

SUMMARY REPORT FOR THE UNIVERSAL PERIODIC REVIEW OF TUNISIA

The report for the Working Group on the Universal Periodic Review (UPR) presents information and data on the use of the death penalty in Tunisia since the last session of the UPR (2017) for the 4th examination cycle (November 2022).

FACTS AND FIGURES:

- Tunisia has observed a de facto moratorium since 1991 but judges continue to sentence people to death every year.
- Between 2010 and 2020, 185 death sentences were reportedly handed down by the judiciary.
- In 2020, 8 death sentences were reportedly pronounced. Between 1 January and 30 April 2022, more than 20 death sentences were pronounced.
- As of 31 December 2021, 136 prisoners sentenced to death, including 3 women, were being detained in Tunisian prisons.
- Some prisoners sentenced to death suffer from intellectual disabilities or suffered from significant psychosocial disabilities at the time of the trial.
- Since his election in 2019, the President has repeatedly declared its support to the application of the death penalty.

Recommendations

- **Officialise the moratorium on executions.**
- **Publish transparent disaggregated data on the use of the death penalty, including the number of death sentences handed down each year and the number of prisoners sentenced to death by prison, sex, age, etc.**

LEGAL FRAMEWORK

National legal framework

- The Constitution adopted in 2014 did not abolish the death penalty but guaranteed the right to life.
- 58 legislative provisions provide for the death penalty. They are included in the Criminal Code, the Code of Military Justice and the Organic Law No. 2015-26 of 7 August 2015 on the fight against terrorism and the repression of money laundering.
- More than half of the provisions provide for the death penalty for offenses that do not meet the threshold of the most serious crimes under international law.
- The President of the Republic has the right to grant clemency. The last known clemency was on 14 January 2012.

Recommendations

- **Revise the Tunisian Penal Code with a view to abolishing the death penalty.**
- **Amend legislative provisions that provide for the death penalty for offenses that cannot be considered as “most serious” crimes under international law.**
- **Strengthen the capacity of actors of the judiciary about international minimum standards applicable to all persons deprived of their liberty, including those on death row.**
- **Use the right to grant clemency and commute all death sentences to prison sentences.**
- **Include the right to visit prisoners sentenced to death in prison regulations.**

International instruments

- Tunisia has ratified the following treaties:
 - International Covenant on Civil and Political Rights (ICCPR)
 - African Charter on Human and Peoples’ Rights (ACHPR)
 - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
 - Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

- Tunisia has neither ratified the Rome Statute nor the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (OP2).
- Since 2012, Tunisia has voting in favour of the UN General Assembly Resolution calling for a universal moratorium on the use of the death penalty.
- At its last UPR in 2017 Tunisia accepted 4 (out of 18) recommendations related to the death penalty.

Recommendations

- *Continue to vote in favour of the UN General Assembly Resolution calling for a universal moratorium on the use of the death penalty.*
- *Ratify the Second Optional Protocol (OP2) to the International Covenant on Civil and Political Rights, providing for the abolition of the death penalty in all circumstances.*
- *Support the draft Protocol to the African Charter on Human and Peoples' Rights on the abolition of the death penalty.*

USE OF THE DEATH PENALTY IN TUNISIA

- The right to a fair trial and due process of people accused of capital offenses is regularly violated.
- Prisoners sentenced to death are not separated from other prisoners. The majority of those sentenced to death are held in Mornaguia prison.
- Since the last UPR, the conditions of detention of people sentenced to death have remained well below international standards: insufficient access to hygiene and food, lack of heating and air conditioning, etc.
- During the Covid-19 pandemic, prisoners were not allowed any visits from their relatives, families or lawyers.

Recommendations

- *Ensure that all prisoners, without exception or discrimination, benefit from fundamental safeguards under national law from the very beginning of their deprivation of liberty.*
- *Ensure that all vulnerable people have access to legal assistance in all regions and at all stages of the procedure.*
- *Revise the criminal procedure in order to establish the obligation of conducting a medical and social expertise for the most serious cases.*
- *Ensure that prisoners are detained in the facilities closest to their homes. Ensure that prisoners sentenced to death at first instance are not transferred to prisons in other regions until the end of the appeal procedure.*
- *Continue to guarantee free and independent access to all places of detention to Tunisian civil society organisations, as well as to the High Committee for Human Rights and Fundamental Freedoms, the National Instance for the Prevention of Torture and to MPs.*
- *Take all necessary measures to improve the conditions of detention of prisoners, including those sentenced to death, in particular regarding hygiene, food and sanitary conditions.*
- *Revise the 1913 Penal Code with a view to decriminalising minor offences and using alternative sentences.*
- *Reduce prison overcrowding by using alternative sentencing measures and by introducing non-custodial alternative sentences in prisons where overcrowding remains endemic.*
- *Ensure access to health care for all prisoners, including through systematic medical examinations at the very beginning of the detention.*
- *Systematically and regularly carry out a psychological and medico-social assessment of death row prisoners.*
- *Work towards the transfer of death row prisoners to prisons located closer to their families.*
- *Ensure that prisoners sentenced to death are not isolated or separated from other prisoners.*
- *Provide opportunities for education, training and activities for prisoners on death row.*
- *Allow prisoners privacy with their spouses, in order to strengthen family ties and reduce tension and hostility.*
- *Establish a prison medical centre for prisoners suffering from mental disorders who are likely to backslide and create a regional forensic medicine service, responsible for medical diagnosis, psychological expertise of convicts and victims, and educational and social assistance to prisoners.*