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Universal periodic review

Report of the Working Group on the Universal Periodic Review

Tunisia

Addendum

**Views on conclusions and/or recommendations, voluntary
commitments and replies presented by the State under
review***

* The present document is being issued without formal editing.



Position on the deferred recommendations within the framework of the discussion of the national report submitted under the universal periodic review mechanism (November 2022)

<i>Recommendation No.</i>	<i>Substance of the recommendation</i>	<i>Country that submitted the recommendation</i>	<i>Proposed position</i>
Ratification of international and regional conventions and adaptation of national legislation			
1	Adopt the necessary measures to ratify the Violence and Harassment Convention, 2019 (No. 190) of the International Labour Organization (ILO) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence	Argentina	<p>Noted</p> <p>In her speech, the Prime Minister stated that the next parliament would consider acceding to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, which is currently not in force in Tunisia.</p> <p>The Government has held consultations with interested parties on the possibility of ratifying ILO Convention No. 190. It became clear from those discussions, however, that the relevant entities are not ready to ratify the convention at this time.</p> <p>It should be noted that the two aforementioned conventions contain certain terms – such as “gender”, “cohabitation” and “sexual orientation and gender identity” – that establish practices inconsistent with the situation in Tunisia. In ratifying these conventions, the State would be obliged to harmonize national legislation with them, in particular by repealing article 230 of the Criminal Code. As stated throughout the universal periodic review process, Tunisia is not willing to repeal that article.</p>
2	Ratify the Violence and Harassment Convention, 2019 (No. 190) of the International Labour Organization	Mauritius	Noted
3	Ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence	Slovenia	Noted
4	Accede to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) and ensure the effective implementation of the relevant legislation	Norway	Noted
35	Ratify the Istanbul Convention and equip itself with an organic law to apply it	Spain	Noted

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5	Ratify the Arms Trade Treaty and the Treaty on the Prohibition of Nuclear Weapons	Panama	Noted
6	Consider progressive ratification of outstanding international human rights instruments	Malawi	Accepted Given that the Tunisian State has been engaged in and supportive of the international and regional normative human rights system in recent years, it has no objection to accepting this recommendation, provided that the recommendation is implemented gradually and in accordance with the studies required to prepare for the State's obligations following ratification, and that awareness and advocacy programmes on the conventions in question are conducted to ensure their correct application.

Adaptation and amendment of the national legal framework

7	Promptly finalize the amendments of the Criminal Code and Code of Criminal Procedure	Malawi	Accepted While the immediate completion of the proposed amendments is not possible owing to the time-consuming nature of the procedures required, work on these amendments is ongoing.
8	Amend legislation to prohibit the prosecution of civilians before military courts	Malawi	Noted Any amendments to the military justice system will have repercussions for the preservation of national defence secrets during trials. The review of the penal and judicial systems in Tunisia is still ongoing; the Ministry of Justice has, for some time, been reviewing the civilian justice system and revising the provisions of the Criminal Code and the Code of Criminal Procedure. This reform process requires in-depth studies to be carried out and consultations to be held with various authorities, ministries and stakeholders regarding possible alternatives, such as establishing specialized civilian judicial chambers to hear military cases involving civilians – in a similar manner to the Military Indictment Division and the Military Appellate Division – in order to both ensure specialization of the courts and protect national defence secrets. Given that civilian court judges are unfamiliar with military matters and requirements and lack the specialization required to guarantee that all decisions issued with regard to the military are fair, training programmes need to be introduced and mechanisms need to be established to
9	Revise the Code of Military Justice and other relevant legislation to prohibit the prosecution of civilians before military courts	Canada	
10	Amend the Code of Military Justice and other relevant texts in order to prohibit the arraignment of civilians before military justice	Switzerland	
11	Amend legislation to prohibit the prosecution of civilians before military courts	Botswana	

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			<p>follow up on the outcome of civilian court cases involving offences against the interests of the national army or against military personnel in or during the course of their duties. Research and investigation also need to be conducted on issues relating to military information or secrets that could affect the safety or security of the military or of the country as a whole.</p> <p>In accepting this recommendation, the Tunisian State would be obligated to transfer the jurisdiction of military courts to try civilians to the civilian courts. Studies need to be carried out to assess the various reforms and alternatives that could be adopted in this context – as mentioned above – especially with regard to the structure of the judiciary. It will take a significant amount of time to ensure that the military criminal codes are consistent with all other national criminal codes and do not conflict with the civilian judicial reforms planned within the framework of the Tunisian State's judicial policy review. In addition, the jurisdictions of the various national judicial organs must be allocated with care in order to ensure the efficiency and effectiveness of the judiciary.</p>
Prosecution of civilians before military courts			
16	Ensure fair trials for all Tunisians, including ending prosecution of civilians in military courts	United States of America	<p>Noted</p> <p>The Tunisian State is not in a position to accept this recommendation at this time, as it does not want to rush the revision of the Code of Military Justice and other relevant laws, given that the review of the civilian criminal and judicial system has yet to be completed. It also cannot postpone its consideration of the recommendation, according to the regulations of the Human Rights Council. This is not a principled position, merely a matter of time limitations, which do not currently allow for such a commitment. The Tunisian State is currently undertaking a number of in-depth reviews of the judicial system, especially the provisions of its criminal legislation. To that end, it is conducting extensive studies and preparing the legal ground for the relevant amendments in the light of its comprehensive vision for</p>
17	Stop the practice of arraigning civilians before military tribunals	Sweden	
18	End the practice of military trials for civilians and drop all charges against those facing prosecution for peacefully exercising their human rights	Romania	
19	Halt the practice of the prosecution of civilians before the military courts	Slovakia	
20	Immediately end the practice of trying civilians in military courts and amend the Code of Military Justice to abolish the jurisdiction of military courts over civilians	Germany	
21	Cease prosecution of civilians in military courts	Costa Rica	

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22	Commit to ending the trial of civilians in military courts	United Kingdom of Great Britain and Northern Ireland	criminal policy, which includes the military judiciary as part of the national criminal justice system.
23	End the use of military courts to try civilians	Norway	
24	Refrain from prosecuting civilians in military courts	South Africa	
25	Refrain from prosecuting civilians, including journalists and media workers, before military tribunals	Estonia	
26	Refrain from using article 91 of the Code of Military Justice to prosecute journalists before military courts	Austria	

Freedom of expression, and protecting human rights defenders

12	Repeal article 86 of the Communication Code	Estonia	<p>Noted</p> <p>The aim of article 86 is to protect citizens, especially vulnerable groups, from acts that have been criminalized in the physical space but decriminalized in the digital space.</p>
30	Ensure media self-regulation by recognizing the Press Council and support its work, including by providing it with a headquarters and stable public funding	Estonia	<p>Noted</p>
31	Reform the legal framework relating to freedom of expression, the independence of the media and the protection of journalists and human rights defenders	Luxembourg	<p>Noted</p> <p>These two recommendations have been noted, as the meaning of “reform the legal framework” is unclear and as Tunisia also noted the recommendation to amend Decree No. 54 of 2022, dated 13 September 2022.</p> <p>It should be noted that, in recent years, various legislative initiatives have been proposed to amend provisions related to freedom of expression and media independence, including a review of the legal provisions applicable to the Internal Security Forces, in order to further enshrine freedom of expression and freedom of the press and ensure the protection of journalists and human rights defenders as a priority. In addition, since 2013, the Ministry of the Interior has been developing a draft basic law on the right to peaceful assembly.</p> <p>The aim of this bill is to amend Act No. 4 of 1969, dated 24 January 1969, in order to bring the procedures applicable to public meetings and</p>

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			<p>demonstrations into line with the provisions of the Constitution and with international standards on the right to demonstration and peaceful assembly.</p> <p>As part of efforts to review and update the current legislation applicable to demonstrations and gatherings, the Ministry of the Interior will take the bill through the necessary legislative processes, including by establishing a technical working group within the Ministry to ensure that the bill is aligned with the Constitution, current legislation and international standards on the protection of rights and freedoms and to ensure a balance between guaranteeing public security and protecting rights and freedoms. The Ministry will refer the bill, in the form of a basic law, to the President's Office so that it can be presented before the Council of Ministers.</p> <p>In addition, the Ministry will adopt accompanying measures to develop its communication policy, strengthen communication with journalists and media professionals and further its interactions with human rights defenders.</p> <p>It should be noted that the Ministry of the Interior has responded positively to urgent appeals issued by United Nations rapporteurs, such as the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders.</p>
32	Reform the legal framework that would guarantee freedom of expression and the independence of the media	Slovakia	Noted
State of emergency			
13	Repeal the 1978 Decree on the state of emergency and the 1975 Decree establishing the responsibilities of the Ministry of the Interior	Canada	<p>Accepted</p> <p>The Ministry of the Interior is prioritizing the review of the system of states of emergency. A draft basic law on states of emergency has already been prepared, in coordination with the relevant entities, with a view to bringing national legislation into line with the Constitution regarding the protection of rights and freedoms and to establishing guarantees to ensure a balance between protecting public security and protecting rights and freedoms, in line with the Constitution</p>

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			<p>and the relevant international standards. The bill defines the procedures for declaring or extending a state of emergency, sets limits on the duration of states of emergency, specifies the measures and decisions that fall under the jurisdiction of the executive authorities and sets out the applicable judicial controls. The bill was referred to the Assembly of the Representatives of the People on 30 November 2018 (reference No. 91/2018), but it has yet to be approved. Given the importance of the bill, it has been recommended that the bill be presented before the new Assembly after the necessary issues have been examined so that it can be issued as a basic law in accordance with the constitutional requirements.</p> <p>To that end, the Ministry of the Interior, in coordination with the relevant bodies, will complete the required procedures in order to produce a draft basic law on states of emergency that is in line with the Constitution and with international standards on the protection of rights and freedoms.</p> <p>The terms of reference of the Ministry of the Interior are set out in Decree No. 342 of 1975, dated 30 May 1975, as amended by Decree No. 1454 of 2001, dated 15 June 2001. Many of those terms of reference no longer correspond to the actual activities of the Ministry, which have been assigned to other authorities pursuant to various legislative and regulatory texts. For example, the task of administering, organizing and supervising elections and referendums at all stages has been reassigned to the Independent High Authority for Elections pursuant to Basic Law No. 23 of 2012, dated 20 December 2012, and responsibility for maintaining the record of civil associations now falls under the purview of the General Secretariat of the Government. The Ministry of the Interior is therefore no longer responsible for these areas in practice.</p> <p>Furthermore, Decree No. 342 of 1975 is no longer compatible with the Ministry's responsibilities regarding security and public order or with the requirements of national security, law enforcement controls and respect for rights and freedoms.</p>

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Anti-Corruption Commission			
14	Establish a commission on corruption and good governance	Costa Rica	<p>Noted</p> <p>The State is currently reviewing the structure of the Anti-Corruption Commission to enable it to perform its tasks to the fullest. The final structure of the Commission has yet to be decided.</p>
15	Reinstate the anti-corruption commission	Luxembourg	<p>Noted</p> <p>A temporary administrator has been appointed to oversee the administrative and financial affairs of the Anti-Corruption Commission.</p>
Transitional justice			
27	Carry out the transitional justice process and implement the recommendations of the Truth and Dignity Commission	Luxembourg	<p>Noted</p> <p>All issues regarding the completion of the transitional justice process and the implementation of recommendations issued by the Truth and Dignity Commission are matters of national importance. All final decisions on such issues are made in line with the general approach taken by the State in the light of the requirements of the new Constitution, and they are upheld by all State structures.</p>
28	Adopt measures aimed at ensuring the adequate implementation of the recommendations from the Truth and Dignity Commission	Peru	Noted
29	Develop and adopt an action plan of reforms as contained in the Truth and Dignity Commission's recommendations in order to guarantee the non-recurrence of human rights violations in line with transitional justice law	Romania	Accepted
Unemployment insurance			
33	Develop and implement effective measures to address the social insurance system against unemployment	Islamic Republic of Iran	<p>Accepted</p> <p>A social care system is currently being implemented for workers who have lost their jobs for economic or technical reasons or as a result of the sudden and final closure of their place of work, in violation of the legal procedures set out in the Labour Code. This system consists of the following mechanisms:</p>

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			<ul style="list-style-type: none"> • Payment of benefits owed and severance pay • Health coverage for one year • Regular social benefits for 12 months, in addition to exceptional benefits. <p>As part of efforts to implement the social contract, which provides for the creation of an unemployment insurance fund, a study is currently being conducted to assess the various options for establishing such a fund and for financing it within the framework of the FORMAT project, in coordination with the competent bodies.</p>
Combating violence against women			
34	Continue the efforts taken to combat violence and discrimination against women, in particular by ratifying the Istanbul Convention	France	The part of this recommendation related to strengthening efforts to eliminate violence is accepted , without tying it to the need to ratify the Istanbul Convention, for the reasons set out above.
Repatriating children in places of heightened tensions			
36	Accelerate efforts to repatriate children born to Tunisian parents involved in armed conflict abroad, with a view to ensuring their protection, recovery and reintegration support that is human rights-based and gender and age responsive	Panama	Noted The State is currently studying this issue as part of a comprehensive approach designed to take into account the best interests of the child and ensure the optimal path for return, integration and follow-up.
Anal examination			
37	Put the dignity of people at the centre of the justice sector by guaranteeing access to an independent civil justice, reinforcing the application of “Law 5”, and abolishing practices like forced anal and virginity tests	Netherlands	Accepted The parts of this recommendation relating to ensuring access to independent civil justice and reinforcing the application of Act No. 5 are accepted. The examinations mentioned are voluntary and require the express consent of the person concerned, in accordance with the legislation in force (the Code of Criminal Procedure). Constitutional and legislative guarantees are in place to protect the inviolability of individuals’ bodies and physiological privacy. Legal provisions are also in place to prevent the bodily violation of the persons concerned.

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			The State already accepted this recommendation in 2017.
38	Prohibit intrusive medical examinations that have no medical justification	Iceland	Noted A medical examination, even where it has no medical justification, is considered a safeguard in many cases. As mentioned above, medical examinations are generally not carried out without the consent of the person concerned.
Migration and asylum			
39	Adopt a more inclusive national migration strategy for migrant populations, including the adoption of an asylum law	Austria	Noted Tunisia is in the process of developing a migration and asylum strategy that aligns with the Tunisian Constitution and international standards.
40	Implement its obligations under the 1951 Convention relating to the Status of Refugees, and ratify the ILO Migration for Employment Convention (Revised), 1949 (No. 97) and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	Norway	Noted
41	Establish a national coordination mechanism with a multisectoral and human rights-based approach for the timely assistance and protection of refugees and asylum-seekers rescued or intercepted at sea	South Sudan	Noted
42	Step up efforts to draft an adequate legislative framework for the protection of the rights of refugees and asylum-seekers	Senegal	Noted
Statelessness			
43	Further strengthen laws that eradicate statelessness by ensuring that birth registrations are given to all children within Tunisia, even migrants and refugees	Eswatini	Noted Births are registered in line with current laws. The acquisition of Tunisian nationality is a sovereign matter of State which requires various conditions – as stipulated in the Nationality Code – to be met. The acquisition of nationality is not directly linked to registration in the civil status records.
44	Continue to reform laws to ensure that no one, especially children born in Tunisia, will be left stateless	Kenya	Noted

Total

Recommendations accepted: 7

Recommendations noted: 37
