



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

**Information received from Tunisia on follow-up to
the concluding observations on its sixth periodic
report***

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* The present document is being issued without formal editing.



Introduction

1. The Tunisian State submitted its sixth periodic report on civil and political rights (CCPR/C/TUN/6), in accordance with article 40 of the Covenant, on 30 April 2019. The report was produced in accordance with the simplified reporting procedure and was based on the list of issues sent by the United Nations Human Rights Committee prior to the submission of the Tunisian periodic report.
2. The Tunisian State discussed its sixth periodic report before the Human Rights Committee at its 3692nd and 3693rd meetings held on 3 and 4 March 2020. The Committee adopted its concluding observations (CCPR/C/TUN/CO/6) on 27 March 2020.
3. This report provides information concerning follow-up measures taken with respect to a number of concluding observations and recommendations. It was prepared by the National Commission for the Coordination, Preparation and Submission of Reports and Follow-up to Recommendations on Human Rights established by Governmental Decree No. 1593 of 2015, adopted on 30 October 2015, and contains contributions from the ministries and institutions that are directly concerned with the issues raised.

I. The Constitutional Court (paragraph 8 of the concluding observations)

4. In addition to what was stated in paragraphs 27 and 28 of the Tunisian State's periodic report on civil and political rights (CCPR/C/TUN/6) concerning the measures required at the time to complete the establishment of the Constitutional Court, and in line with the recommendations made in this regard, mention should be made of the provisions of article 10 of Act No. 50 of 3 December 2015 concerning the organization of the Constitutional Court, which includes a specific arrangement for the appointment of members of the Court, namely that no party can proceed until the previous party has completed its appointments.
5. As the Assembly of People's Representatives elected one female member but was unable to elect other members because it failed to secure a two-thirds majority, the two other parties involved were unable to proceed with the appointment of members, and the process of electing members of the Constitutional Court faltered as a result.
6. In light of the foregoing, Organic Act No. 50 of 2015 was amended with a view to surmounting the obstacles to the election of members of the Constitutional Court.
7. The amendments were as follows:
 - The word "successively" in article 10 of the Act was deleted with a view to permitting the Supreme Judicial Council and the Presidency of the Republic to elect eight members of the Constitutional Court without waiting for the Parliament to complete its election of four members.
 - The required majority was amended so that the remaining members of the Constitutional Court could be elected by a three-fifths majority of "131 votes" in three successive rounds if a sufficient number of candidates failed to achieve the required majority of "145 votes" after three rounds. In addition, the provisions of article 11 (1) of Organic Act No. 50 of 2015 concerning the presentation of candidates for Court membership by parliamentary blocs were deleted.
8. The draft was submitted to the plenary session of the Assembly of People's Representatives on 4 May 2021 and was adopted by 141 votes, with 15 votes against the draft and 10 abstentions. However, the Organic Act was not signed by the President of the Republic owing to the expiry of the constitutional deadline for the establishment of the Court set by article 148 (5) of the Constitution, namely within a maximum of one year from the date of the 2014 parliamentary elections.
9. Exceptional circumstances have prevailed in Tunisia since 25 July 2021, and powers have been temporarily reorganized. Article 1 of Presidential Decree No. 117 of 2021, dated 22 September 2021, concerning exceptional measures provided for the suspension of all

powers of the Assembly of People's Representatives. The Decree also provided for the suspension of the provisions of the Constitution with the exception of the preamble, articles 1 and 2, and all provisions that were not incompatible with the provisions of the Presidential Decree.

10. Presidential Decree No. 117 of 2021, dated 22 September 2021, stipulated that legislative texts should be issued in the form of decrees promulgated by the President of the Republic, who would authorize their publication in the Official Gazette of the Republic of Tunisia following their deliberation in the Council of Ministers. Such decrees should not undermine the human rights and freedoms guaranteed by the national and international legal systems. The decrees address similar areas to those addressed by basic and ordinary legislation.

11. In addition, article 21 of the aforementioned Presidential Decree abolished the temporary authority that was authorized to monitor the constitutionality of bills. A timeline was established for the restoration of the regular functioning of State institutions and for the announcement of legislative elections by the end of 2022.

II. State of emergency and counter-terrorism (paragraph 30 of the concluding observations)

12. As stated in the national report (CCPR/C/TUN/6), the declaration of a state of emergency is based on Decree No. 50 of 1978. A state of emergency was declared for the first time in late 2015 and was subsequently extended on several occasions for various periods. The Head of State is authorized to issue such a decision after consulting the heads of the Government and Parliament.

13. The state of emergency was extended for six months from 26 December 2020 to 23 June 2021 and was extended for a further month from 24 June 2021 to 23 July 2021. The Head of State decided to extend the state of emergency for six months from 24 July 2021 to 19 January 2022. Pursuant to Presidential Decree No. 43 of 2022, dated 18 January 2022, the state of emergency was extended from 20 January 2022 to 18 February 2022.

14. Article 5 of Decree No. 50 of 1978 authorizes the Minister of the Interior to place any person whose activities or movements are deemed to constitute a threat to public security under house arrest.

15. In the event of the declaration of a state of emergency in the country, the aforementioned Decree also permits the placement of persons under house arrest, without the authorization of the Office of the Public Prosecutor, if the Minister of the Interior suspects that a person has been involved in acts that jeopardize the country's security and public order, particularly freedom of movement and freedom of the media, publications and meetings. Reference should be made in this connection to the rule of proportionality set forth in article 49 of the Constitution, which specifies the precepts governing restrictions on the exercise of basic rights and freedoms.

16. According to the legislation in force, the state of emergency constitutes a special regimen that is resorted to temporarily in order to protect vital national interests, to address emergency circumstances, and to maintain security and public order. It ends when the underlying grounds are eliminated. The executive authority is granted exceptional powers to address the situation and the action it takes is subject to the supervision of the judiciary.

17. The executive authorities of the Tunisian State aspire, in cooperation with their technical and financial partners, to provide the necessary training for security agents, the armed forces and all law enforcement bodies in order to provide them with the requisite knowledge and skills and to raise their awareness of the need to respect human rights when implementing the laws in force, both under normal State circumstances and in emergency situations.

18. When transgressions are brought to the attention of the relevant authorities, investigations are launched, the perpetrators are pursued and appropriate measures are taken

against them. The law also authorizes persons who are adversely affected by measures taken during a state of emergency to lodge a complaint with the administrative judiciary.

19. It should be noted in this connection that a draft Organic Act regulating the state of emergency was discussed in ministerial councils, most recently on 23 November 2018, and was approved and referred to the Assembly of People's Representatives. The draft aims to regulate authorized procedures to be followed by the civil authorities, the internal security forces and the national army when confronting cases involving serious disruption of public order or incidents of catastrophic gravity. The regulation of such cases is subject primarily to the provisions of Decree No. 50 of 1978, which was issued in response to the events that the country was experiencing at that time and the need to ensure the compatibility of its provisions with the 2014 Constitution.

20. Governmental Decree No. 1196 of 2019, dated 24 December 2019, established a National Committee tasked with aligning human rights legislation with the provisions of the Constitution and ratified international treaties. The Committee compiled a list of provisions requiring alignment, and the sources to which it referred included relevant legislative recommendations made to the Tunisian State.

21. The S17 consultation procedure prior to border crossing is a temporary preventive measure that has proved effective in pursuing suspected perpetrators of various crimes (terrorism, espionage, drug trafficking, human trafficking, money laundering and other complex cross-border crimes).

22. The procedure has been imposed since 2011 in response to the internal security challenges created by the global escalation of terrorist threats and the emergence of hotbeds of tension that attract terrorist fighters from all over the world through organized and interlinked travel networks.

23. Such measures have been taken in many cases in response to demands from parents who possessed data and conclusions indicating their children's plans to join the ranks of terrorist groups in countries experiencing armed conflicts.

24. The procedure is subject to the oversight of the administrative judiciary, and the list of persons who have undergone the procedure is periodically reviewed. The Ministry of the Interior implements the rulings of the Administrative Court in this regard, which may require the annulment or suspension of implementation. The Administrative Court handed down judgments in 203 cases in which the propriety of the authorities' action was proven. They comprised 194 cases concerning suspension of implementation, 8 cases concerning urgent action and 1 case concerning abuse of authority. The 74 judgments handed down against the authorities comprised 64 cases concerning suspension of implementation, 6 cases concerning urgent action and 4 cases concerning abuse of authority. This confirms that the authorities' decisions (until 2020) were based on serious data, that they were not arbitrary and that freedoms were not systematically targeted.

25. This and other border procedures constitute operational procedures that have been adopted with a view to protecting national borders and complying with international obligations to combat and prevent terrorism and organized crime. Such procedures are implemented in most countries of the world, although they are labelled in different ways.

26. Like all measures affecting freedoms, the application of this and other procedures has given rise to a number of problems. The Ministry of the Interior is fully aware of the need to surmount all such problems and is determined both to respect rights and freedoms and to guarantee the security of the homeland and its citizens.

27. Accordingly, the Ministry has begun to take the necessary measures to surmount the problems stemming from the S17 consultation procedure prior to border crossing and to reduce them to a minimum. With that end in view, a number of measures and recommendations are being implemented, in particular the following:

- The procedure should be applied solely to suspects who pose a genuine threat to public security, who are feared to be members of organized crime networks or terrorist organizations, and concerning whom reliable information has been provided exclusively by agencies and entities whose sources are serious and trustworthy.

- The procedure should not be applied to incomplete identities save in extreme cases (when confirmed information is available regarding an imminent threat from a person whose identity is only partially known).
- The competent departments should regularly review the lists of persons to whom the procedure has been applied and automatically remove persons concerning whom there are no reliable grounds for being subjected to the procedure. The data available to the security services should be continuously updated.
- It should be possible to submit a request for review of the decision by using the anti-ambiguity document delivered by the Citizens Relations Bureau to persons who have requested a review of the decision to subject them to the border procedure because of the similarity of names. Many complaints have been filed concerning such cases.
- Implementation of the procedure at border crossings should be strictly limited by withholding information from active security and National Guard units in order to avoid obstructing citizens on the public highway during the routine monitoring process and taking them to the security unit headquarters for interrogation on the grounds that they are subject to the S17 border procedure.
- Communication between the crossing points and the source of the procedure should be facilitated.

28. These and other measures have led to a reduction in complaints and criticism owing to the settlements reached in a large number of cases, either through an automatic review or through a reassessment of cases in which the persons concerned had submitted petitions to the Citizens Relations Bureau or to the Directorate General of Human Rights. The Ministry continues to adopt this approach in order to ensure that citizens' freedoms are not abused or violated.

29. In addition to the urgent measures that have already been implemented, the Ministry of the Interior is examining fundamental issues aimed at regulating all border procedures that may curb citizens' freedom of movement, adopting an approach based on respect for human rights. In this context, the various measures will be listed and reviewed, and steps will be taken to replace the regulatory provisions set forth primarily in Decree No. 342 of 1975, dated 30 May 1975, specifying the functions of the Ministry of the Interior, and Decree No. 50 of 1978, dated 26 January 1978, concerning the organization of a state of emergency. A list will be compiled of other legal and regulatory provisions governing the activities of the Ministry of the Interior, some of which may restrict citizens' freedoms, particularly their freedom of movement, in order to review them and ensure their consistency with guarantees of rights and freedoms.

III. Use of force (paragraph 48 of the concluding observations)

30. The conditions governing the use of force and firearms are laid down in national legislation. Article 39 of the Criminal Code restricts such action to cases of legitimate defence. Article 42 of the Code describes the circumstances that require permission by a competent authority or a legal order. Mention should also be made of the measures and procedures contained in article 98 of the Code of Military Procedure and Penalties, which authorizes a guard or sentry to use a weapon in the event of non-compliance with orders after a third warning has been issued, and in Act No. 4 of 1969, dated 24 January 1969, concerning public meetings, processions, parades and gatherings.

31. A National Committee was established with a view to developing the legal system and amending the legislation governing such issues. Its members include representatives of all weapon-bearing entities and it is chaired by a representative of the Centre for Legal and Judicial Research and Studies at the Ministry of Justice.

32. The Committee was assigned the task of developing a draft legal framework regulating the intervention of the armed forces in operations aimed at maintaining law and order, combating terrorism and addressing emergency situations and natural disasters.

33. The Committee was mandated to prepare the preliminary draft of a bill aimed at preserving the rights of all stakeholders and elucidating their responsibilities and at specifying legitimate procedures for the use of firearms based on applicable international norms. It was agreed that one section of the bill would contain general provisions, that a second section would set forth the basic principles governing the use of force and firearms (the principle of legality, the principle of necessity, the principle of proportionality and the principle of accountability), and that a third section would focus on rules, conditions and cases involving the use of force and firearms.

34. The Ministry of the Interior submitted a bill concerning the right to peaceful assembly to the Office of the Prime Minister in 2013, the aim being to abrogate and replace Act No. 4 of 1969, dated 24 January 1969, concerning public meetings, processions, parades and gatherings.

35. The bill contains the following principles and precepts:

- The goal of its enactment is to regulate the right to peaceful public assembly and the right to demonstrate peacefully by specifying the measures required to exercise such rights in accordance with the principles enshrined in international treaties on civil and political rights and the constitutional principles guaranteeing such freedoms.
- It defines the concepts of peaceful public assembly and peaceful demonstration.
- It specifies events that are not deemed to constitute public assemblies, such as electoral meetings, meetings organized by the administrative authorities, and public meetings of parties, associations, organizations and commercial establishments. It also specifies gatherings that are not deemed to constitute demonstrations and that fall outside the scope of the bill, such as processions, parades, folkloric rallies, and traditional and commemorative celebrations, which require prior notice under Act No. 4 of 1969.
- The bill excludes from the concept of demonstrations so-called labour pickets in the workplace whereby workers exercise their legitimate trade union rights pursuant to the Labour Code. On the other hand, pickets that do not constitute legitimate trade union activities are deemed to be illegal and are treated as an assembly, especially if they disrupt labour freedom, damage public facilities and private institutions, and hinder freedom of movement.
- The bill determines the procedures for obtaining permits for public assemblies and peaceful demonstrations.
- It specifies the locations where public assemblies can be held and locations where they are prohibited.
- It imposes restrictions on the organization of demonstrations in terms of timing, locations and procedures.
- It specifies the grounds and terms for the prohibition of a public assembly, and for the postponement, modification or prevention of a demonstration.
- It determines cases in which a public assembly or a demonstration will be dispersed.
- The body that organizes a public assembly or demonstration has a duty to ensure, in coordination and cooperation with the security authorities, that it proceeds in an orderly manner. Direct responsibility for any breach of public security during the meeting or demonstration shall be borne by the perpetrators.
- The law enforcement authorities are assigned responsibility for protecting a peaceful demonstration, maintaining law and order during the demonstration, protecting public and private property, ensuring access to first aid and assistance when necessary, and facilitating the task of media representatives.
- The bill regulates the procedures for dealing with demonstrations or assemblies, especially if the peaceful nature of a demonstration is undermined in a manner that jeopardizes public security, or if participants are bearing arms.
- It regulates the definition and prohibition of armed or unarmed gatherings.

- It specifies the civil and law enforcement authorities who should proceed to the meeting place in order to negotiate with the demonstrators and persuade them to disperse peacefully or who may, when necessary, authorize the use of force to disperse them when legal warnings have proved futile.
- It identifies the officials who are authorized to disperse the crowd (national security officers, National Guard officers or both).
- It specifies cases in which it is permissible to resort to the use of force without the issuance of legal warnings.
- It specifies the degree of force to be used in the early stages in order to disperse the crowd. The use of force must be incapacitating and non-lethal, and it must be used gradually, in a manner proportionate to the risk of undermining public security and in a manner conducive to the achievement of its legitimate aim, in accordance with international norms.
- The bill determines the cases and conditions in which the use of firearms is permissible if incapacitating means of dispersal prove ineffective, and if the crowds use firearms or other lethal weapons against officials or other persons.
- It states that officials charged with dispersing the crowd through the legitimate use of force and authorities who authorize the use of force shall not bear criminal responsibility, provided that the force that is used remains within the limits specified in the act.
- The rules governing implementation of the provisions concerning the use of force should be based on a specific order.
- The bill prescribes penalties for offences resulting from breaches of the provisions of the act.
- It permits the court to require individuals who deliberately continue to participate in a gathering following legal warnings concerning dispersal to provide reparations for damages inflicted on others by the gathering.

36. It was proposed that the bill should be included among the Government's priorities for the year 2020-2021. However, no progress was achieved in the enactment procedures owing to the unstable situation, which undermined the work of the Assembly of People's Representatives and impeded the submission of bills.

37. In accordance with the principle of freedom of assembly and demonstration, the Ministry of the Interior has assumed responsibility for the security of public spaces and for the security of demonstrations and protests that have taken place in recent months. It gradually intervenes through the legitimate use of force when some movements deviate from the principle of peaceful assembly, especially when they prevent freedom of movement by closing public highways, when they launch attacks on public or private institutions, or when they resort to riots. When the movements become uncontrollable, the supervisors of the security units issue instructions to withdraw in order to avoid human losses among the protesters or security forces.

38. Furthermore, the departments of the Ministry of the Interior do not hesitate to monitor (administratively and judicially) officials or security agencies that commit serious professional offences while performing their riot control duties. They also undertake the necessary investigations, through the Ministry's oversight structures, into any grievance or complaint regarding offences against security officers, in accordance with the rules of integrity, transparency and impartiality, and adopt the necessary disciplinary measures in the event of any breach or abuse of the limits of authority. There have not been any recent administrative complaints regarding such conduct or regarding issues related to human rights and the accountability of government officials.

39. Paragraph 17 of the sixth periodic report (CCPR/C/TUN/6) referred to the establishment of the Directorate General for Human Rights in the Ministry of the Interior, which listens to citizens' concerns pertaining to human rights and public freedoms, responds

to their inquiries and offers them advice, and receives and processes petitions and complaints, in coordination with various competent departments of the Ministry.

40. In addition, the Government Decree concerning the structural organization of the Ministry of the Interior provided for a review of the Ministry's departments by the Central Inspectorate, which undertakes investigations and research into the content of complaints, petitions and notifications received by the Ministry concerning suspicions of corruption, abuse of influence or grave abuses attributable to the Ministry's agents or structures. It also submits reports on the results of monitoring, inspection and research work to the Minister and requests the launching of administrative and judicial procedures in accordance with the legislation in force.

41. Work is under way in the Ministry of National Defence to complete and develop the legal system governing the tasks and functions of the military forces in order to align them with contemporary national and regional challenges and international obligations stemming from human rights treaties ratified by the Tunisian State. The following action has been taken:

- Alignment of texts concerning defence facilities with the Constitution and international norms, particularly the drafting of a bill concerning the organization of the national army and a bill concerning support by the national army for the civil authorities;
- Action to fill the legal void regarding the regulation of intervention by the armed forces in various situations, and regarding rules governing the use of weapons (rules of engagement; procedures for the use of force);
- Development of legal provisions concerning armed forces personnel and a review of the basic regulations governing the military with a view to enhancing their professional safeguards through the specificity of their tasks; highlighting of value-related aspects through the adoption of special codes of conduct and procedural guides to regulate their diverse activities;
- A review of the structural organization of the Ministry of National Defence with a view to enhancing the role of advisory structures and developing mechanisms, rules and terms of reference for supervisory structures and those responsible for foresight and strategic planning.

42. Article 72 of Organic Act No. 26 of 2015, dated 7 August 2015, on combating terrorism and preventing money-laundering stipulates that: "In addition to cases of legitimate defence, internal security force, military and customs officers shall not be held criminally liable if they resort to force or issue orders for the use of force in situations where such action is required for the performance of their duties, provided that it remains within the limits established by the law, institutional procedures and the instructions lawfully issued in the context of combating the terrorist offences set forth in the present Act. In other cases, military personnel who have committed offences relating to the tasks assigned to them shall be subject to the provisions of the Code of Military Procedure and Penalties."

43. The Ministry of National Defence also sends a national investigation officer to participate in peacekeeping missions around the world in which the Tunisian armed forces are involved, such as the United Nations Multidimensional Integrated Stabilization Missions in Mali and the Central African Republic. Such action is, on the one hand, in line with its international obligations and the applicable operational rules adopted by the United Nations and, on the other hand, in line with its desire to support appropriate mechanisms to investigate diverse issues and any breaches that may be committed by the military during the performance of such tasks. It also offers advice to the contingent commander on legal matters related to the measures that must be taken to prevent violations or to hold perpetrators accountable in accordance with the participating State's domestic legislation and disciplinary procedures.

44. The military judiciary also dealt with cases involving violations perpetrated against demonstrators and protestors during the events of the revolution of 17 December 2010 and 14 January 2011. Convictions were handed down against a large number of high-ranking officials, such as the Head of State, the Minister of the Interior, a number of directors general

of national security and presidential security, the chief of the National Guard and military personnel.

45. In general, military training programmes comprise areas relating to respect for human rights and international humanitarian law and directions concerning the use of force during the performance of diverse military functions.
