7. Support for capital punishment among Tunisia’s political leadership is also cause for concern. During the 2019 election campaign, Tunisia’s new president, Kais Saied, declared his support for reinstating the death penalty.<sup>4</sup> Moreover, the Speaker of the Assembly of Representatives and leader of Tunisia’s powerful An-Nahda party, Rachid Ghannouchi, has also spoken in favor of the death penalty.<sup>5</sup> Views such as these suggest potential regression in the public effort to meet state party obligations under the ICCPR, and run directly counter to the findings of Tunisia’s Individual Freedoms and Equality Committee (COLIBE), mandated in 2017 by the previous President of the Republic. In its

---

<sup>1</sup> That estimate includes 41 terrorism-related convictions pronounced in January 2019 by the fifth chamber of the criminal court specializing in terrorism, five other death sentences pronounced for rape and murder in February 2019, and another for rape and murder in June 2019.

<sup>2</sup> Amnesty International, *Death Sentences and Executions: 2018*, (London: Amnesty International Ltd, 2019), <https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF>.

<sup>3</sup> Amnesty International, *Death Sentences and Executions: 2018*, (London: Amnesty International Ltd, 2019) <https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF>.

<sup>4</sup> Rana Jawad, *Comment le timide professeur de droit Kais Saïd est devenu président de la Tunisie*, BBC, Oct. 19, 2019, <https://www.bbc.com/afrique/region-50101107>.

<sup>5</sup> *Rached Ghannouchi, leader of Tunisia's ruling Islamist party*, The Interview, France24, April 1, 2013, <https://www.france24.com/en/20130401-interview-rached-ghannouchi-ennahda-islamist-party-child-rape-death-penalty>.

report submitted in 2018 to the President of the Republic, COLIBE forcefully recommended a national orientation toward abolition of the death penalty.<sup>6</sup>

8. *Suggested recommendations:*

- Tunisia should take concrete steps to adopt a complete, formal abolition of the death penalty and ratify the Second Optional Protocol.
- Tunisia should formalize its moratorium on executions.
- While working toward complete abolition, the Tunisian Government should revise the criminal code and the code of military justice to remove capital punishment from the list of principal sentences so that judicial authorities cease sentencing people to death.

**II. Tunisia maintains offenses that are punishable by death in its criminal code, and continues to enact new laws whose penalties include capital punishment (Art. 6).**

9. While Tunisia continues to observe a moratorium on executions, a number of offenses remain punishable by death, and during the reporting period the State has authorized capital punishment for new offenses.
10. The List of Issues notes in paragraph 13 that Organic Act No. 2015-26 of 7 August 2015 authorizes capital punishment for certain terrorism-related crimes. It also requests that the State Party provide an exhaustive list of crimes punishable by death, and further seeks information on whether the death sentence is mandatory with respect to these offenses. Tunisia, in paragraph 148 of its response, acknowledges the 2015 terrorism law, but notes that only terrorist acts that result in death are punishable by death, and further asserts that only 4 individuals have been sentenced under the law. The State Party lists offenses punishable by death under Organic Act No. 2015-26 in Annex 16. In paragraph 151, Tunisia also notes that judges are permitted to apply mitigating factors to death sentences.
11. Organic Act No. 2015-26 of 7 August 2015 does in fact establish that a number of terrorist acts are punishable by death.<sup>7</sup> Moreover, as amended in 2019 by Organic Act No. 9, the law appears to establish a new offense punishable by death: committing a rape in the course of committing a terrorist activity.<sup>8</sup> Tunisia's criminal code also provides for the imposition of the death penalty for a number of other offenses, many of which do not entail an intentional killing or, in some cases, any killing at all. They include: treason and espionage,<sup>9</sup> an attack on the life of the head of state,<sup>10</sup> insurrection,<sup>11</sup> gang-related violence (political or otherwise),<sup>12</sup> arson against certain state property,<sup>13</sup> violence or

---

<sup>6</sup> *The Tunisian Covenant for Equality and Individual Freedoms*, HRW, July 24, 2018, <https://www.hrw.org/news/2018/07/24/tunisian-covenant-equality-and-individual-freedoms>.

<sup>7</sup> Organic Act No. 2015-26 of 7 August 2015; *see also* Annex 16.

<sup>8</sup> Article 29, Organic Act No. 2019-9 of 23 January 2019. (The 2019 amendment does also make positive revisions to the 2015 law regarding human rights protections more generally.)

<sup>9</sup> Penal Code of Tunisia, art. 60, Jul. 9, 1913, as amended.

<sup>10</sup> Penal Code of Tunisia, art. 63, Jul. 9, 1913, as amended.

<sup>11</sup> Penal Code of Tunisia, art. 72, Jul. 9, 1913, as amended.

<sup>12</sup> Penal Code of Tunisia, art. 74, Jul. 9, 1913, as amended.

<sup>13</sup> Penal Code of Tunisia, art. 76, Jul. 9, 1913, as amended.

threat of violence against a magistrate during a hearing,<sup>14</sup> premeditated murder,<sup>15</sup> parricide,<sup>16</sup> and voluntary homicide during the commission of a crime.<sup>17</sup> In addition, under Article 59, attempted crimes are punishable by the prescribed penalties of the underlying crime.<sup>18</sup> The death penalty, then, is available for three broad categories of crimes: crimes against the state, acts of terrorism, and violent criminal offenses that result in death.

12. Tunisia continues to sentence individuals to death under each category. With respect to terrorism and attacks against the state, Tunisia acknowledged that at least four individuals have been sentenced to death under the 2015 terrorism law. There are, however, numerous examples of recent terror-related death sentences. Two individuals were sentenced to death in January 2020 in connection with the bombing of a presidential guard bus in 2015. In 2019, a Tunisian court sentenced 41 alleged terrorists to death—only two of whom were in custody at the time of trial—for an attack on an army checkpoint in the Chaambi Mountains in July 2014.<sup>19</sup> Additionally, in 2018, an individual was sentenced to death in Bizerte, under terrorism charges, for killing an army officer.<sup>20</sup> In 2016, an individual was sentenced to death in another mass sentencing for a 2013 attack in the Chaambi Mountains.<sup>21</sup> Courts also regularly issue death sentences for violent felonies. A death sentence was affirmed in November 2019 by an appeals court in Kairouan for an individual who raped and murdered a mother of three.<sup>22</sup> The court of first instance in Kairouan condemned to death, in February 2019, five individuals accused of raping and murdering an elderly woman.<sup>23</sup> In 2018, an appeals court in Sousse upheld a death sentence for a former police officer who killed a colleague.<sup>24</sup> Moreover, following heinous crimes or terrorist attacks, police unions, the relatives of victims, and other sympathetic citizens often call for the death penalty. These demands are, in part, stoked by political manipulation (sometimes led by Islamist politicians in favor of its reinstatement) and media campaigns. For example, in August 2019, citizens in Ksar held a protest calling for the death penalty for a suspect in custody.<sup>25</sup>

---

<sup>14</sup> Penal Code of Tunisia, art. 126, Jul. 9, 1913, as amended.

<sup>15</sup> Penal Code of Tunisia, art. 201, Jul. 9, 1913, as amended.

<sup>16</sup> Penal Code of Tunisia, art. 203, Jul. 9, 1913, as amended.

<sup>17</sup> Penal Code of Tunisia, art. 204, Jul. 9, 1913, as amended.

<sup>18</sup> Penal Code of Tunisia, art. 59, Jul. 9, 1913, as amended.

<sup>19</sup> *Tunisia sentences 41 to death over 2014 attack on army*, THE NATIONAL, Jan. 13, 2019, <https://www.thenational.ae/world/mena/tunisia-sentences-41-to-death-over-2014-attack-on-army-1.812443>.

<sup>20</sup> *Bizerte: Peine capitale pour le terroriste qui a tué le caporal Khiari*, Kapitalis, April 18, 2018, <http://kapitalis.com/tunisie/2018/04/18/bizerte-peine-capitale-pour-le-terroriste-qui-a-tue-le-caporal-khiari/>.

<sup>21</sup> *Tunisia sentences 76 over soldier killings*, Al Araby Al Jadeed, Oct. 13, 2016, <https://www.alaraby.co.uk/english/news/2016/10/13/tunisia-sentences-76-over-soldier-killings>.

<sup>22</sup> *Kairouan: Confirmation de la peine capitale pour le serial violeur qui a tué la mère de famille au cimetière Qoraich*, Kapitalis, Nov. 22, 2019, <http://kapitalis.com/tunisie/2019/11/22/kairouan-confirmation-de-la-peine-capitale-pour-le-serial-violeur-qui-a-tue-la-mere-de-famille-au-cimetiere-qoraich/>.

<sup>23</sup> Anouar Chennoufi, *Viol et meurtre de la vieille femme de 86 ans à Kairouan : Les 5 accusés condamnés samedi à la peine de mort par pendaison*, Tunivisions, Feb. 16, 2019, <https://tunivisions.net/20048/viol-et-meurtre-de-la-vieille-femme-de-86-ans-a-kairouan-les-5-accuses-condamnes-samedi-a-la-peine-de-mort-par-pendaison/>.

<sup>24</sup> *Sousse: Peine capitale pour un ancien policier qui a tué son ex-collège*, Kapitalis, Nov. 10, 2018, <http://kapitalis.com/tunisie/2018/11/10/sousse-peine-capitale-pour-un-ancien-policier-qui-a-tue-son-ex-collague/>.

<sup>25</sup> Mohamed Khalil Jelassi, *Crime, violence et sentiment d'insécurité : Un malaise social inquiétant*, La Presse, Aug. 17, 2019, <https://lapresse.tn/19763/crime-violence-et-sentiment-dinsecurite-un-malaise-social-inquietant/>.

13. *Suggested recommendations:*

- Tunisian authorities should cease introducing new laws that authorize capital punishment for additional crimes.
- While working toward complete abolition, the Tunisian Government should narrowly restrict application of the death penalty to the most serious criminal offences pursuant to Article 22 of the Tunisian Constitution and Article 6 of the ICCPR, consistent with paragraphs 35 and 36 of General Comment 36.

14. *Suggested questions:*

- What role does the military court system play in the imposition of the death penalty, including in terrorism-related cases?
- How is Tunisia working to better define what constitutes terrorism as a criminal offense?

**III. Suspects, particularly persons alleged to have committed offenses related to terrorism, continue to report that they were tortured during interrogation and/or pretrial detention (Art. 7).**

15. Torture is an issue of primary concern in Tunisia. Civil society organizations and the media regularly publish reports of detainee abuse. The role torture plays in terrorism investigations is especially significant.

16. Paragraph 14 of the List of Issues asks Tunisia to explain how it has aligned its definition of torture with Article 7. The List of Issues also seeks information related to measures taken to prevent torture and to protect individuals from torture and requests a statistical breakdown of reports of detainee abuse (paragraphs 14, 15). The List of Issues also requests information regarding the use of force when state security forces come under attack (paragraph 16). Tunisia responds by listing the domestic instruments that prohibit torture and protect individual life and dignity (Section 7.2). It further notes that a national review was being conducted to better prevent torture. The State Party notes the establishment of the National Authority for the Prevention of Torture, as well as civil society collaboration and further training in prevention. Annexes 17 and 18 detail allegations of ill-treatment (Section 7.5). The State Party also details the domestic authorization of the military's use of force (section 7.6) and describes an initiative to establish a code of conduct for internal security forces (paragraph 185).

17. This report focuses on torture in the context of alleged acts of terrorism, as terrorist offenses carry the death penalty and terror-related detainees often allege abuse. Under the former Ben Ali regime, torture was widespread, and since the revolution of 2010-2011 the State Party has continued to use torture. The Tunisian Organization Against Torture documented an estimated 250 cases of torture in 2015, 153 cases in 2016, 80 cases in 2017, and 54 cases in 2018.<sup>26</sup>

---

<sup>26</sup> See, e.g., *Ahmed Nadhif, Torture is still rampant in Tunisia*, Al Monitor, Dec. 26, 2017, <https://www.al-monitor.com/pulse/fa/originals/2017/12/tunisia-torture-security-ben-ali-regime.html>.

18. Moreover, allegations of torture often arise in the context of terrorism-related arrests and investigations. A 2017 report from Amnesty International documented repeated circumstances of “unlawful house searches, arbitrary arrests, torture and other ill-treatment.”<sup>27</sup> In particular, in 2015, the same year the counterterrorism law was passed providing for the imposition of the death penalty, two scandals emerged involving terrorism-related arrests and torture by the Al-Gorjani counterterrorism brigade.<sup>28</sup> One detainee, arrested by the Gorjani Brigade after the Bardo attacks, recited a litany of abuse:

*At one point they took me to an office on my own with nine officers and they made me take off my clothes and beat me and hung me up in the chicken position. They beat me and used electric shocks and would ask me questions while they were beating me. Sometimes they would return me to the others and then call me back and beat me again. They beat me on my feet [falaqa]. They used electric shocks on my genitals. They beat me with sticks, rubber tubes and metal rods on my lower back and chests. They never let me rest.*<sup>29</sup>

19. The Amnesty report further detailed similarly concerning treatment in the pretrial detention context, as well as accountability deficits.<sup>30</sup>

20. *Suggested recommendations:*

- Tunisia should revise its criminal code to align domestic definitions of torture with international norms, including the standard articulated in Article 7 of the ICCPR.
- Tunisia should amend domestic laws to formally prohibit torture, in law and practice, including specific provisions for protecting reporting parties and fostering greater accountability for perpetrators of torture.
- Tunisia should ensure that no court of law admits as evidence any statements obtained through the use of torture or other ill-treatment.
- Tunisia should ensure that any person arrested on suspicion of terrorism-related offenses is questioned only when the suspected person’s attorney is present.

21. *Suggested question:*

- To what extent does the state of emergency exacerbate the risk of torture and ill-treatment of criminal suspects and persons in detention?

---

<sup>27</sup> Amnesty International, *‘We Want an End to the Fear’ Abuses under Tunisia’s State of Emergency*, (London: Amnesty International Ltd, 2017), <https://www.amnesty.org/download/Documents/MDE3049112017ENGLISH.PDF>.

<sup>28</sup> ‘Amnesty International, *‘We Want an End to the Fear’ Abuses under Tunisia’s State of Emergency*, (London: Amnesty International Ltd, 2017), <https://www.amnesty.org/download/Documents/MDE3049112017ENGLISH.PDF>.

<sup>29</sup> Amnesty International, *‘We Want an End to the Fear’ Abuses under Tunisia’s State of Emergency*, (London: Amnesty International Ltd, 2017), <https://www.amnesty.org/download/Documents/MDE3049112017ENGLISH.PDF>.

<sup>30</sup> ‘Amnesty International, *‘We Want an End to the Fear’ Abuses under Tunisia’s State of Emergency*, (London: Amnesty International Ltd, 2017), <https://www.amnesty.org/download/Documents/MDE3049112017ENGLISH.PDF>.

#### **IV. Despite commendable reforms, due process violations undermine the integrity of criminal investigations and trials (Arts. 9, 10 & 14).**

22. Defendants who face a possible sentence of death are entitled to heightened due process safeguards. Tunisia has taken commendable steps toward improving pretrial and trial protections, but the judicial process lacks procedural safeguards prior to the initiation of formal charges, as relevant to Articles 9, 10, and 14.
23. Paragraph 19 of the List of Issues asks Tunisia to provide details on Organic Law 2016-5 of 16 February 2016, which limits pre-charge custody and provides access to counsel. In paragraph 23, the Committee also asks Tunisia to list measures taken to provide equal access to the courts and to fair trials. In section 9.1 of its response, Tunisia notes the important safeguards covered by Law No. 5, as well as increased independent access to custodial facilities and improved training for judges. Tunisia also underscores constitutional guarantees for the right to counsel and notes the multi-year, nationwide Plan of Action for Judicial and Prison System Reform, aimed at improving access to and the quality of justice (paragraphs 240-242).
24. The authors of this report note that the 2016 enactment of Law No. 5 was a significant step toward ensuring basic due process guarantees, including access to counsel and limiting pre-charge custodial periods. The Tunisian Code of Criminal Procedure currently provides for access to counsel upon arrest and limits, for serious offences, pre-charge custody to 48 hours, renewable for another 48 hours if so ordered.<sup>31</sup> Defendants suspected of engaging in terrorist-related offenses, however, can be denied access to counsel for 48 hours<sup>32</sup> and may be detained without charge for 15 days.<sup>33</sup>
25. According to Tunisian defense attorneys interviewed by Human Rights Watch, this exception to the right to immediate access to counsel is almost always used in terrorism cases.<sup>34</sup> One lawyer who said she had handled nearly 50 terror-related cases since the enactment of Law No. 5 estimated that in 80% of her cases the defendant had been denied access to counsel for 48 hours.<sup>35</sup> Human Rights Watch reviewed five terror-related prosecution files and in each case authorities had requested to deny access to counsel.<sup>36</sup>
26. In addition, authorities appear to be denying suspects their rights, such as the right to counsel, and in a number of documented circumstances they have used force, duress, or misrepresentation to obtain waivers from suspects.<sup>37</sup> This practice appears to be

---

<sup>31</sup> Art. 13, Code de Procédure Pénale, <http://www.legislation.tn/sites/default/files/codes/Procedurepenale.pdf>.

<sup>32</sup> Article 13, Organic Law No.5 of February 16, 2016.

<sup>33</sup> Amnesty International, *'We Want an End to the Fear' Abuses under Tunisia's State of Emergency*, (London: Amnesty International Ltd, 2017), <https://www.amnesty.org/download/Documents/MDE3049112017ENGLISH.PDF>.

<sup>34</sup> *You Say You Want a Lawyer? Tunisia's New Law on Detention, on Paper and in Practice*, HRW, June 1, 2018, <https://www.hrw.org/report/2018/06/01/you-say-you-want-lawyer/tunisia-new-law-detention-paper-and-practice>.

<sup>35</sup> *You Say You Want a Lawyer? Tunisia's New Law on Detention, on Paper and in Practice*, HRW, June 1, 2018, <https://www.hrw.org/report/2018/06/01/you-say-you-want-lawyer/tunisia-new-law-detention-paper-and-practice>.

<sup>36</sup> *You Say You Want a Lawyer? Tunisia's New Law on Detention, on Paper and in Practice*, HRW, June 1, 2018, <https://www.hrw.org/report/2018/06/01/you-say-you-want-lawyer/tunisia-new-law-detention-paper-and-practice>.

<sup>37</sup> *You Say You Want a Lawyer? Tunisia's New Law on Detention, on Paper and in Practice*, HRW, June 1, 2018, <https://www.hrw.org/report/2018/06/01/you-say-you-want-lawyer/tunisia-new-law-detention-paper-and-practice>.



particularly common in cases involving terrorism charges. In one case relayed to Human Rights Watch, defense counsel for a terror suspect suspected that authorities had falsely obtained the waiver:

*...he had been arrested by the Anti-Terrorist brigade of Gorjani and that he would be transferred to court. When I went to the first instance court in Tunis, the investigative judge was interrogating my client. I read through the police report and found that he had waived his right to a lawyer. I asked him in front of the judge whether this was true, and he said that he had not waived his right and, on the contrary, had asked them to call me, but the police forces beat him and then wrote that he did not wish to have the assistance of a lawyer. I find it hard to believe that a person arrested on terrorism charges so many times, who has a lawyer defending him in all those past cases, would willingly renounce to this right.<sup>38</sup>*

27. *Suggested recommendations:*

- The Tunisian Government should undertake outreach efforts to better inform the public about a suspect's rights upon arrest.
- Tunisian authorities should undertake pre-charge detention of suspects only in rare circumstances and for no longer than 48 hours.
- The Tunisian Government should amend the law to ensure that the right to counsel is never abrogated in cases related to terrorism, and that the presence of a lawyer is compulsory at all stages of the criminal justice process, including the police investigation, and to require independent verification of the legitimacy of waivers of the right to counsel.
- The Tunisian Government should take into account that the decision to deprive an accused person the assistance of counsel must be grounded in law and in practice, and that after any period during which access to counsel is denied the accused must be given a medical exam.

**V. Tunisian authorities impose the death penalty arbitrarily, in violation of Article 14 of the ICCPR (Art. 14).**

28. Article 108 of the Tunisian Constitution provides for the right to a fair trial. Yet people sentenced to death in Tunisia disproportionately come from poor communities (both urban and rural), suggesting systemic injustice. In paragraph 23 of the List of Issues, the Committee notes the importance of legal aid in assuring adequate representation.

29. A 2013 report by Ensemble Contre la Peine de Mort in partnership with La Coalition tunisienne contre la peine de mort found that 68.5% of people sentenced to death were precarious day-workers, people who were unemployed, guards, and farmworkers, who came from the poorest and most neglected regions of the country. A quarter of them alone came from one such region, the governorate of Silinia. A new investigation, undertaken in 2018, by La Coalition tunisienne contre la peine de mort in 10 prisons

---

<sup>38</sup> *You Say You Want a Lawyer? Tunisia's New Law on Detention, on Paper and in Practice*, HRW, June 1, 2018, <https://www.hrw.org/report/2018/06/01/you-say-you-want-lawyer/tunisia-s-new-law-detention-paper-and-practice>.

across the country, confirmed the similar findings. It found that the overwhelming majority of persons sentenced to death grew up in precarious environments, 62% had no fixed income, 6% were illiterate, some had mental health issues. The study concluded that the application of the death penalty tracks social and regional disparities. These findings underscore additional concerns about the disadvantages that people from disadvantaged socio-economic backgrounds face at trial in Tunisia, including access to counsel upon arrest and the financial inability to be assisted by the lawyer of one's choosing through all phases of an investigation and trial.

30. *Suggested recommendation:*

- The Justice Ministry should ensure that from the moment the right to counsel attaches, no person is denied access to counsel on account of ability to pay.
- The Justice Ministry should guarantee public information on the number of persons sentenced to death.
- The Tunisian Government should ensure that persons sentenced to death have access to medical and psychological assistance and treatment that meet international standards.

31. *Suggested question:*

- Please provide cross-tabulated geographic, and economic, and demographic data for all persons sentenced to death.