



Tunisia's 2014 Elections A Human Rights Agenda

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Introduction

Tunisia's legislative elections, scheduled for October 26, 2014, are a significant step in the country's transition to democracy. Three years after its first free elections, to select a National Constituent Assembly in charge of drafting a new constitution, Tunisia has consolidated the protection of human rights in important ways.

On January 27, 2014, it adopted a new constitution that included a comprehensive list of rights and freedoms and strong guarantees against their violation. New institutions were also created, such as the High Authority for the Prevention of Torture and the Truth and Dignity Commission in charge of investigating past human rights abuses. During the first transitional phase, the authorities reformed several key laws, such as those on the press, associations and political parties, to make them more consistent with international human rights standards.

However, almost four years after the overthrow of former president Zine El Abidine Ben Ali, broader reform efforts are still needed. The future legislative assembly will play a crucial role in consolidating the gains of the transition by, among other things, modifying the laws to harmonize them with the new constitution.

In this memo Human Rights Watch outlines six areas where progress is needed on human rights protection and seeks pledges from electoral candidates to uphold the following key demands:

I. Preventing Torture

Torture by police was commonplace in the interrogation of suspects in Tunisia during the Ben Ali presidency, even though Tunisia had ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in, and adopted an amendment to the penal code criminalizing torture. Almost four years after the revolution, torture remains an issue during detention and interrogation. The United Nations special rapporteur on torture, during his follow-up mission to Tunisia in May 2014, stated that "although there was progress in fighting torture, and victims now are less afraid to file complaints, there is unfortunately very little action by prosecutors and by judges in pursuing the cases." He also said that the cases of torture are not isolated as the government claims.

Legally and institutionally, there has been some significant progress in addressing the problem of torture. Tunisia's new constitution prohibits torture and states that as a criminal offense it cannot be subject to any statute of limitations. Tunisia's National Constituent Assembly on October 9, 2013, adopted a law to create a National Authority for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in keeping with its obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Tunisia ratified in 2011. The legislative assembly will elect 16 experts who will have the authority to visit any site where people are deprived of their liberty to document torture and ill-treatment, request criminal and administrative investigations, and issue recommendations for measures to eradicate torture and ill-treatment.

However, further steps are needed in order to fight torture and impunity. Among the most important reforms still needed is to grant suspects in *garde à vue* (pre-arraignment) detention the right to see a lawyer promptly. Defendants currently have the right to counsel only upon their first appearance before the investigating judge, which, according to the law, can be as much as six days after they are detained. Other safeguards needed in Tunisian law include setting out the obligation for detaining authorities to grant medical examination to detainees upon their request, shortening the duration for pre-charge detention, and the obligation for prosecutors and investigative judges when appropriate to open investigations in cases of torture upon receiving credible information about a case of torture.

Human Rights Watch urges candidates and parties to include as part of their platform a commitment that they will:

- **Ensure a prompt setting up of the National Authority for the Prevention of Torture and grant it all the necessary means to conduct its work.**
- **Amend the code of criminal procedures to introduce:**
 - **The right of a detainee to meet with a lawyer from the beginning of detention and introduce clear conditions for its effective implementation;**
 - **Reduce the duration of garde-à -vue detention to 48 hours;**
 - **The obligation for authorities to accept a request for medical examination made by a detainee, his family, or his lawyer.**

II. Economic and Social Rights

Article 12 of the new constitution obliges the state to achieve social justice, sustainable development and a balance between regions based on development indicators and the principle of positive discrimination. Article 40 of the constitution states that “Work is a right for every citizen, male and female” and that all citizens have the right to decent working conditions and to a fair wage. Article 38 states that “Health is a right for every person.” It adds that the state guarantees preventive health care and treatment for every citizen and provides the means necessary to ensure the safety and good quality of health services. In addition, the state shall ensure free health care for those without support and those with limited income. It shall guarantee the right to social assistance as specified by law.” Article 39 provides that “Education shall be mandatory until at least the age of sixteen.” It obliges the State to guarantee the right to free public education at all stages and to provide the necessary means to achieve a high quality of education and training.

While these articles articulate important economic and social rights, they will remain ink on paper unless the state implements them through concrete policies. According to the International Covenant on Economic, Social and Cultural Rights (ICESCR), each state party has the duty to take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of these rights. One important mechanism to implement economic, social, and cultural (ESC) rights enshrined in the constitution is to design accountability and remedy mechanisms at the national level in order to allow victims of violations of these rights to file complaints before an independent and impartial body and to request adequate remedies for the violation. The Committee on Economic, Social and Cultural Rights considers the provision of domestic legal remedies for violations of ESC rights to be part and parcel of state obligations under the ICESCR.

Tunisia has not yet ratified the Optional Protocol to the ICESCR, an important instrument to adjudicate cases of violations of economic, social and cultural rights. The protocol, which entered into force on May 5, 2013, enables the UN Committee on ESCR to receive communications submitted by or on behalf of individuals or groups of individuals claiming to be victims of a violation committed by that State Party of any of the ESC rights set forth in the Covenant.

Human Rights Watch urges candidates and parties to include as part of their platform a commitment that they will:

- **Ratify the Optional Protocol to the ICESCR.**
- **Introduce legislation creating domestic legal remedies for violations of the ESC rights enshrined in the constitution.**

III. Gender equality and violence against women

Tunisian laws protect women's equality more than the laws of most other countries of the Arab world. The law on personal status, promulgated in 1956 by then-President Habib Bourguiba, greatly reduced gender inequality in many facets of family life, including marriage and divorce. However, Tunisian law continues to discriminate against women in inheritance, in child custody, and in other aspects of the life. On April 23, 2014, the Tunisian government officially lifted key reservations to the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), an important step toward realizing gender equality. However, Tunisia maintained a general declaration stating that the country "shall not take any organizational or legislative decision in conformity with the requirements of this Convention where such a decision would conflict with the provisions of Chapter I of the Tunisian Constitution." Chapter I of the constitution states that the religion of the country is Islam.

Tunisia is one of only four members of the African Union not to have signed the Maputo Protocol on the Rights of Women in Africa, which has stronger protection for women's rights on some issues than does CEDAW.

Tunisia's new Constitution, adopted on January 27, strongly protects women's rights, such as in article 46, which provides that "The state commits to protect women's established rights and works to strengthen and develop those rights," and guarantees "equality of opportunities between women and men to have access to all levels of responsibility and in all domains." Tunisia is now one of the few countries in the Middle East and North Africa region with a constitutional obligation to work toward gender parity in elected assemblies. In addition, the constitution contains a new obligation for the state to take all necessary measures in order to eradicate violence against women.

Human Rights Watch urges candidates and parties to include as part of their platform a commitment that they will:

- **Amend the personal status code to ensure equality in all aspects of family and private life.**
- **Ensure Tunisia quickly signs and ratifies the Maputo Protocol.**

- **Devise a comprehensive strategy for the implementation of the provision of the new constitution that the state will take all necessary measures in order to eradicate violence against women.**

IV. Freedom of Expression and Defamation

Tunisia's penal and press codes contained numerous provisions that imposed prison terms as punishment for the nonviolent exercise of the right to express oneself. In September 2011, the transitional government adopted a new press code, which brought national law closer to international human rights law on the right to freedom of expression. The new press code eliminated prison terms for almost all speech offenses, such as defamation or offending state institutions.

However, the penal code still criminalizes speech offenses and provides prison sentences as punishment for some of them. For example, article 247 provides for up to six months in prison for defamation of public officials, and article 226 prohibits offending public morality or decency through acts or words. Since the Tunisian revolution in 2011, authorities have repeatedly used these and other repressive laws of the previous government to prosecute speech they consider objectionable. The National Constituent Assembly, which played the role of a legislature, has made no move to abolish these laws.

The Tunisian constitution, adopted on January 27, 2014, contains robust provisions for the protection of freedom of speech.

Human Rights Watch urges candidates and parties to include as part of their platform a commitment that they will:

Support legislation to decriminalize defamation in Tunisian law, making it a civil rather than a penal offence, and eliminate other speech offenses such as “hampering public order and public morals” or spreading “false information.”

V. Enhancing Judicial Independence

The chapter in the constitution on judicial authority contains strong guarantees for the independence of the judiciary. The High Judicial Council, which will supervise the judiciary and decides on the appointment, career advancement, and discipline of

judges, will be composed of two-thirds of judges, the majority of whom will be elected by their peers.

However, the constitution does not state the modalities and conditions for the election and appointment of judges. The new authorities have yet to reform law 67-29 of 14 July 1967, which places judges under the effective control of the minister of justice, who used his powers in 2012 to summarily dismiss 75 judges for alleged corruption or links to the Ben Ali regime. The discipline of judges is a particularly sensitive area. The constitution contains weak guarantees for the discipline of judges, contrary to international standards, for example the UN Basic Principles on the Independence of the Judiciary and the Principles and Guidelines on the Right to Fair Trial in Africa. While prohibiting removal of judges or their transfer without their consent, the constitution envisages exceptions “in accordance with guarantees provided for by the law,” a formulation that could be misused by the executive and legislative powers and risks undermining the essence of this protection.

The office of the prosecutor is still under the authority of the Minister of Justice, who can direct the prosecutor to open investigations into certain cases. In addition, the office of the prosecutor oversees the distribution of individual cases to investigative judges in each tribunal.

A further source of concern is the use of military courts to adjudicate allegations of human rights violations committed by military and security forces. The constitution reduced the jurisdiction of military courts to “military crimes” but stated that the “law shall regulate the mandates, composition, organization, and procedures of military courts, and the status of military judges.”

Human Rights Watch urges candidates and parties to include as part of their programs that they will:

- **Adopt implementing legislation for the constitution’s chapter on the judiciary that will uphold the highest standards for respecting its independence. In particular, the law should state that all procedures for the appointment, career development and removal of judges will be the exclusive mandate of the High Judicial Council. The law should mention clear criteria for the discipline of judges, and make it possible only for gross misconduct, following fair trial guarantees and when decided upon by the high judicial council.**

- **Define the jurisdiction of military courts to cover only members of the military accused of breaches of military discipline. Military courts should have no jurisdiction over human rights violations committed by the military or security forces personnel or over alleged offenses committed by civilians.**
- **Amend the laws applicable to the office of the prosecutor in order to ensure that prosecutors will carry out their functions independently and impartially, in particular by limiting the authority of the Ministry of Justice over the prosecutor to defining general policy orientations.**

VI. Reform of law 52 on drug use

Tunisia's drug laws are draconian and have exacerbated prison overcrowding. In its last report on Tunisia, the Office of The United Nations High Commissioner for Human Rights reported that Tunisian prisons were operating at 50 percent over capacity. According to the official numbers of the prison service, more than a third of inmates are incarcerated for drugs. The overwhelming majority are there for possession of drugs for personal use , say the authorities.

Law 52 provides for the imprisonment for one to five years and a fine of 1,000 to 3,000 dinars [562 to 1684 USD] for any person found to be using or holding for personal use drug plants or materials. In contrast to sentencing guidelines for other offenses, Law 52 forbids judges to reduce the sentence on the grounds of mitigating circumstances.

The revision of Law 52 should be at the heart of these considerations on reforms. Human Rights Watch thus urges parties and independent candidates running for the elections to commit to revise law 52 by:

- **Granting the judge the power to apply mitigating circumstances in cases of drug consumption;**
- **Eliminating prison sentences for possession of drugs for personal use and applying alternative penalties instead.**