



## **Tunisia's Compliance with the Convention on the Rights of the Child**

### **Suggested List of Issues Relating to the Protection of the Rights of Children of Parents Sentenced to Death or Executed**

#### **Submitted by The Advocates for Human Rights**

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

#### **World Coalition Against the Death Penalty**

a non-governmental organization gathering 150 NGO founded in 2002  
and

#### **Coalition tunisienne contre la peine de mort**

a non-governmental organization created in 2007 and established under Tunisian law since 2012

### **84th Session of the Committee on the Rights of the Child (Pre-Sessional Working Group) 30 September 2019–4 October 2019**

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**The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental 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** 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.

**The Coalition tunisienne contre la peine de mort** is a volunteer-based non-governmental organization committed to the definitive abolition of the death penalty in Tunisia. Created in 2007 and recognized in 2012, it is also committed to the respect of the right of the prisoners to receive visits from their family and to rehabilitate the persons executed for political motives under the dictatorship in Tunisia.

## EXECUTIVE SUMMARY

1. Since 1956, Tunisian authorities have executed 135 persons. Nearly half of the executions have been motivated by the accused's political opinions. Since 9 October 1991, Tunisia has observed a de facto moratorium on executions. In 2012, the 122 people under sentence of death had their sentences commuted to life imprisonment. After the Revolution of 2010-2011, prisoners sentenced to death are no longer subject to isolation, are able to correspond with family members, and are able to receive food packages and visits from family. Laws enacted in 2015 expanded the death penalty in Tunisia for terrorist acts and allowed authorities to apply that law to children.<sup>1</sup>
2. The Coalition tunisienne contre la peine de mort, with the collaboration of Tunisian authorities, collected the bulk of the information contained in this report. In 2018, Tunisian authorities gave the Coalition tunisienne the right to visit prisoners sentenced to death in Tunisian prisons. The NGO met with a total of 53 persons sentenced to death, including 3 women. The ages of the prisoners ranged from 20 years (58.3% of the total) to 52 years (4.2% of the total). Even though information related to the number of persons sentenced to death is not publicly available, the NGO was able to hold direct visits (in a room with no bars between the prisoner and the visitors), without restrictions, with men and women sentenced to death in their place of imprisonment. This access is without precedent and marks genuine progress in addressing the issue of death penalty in Tunisia. Despite this progress, the information gathered demonstrates that Tunisia is not in compliance with its obligations under the Convention on the Rights of the Child with respect to the children of parents sentenced to death or executed.

### **Tunisia fails to uphold its obligations under the Convention on the Rights of the Child**

3. This report focuses on several issues of utmost importance to children of parents sentenced to death or executed in Tunisia: a child's right to maintain relations and direct contact with her parents sentenced to death (Art. 9); a child's right not to be subject to arbitrary interference with her parents (Art. 16); a child's right to necessary medical assistance and health care following the death sentence or execution of the child's parent (Art. 24); and a child's right not to be sentenced to death (Art. 37).

#### **A. Tunisia does not uphold a child's right to maintain personal relations and direct contact with her parent when that parent is sentenced to death (Art. 9), and a child's right not to be subject to arbitrary interference with her parent sentenced to death (Art. 16).**

4. The Tunisian Constitution adopted in 2014 recognizes the rights of the child and stipulates, in Article 47, that "the State must protect all children without any discrimination, in accordance with their best interests."
5. Tunisian authorities make some efforts to allow children of people sentenced to death to maintain contact with their parents, but those efforts fall short. For example, children born in prison and children who accompany their mother to prison are separated from their mother at

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<sup>1</sup> Assembly of People's Representatives, the 7<sup>th</sup> August 2015, Organic Law No. 2015-26 on Combating Terrorism and the Suppression of Money Laundering.

the age of 3. Upon the mother's request, and with the consent of the General Directorate of Prisons and Rehabilitation, this period may be extended.

6. For children living outside prison, visits to a person sentenced to death are limited to 30 minutes a week. Moreover, visits are often rendered impossible due to prohibitive costs, including transportation costs.
7. Under Article 48 of Decree No. 88-1876 of 4 November 1988 on the Special Regulations for Prisons, children, as descendants of people in prison, are allowed to visit their parents.<sup>2</sup> The State Party Report addresses in general terms the best interests of the child. But it does not mention how Tunisian authorities account for these interests in the context of children whose parents are in prison, sentenced to death, or executed.
8. People sentenced to death are entitled to one 30-minute family visit per week. Yet visits actually take place with much less frequency because of the costs of the visits for the families. According to data the Coalition tunisienne gathered from interviews of persons sentenced to death and their family members, even though 92% of prisoners had received family visits, the average frequency is one visit every three months. Some prisoners receive family visits only once a year and others have family visitors only once every three years. Moreover, 8% of the prisoners interviewed did not receive any family visits. The barriers to family visits are particularly troublesome because 2/3 of the people interviewed were parents.
9. Children, especially when under the age of 13, have a right to visit their parents. But at any time the prison administration may cancel all visits, including visits by children of people in prison, for disciplinary or security reasons.<sup>3</sup>
10. In order for a child under the age of 13 to have a "direct" visit (in a separate room with no bars between the child and parent) with a parent in prison, the detained person must submit a written request, and the prison administration must authorize the request in writing. When a child is 13 years old or older, the General Directorate of Prisons and Rehabilitation must also approve the visit.
11. Direct, physical contact visits, including by children under the age of 13, are subject to strict conditions. Visitation is usually conducted with the prisoner remaining behind bars, so a child is unable to have meaningful direct physical contact with the parent.
12. **Suggested questions** relating to a child's right to maintain personal relations and direct contact with her parents sentenced to death (Art. 9), and to have her relationship with her parent be free from arbitrary interference:
  - How many people under sentence of death in Tunisian prisons have children? What support does the Tunisian Government provide to those children?
  - How many children reside in prison with a parent who has been sentenced to death? What facilities and measures are in place to ensure the safety and rights of those children?
  - At the time of sentencing, what measures are in place to ensure that the sentencing authority considers the best interests of the child of the person being sentenced? Please provide details regarding whether any sentencing authority has

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<sup>2</sup> Decree No. 88-1876 of 4 November 1988 on the Special Regulations for Prisons.

<sup>3</sup> Decree N° 88-1876 of 4 November 1988, Art.16 and Rules of Procedure of Penitentiary Institutions.

ever referred to or applied the best interests of the child standard in the Convention when sentencing a parent.

- After a parent is sentenced to death, how do Tunisian authorities assess the best interests of the child of the parent and what measures do those authorities take to promote the best interests of such children?
- What factors does the General Directorate of Prisons and Rehabilitation take into account when considering a mother's request to extend the stay of her child in prison with her beyond three years? How do authorities identify and respect the best interests of the child in this context?
- What measures are in place to ensure that all children of persons sentenced to death may conduct regular, direct visits to the parent, unhindered by financial barriers?
- What steps will Tunisian authorities take to ensure that every child visiting a parent who has been sentenced to death may have genuine physical contact with the parent during the visit (a "direct" visit) and to ensure that such visits take place in a child-friendly atmosphere?
- What measures will Tunisian authorities take to ensure that children are not denied their right to visit their incarcerated parents due to disciplinary or security concerns?
- How do Tunisian authorities ensure that prison administration officials and the General Directorate of Prisons and Rehabilitation take into account the best interests of the child when deciding whether to permit a child to visit a parent who has been sentenced to death?
- Besides visitation, in what other ways are children allowed to communicate with a parent sentenced to death? What measures are in place to promote a child's right to visit and contact an incarcerated parent? Are visitation and communication procedures for children different from procedures for others seeking to visit or communicate with people who are imprisoned? Is a child ever compelled to pay a fee in order to visit a parent in prison?
- What measures do Tunisian authorities take to ensure that children of persons sentenced to death receive adequate and appropriate alternative care when they are removed from prison after residing with an incarcerated parent?
- Do government agencies provide training to individuals in the judiciary and the prison system regarding how to engage with and support children of death-sentenced or executed parents?
- To what extent does the Tunisian Government offer financial support programs, including income support, travel costs, funeral costs, and medical/health care costs, for children of parents who have been executed or who are under sentence of death?

**B. Tunisia does not uphold a child's right to the necessary medical assistance and health care following a parent's death sentence (Art. 24).**

13. Tunisian authorities do not provide appropriate medical assistance to children who are separated in early childhood from a parent sentenced to death, as well as other children of parents sentenced to death. Some children of persons sentenced to death suffer from psychological and psychosocial health complications arising out of the crimes the parent is

alleged to have committed or other factors. Only a small fraction of the children of people interviewed had been participating in a therapy. Most children do not receive any assistance or services. The situation is particularly harsh for children whose parent is sentenced in the child's early childhood. Because Tunisia has been de facto abolitionist since 1991, young children experience their parents living in prison for a very long period.

14. People who were children when their parents were executed for political reasons in the 1960s continue to suffer from the trauma they experienced in childhood. This trauma was caused by a variety of factors, including the execution itself, demonization campaigns, guilt, and political and social stigma. Today, as adults, they are demanding that Tunisian authorities rehabilitate their parents and they fight to recover their parents' remains, which were often buried in secret locations.
15. **Suggested questions** relating to a child's right to medical assistance and health care (Art. 24):
  - What measures do Tunisian authorities take to ensure that children of persons sentenced to death receive relevant and high-quality medical treatment and health care for trauma and other health issues arising out of the parent's incarceration and death sentence?
  - What measures are in place to ensure that children of parents sentenced to death do not face discrimination in any sphere of life?
  - What steps will Tunisian authorities take to ensure that people who were children when their parents were executed for political reasons in the 1960s are able to recover their parents' remains to provide those remains with an appropriate burial? What steps will Tunisian authorities take to rehabilitate those parents?

**C. Tunisia does not uphold a child's right not to be sentenced to death (Art. 37(a)).**

16. A new anti-terrorism law adopted on 25 July 2015 introduced the death penalty for "terrorist" crimes. Under Law No. 26 of 7 August 2015, children may be sentenced to death for acts of terrorism.<sup>4</sup>
17. The Annexes to the State Party Report propose to clarify the definition of terrorist acts and to ensure that children are not held responsible or detained under anti-terrorism legislation. Furthermore, the Annexes propose to revise the law No. 26 of 7 August 2015 to promote rehabilitation and reintegration of children accused of terrorist acts.
18. The authors of this report welcome the State Party's proposal to revise law No. 26 of 7 August 2015 to promote rehabilitation and reintegration of children accused of terrorist acts. The authors further welcome Tunisian authorities' proposal to clarify the definition of terrorist acts and to ensure that children are not held responsible or detained under anti-terrorism legislation. These amendments should be adopted immediately.
19. **Suggested questions** relating to the right of a child to not be sentenced to the death penalty (Art. 37(a)):

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<sup>4</sup> Organic law No. 2015-26 dated 7 August 2015, related to the fight against terrorism and suppression of money laundering.

- When will Tunisian authorities revise the laws concerning terrorism to prohibit imposition of the death penalty on any person who committed any terrorist act when under the age of 18 years?
- How will Tunisian authorities ensure that any child accused of terrorist acts is actually rehabilitated and reintegrated? How will authorities ensure that the rehabilitation and reintegration process does not violate the rights of the child?