1. (A) Introduction

1.1 In this document, CIVICUS and Amazigh of Tunisia examine the Government of Tunisia’s compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyze Tunisia’s fulfillment of the rights to freedom of association, assembly, and expression and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination in May 2012. To this end, we assess Tunisia’s implementation of recommendations received during the 2nd UPR cycle relating to these issues and provide a number of specific, action-orientated follow-up recommendations.

1.2 During the 2nd UPR cycle, the Government of Tunisia received twelve recommendations relating to the freedom of association, peaceful assembly, expression and the protection of Human Rights Defenders (HRDs). Of these recommendations, eleven were accepted and one was noted. An evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission demonstrate that the Government of Tunisia has fully implemented three recommendations, partially implemented five recommendations and has not
implemented three recommendations relating to the above freedoms. While the government has made significant strides in guaranteeing fundamental rights in the 2014 Constitution, the government has failed to effectively address certain restrictions on the above mentioned rights/civic space since its last UPR examination, acute implementation gaps were found with regard to the freedom of expression and peaceful assembly, with certain restrictive pre-revolution laws still in place.

1.3 CIVICUS and Amazigh of Tunisia are deeply concerned by the legal and extra-legal restrictions that stifle the freedom of expression in the country, more specifically legal provisions that criminalise defamation, overbroad definitions in the anti-terrorism legislation and the number of attacks against journalists and media workers.

1.4 CIVICUS and Amazigh of Tunisia are further alarmed by restrictive pre-revolution legislation that impedes the freedom of assembly.

2. (B) Freedom of association

2.1 During Tunisia’s examination under the 2nd UPR cycle, the government received three recommendations on the right to freedom of association and creating an enabling environment for civil society organizations (CSOs). Among other recommendations, the government committed to ensuring the fundamental freedom of association into the new Constitution and to guarantee in law and in practice the freedom of association, in conformity with the ICCPR. Of the recommendations received, the government accepted all three recommendations. Two of these recommendations were fully implemented, while the recommendation to guarantee in law and in practice the freedom of association was partially implemented.

2.2 Article 35 of the 2014 Constitution guarantees the right to freedom of association. Moreover, article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Tunisia is a state party, also guarantees freedom of association. However, despite these commitments and the recent adoption of progressive legislation governing freedom of association, implementation gaps persist which prevents full realisation of this freedom. In addition, concerns persist regarding the invocation of national security and anti-terrorism measures to unwarrantedly suspend and dissolve associations.

2.3 Recommendations

- Strengthen the capacity of the Directorate of Associations, establish regional sections as to promote associative actions outside the capital.
• All civil society organizations which have been arbitrarily and unduly suspended should be immediately reinstated. Suspensions of CSOs should follow article 33 of decree-law 2011-88, which dictates that associations may only be suspended or dissolved following a judicial decision.

• Cease all harassment and intimidation, including judicial harassment, of associations that work on LGBTI rights. Additionally, orders should be issued to officials to desist from harassing LGBTI rights associations.

3. (C) Harassment, intimidation and attacks against human rights defenders, civil society activists and journalists

3.1 Under Tunisia’s previous UPR examination, the government received one recommendation regarding the protection of human rights defenders, journalists and civil society representatives, which was not implemented.

3.2 Article 12 of the UN Declaration on Human Rights Defenders mandates states to take necessary measures to ensure protection to human rights defenders. The ICCPR further guarantees the freedoms of expression, association and peaceful assembly. Additionally, article 7 of decree-law 2011-88, states that “the State shall make all necessary arrangements to guarantee that each person receives the protection of competent authorities against any violence, threat, vengeance actually or legally damaging, discrimination or pressure, or any other coercive measure as a result of the legal exercise of the above indicated rights by this decree”. However, in spite of these protections, human right defenders, especially those active in the field of LGBTI rights, have been subject to harassment and threats.¹

3.3 Recommendations

• Civil society members, journalists and human rights defenders should be provided a safe and secure environment to carry out their work. Conduct impartial, thorough and effective investigations into all cases of attacks, harassment, and intimidation against them and bring perpetrators of such offences to justice.

• Ensure that human rights defenders are able to carry out their legitimate activities without fear or undue hindrance, obstruction or legal and administrative harassment.

• The Government should systematically apply legal provisions that promote and protect human rights and establish mechanisms that protect human rights activists by adopting a specific law on the protection of human rights activists in accordance with Council resolution 27.31 of the Human Rights Council.

4. (D) Freedom of expression, independence of the media and access to information

4.1 Under the 2nd UPR cycle, the Government of Tunisia received ten recommendations relating to freedom of expression and access to information. For example, the government pledged to guarantee the freedom of expression in the Constitution and to take measures to ensure that the national legislation affecting the realisation of freedom of expression is fully aligned with international human rights obligations. Of the recommendations received, nine were accepted and one was noted. Although the freedom of expression is guaranteed in the 2014 Constitution, the government did not take sufficient measures to fully implement the other recommendations.

4.2 Article 19 of the ICCPR guarantees the right to freedom of expression and opinion. Article 31 of the 2014 Constitution of the Republic of Tunisia also guarantees the rights to freedom of opinion, thought, expression, information and publication and also guaranteeing that these rights shall not be subject to prior censorship. However, in policy and practice, a number of pre-revolution criminal laws and new anti-terrorism legislation continues to undermine the exercise of freedom of expression.

4.3 We welcome Tunisia signing the Arab Declaration on Media Freedom on 26 August 2016. The Declaration makes commitments to the principles of media freedom, independent journalism and the right to information, and sets out 16 principles in order to achieve the highest international standards of media freedom.

4.4 Several provisions of the 1968 Criminal Code unduly restrict freedom of expression, including the criminalisation of defamatory statements. Articles 245 and 247 of the Criminal Code penalise defamation of an individual or state institutions with a prison sentence up to 6 months and a fine of 240 dinars (approximately 109 USD), while slander can be punished by a one year in prison and a fine of 240 dinars (articles 246 and 247). Additionally, under article 248 false allegations against members of an administrative...
or judicial authority is punishable by a prison sentence from 2 to 5 years and a fine of 720 dinars (approximately 327 USD). According to article 128, the attribution of illegal acts to a public official related to his or her function, without proving its veracity, is punishable by a prison sentence of two years and a fine of 120 dinars (approximately 109 USD). Additionally, article 91 of Tunisia’s Code of Military Justice authorizes up to three years imprisonment for anyone who “commits ... outrages against the flag or the army, offenses against the dignity, reputation or morale of the army, or acts to undermine military discipline, obedience and due respect to superiors or criticizes the action of military hierarchy or the military officers, offending their dignity.” Finally, we also remain concerned by article 86 of the 2001 Telecommunication Code or Law 2001-1of 15 January 2001 which provides that “anyone who intentionally causes harm to others or disturbs their quietude through public telecommunication networks is punishable by one-to-two year imprisonment”.

4.5 Recommendations

- Ensure freedom of expression and media freedom by bringing national legislation into line with international standards. Repeal the provisions in the Criminal Code and the Code of Military Justice regarding the criminalisation of defamation and slander. Additionally, article 86 of the 2001 Telecommunication Code must be repealed.

- Ensure that journalists and writers may work freely and without fear of retribution, including judicial harassment, for expressing critical opinions or covering topics that the Government may find sensitive.

- Take adequate steps to lift restrictions on freedom of expression and adopt a framework for the protection of journalists from persecution, intimidation and harassment.

5. (E) Freedom of peaceful assembly

5.1 During Tunisia’s examination under the 2nd UPR cycle, the government received seven recommendations on the right to freedom of peaceful assembly, which were all accepted by the Government of Tunisia. Among other recommendations, the government committed to ensuring that the freedom of peaceful assembly is to be guaranteed under the Constitution and to remove remnants of Ben Ali-era legal codes that stifle the freedom of assembly. Although two of these recommendations were fully implemented, the government has partially implemented three

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Amended by Law 2008-1 of 8 January 2008
recommendations, and has not implemented two recommendations. The Government of Tunisia has failed to take appropriate measures to operationalise the freedom of assembly, as guaranteed in the 2014 Constitution.

5.2 Article 21 of the ICCPR guarantees the right to freedom of peaceful assembly. In addition, article 37 of the 2014 Constitution also guarantees the right to freedom of peaceful assembly. Additionally, article 5 (3) of the decree-law 2011-88 on associations explicitly states that associations have the right “to organise meetings, demonstrations, conferences, workshops, and all types of civil activities”. However, in practice peaceful assemblies, public meetings and rallies are still regulated under the restrictive Law 1969-4 of 24 January 1969. Additionally, the authorities have banned legitimate assemblies and demonstrations under the pretext of a State of Emergency, while there have been instances of excessive force by security forces to disperse peaceful protests on several occasions.

5.3 Recommendations

- Law 1969-4 of 24 January 1969 should be repealed, and the draft law on Peaceful Assembly, as submitted to the Tunisian Parliament, should be considered in order to fully guarantee the constitutional right to freedom of assembly.

- Refrain from banning or restricting peaceful assemblies during a State of Emergency.

- All instances of excessive force committed by security forces while monitoring protests and demonstrations should be immediately and impartially investigated.