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TUNISIA'S COVID-19 VACCINE PASS DISPROPORTIONATE AND UNREASONABLE

On 22 December, new rules will come into force in Tunisia mandating the use of a Covid-19 vaccine pass for many places and activities, including restaurants, public buildings, and other public and private workplaces. Enforcing those rules will restrict excessively the rights to work and to freedom of movement, and impose unreasonable penalties for non-compliance, Amnesty International said today.

In addition, health authorities have failed to publicize a clear, science-based rationale for plans to impose a vaccine pass, to clarify or strengthen legal safeguards against potential abusive enforcement, and to show that they have sought meaningful public input in crafting vaccine pass policy.

Amnesty International, in line with WHO recommendations,¹ calls on governments to favour communication and public outreach to encourage people to get vaccinated against Covid-19 over more coercive methods that pressure them to do so.

On 22 October, President Kais Saied, who suspended Parliament on 25 July and has since granted himself the power to legislate by decree, issued Decree Law 2021-1, which mandates a Covid-19 vaccine pass for nearly all people aged 18 and older as proof of vaccination against Covid-19 to access to a wide range of public and private spaces.

The new rules state that both public sector workers and salaried private sector workers who fail to show a vaccine pass will be barred from working until they obtain one, and requires employers not to pay them for their period of suspension. The rules also mandate authorities to order businesses other than private health facilities that fail to enforce applicable vaccine pass requirements to close for up to 15 days.

With Tunisia struggling to overcome years of economic malaise and high unemployment made worse by the Covid-19 pandemic, the threat to ordinary Tunisians of potentially substantial loss of income for vaccine pass infractions is grounds for serious concern. Tunisian citizens aged 18 and older will also require a vaccine pass to travel abroad, raising concerns for the right to freedom of movement.²

Decree-Law 2021-1 states that the vaccine pass will enter into force two months after the law's publication and remain in force for six months. It will thus come into force on 22 December, according to a recent post on the Health Ministry's Facebook page.³ On 5 November, authorities issued a directive specifying the technical aspects of the pass.⁴

¹ World Health Organization, "COVID-19 and mandatory vaccination: Ethical considerations and caveats", 13 April 2021, p. 4. Available at: <https://www.who.int/publications/i/item/WHO-2019-nCoV-Policy-brief-Mandatory-vaccination-2021.1>

² Available at: http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX_3892-44-CFEudrfuAt/AfficheJORT/SYNC_-1080878514 (AR) and http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX_3892-44-CFEudrfuAt/AfficheJORT/SYNC_-1081250811 (FR)

³ Ministry of Health Facebook post, 3 December 2021, available at: <https://www.facebook.com/santetunisie.rns.tn/posts/270685281768608>

⁴ According to the directive, from the health and communications technology ministries, the pass will consist of basic personal information - name, date of birth, and date from which the pass is valid - and a QR code giving access to encrypted vaccination information, and will be available exclusively through the government's online vaccination portal, EVAX. Available at: http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX_3892-44-CFEudrfuAt/AfficheJORT/SYNC_-1080985671 (AR) and http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX_3892-44-CFEudrfuAt/AfficheJORT/SYNC_-1081124311 (FR)

Covid-19 has struck Tunisia hard since autumn of 2020, infecting at least [718,561 people and killing more than 25,000](#) from a population of about [11.7 million](#), according to official data.⁵ In mid-July 2021, Tunisia's daily confirmed deaths per million was the second highest in the world.⁶

Authorities began vaccinations in March 2021, but the rollout proceeded slowly at first, undermined by lack of transparency, political interference, and delays in vaccine shipments.⁷ Authorities initially failed to prioritize some at-risk categories of people, such as prisoners, undocumented migrants, and those living in poverty.

However, authorities stepped up vaccinations from late July onward, facilitated by deliveries from several countries, after President Saïed suspended parliament, dismissed Prime Minister Hichem Mechichi, and claimed sweeping powers that he said were granted to him by Tunisia's constitution.⁸ The vaccination rate shifted from six percent of Tunisia's population fully vaccinated in mid-July to around 46 percent in mid-December.⁹

Article 6 of the International Covenant on Economic, Cultural and Social Rights (ICECSR), which Tunisia has ratified, commits governments to protecting the right to work for a living.¹⁰ While Article 12 of the ICECSR commits governments to protecting public health, guidance on implementing that article by the United Nations' Human Rights Committee (HCR) states that any restrictions on ICECSR rights on public health grounds must be strictly necessary, the least restrictive option available, limited in scope, and subject to review, in accordance with ICECSR articles 4 and 5.¹¹

Some aspects of Decree-Law 2021-1 and the 5 November directive are consistent with relevant international law and World Health Organization (WHO) recommendations. Notably, they establish the pass as a temporary measure and contain provisions intended to ensure that no one eligible for it gets left out.

The new rules grant the vaccine pass, in the form of a digital QR code, to all fully vaccinated people aged 18 and older and allow for fully vaccinated minors to receive it as well, and grant an alternative pass to people who cannot be vaccinated for health reasons.¹² They also provide for a paper version of the vaccine pass with QR code for people who lack digital devices such as smartphones, and stipulate that data privacy laws apply to personal vaccination information.

However, several other aspects of Decree-Law 2021-1 raise serious concerns, and risk curtailing the rights to work for a living and to freedom of movement beyond what is permitted under international law.

⁵ Ministry of Health Facebook post, 14 December 2021. Available at:

<https://www.facebook.com/santetunisie.rns.tn/posts/277650621072074> ; and Institut National de la Statistique, "Bulletin Mensuel de la Statistique, Août 2021", p. 9

⁶ Amnesty International, "Tunisia: COVID-19 Vaccination Plan must be Fair and Transparent", 15 July 2021. Available at: <https://www.amnesty.org/en/documents/mde30/4459/2021/en/>

⁷ Amnesty International, "Tunisia: COVID-19 Vaccination Plan must be Fair and Transparent", 15 July 2021. Available at: <https://www.amnesty.org/en/documents/mde30/4459/2021/en/>

⁸ Reuters, "Tunisia received 6 million doses of vaccine as donations – President", 3 August 2021. Available at: <https://www.reuters.com/world/africa/tunisia-received-6-million-doses-vaccine-donations-president-2021-08-02/>

⁹ Amnesty International, "Tunisia: COVID-19 Vaccination Plan must be Fair and Transparent", 15 July 2021. Available at: <https://www.amnesty.org/en/documents/mde30/4459/2021/en/> ; Ministry of Health Facebook post, 14 December 2021. Available at: <https://www.facebook.com/santetunisie.rns.tn/posts/277651394405330>

¹⁰ International Covenant on Economic, Cultural and Social Rights. Available at: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

¹¹ General comment no. 14 (2000), The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights). Available at: <https://digitallibrary.un.org/record/425041?ln=en>

¹² Neither Decree-Law 2021-1 nor the 5 November 2021 ministerial directive gives further details on this alternative pass. According to a statement from a Health Ministry official cited by Tunisia's state news agency on 4 December 2021, the alternative pass will be similar in form and function to a vaccine pass, and will be made available on the EVAX portal before 22 December 2021. Those eligible will have to upload a medical certificate stating the conditions that preclude them from being vaccinated against Covid-19, for review by experts. An official list of recognized precluding conditions is forthcoming, according to the news agency. See:

TAP, "Covid19: Un pass spécifique sera délivré aux personnes dispensées de vaccination avant le 22 décembre prochain", 4 Dec 2021. Available at : <https://www.tap.info.tn/fr/Portail-Covid-FR/14648085-covid19-un-pass>

TAP, "الصحة بوزارة مسؤول(خصوصي صحي جواز من كورونا ضد التلقيح من المعفيين من الأشخاص ستمكن الصحة وزارة", 4, Dec 2021. Available at: <https://www.tap.info.tn/ar/كوفيد-19-Portal-Covid-19/14647929-وزارة-الصحة-وزارة-ستمكن>

LACK OF CONSULTATION, FAILURE TO PUBLICISE A CLEAR RATIONALE FOR THE VACCINE PASS

Authorities have described the vaccine pass as part of the efforts “to bring about collective immunity as soon as possible....”¹³ However, Amnesty International has found no evidence that they have tried to present a clear, widely-communicated, science-based rationale for that decision, nor of having made significant efforts to seek input from labour unions, civil society groups, or others who might help craft sound policy on vaccine pass requirements. Consultations took place via the “Scientific Committee to Fight Coronavirus” which included a number of medical professionals, but was not more broadly opened up to invite human rights groups to comment on the proposed restrictions on freedoms.

In its guidance on Covid-19 vaccine mandates and vaccine pass requirements, the WHO advises governments to explain clearly the reasoning behind such policies in part to help build public trust; and to help address the ethical questions that such policies may raise, authorities should consult with the public - “particularly with representatives of groups who are likely to face increased disadvantages or risks....”¹⁴

UNREASONABLE PENALTIES FOR FAILURE TO GET A VACCINE PASS

Under Article 6 of Decree-Law 2021-1, both public sector workers and salaried private sector workers are barred from their jobs until they get a vaccine pass and from being paid for their period of suspension – in effect, forced to take unpaid leave. Under Article 8, territorial governors are mandated to order businesses other than private health facilities that fail to enforce applicable vaccine pass requirements to close for up to 15 days.

These penalties amount to cutting off income and thus risk inflicting unreasonable harm on the livelihoods of those penalized and any dependants they may have, especially given the economic and financial crises that Tunisia is currently suffering.

Tunisia’s economy, already struggling, shrank by 8.8% during 2020 as the Covid-19 pandemic battered much of the world economy.¹⁵ A survey by the World Bank and Tunisia’s state statistics body, the Institut National de la Statistique (INS) found that as of October 2020 nearly half (44%) of respondents said the pandemic had damaged their household finances, and nearly two thirds (62%) of the poorest group said they could no longer cover monthly expenses.¹⁶

Unemployment currently stands at 18.4% overall as of November 2021 and more than double that, at 42.8%, for those aged 15 to 24, according to INS data.¹⁷ One September 2021 survey found that nearly three quarters of respondents reported income loss during the pandemic, and 43% reported having had to skip meals during the previous week. A majority of respondents cited income loss as a hindrance to getting food.¹⁸

¹³ Statement by the ministries of health and communications technology, published on the Health Ministry Facebook page, 29 October 2021. Available at:

https://www.facebook.com/permalink.php?story_fbid=4640323926006675&id=186480324724413

¹⁴ World Health Organization, “COVID-19 and mandatory vaccination: Ethical considerations and caveats”, 13 April 2021, pp. 2-3. Available at: <https://www.who.int/publications/i/item/WHO-2019-nCoV-Policy-brief-Mandatory-vaccination-2021.1>

and World Health Organization, “Digital Documentation of COVID-19 Certificates: Vaccination Status — Technical Specifications and Implementation Guidance”, 27 August 2021, p. 10. Available at:

https://www.who.int/publications/i/item/WHO-2019-nCoV-Digital_certificates-vaccination-2021.1

¹⁵ World Bank, “Tunisia Economic Monitor, Spring 2021: Navigating out of the Crisis”, p. 2, available at:

<https://openknowledge.worldbank.org/handle/10986/36123>

¹⁶ Institut National de la Statistique, “Suivi de l’impact socio-économique du COVID-19 sur les ménages tunisiens, Octobre 2020”, October 2020, p. 2, available at: <http://ins.tn/publication/suivi-de-limpact-socio-economique-du-covid-19-sur-les-menages-tunisiens-octobre-2020>

¹⁷ World Bank, “Tunisia’s Economic Update – October 2021”, 7 October 2021. Available at:

<https://www.worldbank.org/en/country/tunisia/publication/economic-update-october-2021> ; Institut National de la

Statistique, “Indicateurs de l’emploi et du chômage, troisième trimestre 2021”, available at:

<http://ins.tn/publication/indicateurs-de-lemploi-et-du-chomage-troisieme-trimestre-2021>

¹⁸ The survey was carried out by the Partnership for Evidence-Based Response to Covid (PERC), a group of private sector firms and global health organisations: PERC, “Finding the Balance: Public health and social measures in Tunisia,” p. 8.

Available at: https://preventepidemics.org/wp-content/uploads/2021/10/tunisia_en_20211028_1238.pdf

Meanwhile, life is getting more expensive for people in Tunisia. The World Bank predicts inflation of 5.6% this year and 6.0% in 2022.¹⁹ As of November 2021, the prices of food, clothing, housing, and utilities had all risen over the past year, according to the INS. Food prices were up 6.9% overall and had jumped dramatically for staple items poultry (24.0%), olive oil (24.4%), and eggs (16.4%).²⁰

While international law allows governments to limit some rights to address public health emergencies, such measures must be temporary, necessary, proportional to the problem they are meant to address, and must not themselves constitute or invite other violations of basic rights and freedoms. In this case, penalties for workers who fail to get a vaccine pass or businesses that fail to enforce vaccine pass requirements threaten the right to secure a livelihood through work.

DISPROPORTIONATE LIMITATIONS ON FREEDOM OF MOVEMENT

Article 3 of Decree-Law 2021-1 stipulates that Tunisian citizens aged 18 and older will require a vaccine pass to travel outside the country via any point of exit. This restriction is both invasive and unnecessary, and as such does not amount to a legitimate limitation on freedom of movement as protected by international law and cited in relevant WHO recommendations.

Article 12 of the International Covenant on Civil and Political Rights (ICCPR), which Tunisia has ratified, guarantees freedom of movement both within a country and across its borders. It states specifically that no one should be prevented from leaving his or her own country. While Article 12 allows for restrictions on freedom of movement on certain grounds, including to safeguard public health, these restrictions must be provided by law, necessary to achieve a legitimate aim, proportionate, and must not violate other rights in the ICCPR.²¹ Governments should use the "least intrusive" means possible to achieve the desired end, according to HCR guidance on implementing Article 12.²²

WHO guidance on international travel during the Covid-19 pandemic states that governments should not restrict travel based on proof of vaccination, but should opt instead for "risk-based" measures such as testing for Covid-19, imposing quarantines on incoming travellers, and/or requiring travellers to show a recent negative Covid-19 test result.²³

INSUFFICIENT LEGAL SAFEGUARDS AGAINST ARBITRARY ENFORCEMENT

Decree-Law 2021-1 does not appropriately safeguard against abuse by failing to specify disciplinary penalties or recognize force majeure grounds other than health that might impede access to vaccines, does not provide for a swift, impartial means of seeking remedy and does not clarify what form of judicial review may be available.

For example, Article 1 of Decree-Law 2021-1 provides for an alternative pass for people who cannot be vaccinated for health reasons.²⁴ However, the law makes no provision for people who cannot obtain a pass for other reasons beyond their control, such as uneven access to health facilities in more remote areas, leaving them vulnerable to unfair penalties.

¹⁹ World Bank, "Tunisia's Economic Update – October 2021", 7 October 2021. Available at: <https://www.worldbank.org/en/country/tunisia/publication/economic-update-october-2021>

²⁰ Institut National de la Statistique, "Indice des prix à la consommation, Novembre 2021" Available at: <http://www.ins.tn/publication/indice-des-prix-la-consommation-novembre-2021>

²¹ International Covenant on Civil and Political Rights. Available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

²² Human Rights Committee, "General Comment No. 27: Article 12 (Freedom of Movement)", 2 November 1999, Section 14. Available at: <https://www.refworld.org/docid/45139c394.html>

²³ World Health Organization, "Policy considerations for implementing a risk-based approach to international travel in the context of COVID-19," 2 July 2021, p. 2. Available at: <https://apps.who.int/iris/handle/10665/342235>

²⁴ Neither Decree-Law 2021-1 nor the 5 November 2021 ministerial directive gives further details on this alternative pass. According to a statement from a Health Ministry official cited by Tunisia's state news agency on 4 December 2021, the alternative pass will be similar in form and function to a vaccine pass, and will be made available on the EVAX portal before 22 December 2021. Those eligible will have to upload a medical certificate stating the conditions that preclude them from being vaccinated against Covid-19, for review by experts. An official list of recognized precluding conditions is forthcoming, according to the news agency. See:

TAP, "Covid19: Un pass spécifique sera délivré aux personnes dispensées de vaccination avant le 22 décembre prochain", 4 Dec 2021. Available at : <https://www.tap.info.tn/fr/Portail-Covid-FR/14648085-covid19-un-pass>

Article 7 of Decree-Law 2021-1 mandates that public sector workers who fail in their duty to enforce vaccine pass requirements be disciplined according to “the legislation in force,” a vague provision that leaves them vulnerable to potentially disproportionate, or otherwise unreasonable or abusive punishment.

Neither Decree-Law 2021-1 nor the 5 November ministerial directive establish any mechanism of frequent, transparent review of the decision to impose vaccine pass requirements or the policies surrounding their enforcement, based on the latest scientific research and consideration for fundamental rights and freedoms.

While Tunisia’s Administrative Tribunal may overturn illegal administrative decisions made on the basis of decree-laws, litigation before the Administrative Tribunal may last months - or even years - and the harm caused to the person would not be redressed or repaired swiftly.

In addition, President Saïed’s recent concentration of powers has removed key institutional checks on potentially abusive laws. Under a 22 September presidential decree, Tunisia’s Administrative Tribunal may no longer strike down decree-laws - such as Decree-Law 2021-1 – on the grounds that they constitute violations of the legal order. The same presidential decree dissolved a temporary body empowered to vet the constitutionality of laws. (Tunisia currently lacks a full-fledged constitutional court.)

CONCLUSION AND RECOMMENDATIONS

Imposing vaccine pass requirements is likely to have broad and potentially deep impact on people’s daily lives and ability to exercise basic rights – in this case, notably, the right to freedom of movement and the right to work for one’s livelihood. Tunisian authorities should ensure that any laws and regulations related to vaccine passes are consistent with Tunisia’s obligations to protect fundamental rights and freedoms under international law, and with the relevant recommendations of the WHO.

August 2021 WHO guidance on vaccine passes that is aimed at governments, and which reflects international human rights law on the legitimate limitations on rights, says that vaccine pass requirements should be temporary, proportionate, based on scientific evidence, provided by law, and not imposed “in an arbitrary, unreasonable or discriminatory manner.”²⁵ Governments should explain clearly to the public how vaccine passes are meant to work and what “policies and mechanisms” government will set up to guard against their misuse.²⁶

As a general rule, governments should also ensure that policies on Covid-19 vaccination and vaccine passes are consistent with international human rights standards, namely the Siracusa Principles on the Limitation and Derogation of Provisions in the [ICCPR], a set of expert recommendations on how government may restrict certain rights and freedoms in exceptional circumstances when they are “specifically aimed at preventing disease or injury or providing care for the sick and injured”. Notably, the Principles state that governments must justify such restrictions, use the least restrictive means possible, and provide legal safeguards against abusive enforcement and means of seeking redress.²⁷

In particular, Tunisian authorities should:

- 1) Amend penalties for non-compliance with vaccine pass requirements to ensure that they do not threaten people’s right to seek a livelihood through work as protected by international law.
- 2) Amend the requirement to show a vaccine pass as an exclusive means to leave Tunisia and allow travellers who cross Tunisia’s international borders to prove their Covid-19 vaccination, infection, or innocuity status through a variety of means, such as a PCR test, in accordance with relevant WHO recommendations.

TAP, “مسؤول بوزارة الصحة(وزارة الصحة ستمكن الأشخاص من المعفيين من التلقيح ضد كورونا من جواز صحي خصوصي”, 4, Dec 2021. Available at: <https://www.tap.info.tn/ar/كوفيد-سيت-ويب/19-Portal-Covid-19/14647929-وزارة-الصحة-وزارة-ستمكن-الصحة-وزارة-4>

²⁵ World Health Organization, “Digital Documentation of COVID-19 Certificates: Vaccination Status — Technical Specifications and Implementation Guidance”, 27 August 2021, p. 10. Available at: https://www.who.int/publications/i/item/WHO-2019-nCoV-Digital_certificates-vaccination-2021.1

²⁶ World Health Organization, “Digital Documentation of COVID-19 Certificates: Vaccination Status — Technical Specifications and Implementation Guidance”, 27 August 2021, p. 11. Available at: https://www.who.int/publications/i/item/WHO-2019-nCoV-Digital_certificates-vaccination-2021.1

²⁷ UN Commission on Human Rights, “The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights,” 28 September 1984, Articles 8, 11, 12, 18, and 26. Available at: <https://www.refworld.org/docid/4672bc122.html>

- 3) Ensure and specify adequate legal safeguards to protect people from abusive enforcement of vaccine pass requirements as required by international law; and ensure and specify swift, impartial, and legally provided means for people to seek and obtain remedy for any such enforcement of vaccine pass requirements to which they are subject.
- 4) Establish by law a transparent mechanism for the frequent review of vaccine pass requirements based on the latest scientific research, Tunisia's obligations under international law to protect fundamental rights and freedoms, and relevant WHO recommendations; and for the prompt communication of that mechanism's findings to the public.
- 5) Make public clear evidence of any significant effort by authorities to consult meaningfully on vaccine pass requirements with a wide range of social actors, and in particular any who speak for people most likely to be affected. If authorities have made no such effort, they should do so immediately and transparently.
- 6) Communicate clearly, widely, and repeatedly to the public the justification for imposing vaccine pass requirements, how those requirements will be enforced, the rights and obligations of the public with respect to them, and especially rights to protection from abusive enforcement and means of seeking redress for the same.
- 7) Focus on convincing people to get vaccinated voluntarily by providing accurate and evidence-based information, in formats that are accessible to everyone, about the availability, necessity, and effectiveness of vaccinations.