

TUNISIA

27TH SESSION OF THE WORKING GROUP
ON THE UNIVERSAL PERIODIC REVIEW
HUMAN RIGHTS COUNCIL

MAY 2017

WRITERS OF THE REPORT



I. INTRODUCTION AND PRINCIPAL RESULTS

The aim of this report is to provide information about application of the death penalty in Tunisia since the last session of the Universal Periodic Review (27th May to 1st June 2012). It is a joint report by the following three organisations:

- **La Coalition nationale Tunisienne contre la peine de mort** (Tunisian National Coalition Against the Death Penalty or CTCPM) was created in response to the appeal launched at the World Congress Against the Death Penalty held in Paris in February 2007, which encouraged abolitionists to form organisations at national and regional levels. The Coalition nationale concentrates its efforts on Tunisia and carries out research and action with a view to abolishing the death penalty in that country. Its charter stipulates that the Coalition nationale aims to “obtain abolition of the death penalty in [its] country [...] by coordinating action to promote a broad citizen-led movement in support of abolition and by taking action with the authorities in order for [its] country to join the camp of abolitionist States.”
- **Ensemble contre la peine de mort** (Together Against the Death Penalty or ECPM) argues for universal abolition of capital punishment, particularly via action to raise awareness and international advocacy. As a founding member of the World Coalition Against the Death Penalty, ECPM organises the World Congress which is held every three years. ECPM supports the creation of national and regional coalitions, educates the public through paper publications and online, and leads legal investigations, press conferences and, depending on the urgency of the executions, international campaigns for action.
- **The World Coalition Against the Death Penalty** is composed of more than 150 NGOs, bar associations, local authorities and unions. It aims to strengthen the international dimension of the fight against the death penalty. Its eventual aim is to obtain universal abolition of the death penalty. The World Coalition provides a global dimension to the action taken by its members in the field who are sometimes isolated. Its work complements their initiatives while respecting their independence.

II. LEGAL FRAMEWORK SURROUNDING APPLICATION OF THE DEATH PENALTY IN TUNISIA

II.1. INTERNATIONAL LEGAL FRAMEWORK

Tunisia has ratified several international treaties relating to the protection of human rights.

On 30th April 1968, it signed the International Covenant on Civil and Political Rights (ICCPR)¹, an agreement which it ratified on 18th May 1969. The ICCPR was adopted by the UN General Assembly and submitted for signature, ratification and adherence through Resolution No. 2 200 of 26th December 1966. On 27th September 1988, Tunisia ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly and submitted for signature, ratification and adherence through Resolution No. 39/46 of December 1984, and which came into force on 26th June 1987.

On 29th June 2011, Tunisia ratified the Option Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The national mechanism for the prevention of torture, an independent body charged with overseeing respect for people deprived of their liberty, came into force on 5th May 2016.

¹ In conformity with Article 6, the International Covenant on Civil and Political Rights (ICCPR) sets out that “every human being has the inherent right to life” and that every person enjoys the natural right to life, obliging the law to protect this right in such a way that “no one shall be arbitrarily deprived of his life”.

Within international bodies, Tunisia voted in favour of the last two UN General Assembly resolutions seeking a moratorium on application of the death penalty (it abstained in 2007, 2008 and 2010; it voted in favour in 2012 and 2014).

II.2. NATIONAL LEGAL FRAMEWORK

II.2.1. THE LEGAL BASIS FOR THE APPLICATION OF THE DEATH PENALTY

— The death penalty in the Tunisian Constitution
After several months of discussion, Tunisia adopted a new Constitution on 26th January 2014. In the absence of the abolition of the death penalty, Article 21 of the document declares that “the right to life is sacred”, but it specifies that “it can be infringed in cases set down by law”.
Introducing its exceptional nature in this way also legitimises use of the death penalty in Tunisia.

— The death penalty in the Tunisian penal system
Tunisian criminal law is secular. It provides for the death penalty for two categories of offences: common law crimes (homicide, aggravated rape, kidnapping followed by death) and political or military offences (attacking internal or external State security, high treason). Political or military offences are subject to proceedings before civilian or military courts.
On 25th July 2015, the Tunisian Parliament adopted a new anti-terrorist law by a very large majority (174 votes for, 10 votes against and no abstentions). Against a background marked by a number of successive terrorist attacks in Sousse and Tunis, the text provides for the death penalty for a series of ‘terrorist’ crimes. There was no provision for the death penalty for in the old 2003 anti-terrorist law.

II.2.2. APPLICATION OF THE DEATH PENALTY IN TUNISIA

In Tunisia, 135 prisoners have been executed since independence, the first in 1956 and the last in 1991. The death penalty has served as an instrument to assert the authority of the State. Nearly half of all sentences executed were for political motives.

Since 9th October 1991, Tunisia has observed a ‘de facto moratorium’ on executions. However, this has not been legally formalised. Since that date, the courts have continued to hand down death sentences at a rate of seven to ten sentences per year. According to Amnesty International, 11 people were sentenced to death in 2015.

125 prisoners sentenced to death received a ‘special pardon’ from President Moncef Marzouki on 14th January 2012, a month after his election. Their sentences were commuted to life imprisonment. Nine of them, including the oldest, were released on 14th January 2013 after spending more than two decades in detention under inhuman conditions.

III. THE TREATMENT OF PRISONERS SENTENCED TO DEATH IN TUNISIA

Until 1995 and 1996, prisoners sentenced to capital punishment lived in isolation, locked up in solitary confinement, usually chained, including at night, their only clothes, winter and summer, being a distinctive blue outfit, the prison uniform. They endured physical cruelty, humiliation and ill treatment, especially during the period preceding the first cell reallocations (before 1996).

In January 2011, in the wake of the popular demonstrations which led to the fall of the dictatorial regime of Zine el-Abidine Ben Ali, Tunisian prisons witnessed a veritable insurrection. It ended with more than 60 deaths, mass escapes and serious damage.

The Revolution ended the most shocking abuse of prisoners sentenced to death. In particular, they were once again authorised to receive visits from their close family and to receive food parcels twice a week.

Until the commutation of their sentences in 2012, prisoners sentenced to death lived in terror of their execution and developed pathologies linked to the death row phenomenon throughout their incarceration. Prisoners suffered from isolation and then overcrowding, unhygienic conditions and food which they judged to be “revolting”. Their material conditions of detention seem paradoxically to have worsened since the Jasmine Revolution because prisons have been hit by budgetary restrictions or shortages.

Although the situation varies enormously from one establishment to another, depending on the level of isolation of the relevant region, medical and psychological monitoring of prisoners sentenced to death is inadequate overall. Chronic illnesses are poorly treated. In the 1990s and 2000s, a number of prisoners sentenced to death died due to a lack of care and several others committed suicide. A large number of prisoners use and abuse anxiolytic and psychotropic drugs which seem to be generously distributed to them to buy a form of ‘social peace’.

Prisoners sentenced to death do not have access to educational, professional or technical training programmes and are not given the possibility to work. Even today, the activities proposed in prison are often limited to religious studies provided free of charge by not-for-profit organisations under the theoretical supervision of the Ministry for Religious Affairs.

There is no mechanism for assistance or help with rehabilitation for prisoners sentenced to death who are subsequently pardoned and released, and who are therefore left to themselves when they leave prison.

IV. RECOMMANDATIONS

The Tunisian authorities could immediately:

IV.1. POLITICAL

- Ratify the Second Protocol to the International Covenant on Civil and Political Rights (ICCPR);
- Maintain Tunisia’s positive vote at the UN General Assembly for a universal moratorium on executions;
- Commute all death sentences into imprisonment for a determined period;
- Open widely in public spaces and political arenas a debate on the abolition of the death penalty;
- In the event of a review of trials requested by prisoners sentenced to death, guarantee that it is brought before judges who have not previously passed judgement on their cases;
- Return to the rule of unanimity for the passing of death sentences within Tunisian courts.

IV.2. MEDICAL

- Guarantee the lack of criminal responsibility of those who are mentally ill, in line with international standards and Tunisian law;
- Ensure prisoners sentenced to death have access to medical-psychological treatment and assistance in line with international standards;
- Introduce specific assistance for prisoners who are sentenced to death and subsequently released.

IV.3. HUMANITARIAN AND PENITENTIARY

- Guarantee public information about the number of prisoners sentenced to death and their identities;
- Guarantee conditions of detention for prisoners sentenced to death in line with international standards;
- Plan for the possibility of enrichment and rehabilitation for prisoners by guaranteeing their right to training and regular visits from family and friends.

V. BIBLIOGRAPHIE

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This publication has been prepared with the help of the AFD, Fondation de France and Région Ile de France. The contents of this publication are the sole responsibility of the CMCPM and the OMDH and can in no way be considered to reflect the views of the financial partners.