



Cornell Law School
Cornell Center on the
Death Penalty Worldwide



Tunisia's Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women: The Death Penalty

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996

The World Coalition Against the Death Penalty

The Cornell Center on the Death Penalty Worldwide

La Coalition tunisienne contre la peine de mort (CTCPM)

and

Ensemble contre la peine de mort (ECPM)

for the

84th Session of the Committee on the Elimination of Discrimination Against Women

6–24 February 2023

Submitted 9 January 2023

The Advocates for Human Rights (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty (the Coalition) is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

La Coalition tunisienne contre la peine de mort (CTCPM) is a volunteer-based non-governmental organization committed to the definitive abolition of the death penalty in Tunisia, via the Constitution and the development of a citizen movement in favor of abolition and holding Tunisian authorities accountable. Created in 2007 and recognized in 2012, it is also committed to monitoring the situation of persons sentenced to death including the respect for their rights before and after conviction, and to rehabilitate the memory of persons executed for political motives under the dictatorship in Tunisia.

The Cornell Center on the Death Penalty Worldwide is a US-based research, advocacy, and training center focused on capital punishment and international law. It publishes reports and manuals on death penalty issues, provides transparent data on death penalty laws and practices around the world, trains capital lawyers in best practices, and engages in targeted advocacy and litigation. Its staff and faculty advisors have collectively spent more than eight decades representing hundreds of prisoners facing the death penalty. In 2019 it was awarded the World Justice Challenge Award in recognition for its work on behalf of death-sentenced prisoners in Malawi.

ECPM (Together Against the Death Penalty) is a French non-governmental organisation that fights against the death penalty worldwide and in all circumstances by uniting and rallying abolitionist forces across the world. The organisation advocates with international bodies and encourages universal abolition through education, information, local partnerships and public awareness campaigns. ECPM is the organiser of the World Congresses Against the Death Penalty and a founding member of the World Coalition Against the Death Penalty. In 2016, ECPM was granted consultative status with ECOSOC.

EXECUTIVE SUMMARY

1. Tunisia carried out its last execution in November 1991. Despite this 32-year *de facto* moratorium on executions, Tunisian courts continue to sentence individuals to death for a litany of crimes, with the ascertainable numbers increasing year over year. In a speech on September 29, 2020, President Kais Saied signaled support for reinstating executions for “heinous crimes,” specifically including murder. In a string of subsequent Presidential Decrees, President Saied declared a state of emergency, dissolved Parliament and the Constitutional Court, and set up a presidential regime with executive, legislative, and judicial powers concentrated in his hands.
2. Tunisia has not abolished the death penalty or established a *de jure* moratorium on the death penalty.¹ The legal system does not protect women in conflict with the law from discrimination on the basis of sex or gender. Nor does it limit capital offenses to the “most serious” crimes. There is no evidence that sentencing authorities take into account a woman’s history as a survivor of gender-based violence when determining an appropriate sentence. Moreover, women under sentence of death face degrading conditions of detention. The only protection for women is Article 9 of the Penal Code, which states that any woman sentenced to death and found to be pregnant shall not be executed until after she gives birth.
3. This report recommends that Tunisia abolish the death penalty, work to restore the independence of its judiciary, ensure the fair trial rights of any women at risk of being sentenced to death, and improve conditions of detention for women under sentence of death.

Tunisia fails to uphold its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women

I. Tunisia continues to sentence women to death and has signaled it may resume executions. (List of Issues para. 1)

4. The Committee requested “information and statistics, disaggregated by sex, age, disability, ethnicity, religion, and urban and rural area, on the current situation of women in [Tunisia].”² The Seventh Periodic Report omits any data regarding women in conflict with the law, women at risk of being sentenced to death, and women under sentence of death.³ Tunisia does not make such disaggregated data available to civil society.
5. Tunisia’s Criminal Code authorizes the death penalty for a litany of crimes, including murder and offensive conduct resulting in murder (kidnapping, sequestration, arson), terrorism (comprising a significant portion of recent death sentences pursuant to a 2015 terrorism law⁴), arson or destruction of State-owned goods, treason, espionage, various military offenses

¹ ECPM, CTCPM, WCADP, Tunisia, 41st session, Alternative report in view of the Examination of the periodic report, Death penalty, 2022, available online at <https://www.ecpm.org/app/uploads/2022/08/Seminaire-EPU-tunisie-12p-120422-MD-page-1.pdf>.

² Committee on the Elimination of Discrimination against Women, *List of issues and questions prior to the submission of the seventh periodic report of Tunisia*, (Aug. 19, 2019), U.N. Doc. CEDAW/C/TUN/QPR/7, ¶ 1.

³ Committee on the Elimination of Discrimination against Women, *Seventh periodic report submitted by Tunisia under article 18 of the Convention, due in 2020*, (Dec. 29, 2021), U.N. Doc. CEDAW/C/TUN/7, ¶¶ 10-29.

⁴ Arab News, *Tunisia sentences nine militants to death over soldier's murder*, <https://www.arabnews.com/node/2004916/middle-east>

including desertion and disobedience, attempting to commit a death-eligible offense, and the assault of a judge on duty.⁵

6. Tunisia has executed 135 people since gaining independence in 1956,⁶ most recently in 1991.⁷ As of October 2022, 136 people were living under sentence of death, including 3 women.⁸ The number of death sentences handed down continues to rise year-over-year, with 36 sentences handed down in 2021 and 48 sentences issued in 2022,⁹ including 11 death sentences handed down in the first 15 days of January 2022 alone.¹⁰ The majority of death sentences are issued under a 2015 anti-terrorism law.¹¹
7. Despite Tunisia's consistent support for the UN General Assembly resolution calling for a moratorium on the use of the death penalty,¹² in September 2020, President Saïed declared his support for the death penalty. He issued a statement to Tunisia's Security Council in response to the murder of a 29-year-old woman, referring to the "high crime rate in the country," and, in calling for "dealing firmly with this phenomenon,"¹³ declared that, "[a]nyone who kills a person for no reason deserves the death penalty. ... Each society has its choices, we have our principles, and the text is there. ... If proven that he has killed one or more people, I don't think the solution is ... not to apply the death penalty."¹⁴
8. Approximately ten months later, President Saïed issued Presidential Decree 69-2021, invoking Article 80 of the 2014 Constitution which permits the president to take exceptional measures to deal with an imminent threat to the State. Through this decree, he dismissed Prime Minister Hichem Mechichi and suspended the Assembly of People's Representatives for an extendable period of 30 days (the suspension has ultimately been in effect since July 25, 2021), effectively dismissing and dissolving the remainder of the government, and assuming all executive,

⁵ PENAL CODE art. 59, 60, 60bis, 60ter, 61bis, 63, 72, 74, 126, 201, 203, 204, 207, 227, 237, 251; Code of Military Justice art. 69, 70, 79, 81, 99, 104, 111, 113, 115-119, 121-123,

⁶ Yahoo, *Tunisia president backs hanging amid uproar over woman's murder*, <https://www.yahoo.com/now/tunisia-president-backs-hanging-amid-164333885.html>

⁷ Tunisie.fr, *Here are the 3 most famous Tunisian serial killers*, <https://www.tunisie.fr/les-plus-celebres-tueurs-en-serie-tunisiens/>

⁸ A24 News Agency, *Tunisia – Tunisian coalition calls for abolition of death penalty*, <https://a24now.com/2022/10/tunisian-coalition-calls-for-abolition-of-death-penalty/>

⁹ 24 News Agency, *Tunisia – Tunisian coalition calls for abolition of death penalty*, <https://a24now.com/2022/10/tunisian-coalition-calls-for-abolition-of-death-penalty/>

¹⁰ Middle East Monitor, *Tunisia: courts issue 11 death sentences in 15 days*, <https://www.middleeastmonitor.com/20220118-tunisia-courts-issue-11-death-sentences-in-15-days/>

¹¹ Human Rights Watch, *Tunisia: counterterror law endangers rights*, <https://www.hrw.org/news/2015/07/31/tunisia-counterterror-law-endangers-rights>

¹² Amnesty International, *Tunisia: Presidential statement in favour of death penalty is shocking*, <https://www.amnesty.org/en/latest/press-release/2020/09/tunisia-presidential-statement-in-favour-of-death-penalty-is-shocking/>; United Nations General Assembly, *Moratorium on the use of the death penalty: resolution / adopted by the General Assembly*, <https://digitallibrary.un.org/record/3997726?ln=en>

¹³ Middle East Monitor, *Tunisia's president discusses reactivating death penalty*, <https://www.middleeastmonitor.com/20200930-tunisi-as-president-discusses-reactivating-death-penalty/>

¹⁴ Yahoo, *Tunisia president backs hanging amid uproar over woman's murder*, <https://www.yahoo.com/now/tunisia-president-backs-hanging-amid-164333885.html>

legislative, and judicial power.¹⁵ He subsequently issued various other decrees asserting additional authority and consolidating his power.¹⁶ One of those decrees resulted in the 2022 Constitution, approved by a referendum in which approximately 30% of Tunisians voted.¹⁷

9. While Article 24 of the 2022 Constitution acknowledges the general importance of the right to life, the right is vaguely conditioned on “extreme cases provided for by law,” with the 2022 Constitution failing to provide additional guidance as to what an “extreme case” may be. Working in tandem is Article 74, which provides that international agreements “approved by the President and ratified by Parliament” have a status superior to the laws of Tunisia but inferior to the Constitution. Article 74 unilaterally empowers the President to withdraw from any international agreement again without any oversight. In essence, the 2022 Constitution provides for an unlimited presidential system with an omnipotent President, a powerless Parliament, and an ineffectual and compliant judiciary.¹⁸
10. In September 2022, the African Court on Human and Peoples’ Rights entered judgment in a case brought by Tunisian Ibrahim Ben Mohamed Ben Ibrahim Belguith in which Mr. Belguith challenged several presidential decrees that formed the judicial basis for the institution of the 2022 Constitution. Finding in favor of Mr. Belguith on all counts, the Court found that non-monetary reparations were appropriate and necessary. The Court directed Tunisia to repeal several presidential decrees, establish an independent Constitutional Court, and return to constitutional democracy.¹⁹

¹⁵ Tunisia Presidential Decree No. 69-2021; Carnegie Endowment for International Peace, *One year later, Tunisia's president has reversed nearly a decade of democratic gains*, <https://carnegieendowment.org/2022/07/22/one-year-later-tunisia-s-president-has-reversed-nearly-decade-of-democratic-gains-pub-87555>; Amnesty International, *Tunisia: adoption of new constitution marks a setback for human rights*, <https://www.amnesty.org/en/latest/news/2022/07/tunisia-adoption-of-new-constitution-marks-a-setback-for-human-rights/>

¹⁶ Tunisia Presidential Decree No. 80-2021; African Court on Human and Peoples' Rights, *Belguith v. Republic of Tunisia*, 017/2021, *Judgment*, ¶3, <https://www.african-court.org/cpmt/storage/app/uploads/public/633/48f/dcc/63348fdcc9449943680203.pdf>; Tunisia Presidential Decree No. 109-2021; *Belguith v. Republic of Tunisia*, 017/2021, *Judgment*, ¶3; Tunisia Presidential Decree No. 117; African Court on Human and Peoples' Rights, *Belguith v. Republic of Tunisia*, 017/2021, *Judgment*, ¶3; Carnegie Endowment for International Peace, *One year later, Tunisia's president has reversed nearly a decade of democratic gains*; Tunisia Presidential Decree No. 117; African Court on Human and Peoples' Rights, *Belguith v. Republic of Tunisia*, 017/2021, *Judgment*, ¶3.

¹⁷ Amnesty International, *Tunisia: adoption of a new constitution marks a setback for human rights*, <https://www.amnesty.org/en/latest/news/2022/07/tunisia-adoption-of-new-constitution-marks-a-setback-for-human-rights/>; Reuters, *Tunisia constitution giving president wider powers comes into effect*, <https://www.reuters.com/world/africa/tunisia-constitution-giving-president-wider-powers-comes-into-effect-2022-08-16/>

¹⁸ Brookings Institute, *Tunisia's new constitution will only worsen its political crisis*, <https://www.brookings.edu/blog/order-from-chaos/2022/07/06/tunisiass-new-constitution-will-only-worsen-its-political-crisis/>

¹⁹ African Court on Human and Peoples' Rights, *Belguith v. Republic of Tunisia*, 017/2021, *Judgment*, ¶3, <https://www.african-court.org/cpmt/storage/app/uploads/public/633/48f/dcc/63348fdcc9449943680203.pdf>

II. Women in conflict with the law face barriers to accessing justice and violations of their fair trial rights. (List of Issues para. 3)

11. The Committee requested information about measures taken to ensure that women are empowered to claim their rights, “including through unimpeded access to justice and the provision of legal aid.”²⁰
12. The Seventh Periodic Report notes that “Article 5 of Organic Act No. 58 (2017) . . . enshrines the principle of providing legal guidance to victims of violence. Article 13 grants victims of violence the right to legal guidance on the provisions governing litigation and the services available.”²¹ The report further notes that in criminal procedures, “Act No. 52 (2002) on legal aid provides that litigants who are unable to afford the costs of litigation may request legal aid.”²² The Seventh Periodic Report also states that the Ministry of Justice has developed training programs on international human rights instruments.²³ None of these provisions are specific to gender issues that arise when women are in conflict with the law, particularly in the context of gender-based violence and coercive control relationships that may result in women committing offenses that are eligible for the death penalty.
13. According to a comprehensive study conducted by the Cornell Center on the Death Penalty Worldwide, data indicate that most women on death row have been sentenced to death for the crime of murder.²⁴ These women have overwhelmingly experienced prolonged domestic violence at the hands of a partner, spouse, or another family member.²⁵ In many cases, the abuse has occurred repeatedly. Many women under sentence of death are survivors of gender-based violence and come from disadvantaged socio-economic backgrounds.²⁶ At a global level, courts rarely consider gender-based violence as a mitigating factor during sentencing.²⁷ Research also indicates that courts also fail to account for power dynamics and tactics of coercive control that may affect a woman’s involvement in and culpability for a crime.
14. According to the above-mentioned study by the Cornell Center on the Death Penalty Worldwide, women are more likely to receive a death sentence when the adjudicating authority perceives that they are violating entrenched gender norms, being cast as the “female fatale” or

²⁰ Committee on the Elimination of Discrimination against Women, *List of issues and questions prior to the submission of the seventh periodic report of Tunisia*, (Aug. 19, 2019), U.N. Doc. CEDAW/C/TUN/QPR/7, ¶ 3.

²¹ Committee on the Elimination of Discrimination against Women, *Seventh periodic report submitted by Tunisia under article 18 of the Convention, due in 2020*, (Dec. 29, 2021), U.N. Doc. CEDAW/C/TUN/7, ¶ 68.

²² Committee on the Elimination of Discrimination against Women, *Seventh periodic report submitted by Tunisia under article 18 of the Convention, due in 2020*, (Dec. 29, 2021), U.N. Doc. CEDAW/C/TUN/7, ¶ 76.

²³ Committee on the Elimination of Discrimination against Women, *Seventh periodic report submitted by Tunisia under article 18 of the Convention, due in 2020*, (Dec. 29, 2021), U.N. Doc. CEDAW/C/TUN/7, ¶ 31.

²⁴ *Id.* at 11.

²⁵ *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 4, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

²⁶ *Ibid.*

²⁷ *Ibid.*

the “witch.” Women are often put on trial not only for acts they performed but also for allegedly being “a bad wife, a bad mother, and a bad woman.”²⁸

15. CTCPM has conducted in-depth interviews with all three women under sentence of death in Tunisia, and their cases highlight how women who violate entrenched gender norms face discriminatory treatment. The first woman had been married to an older man who was an alcoholic and who repeatedly subjected her to domestic violence.²⁹ She ultimately had an affair with a man who was her age, and when her husband found them together the man and her husband fought, and the man accidentally killed her husband by choking him in an effort to prevent him from screaming and alerting the neighbors.³⁰ The woman was in shock but called the police. She was given sedatives and taken by ambulance to the police station, where she was interrogated and, while still under sedation, forced to sign a confession stating that she and the younger man had planned to murder her husband.³¹ The woman later discovered that her husband’s nephew had orchestrated the husband’s “discovery” of the couple in order to preserve the husband’s “honor” and punish her for her “treason.”³² During her interrogation, the nephew told the woman that he would ensure she would be hanged.³³ The woman obtained a medical certificate proving that she had been under the influence of sedatives during her interrogation and confession, but the justice system ignored that evidence.³⁴ At trial, the young man denied that she had been involved in her husband’s accidental death and took full responsibility for the killing.³⁵ Years later, CTCPM met with the young man, who was astonished that the woman was still under sentence of death despite his unwavering acceptance of full responsibility for the accidental killing.³⁶
16. The second and third women are sisters and were sentenced to death for allegedly engaging in “sorcery” in the form of treasure hunting involving the kidnapping and murder of their nephew.³⁷ The case was highly publicized.³⁸ At the time of the alleged events, one of the

²⁸ *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 4, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

²⁹ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

³⁰ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

³¹ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

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³⁵ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

³⁶ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

³⁷ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

³⁸ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

women was single and age 43, and the other was widowed and age 40, with three daughters.³⁹ The younger woman explained that she and her sister were “the ideal scapegoats to put a stop to the media campaign that followed the murder of her nephew.”⁴⁰ The older woman reported to CTCPM that she had spent seven years in preventative detention before being tried and sentenced to death.⁴¹ She said she had been interrogated for six days and then forced to sign a confession without knowing its contents.⁴² The younger woman told CTCPM that DNA traces found on the nephew’s body exonerated both women, but the courts have ignored this evidence.⁴³

17. CTCPM interviewed two female relatives who have been sentenced to death in the first instance and are awaiting appeal.⁴⁴ Consistent with the Cornell Center’s analysis, they were sentenced to death for infanticide of the younger woman’s child, after she became pregnant out of wedlock.⁴⁵ They come from a remote and disadvantaged region of the country and live in very poor, rural areas.⁴⁶ They were accused of infanticide allegedly to “hide” the “dishonorable” conduct of the younger woman.⁴⁷ CTCPM has not received any information about the current status of their cases.⁴⁸
18. Tunisia’s reply to the List of Issues overlooks the need for comprehensive training programs for prosecutors and judges when women are in conflict with the law. Specialized training is particularly important when women are defending themselves against gender-based violence (*i.e.*, defending against an abuser and acting in self-defense). Such training programs are especially important when women are subsequently charged with death-eligible offenses. Self-defense is often not an available defense for women who kill following a *history* of abuse, particularly if they cannot show an actual threat at the time the woman used responsive force. Moreover, many women experience non-physical abuse, such as emotional and economic abuse, which courts may disregard as not sufficiently severe to justify physical violence as self-defense.

³⁹ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

⁴⁰ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

⁴¹ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

⁴² Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

⁴³ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

⁴⁴ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

⁴⁵ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

⁴⁶ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

⁴⁷ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

⁴⁸ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

19. In 2016, the Committee against Torture found “consistent reports that torture and ill-treatment continue to be practiced in the security sector.”⁴⁹ Those concerns increased following President Saied’s 2021-22 power grab.⁵⁰ Human Rights Watch reports that “the lack of a constitutional court with a mandate to repeal laws that are found unconstitutional deprives Tunisians of a key safeguard against criminal prosecutions on charges that violate their human rights.”⁵¹ Amnesty International reports that detainees are often subjected to electric shocks, slapped, deprived of sleep, forced to undress, or have their family members threatened.⁵²
20. Observers have documented civilians being prosecuted in both military and civilian courts for public criticism of President Saied.⁵³ The practice of charging civilians before a military tribunal violates the right to a fair trial and due process guarantees under The Principles on the Right to a Fair Trial and Legal Aid in Africa.⁵⁴ Charges for criticizing the president have been filed in military courts as “defaming the army” under article 91 of Tunisia’s military justice code because the president is the commander-in-chief of the armed forces under the constitution.⁵⁵ In a similar vein, Decree-Law No. 2022-54 of September 13, 2022 includes prison sentences of up to 10 years for alleged offenses relating to information and communication systems, and have the effect of intimidating journalists and stifling critics of the President.⁵⁶
21. CTCPM reports that in many cases involving women charged with capital offenses, “the discriminatory nature of the arrest, the investigation of the cases, the trials, and the incarceration is blatant.”⁵⁷ These women do not have access to justice because they lack knowledge of the criminal legal system and they lack the means to hire an attorney.⁵⁸ Moreover, according to CTCPM, “[m]ost of the women sentenced to death are abandoned by their families either because of economic necessity or to ‘escape’ the ‘dishonor’ and stigma.”⁵⁹ CTCPM reports that according to direct observations, many of these women at risk of being

⁴⁹ Committee Against Torture, *Concluding observation son the third periodic report of Tunisia* (June 10, 2016) U.N. Doc. CAT/C/TUN/CO/3, ¶ 15.

⁵⁰ Human Rights Watch, *Tunisia: Courts Ramp up Speech Prosecutions* (December 23, 2021). Available online at <https://www.hrw.org/news/2021/12/23/tunisia-courts-ramp-speech-prosecutions>.

⁵¹ Human Rights Watch, *Tunisia: Courts Ramp up Speech Prosecutions* (December 23, 2021). Available online at <https://www.hrw.org/news/2021/12/23/tunisia-courts-ramp-speech-prosecutions>.

⁵² *We Want an End to the Fear: Abuses Under Tunisia’s State of Emergency*, Amnesty International, 2017, <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE3049112017ENGLISH.pdf>

⁵³ Human Rights Watch, *Tunisia: Courts Ramp up Speech Prosecutions* (December 23, 2021). Available online at <https://www.hrw.org/news/2021/12/23/tunisia-courts-ramp-speech-prosecutions>.

⁵⁴ African Commission on Human and People’s Rights, *Principals and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003). Available online at <https://eipss-eg.org/wp-content/uploads/2015/07/principles-guidelines-right-fair-trial#:~:text=Solemnly%20proclaims%20these%20Principles%20and%20Guidelines%20on%20the,parties%20to%20the%20Charter%20and%20respected%20by%20them%3A>

⁵⁵ Human Rights Watch, *Tunisia: Courts Ramp up Speech Prosecutions* (December 23, 2021). Available online at <https://www.hrw.org/news/2021/12/23/tunisia-courts-ramp-speech-prosecutions>.

⁵⁶ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

⁵⁷ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

⁵⁸ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

⁵⁹ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

sentenced to death and under sentence of death “are in very fragile psychological situations, depressed and suicidal.”⁶⁰

III. Women under sentence of death experience degrading detention conditions.

22. Women under sentence of death are held at the Manouba prison.⁶¹ They live alongside people in the general women’s prison population.⁶² According to the Tunisian Coalition Against the Death Penalty (CTCPM) and Ensemble Contre la Peine de Mort (ECPM), people on death row do not have “access to educational, vocational and technical training programmes and have not been given the opportunity to work.”⁶³ Moreover, CTCPM and ECPM report, “the medical and psychological care of prisoners on death row is generally inadequate.”⁶⁴ In October 2022, the Minister of Justice paid an unexpected visit to the Manouba prison, where she reportedly “became concerned with the conditions of accommodation . . . as well as the quality of the means offered to [the women], the availability of food products in the prison unit, and the conditions of their storage.”⁶⁵ The three women under sentence of death told CTCPM that they had to purchase their own hygiene products, that women were allowed to shower just once per week, and that the water was not of drinking quality.⁶⁶ One woman told CTCPM that her elderly parents could provide her with only 10 dinars (6-7 Euros) to purchase basic hygiene products in prison.⁶⁷ Her parents could no longer visit her in prison because of the cost of travel.⁶⁸
23. One woman under sentence of death told CTCPM that while in detention, she had developed diabetes, hypertension, anemia, and cataracts, noting that medical follow-up is “insufficient.”⁶⁹ She also told CTCPM that prison officials rejected her request to have direct access to her

⁶⁰ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

⁶¹ CTCPM, ECPM, The death penalty in law and practice, Tunisia, 2022, Available online at : <https://www.ecpm.org/app/uploads/2023/01/flyer-tunisie-gb-311022-MD.pdf>.

⁶² Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

⁶³ CTCPM, ECPM, The death penalty in law and practice, Tunisia, 2022, Available online at : <https://www.ecpm.org/app/uploads/2023/01/flyer-tunisie-gb-311022-MD.pdf>.

⁶⁴ CTCPM, ECPM, The death penalty in law and practice, Tunisia, 2022, Available online at : <https://www.ecpm.org/app/uploads/2023/01/flyer-tunisie-gb-311022-MD.pdf>.

⁶⁵ Tunisie Numerique, *Tunisia—Minister of Justice on an unexpected visit to women’s prison in Manouba*, Oct. 4, 2022, <https://news-tunisia.tunisienumerique.com/tunisia-minister-of-justice-on-an-unexpected-visit-to-womens-prison-in-manouba/> (last visited Jan. 2, 2023).

⁶⁶ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

⁶⁷ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

⁶⁸ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

⁶⁹ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

daughters and 83-year-old mother for prison visits.⁷⁰ Due to this decision to bar her from contact with her family, she considers herself to be “executed.”⁷¹

24. A recent report in Nawaat magazine included details of an interview with a woman who had recently been released from the Manouba prison.⁷² The woman reported that she had been subjected frequent and humiliating strip searches at the prison, including upon admission to the prison and each time she left her cell to take care of administrative paperwork.⁷³ She explained that women are forced to share beds, and she recounted an occasion in which the shared toilets in her cell malfunctioned.⁷⁴ The guards then assigned one person each day to collect the human waste and pour it into the prison courtyard.⁷⁵ She also reported that suicide attempts were frequent.⁷⁶

IV. Suggested recommendations for the Government of Tunisia

25. The coauthors suggest the following recommendations⁷⁷ for the Government of Tunisia:
- Abolish the death penalty and replace it with penalties that are fair, proportionate, and consistent with international human rights standards.
 - Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.
 - Support the draft protocol to the African Charter on Human and Peoples’ Rights on the abolition of the death penalty.
 - In the interim, establish a de jure moratorium on executions and ensure that the death penalty is an available penalty only for an intentional killing committed by the person to be sentenced to death.

⁷⁰ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

⁷¹ Email correspondence with Tunisian Coalition Against the Death Penalty, Jan. 7, 2023, on file with The Advocates for Human Rights.

⁷² Rihab Boukhatia, *Women’s prisons in Tunisia: punishment without rehabilitation*, Nawaat magazine, June 3, 2022, <https://nawaat.org/2022/06/03/womens-prisons-in-tunisia-punishment-without-rehabilitation/> (last visited Jan. 2, 2023).

⁷³ Rihab Boukhatia, *Women’s prisons in Tunisia: punishment without rehabilitation*, Nawaat magazine, June 3, 2022, <https://nawaat.org/2022/06/03/womens-prisons-in-tunisia-punishment-without-rehabilitation/> (last visited Jan. 2, 2023).

⁷⁴ Rihab Boukhatia, *Women’s prisons in Tunisia: punishment without rehabilitation*, Nawaat magazine, June 3, 2022, <https://nawaat.org/2022/06/03/womens-prisons-in-tunisia-punishment-without-rehabilitation/> (last visited Jan. 2, 2023).

⁷⁵ Rihab Boukhatia, *Women’s prisons in Tunisia: punishment without rehabilitation*, Nawaat magazine, June 3, 2022, <https://nawaat.org/2022/06/03/womens-prisons-in-tunisia-punishment-without-rehabilitation/> (last visited Jan. 2, 2023).

⁷⁶ Rihab Boukhatia, *Women’s prisons in Tunisia: punishment without rehabilitation*, Nawaat magazine, June 3, 2022, <https://nawaat.org/2022/06/03/womens-prisons-in-tunisia-punishment-without-rehabilitation/> (last visited Jan. 2, 2023).

⁷⁷ Some of these recommendations are borrowed or adapted from *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 35-36, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

- Take urgent steps to comply with the African Court on Human and Peoples’ Rights’ judgment issued in *Belguith v. Republic of Tunisia*, both with respect to repealing Presidential Decrees Nos. 69, 80, 109, 117, 137, and 138 as well as establishing a judiciary existing truly independently from the President.
- Ensure that an “extreme case” under Article 24 of the 2022 Constitution authorizes the death penalty consistent with international standards, limited to cases of intentional killing committed by the person to be sentenced to death.
- On at least an annual basis, publish disaggregated data on all women, transgender persons, and nonbinary persons charged with capital offenses and under sentence of death, disaggregated by sex, age, age of dependent children (if any), race / ethnicity, nationality, crime of conviction, date of conviction, relationship to the victim, entity issuing the death sentence, and current location, to facilitate analysis of the demographics of women on death row.
- In collaboration with civil society organizations, provide all judges who have sentencing authority with comprehensive gender-sensitization training, including with respect to women and girls in conflict with the law who have experienced gender-based violence, focusing on gender-based discrimination, domestic violence, and tactics of coercive control that may lead women to commit death-eligible offenses.
- Prohibit military courts from trying civilians in cases involving the potential for the death penalty.
- Ensure that any woman suspected of committing a death-eligible offense has access to free and effective legal representation by attorneys who specialize in capital representation during all stages of the investigation and trial and ensure that the defense has sufficient funding to conduct a thorough investigation and secure relevant expert witnesses.
- Ensure that all attorneys representing women in capital cases have training on gender-based discrimination, gender-based violence, and tactics of coercive control that may lead women to commit death-eligible offenses, and on introducing gender-specific mitigation evidence
- Codify gender-specific defenses and mitigation in capital cases, encompassing women’s experiences of trauma, poverty, and gender-based violence.
- Ensure that women in custody, particularly women under sentence of death, have timely and free access to general and female-specific healthcare and counseling, including mental health care and menstrual health (e.g., access to sanitary products, soap, etc.).
- Improve detention conditions for women, particularly with respect to food, health care, sanitation, and personal hygiene, and ensure that all people have sufficient access to free menstrual hygiene products.
- Ensure that all prison authorities adopt gender-sensitive policies in relation to women’s detention, based on the Bangkok Rules and the Nelson Mandela Rules, ensuring women’s safety and security pre-trial, during admission to any detention facility, and while incarcerated.
- Implement legislative reforms to prevent the application of the death penalty against women and girls when they have experienced gender-based violence, including early and forced marriage as well as rape and sexual assault, and subsequently engage in criminal

conduct against their abusers. Collaborate with civil society organizations to conduct trauma-informed gender-sensitization training for all judges handling serious criminal cases.

- Guarantee that each woman receives an individualized judicial process and is not charged through association with a male spouse, partner, or family member.
- Commute the sentences of any woman sentenced to death for killing a person in her family or household who perpetrated gender-based violence against her.