

# Human Rights Watch

## Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

<https://www.hrw.org/world-report/2016/country-chapters/tunisia>

### Annual reports

Events of 2015

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How the Politics of Fear and the Crushing of Civil Society Imperil Global Rights

Meeting the Global Development Goals Promise to Girls

Making Legal Recognition for Transgender People a Global Priority

The Global Overuse of Detention of Children

Tunisia experienced several deadly attacks by Islamist extremists in 2015 that left dozens of people dead and others injured. On March 18, two gunmen attacked the Bardo Museum, adjacent to Tunisia's parliament, killing 21 foreign tourists and one Tunisian security agent. On June 26, a gunman rampaged through a beach resort in Sousse, killing 38 foreign tourists. On November 24, a suicide attack on a bus killed 12 presidential guards and wounded 20 others, including four civilians. The attacks prompted the government to invoke a 1978 decree to declare a state of emergency that empowered authorities to ban strikes or demonstrations deemed to threaten public order, and to prohibit gatherings likely to provoke or sustain disorder.

The 2014 constitution guarantees key civil, political, social, economic, and cultural rights. Tunisian authorities made little progress in overhauling legislation that fails to comply with the constitution, particularly the penal code and code of criminal procedures.

Article 29 of the constitution affords detainees the right to be represented by a lawyer, but the code of criminal procedures allows detainees to consult a lawyer only after they appear before an investigative judge, up to six days after arrest. Parliament has yet to debate a draft law to reform the Code of Criminal Procedures that the previous government submitted in April 2013.

If enacted, the proposed law would affirm the right of detainees to access a lawyer promptly after arrest and to have their lawyer present during their interrogation and court hearings.

The penal code, the Code of Military Justice, and the Telecommunications Law still include articles that punish with imprisonment speech offenses, such as defamation of public officials, harming public order and public morals, and spreading false information.

In 2015, authorities prosecuted several people for alleged defamation or insult of state officials and on charges of harming public order or public morals. Authorities also used counterterrorism legislation to prosecute a few journalists and bloggers for publishing information or their opinions.

Judicial authorities charged Nouredine Mbarki, chief editor of *Akher Khabar online*, with complicity in terrorism on July 8 for publishing a photograph of gunman Seifeddine Rezgui getting out of a car driven by another person shortly before he killed 38 foreigners in the June 26 Sousse attack.

Authorities also detained Abdelfattah Saied, a teacher, on the same charge on July 22 after he posted a video on Facebook that accused

the security forces of planning the Sousse attack and duping Rezgui into carrying it out. He also faced the charge of defaming a public servant for publishing a caricature of Prime Minister Habib Essid on his Facebook page.

On March 2, a military appeals court sentenced Yassine Ayari, a prominent blogger, to six months in prison for Facebook posts that criticized the army and its top echelons. Several posts in August and September 2014 had criticized the minister of defense for refusing to appoint a new head of military intelligence, and accused him of weakening military institutions. Ayari spent four months in prison before his release on April 16, 2015.

On December 24, 2013, the National Constituent Assembly (NCA) adopted the Law on Establishing and Organizing Transitional Justice.

The law sets out a comprehensive approach to addressing past human rights abuses. It provides criminal accountability via specialized chambers within the civil court system to adjudicate cases arising from past human rights violations, including abuses committed by military and security forces.

The law also established a Truth and Dignity Commission (TDC) tasked with uncovering the truth about abuses committed between July 1955, shortly before Tunisia's independence from France, and the law's adoption in 2013. The NCA elected 15 of the TDC's members on May 15, 2014, and in August 2015, the TDC said it had received 16,000 complaints from people alleging human rights abuses and had begun processing them.

On July 14, however, the government approved a draft Law on Economic and Financial Reconciliation, strongly supported by President Essebsi. If enacted, the law will offer broad amnesty to officials of the former Ben Ali regime and will terminate prosecutions and trials of, and cancel any sentences against, corrupt business executives who submit a reconciliation request to a state-run commission.

The proposed law would threaten the TDC's role, mandated under the transitional justice law, to mediate cases relating to corruption and economic crimes, which were endemic during the 23-year rule of former President Ben Ali.

Tunisia's parliament adopted a new counterterrorism law on July 25 that imperils human rights and lacks adequate safeguards against abuses. The law, which replaced the 2003 counterterrorism law enacted by the Ben Ali administration, affords the security forces broad and vague monitoring and surveillance powers, extends incommunicado detention from six to up to 15 days for terrorism suspects, and permits courts to close hearings to the public and allow the identities of witnesses to be withheld from defendants.

A Human Rights Watch study from July found that Tunisian authorities, under the guise of fighting terrorism, were arbitrarily banning persons under age 35 from travel to countries including Algeria, Libya, Morocco, and Turkey unless they obtain their fathers' authorization to travel, even though Tunisian law does not require adults to obtain such authorization.

The constitution guarantees judicial independence. On May 15, parliament approved a law to create a constitutionally mandated Supreme Judicial Council (SJC). Its functions will include making judicial appointments and overseeing judicial discipline and the career progression of judges.

A week after its adoption, 30 members of parliament challenged the new law before the Constitutional Council, itself a temporary body, arguing that its composition and mandate failed to implement the constitutional chapter on the judiciary. In June, the council issued a decision invalidating the law and sent it back to the parliament for revision. On November 13, the parliament adopted the final version of the law, upholding the Constitutional Council's request to remove membership of the general prosecutor of military justice as an ex-officio member.

In May 2014, the UN special rapporteur on torture said that Tunisian prosecutors and judges had taken very little action to pursue torture complaints dating from the Ben Ali era and since the 2011 revolution.

This failure continued through 2015. Although the National Constituent Assembly approved legislation to create a 16-member High Authority for the Prevention of Torture in October 2013, by September the parliament had yet to select any members. Under its mandate, the High Authority will carry out unannounced inspections of detention sites.

In 2015, Tunisian law still allows police to deny those they arrest access to a lawyer for the first six days of their detention, typically the period when detainees face the greatest pressure to confess. The counterterrorism law adopted in July extended this to a maximum of 15 days in the case of terrorism suspects, increasing the risk of torture.

There were several documented incidents of torture and other mistreatment in 2015. On August 4, seven men detained on suspicion of terrorism filed formal complaints of torture upon release. Shortly after, officers of the police counterterrorism unit they had accused rearrested them. The men underwent forensic medical examination that concluded that five of them bore marks consistent with their torture allegations. On August 10, the prosecutor of the First Instance Tribunal in Tunis opened an investigation but had yet to reveal its outcome at time of writing.

Earlier, the prosecutor of the First Instance Tribunal of Sidi Bouzid opened an investigation into the case of Abdelmajid Ejday after he died on May 13 while held at the city's National Guard headquarters. Ejday had filed a torture complaint four weeks earlier against officers from the same police unit force who had detained him in February. A forensic medical examination reported finding injuries on his body. At time of writing, the prosecutor had not announced the outcome of his investigation.

The 2014 constitution provides improved protection for women's rights and obligates Tunisia to work towards achieving gender parity in elected assemblies.

Tunisia has a personal status code that gives women greater rights within the family than those allowed by other states in the region, but the code retains some discriminatory provisions. These deny women an equal share with men of any inheritance and prohibit a mother who has remarried, unlike remarried fathers, from having her children live with her.

[Tunisia's](#) parliament adopted a new law on November 10, which will allow women to travel with their minor children without getting permission from the children's father.

Tunisia's penal code punishes consensual same-sex conduct with up to three years in prison. In March, Shams, a lesbian, gay, bisexual, and transgender group, was permitted to operate. On September 22, a 22-year-old man was sentenced to one year in prison on homosexuality charges, after being subjected to a forced anal exam, a practice that amounts to torture.

Several United Nations agencies and foreign governments have committed to support Tunisia's transition since the 2011 revolution, focusing on technical and financial assistance to the economy and private sector, security sector support, and support for civil society and democratic practices.

In July, US President Barack Obama and President Essebsi signed an agreement in Washington making Tunisia a Major Non-NATO Ally, thereby enhancing Tunisia's eligibility to receive training on security and military financing of certain defense equipment.

In July, the UN Working Group on the use of mercenaries visited Tunisia, and concluded that some 6,000 Tunisians had left the country to join extremist armed groups in Syria, Iraq, Mali, and Libya. The group urged the government to urgently stop the flow of Tunisians to join extremist groups abroad, dismantle recruitment networks, and devise and implement a comprehensive solution to the problem.

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