



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### Concluding observations on the third periodic report of Tunisia\*

1. The Committee on Economic, Social and Cultural Rights considered the third periodic report of Tunisia on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/TUN/3) at its 57th and 58th meetings (see E/C.12/2016/SR.57 and 58), held on 22 and 23 September 2016, and adopted the following concluding observations at its 78th meeting, held on 7 October 2016.

#### A. Introduction

2. The Committee welcomes the submission of the third periodic report of the State party and of the written replies to the list of issues (E/C.12/TUN/Q/3/Add.1). It also appreciates the constructive and frank dialogue that it had with the State party's high-level delegation.

3. The Committee considered the situation of Tunisia with regard to the Covenant at a time when the country has entered a period of transition, marked primarily by the adoption of a new constitution in 2014. The Committee acknowledges the challenges posed by this transition and encourages the State party to see this phase as an opportunity to strengthen the protection of economic, social and cultural rights.

#### B. Positive aspects

4. The Committee welcomes the adoption on 27 January 2014 of the new Constitution, which safeguards economic, social and cultural rights, in particular trade union rights (art. 36), the right to health (art. 38), the right to education (art. 39), the right to work (art. 40) and the right to water (art. 44).

5. The Committee also welcomes the fact that the State party has ratified or acceded to the majority of international human rights instruments and has withdrawn its reservation to the Convention on the Elimination of All Forms of Discrimination against Women.

6. The Committee further welcomes the establishment, following the revolution of 2011, of democratic institutions including the Assembly of the Representatives of the

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\* Adopted by the Committee at its fifty-ninth session (19 September-7 October 2016).



People, the Truth and Dignity Commission and the Ministry responsible for liaison with constitutional bodies, civil society and human rights.

## **C. Principal subjects of concern and recommendations**

### **Domestic application of the Covenant**

7. While it welcomes the fact that article 20 of the Constitution expressly provides that international treaties in force in Tunisia take precedence over domestic laws, the Committee is concerned that the national courts rarely invoke the Covenant (art. 2 (1)).

8. **The Committee urges the State party to take steps to encourage the application of the Covenant by the national authorities, including the courts. In particular, it recommends that the State party:**

(a) **Raise awareness among judges, lawyers, the public and parliamentarians of the justiciability of economic, social and cultural rights and the possibility of invoking the provisions of the Covenant before the courts;**

(b) **Provide specialized training to judges regarding the application of the Covenant;**

(c) **Provide in its next report a compilation of the relevant decisions taken by Tunisian courts.**

9. **The Committee wishes to draw the State party's attention to general comment No. 9 (1998) on the domestic application of the Covenant.**

10. **The Committee welcomes the development of a bill on a human rights body, given the rank of a constitutional body under article 128 of the Constitution. It recommends that the State party ensure that the body is in line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) and that its mandate covers economic, social and cultural rights (art. 2 (1)).**

11. The Committee notes that a considerable number of bills addressing rights contained in the Covenant are awaiting adoption by the Assembly of the Representatives of the People (art. 2 (1)).

12. **The Committee encourages the State party to fast-track the adoption of the bill on the good governance and anti-corruption entity, the bill on whistle-blowers and the protection of witnesses and the bill on asylum, among others.**

13. **The Committee also encourages the State party to finalize the establishment of the Constitutional Court so that it may ascertain the constitutionality of domestic laws.**

### **Taxation policy**

14. The Committee notes with concern that the current taxation system places a disproportionate burden on households, especially on families that include an employee in the formal sector of the economy (art. 2 (1)).

15. **The Committee recommends that the State party launch a taxation reform to bring about greater fairness and more equal distribution of the burden among taxpayers with a view to enabling the State to move forward with the implementation of economic, social and cultural rights and reduce inequality.**

### Corruption

16. The Committee welcomes the ratification by the State party of the United Nations Convention against Corruption, on 23 September 2008, and the fact that the good governance and anti-corruption entity has been given constitutional status. However, efforts to eradicate corruption must continue. The State party should also ensure that the bill on national economic and financial reconciliation does not lead to impunity for persons who were involved in large-scale corruption prior to 2011, so as not to send mixed messages to Tunisian society (art. 2 (1)).

**17. The Committee recommends that the State party redouble its efforts to combat corruption and ensure accountability and transparency in the management of public funds. The Committee further recommends that the State party raise awareness among political officials, parliamentarians and national and local public servants of the economic and social costs of corruption and encourage judges, prosecutors and public officials to strictly enforce the law.**

### Bilateral and multilateral trade and investment agreements

18. The Committee is concerned at the weakness of current instruments designed to ensure that Covenant rights are taken into consideration in the negotiation of bilateral and multilateral trade and investment agreements by the State party, including the draft agreement on a Deep and Comprehensive Free Trade Area with the European Union (art. 2 (1)).

**19. The Committee urges the State party to ensure that its obligations under the Covenant are taken into account in the negotiation and implementation of bilateral and multilateral trade and investment agreements, in particular through the assessment of the impact of these agreements on economic, social and cultural rights, with a focus on their potential effects on vulnerable groups. The Assembly of the Representatives of the People has specific responsibility in this regard. The Committee wishes to draw the State party's attention to the Guiding principles on human rights impact assessments of trade and investment agreements (A/HRC/19/59/Add.5).**

### Non-discrimination

20. The Committee regrets that the State party has yet to adopt a legislative framework against discrimination that covers all the prohibited grounds of discrimination contained in article 2 of the Covenant. It nonetheless notes with interest the proposals for the adoption of a general anti-discrimination law (art. 2).

**21. The Committee recommends that the State party fast-track the adoption and ensure the implementation of comprehensive anti-discrimination legislation that prohibits all forms of discrimination, both direct and indirect, in accordance with article 2 (2) of the Covenant and general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.**

### Regional disparities

22. The Committee notes with concern the considerable economic and social disparities between the coastal regions and the inland regions in terms of poverty and employment rates, of which the differentiated impact on ethnic groups cannot be ignored (art. 2).

**23. The Committee recommends that the State party take all necessary measures to resolve regional disparities, including by applying the affirmative action mechanism provided for in the Constitution, investing in infrastructure in disadvantaged regions and taking these disparities into account in targeting social policies.**

### **Discrimination on grounds of sexual orientation and gender identity**

24. Although the Constitution safeguards the right to privacy and freedom of expression, freedom of thought and freedom of opinion, the Committee notes with concern that lesbian, gay, bisexual, transgender and intersex persons continue to be discriminated against in law and in practice. The Committee is further concerned that consensual relations between same-sex partners are referred to as sodomy and defined as an offence under article 230 of the Criminal Code and that article 226 of the Code, which penalizes gross indecency, is frequently used as an excuse to harass members of sexual minorities (art. 2 (2)).

**25. The Committee recommends that the State party repeal article 230 of the Criminal Code, without delay, and provide law enforcement officials with training in respecting diverse sexual orientations and gender identities.**

### **Equal rights between men and women**

26. The Committee commends the State party on its commitment to pursuing its efforts to bring about gender equality. Nevertheless, it notes with concern that discriminatory provisions continue to hinder women's access to inheritance; for example, book nine of the Personal Status Code on inheritance is in direct breach of the Constitution and the international conventions ratified by the State party (art. 3).

**27. The Committee recommends that the State party amend, without delay, all the legal provisions that discriminate on grounds of gender, including provisions on inheritance. It reiterates the recommendations made by the Committee on the Elimination of Discrimination against Women and the Working Group on the issue of discrimination against women in law and in practice.**

### **Right to work**

28. The Committee commends the State party on the steps taken to increase the representation of women in the justice sector, the legislature and the civil service. However, women remain at a disadvantage in accessing the labour market owing to the fact that provisions designed to enhance work-life balance actually reinforce gender stereotypes and occupational segregation. The Committee is concerned by the gender pay gap and the number of women in unpaid work in the agricultural sector (arts. 3 and 6).

**29. The Committee urges the State party to:**

(a) **Take targeted measures with regard to women who are at the greatest disadvantage in the labour market, in particular rural women;**

(b) **Combat occupational segregation and develop tools to assess jobs with a view to raising wages in professions where women have traditionally been overrepresented;**

(c) **Increase the representation of women in decision-making positions in public entities and better promote the balanced representation of the sexes in businesses, including through temporary special measures.**

### **Unemployment**

30. The Committee welcomes the adoption of the national employment strategy in 2012. It nonetheless notes with concern that unemployment remains high, in particular in the regions of Sidi Bu Zayd, Qafsah and Qasrayn, and that 37 per cent of jobs, according to some estimates, are in the informal economy (arts. 6 and 7).

**31. The Committee recommends that the State party step up the fight against unemployment by targeting the most affected regions and the most disadvantaged**

groups. The Committee further recommends that the State party take steps to regularize the situation of workers in the informal sector by progressively improving their working conditions and by extending social security schemes to include them. Strengthening the mandate of the labour inspection services in order to promote regularization is a priority in this regard.

#### **Refugees and asylum seekers**

32. The Committee commends the State party on its generous assistance towards refugees and asylum seekers, in particular refugees fleeing Libya. The Committee observes, however, that refugees and asylum seekers registered with the Office of the United Nations High Commissioner for Refugees continue to face obstacles in accessing work, health care and education because they lack temporary legal status (arts. 3, 6, 11, 12 and 13).

33. **The Committee recommends that the State party officially grant temporary legal status to refugees and asylum seekers, ensuring that they are correctly identified and provided with documents issued by the competent Tunisian authorities, and that it thus facilitate their access to paid employment or self-employment, health care and education. The Committee further recommends that the State party prioritize the enactment of the asylum bill, which was pending at the time of the dialogue with the State party.**

#### **Right to just and favourable conditions of work**

34. Although a guaranteed inter-occupational minimum wage has been set pursuant to article 134 of the Labour Code, several categories of workers are in situations where this wage is not applied. Moreover, in the agricultural sector, where a different guaranteed minimum wage is in force, unpaid work remains common. The Committee is concerned at the working conditions in the textile industry and the lack of resources allocated to labour inspection for the periodic assessment of workplace hygiene, health and safety. It is astonished that the mandate of the labour inspection services does not extend to the informal sector, thereby exposing workers in this sector to exploitation and hazardous working conditions (arts. 3, 6 and 7).

35. **The Committee urges the State party to strengthen the capacity of the general labour inspectorate by endowing it with the necessary financial and human resources to fulfil its mandate. It recommends that the State party adopt appropriate measures to ensure that all allegations of violations of the right to work committed by employers are duly investigated and, where appropriate, that penalties are applied. The Committee also recommends that the State party extend labour inspections to the informal sector in order to safeguard the right to just and favourable conditions of work for all. It refers the State party to its general comment No. 23 (2016) on the right to just and favourable conditions of work.**

#### **Right to social security**

36. The Committee notes with concern that over 50 per cent of the workforce does not have social security coverage. In addition, 37 per cent of workers are employed in the informal sector and do not currently enjoy any guarantees in terms of wages, working hours, health and safety or social benefits (arts. 7 and 9).

37. **The Committee strongly urges the State party to continue its efforts to set up a social security system that guarantees broad social coverage, providing sufficient benefits to all workers and all disadvantaged persons and families in order to ensure they achieve an adequate standard of living. In this connection, the Committee refers to its general comment No. 19 (2007) on the right to social security (art. 9).**

**Violence against women**

38. The Committee welcomes the State party's commitment to speeding up the adoption of the bill on the elimination of all forms of violence against women and girls, which will, inter alia, provide protection measures for victims of violence. The Committee hopes that the law will repeal articles 218 and 319 of the Criminal Code, which provide for the termination of criminal proceedings in rape cases when a victim withdraws a complaint against her husband or parent, article 239 of the Code, whereby an abductor can escape criminal prosecution if he marries his victim, and article 227 bis of the Code, whereby a rapist can escape criminal prosecution by marrying his victim, including if the victim is under the age of 15. The Committee regrets the lack of statistical data, disaggregated by offence, on the percentage of complaints that have led to prosecutions and convictions in cases of gender-based violence and on any reparation measures ordered (arts. 2 and 10).

39. **The Committee recommends that the State party:**

(a) **Fast-track the adoption of the bill on violence against women and ensure that it criminalizes all forms of violence against women;**

(b) **Ensure that cases of violence against women lead to thorough and impartial proceedings, that the perpetrators are prosecuted and punished in proportion to the seriousness of their actions and that victims receive protection and obtain reparation;**

(c) **Raise awareness among and provide training to members of the judiciary and the law enforcement agencies regarding all violence against women and step up public awareness campaigns.**

**Poverty**

40. The Committee is concerned at the poverty rates, especially in rural areas and the central-western region. It notes that there is still no integrated strategy to monitor progress in the fight against poverty through independent monitoring mechanisms and that several development programmes are not achieving their stated objectives because of poor coordination among the various departments, insufficient implementation capacity and the lack of any evaluation. Given the poverty rate among the population, the Committee is also concerned about the potential consequences for the poorest households of the reform of the compensation fund, which guarantees access to certain basic foodstuffs at affordable prices (art. 11).

41. **The Committee urges the State party to take all necessary measures to reduce poverty and extreme poverty, especially in rural areas and the inland regions. Specific efforts should be made to ensure that homeless persons are covered by these initiatives and do not encounter any administrative barriers in accessing State assistance. The Committee recalls that, in order to be in line with the Covenant, anti-poverty programmes should recognize recipients as rights holders, inform them of their rights and include effective and independent remedies for challenging cases of exclusion. The Committee draws the State party's attention to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights (E/2002/22-E/C.12/2001/17, annex VII), adopted on 4 May 2001, and to its statement on social protection floors as an essential element of the right to social security and of the sustainable development goals (E/C.12/2015/1), adopted on 6 March 2015. Regarding the compensation fund reform, the Committee wishes to draw the State party's attention to the dangers that narrower targeting of subsidies for basic foodstuffs represents for families who are ill-informed of their rights or unable to overcome the administrative obstacles to their registration as beneficiaries.**

### **Right to water and sanitation**

42. The Committee is concerned by the water shortage, the inadequate provision of drinking water to the population, especially in rural areas, and the frequent and extended cuts to the water supply in affected areas. It is further concerned that the treatment of a large proportion of wastewater (up to 61 per cent according to the Court of Auditors) does not meet minimum standards, thereby posing a danger to health and the environment, especially given that 25 per cent of this wastewater is used for irrigation (art. 11).

43. **The Committee urges the State party to invest more funds in improving the drinking water network and the sanitation system, particularly in rural areas, and to take prompt action to protect water, soil and air from contamination. The Committee refers the State party to its general comment No. 15 (2002) on the right to water and its statement on the right to sanitation (E/C.12/2010/1), adopted on 19 November 2010.**

### **Right to adequate and affordable housing**

44. The Committee notes that a government social housing programme was set up in 2012 to guarantee access to adequate and affordable housing. It regrets, however, the scant investment of resources to support public policies designed to realize the right to adequate housing (art. 11).

45. **Drawing the State party's attention to its general comment No. 4 (1991) on the right to adequate housing, the Committee urges the State party to invest, on the basis of appropriate geographic targeting, resources proportional to the extent of housing needs.**

### **Slums, forced evictions and homelessness**

46. The Committee regrets the lack of information on:

- (a) The large number of people, particularly from disadvantaged and vulnerable groups, living in slums and at risk of forced evictions and homelessness;
- (b) Legal safeguards against forced evictions and expulsions resulting in homelessness and remedies for victims of such evictions, as well as the number of forced evictions;
- (c) The scope and extent of homelessness.

47. **The Committee recommends that the State party take all necessary legislative and other measures to ensure that persons who are forcibly evicted are provided with alternative accommodation or compensation, in accordance with the guidelines adopted by the Committee in its general comment No. 7 (1997) on forced evictions. The Committee further recommends that the State party provide in its next periodic report information on the extent of homelessness and data disaggregated by age, sex and other relevant criteria, and that it establish effective mechanisms to measure progress.**

### **Right to health**

48. The Committee notes that the State party has a national health strategy. It is nonetheless concerned at poor access to health-care services in rural areas experiencing a shortage of medical professionals. It also notes the popular perception that access to health care is often hampered by corruption, as well as the difficulties that the most disadvantaged groups face in purchasing affordable medication (art. 12 (2)).

49. **The Committee requests the State party to monitor on a regular basis the implementation of the national health strategy and the effectiveness of the systems put**

in place to improve access to health care in rural areas experiencing a shortage of medical professionals, to measure the impact of the systems on the enjoyment of the right to health and to take remedial action where necessary. It recommends that, in order to fight corruption in the health-care system, patients be informed of their rights through a “charter of patients’ rights” that would explain the avenues available for filing a complaint if they witness attempted corruption. The State party should guarantee that everyone, without discrimination, has access to affordable medication.

50. The Committee refers the State party to its general comment No. 14 (2000) on the right to the highest attainable standard of health.

#### **Right to education**

51. The Committee commends the State party on the considerable progress achieved in terms of equality between girls and boys in education, as illustrated by the enrolment rate at the secondary and higher education levels. However, the Committee finds regrettable:

- (a) The low academic success rate among persons from socially and economically disadvantaged groups;
- (b) The regional disparities between urban and rural areas, as illustrated by illiteracy rates and the significant difference in access to preschool education;
- (c) The poor quality of State-provided education, in particular in mathematics and the sciences, which might partially explain the high demand for private schools;
- (d) The high dropout and illiteracy rates (arts. 13, 14 and 11).

52. **The Committee encourages the State party to continue its efforts to:**

- (a) **Correct the social and economic inequalities that adversely affect academic success;**
- (b) **Invest more resources in education in rural areas to close existing gaps, including by making every effort to widen access to preschool education;**
- (c) **Take all necessary measures to increase the number of qualified teachers and adequate education facilities, especially in rural and remote areas;**
- (d) **Address the high dropout and illiteracy rates as a matter of urgency.**

53. The Committee refers the State party to its general comment No. 13 (1999) on the right to education.

#### **Cultural rights**

54. The Committee is concerned at reports of discrimination against the members of the Amazigh minority, particularly in the exercise of their cultural rights, and at the lack of data disaggregated by ethnicity and cultural background, which prevents proper assessment of the situation of the Amazigh minority (arts. 2 (2) and 15). The Committee notes that the State party’s definition of its Arab and Muslim identity could lead to violations of the Amazigh minority’s linguistic and cultural rights, particularly through the imposition of the exclusive use of Arabic in State-provided education. It notes and regrets the meagre budgetary resources allocated to Amazigh culture and the protection of Amazigh cultural heritage.

55. **The Committee recommends that the State party officially recognize the language and culture of the indigenous Amazigh people and ensure their protection and promotion, as requested by the Committee on the Elimination of Racial Discrimination in 2009. In addition, the State party should:**



- (a) Collect, on the basis of self-identification, statistics disaggregated by ethnicity and cultural background;
- (b) Adopt legislative and administrative measures to provide instruction in the Amazigh language at all education levels and encourage awareness of Amazigh history and culture;
- (c) Rescind Decree No. 85 of 12 December 1962 and permit the registration of Amazigh names in the civil registry;
- (d) Facilitate the running of cultural activities by Amazigh cultural associations.

#### **D. Other recommendations**

56. The Committee encourages the State party to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

57. The Committee encourages the State party to accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

58. The Committee recommends that the State party fully take into account its obligations under the Covenant and ensure the full enjoyment of Covenant rights in the implementation of the 2030 Agenda for Sustainable Development at the national level, with the support of international assistance and cooperation, where appropriate. The achievement of the Sustainable Development Goals will be greatly facilitated by the State party establishing independent mechanisms for monitoring progress and treating the beneficiaries of government programmes as rights holders who are capable of exercising those rights. Rooting the implementation of the Sustainable Development Goals in the principles of participation, accountability and non-discrimination will ensure that no one is left behind in this process.

59. The Committee urges the State party to set up a comprehensive data-collection system on all areas covered by the Covenant and requests the State party to include in its next periodic report annual comparative statistical data on the enjoyment of each Covenant right, disaggregated by age, sex, region, urban or rural location, ethnicity and other relevant indicators. The Committee recommends that the State party take into account the methodological framework on human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights (HRI/MC/2008/3).

60. The Committee requests that the State party disseminate the present concluding observations widely at all levels of society, particularly among parliamentarians, public officials and judicial authorities, and that it inform the Committee in its next periodic report about the steps taken to implement them. It also encourages the State party to involve civil society organizations in discussions held at the national level prior to the submission of its next periodic report.

61. The Committee requests the State party to submit its fourth periodic report by 31 October 2021 and invites the State party to submit, as soon as possible, its common core document, in accordance with the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.6, chap. I).