

Document #2025581

HRW – Human Rights Watch

Tunisia: Unfinished Rights Business

New Government Should Suspend Abusive Laws

(Tunis) – Tunisia (<https://www.hrw.org/middle-east/n-africa/tunisia>)’s new government, approved by Parliament on February 27, 2020, should make human rights a priority, Human Rights Watch said today. The government should protect fundamental rights in eight key areas: ending criminal prosecutions for peaceful speech, arbitrary arrests by the police, abuses under the state of emergency, violence against women, the persecution of homosexuals, and achieving accountability for past human rights violations, reforming the judicial and security sectors, and allowing for the repatriation of the children of Tunisia’s ISIS fighters stranded abroad.

“Nine years after the uprising that toppled former president Zine el Abidine Ben Ali, Tunisians are still waiting to see all of their rights enshrined in law,” said Amna Guellali (<https://www.hrw.org/about/people/amna-guellali>), Tunisia director at Human Rights Watch. “The new government should fix abusive outdated laws and make other essential changes to safeguard the democratic transition and uphold Tunisians’ human rights.”

Following legislative and presidential elections on October 6 and 13, 2019, respectively, President Kais Saied tasked Habib Jemli with forming a government. The Ennahdha party, which came first in the legislative election with 52 of the 217 seats, nominated Jemli, who served as secretary of state for agriculture from 2011 to 2014, to be prime minister. Following parliament’s rejection of Jemli’s proposed government, President Saied designated a new prime minister, Elyes Fakhfakh, who served as minister of economy between 2012 and 2014. On February 27, Parliament approved the new government, which is composed of 32 ministers and secretaries of state, including 6 women.

Under the 2014 Constitution, the president and the prime minister (head of government) both exercise executive powers. The prime minister determines “the state’s general policy” and exercises general regulatory powers by issuing decrees.

Tunisia has made important strides in protecting human rights since 2011. The authorities adopted a progressive new constitution, held free and fair legislative and presidential elections, adopted laws to improve the status of women, and improved legal protections for detainees.

Yet, serious rights violations and gaps in legal protections of rights persist. A lack of written guidelines on the circumstances in which security forces may arrest a person often result in arbitrary detentions. Despite progress on transitional justice through the establishment of specialized tribunals to try those accused of past human rights abuses, there has been no real justice since those accused effectively have boycotted most of these trials without suffering any consequences.

Prosecutors charge bloggers, journalists, and social media activists under penal code articles criminalizing free speech. Courts imprison men for consensual same-sex acts on the basis of anal tests that the police forces suspects to undergo. These exams have no scientific basis and are a form of cruel, inhuman, and degrading treatment that can amount to torture. Since the declaration in November 2015 of a state of emergency, which is still in force, the authorities have arbitrarily restricted the movement of hundreds of Tunisians.

The government should:

- Issue a moratorium on enforcing articles in the penal code criminalizing freedom of speech and same-sex conduct, pending parliament's repeal of those articles;
- Issue guidelines instructing the judicial police that pre-charge detention should be an exception, not the rule, and should never be applied when someone is suspected of committing an offense that would not entail a prison sentence;
- Direct police forces, under penalty of disciplinary action, to execute court summonses for those accused of crimes and compel them to appear in court;
- Ensure that all restrictions that the executive imposes on freedom of movement in the framework of counterterrorism efforts include a written reason, are for a finite time period, and are subject to meaningful judicial oversight and appeal;
- Publish, in the Official Journal, the final report of the Truth and Dignity Commission (Instance Vérité et Dignité, IVD), Tunisia's truth commission, which documents decades of human rights abuses, and carry out the commission's key recommendations on security and judicial sector reforms;
- Ensure that the law on combating violence against women is effectively carried out, and allocate sufficient budget for enforcement; and
- Ensure the return of families of Tunisian ISIS fighters stranded in Libya, Syria, and Iraq.

End Prosecutions for Free Speech

Despite adopting a progressive press code in 2011 that removed criminal sentences for speech offenses, Tunisian authorities are still using repressive penal and telecommunications code articles to criminalize peaceful speech. They arrest, prosecute, and sometimes imprison bloggers, journalists, and social media activists merely for peacefully criticizing public officials.

The charges frequently include: accusing public officials of crimes related to their jobs without furnishing proof of guilt, under article 128 of the penal code, which provides for up to two years in prison; defamation and “calumny” punishable by up to six months

and one year in prison, respectively under articles 245 and 247 of the penal code; “willfully or knowingly harm[ing] others or disturb[ing] them via public telecommunications networks,” under article 86 of the telecommunications code, with one to two years in prison; and “insulting” the head of state, under article 67 of the penal code, punishable by up to three years in prison.

Human Rights Watch documented 21 cases of prosecutions of bloggers, journalists, and others since 2017. The justice minister, who supervises the prosecution office, should direct prosecutors not to use these laws to prosecute people for their commentary on matters of public interest.

Restrict Police Discretion on Arrests

Tunisian police forces have broad powers to stop and check individuals regardless of whether they suspect criminal activity. The Code of Criminal Procedures (CPP) allows judicial police officers to detain a person if they deem it necessary “for the requirement of the investigation,” without there being a level of suspicion that the suspect has committed a crime.

Tunisia is a party to the International Covenant on Civil and Political Rights (ICCPR), which prohibits arbitrary arrest or detention. The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa mandate countries to ensure that no one is arbitrarily arrested or detained and that “arrest, detention or imprisonment shall only be carried out ... pursuant to a warrant, on reasonable suspicion or for probable cause.” The prohibition against arbitrary arrest or detention means depriving the person of liberty on suspicion of a criminal act, even if provided for by law, must be necessary and reasonable, predictable, and proportional to the reasons for arrest.

The government should issue guidelines to the judicial police instructing them to refrain from arresting people unless they have a reasonable suspicion that the person has committed an offense. It should also issue a directive restricting the police from using pre-charge detention only to individual cases where is necessary, for example to prevent flight, and never for offenses that do not entail prison sentences.

All persons detained for any reason should be brought promptly (within 48 hours) before a judge who will rule on the legality and necessity of their continued detention.

Ensure that Accused Officers are Present for ‘Transitional Justice’ Trials

In December 2014, the authorities created 13 specialized chambers within the ordinary court system to try those responsible for committing gross human rights violations between 1955 and 2013, after the Truth and Dignity Commission referred the cases.

The Tunisian government should support the specialized chambers’ work, which has been undermined by numerous obstacles. These include an effective inability to compel the accused and witnesses to appear because police have failed to deliver people who refuse to answer a summons to court.

The first trial in these special courts opened (<https://www.jeuneafrique.com/563391/societe/affaire-kamel-matmati-en-tunisie-le-premier-proces-de-la-justice-transitionnelle-accueilli-dans-lemotion/>) in the city of Gabes on May 29, 2018. It concerned the forced disappearance (<http://www.ivd.tn/truth-commission-public-hearings-kamel-matmati-tunisie-disappeared/?lang=en>) of Kamel Matmati, an Islamist activist arrested in 1991. The 14 defendants have defied the summonses to appear, leading the Special Court of Gabes to postpone the trial seven times.

Other trials in the Special Courts in Nabeul, Gabes, Gafsa, Tunis, and Le Kef encountered the same obstacle. This situation has created frustration among the victims and survivors, who have long hoped to confront their abusers in a court of justice.

The new government should ensure that police carry out court summonses and discipline police agents who refuse to perform their duties as required by law.

End Abuses Under the State of Emergency

The state of emergency that late President Beji Caid Essebsi declared after a 2015 suicide attack on a bus killing 12 presidential guards was last renewed in December 2019. It is based on a 1978 decree that empowers the authorities to ban strikes or demonstrations deemed to threaten public order, and to prohibit gatherings “likely to provoke or sustain disorder.”

Under the decree, the authorities have, since 2016, placed hundreds of Tunisians under house arrest. The conditions were eased in 2018, but many who remained under house arrest were also placed under a travel ban procedure called “S17” which is applied on anyone the government suspects of posing a threat to state security, Interior Minister Hichem Fourati said during a hearing in Parliament. The procedure allows restrictions on movement both domestically and when trying to leave Tunisia. A person listed as under the S17 procedure risks lengthy questioning whenever they are stopped for a routine police check.

The Tunisian government should stop using house arrest or “S17” measures arbitrarily. If strictly necessary for security, these measures should be used only with strong safeguards. The Interior Ministry should deliver a written copy of the decision to the affected person, and make them subject to meaningful challenge and judicial review.

Publish Truth and Dignity Commission’s Report and Carry Out Recommendations

The new government should carry out the recommendations as stipulated by the Truth and Dignity Commission’s March 26, 2019 report. The report analyzes the institutional system that enabled successive Tunisian governments to carry out human rights abuses (<https://www.hrw.org/news/2019/04/05/tunisia-truth-commission-outlines-decades-abuse>) over five decades. The report, which is the result of five years of investigations carried out by the committee, recommends judiciary and security force reforms to prevent authorities from recommitting systematic abuses.

The prime minister is mandated under the 2013 “Law (<https://www.ohchr.org/Documents/Countries/TN/TransitionalJusticeTunisia.pdf>) on establishing and organizing transitional justice” to prepare, within a year after the final report is issued, a work plan and strategies to apply the recommendations. First and foremost, the new government should ensure the publication of the report in the Official Journal of the Tunisian Republic, as required by article 67 of the Transitional Justice law. The previous government failed to publish it, despite numerous calls from the commission and independent groups to comply with the law. Publication of the report would constitute a formal acknowledgment of its content.

The government should study the commission’s main recommendations on security sector reform. They include, for example, making internal disciplinary measures more transparent. It also recommends creating an independent complaint body to investigate abuses and misconduct by the security forces.

While recognizing that Tunisia has made important strides in adopting laws with stronger guarantees against ill-treatment, such as law no.5 of 2016 granting access to a lawyer from the onset of detention, the commission identified other important safeguards that are needed. These include placing more cameras in police stations to monitor police work and assigning supervision of the judicial police to the Justice, rather than the Interior, Ministry.

Enforce the Law on Eradicating Violence Against Women

On July 26, 2017, parliament adopted law 2017-58 on “Eradicating violence against women.” The law (<https://www.hrw.org/news/2017/07/27/tunisia-landmark-step-shield-women-violence>) includes comprehensive measures to prevent and prosecute gender-based violence. The law introduces new criminal provisions and increases penalties for various forms of violence when committed within the family. It also criminalizes sexual harassment in public spaces.

The law includes requirements to assist domestic violence survivors, including providing legal, medical, and mental health support.

The law also calls for establishing family violence units within Tunisia’s Internal Security Forces to process domestic violence complaints, and assigning a public prosecutor in each governorate to handle such complaints.

The Tunisian government has taken some positive steps to carry out the law. It has, for example, created 128 specialized police units throughout the territory to investigate reported cases of violence against women.

Tunisian authorities should ensure that there is adequate funding and political will to put the law fully into effect. They should, for example, ensure availability of adequate shelter, and psychosocial – mental health, legal, and other services for survivors of domestic violence, including in rural areas.

Information about how the law is being carried out should be made public. The authorities should for example establish a public database on violence against women that includes the number of complaints received, investigations, prosecutions, convictions, and sentences.

Bring Back Children of ISIS Combatants Stranded Abroad

Tunisian authorities have allowed (<https://www.hrw.org/news/2020/02/06/tunisia-six-orphans-brought-home-libya>) only nine Tunisian children held without charge in foreign camps and prisons for families of Islamic State (also known as ISIS) members to return home, all from Libya. About 200 children and 100 women claiming Tunisian nationality have been held abroad without charge for up to three years as ISIS family members, most in Syria and Libya, and fewer in Iraq. Many of the children are age 6 or younger. The government should ensure that all child nationals detained abroad solely because they are the sons and daughters of alleged or confirmed ISIS members are swiftly and safely brought home.

End Anal Tests and Direct Prosecutors Not to Use Article 230

Tunisian police frequently arrest people (<https://www.hrw.org/news/2018/11/08/tunisia-privacy-threatened-homosexuality-arrests>) solely on the basis of perceived homosexuality under article 230 of the penal code criminalizing sodomy. While the Tunisian authorities in 2017 committed to ending anal tests (<https://www.hrw.org/news/2017/09/26/beginning-end-forced-anal-exams>) as evidence in prosecutions for homosexuality, the prosecutors continue to order this practice, which has been shown to be unreliable as a form of evidence of consensual homosexual activity and, when involuntary, has been condemned by international experts as a form of torture.

Prosecutions for consensual sex in private and between adults violate the rights to privacy and nondiscrimination guaranteed by the International Covenant on Civil and Political Rights, to which Tunisia is a party.

Tunisia's new government should order a prosecutorial moratorium on the enforcement of article 230 even before the repeal of this article by Parliament, and issue a directive ordering an immediate end to anal examinations to determine a person's sexual behavior as part of police investigative procedures. The Interior Ministry should also investigate reports of the ill-treatment of people arrested based on their gender identity or sexual orientation.

ecoi.net summary:

Appeal to new government to tackle gaps in legal protection of rights and to ensure rights in key areas



Country:

Tunisia

Source:

[HRW – Human Rights Watch](#) </en/source/11207.html>

Original link:

<https://www.hrw.org/news/2020/02/28/tunisia-unfinished-rights-business>
(<https://www.hrw.org/news/2020/02/28/tunisia-unfinished-rights-business>)

Document type:

Appeal or News Release

Language:

English

Published:

28 February 2020

Document ID:

2025581

Austrian Red Cross

Austrian Centre for Country of Origin and Asylum Research
and Documentation (ACCORD)

Wiedner Hauptstraße 32, 1041 Wien

T (Telefon) +43 1 589 00 583

F (Fax) +43 1 589 00 589

info@ecoi.net

ecoi.net is run by the Austrian Red Cross (department ACCORD) in cooperation with Informationsverbund Asyl & Migration. ecoi.net is funded by the Asylum, Migration and Integration Fund, the Austrian Ministry of the Interior and Caritas Austria. ecoi.net is supported by ECRE & UNHCR.

